Submission ID: S56652394

My Client "ARU Writtle" has two interested party reference numbers: [redacted] and [redacted] and wishes to make a submission in relation to a number of items for deadline 1.
For the avoidance of doubt and missing any deadlines I shall be making this submission twice, once for each interested party reference number.
This submission relates to a number of items for deadline 1:
1. written representations (with summaries for any that exceed 1500 words)
2. suggested locations for site inspections (accompanied or unaccompanied or access required), including justification for consideration by the ExA and specifying whether the locations require access to private land
3. requests by IPs to be heard and have a issue specific hearing
4. notification by statutory parties of their wish to be considered as an interested party by the ExA
These are collectively encompassed in the documents submitted.

DEADLINE 1 REQUESTS:

1) FOR AMENDMENT OF THE NAME OF AN AFFECTED INTERESTED PARTY

2) FOR ADDITION OF AFFECTED INTERESTED PARTY

3) FOR EACH OF (1) AND (2) TO BE HEARD TOGETHER AT A PARTICULAR SOCIO-ECONOMIC ISSUE SPECIFIC HEARING

4) A SITE VISIT TO THE EQUINE FACILITY AT "ARU WRITTLE".

5) FOR EACH OF (1) AND (2) TO BE HEARD TOGETHER AT A COMPULSORY ACQUISITION HEARING

INTRODUCTION

1. These are five Requests to the Examining Authority to exercise its discretion under the Planning Act 2008 at Deadline 1 by ARU Writtle" (being the trademark of the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU").

2. These Requests are accompanied by:

   a) Appendix A – Relevant Representation by "ARU Writtle" to the Examining Authority;

   b) Appendix B – notification from Examining Authority of Interested Party Reference Number

REQUEST 1: AMENDMENT 1 TO THE *DESCRIPTION* OF THE INTERESTED PARTY

3. Request 1 must be read with Request 2. This because in substance they relate to the revelation of two legal entities standing behind a *single description* (presently) but to which the Examining Authority has attributed (presently and properly) *two* Reference Numbers for two Interested Parties. See also **Appendices A-C** attached hereto.

4. This is Request 1 to request the change of the *description* of the single Affected Interested Party "ARU Writtle", and to "Anglia Ruskin University" because the description "ARU Writtle" is a trademark for <u>two</u> legal entities of which one is the "Anglia Ruskin University", freeholder of the land of the ARU Writtle campus affected by the proposals, and for Anglia Ruskin University to be attributed Interested Party Reference Number F1201D06F.

5. Anglia Ruskin University, of Bishops Hall Lane, Chelmsford CM1 1SQ provides Higher Education at its Campus at ARU Writtle under the public facing *brand* or trademark: "ARU Writtle". "Anglia Ruskin

University" was formerly described (for example, in the HM Land Registry Title) as "Anglia Ruskin University Higher Education Corporation". Today, the entity remains described solely as "Anglia Ruskin University".

6. *Because* Anglia Ruskin University provides Higher Education but also, simultaneously, Further Education is provided at ARU Writtle, Anglia Ruskin University incorporated for that educational purpose a wholly owned subsidiary company called "Writtle College Limited" that provides Further Education at the Campus at ARU Writtle. "Writtle College Limited" occupies the same extent of the land at that Campus as does Anglia Ruskin University.

7. Consequently, standing behind the trademark "ARU Writtle" are two discrete legal entities: a) Anglia Ruskin University; and b) Writtle College Limited. Anglia Ruskin University is the freehold owner and occupier of the Campus land and Writtle College Limited is simultaneously an occupier of the same extent of Campus land.

8. The Book of Reference also records "ARU Writtle" as the freeholder of certain plots of land at the location of that Campus but, as a trademark, "ARU Writtle" has no real interest in the land of the Campus. It is understood that National Grid, as Applicant, was also under the same misapprehension when it drew up some years ago its Book of Reference.

9. Relevant Representations were made by the (non-legal) advisors of Anglia Ruskin University in respect of the Application under the trademark name "ARU Writtle" whilst thereby (correctly) making the same representation for both Anglia Ruskin University and Writtle College Company.

10. The Examining Authority attributed to the Relevant Representations in the trademark name "ARU Writtle" not one but two Reference Numbers for two discrete Interested Parties: NTOT-AFP2247 and F1201D06F. Please see attached correspondence from the Examining Authority.

11. Anglia Ruskin University respectfully requests that the Interested Party Reference Number "F1201D06F" be attributed to it as the freeholder entity and that, going forwards, the description attached to that Number be "Anglia Ruskin University". This also properly identifies that entity for the purposes of sections 56 and 57 of the Planning Act 2008 and ensures that the Book of Reference is correct. (See Section E, Book of Reference Amendments, to the Written Submissions of "ARU Writtle").

12. There is no prejudice to either entity because the representations of each entity are aligned as a result of Anglia Ruskin University wholly owning its subsidiary Writtle College Limited. Nor is there expected to be any prejudice to any third party because the change relates to a different *description* of a party that already has an Interested Party Reference Number. Rather, it is of benefit to all that one party have one (not two) Reference Numbers.

REQUEST 2: AMENDMENT 2 TO THE *DESCRIPTION* OF THE INTERESTED PARTY

13. Request 2 must be read with Request 1. See also **Appendices A-C** attached hereto.

14. This is Request 2 to request the change of the *description* of the single Affected Interested Party "ARU Writtle" also to "Writtle College Limited" because the description "ARU Writtle" is a trademark for two legal entities of which one is the "Anglia Ruskin University", freeholder of the land of the ARU Writtle campus affected by the proposals and the other is "Writtle College Limited", the occupier of that campus, and to attribute to Writtle College Limited the Interested Party Reference Number NTOT-AFP2247 .

15. The correct details for "Writtle College Limited" are: Company number 15198562; Registered Office Address at: Writtle College Limited, Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ. Its Directors include Philip Grant and Professor Roderick Watkins.

16. Whilst Anglia Ruskin University provides Higher Education at its Campus at ARU Writtle under the public facing *brand* or trademark: "ARU Writtle", the entity "Anglia Ruskin University" incorporated "Writtle College Limited" for the purpose of simultaneously provision by that company at that Campus of Further Education.

17. "Writtle College Limited" *occupies* the same extent of the land at that Campus as does Anglia Ruskin University (and who is also the freehold owner) .

18. The Book of Reference also records "ARU Writtle" as the freeholder of certain plots of land at the location of that Campus but, as a trademark, "ARU Writtle" has no real interest in the land of the Campus. It is understood that National Grid, as Applicant, was also under the same misapprehension when it drew up some years ago its Book of Reference.

19. Relevant Representations were made by the (non-legal) advisors of Anglia Ruskin University in respect of the Application under the trademark name "ARU Writtle" whilst thereby (correctly) making the same representation for both Anglia Ruskin University and Writtle College Company.

20. The Examining Authority attributed to the Relevant Representations in the trademark name "ARU Writtle" not one but two Reference Numbers for two discrete Interested Parties: NTOT-AFP2247 and F1201D06F. Please see attached correspondence from the Examining Authority.

21. Anglia Ruskin University respectfully requests that the Interested Party Reference Number "NTOT-AFP2247" be attributed to "Writtle College Limited" as an entity occupying the campus (including the Equine Facility) and that, going forwards, the *description* attached to that Number be "Writtle College Limited". This also properly identifies that entity for the purposes of sections 56 and 57 of the Planning

Act 2008 and ensures that the Book of Reference is correct. (See Section E, Book of Reference Amendments, to the Written Submissions of "ARU Writtle").

22. There is no prejudice to either entity because the representations of each entity are aligned as a result of Anglia Ruskin University wholly owning its subsidiary Writtle College Limited. Nor is there expected to be any prejudice to any third party because the change relates to a different *description* of a party that already has an Interested Party Reference Number. Rather, it is of benefit to all that one party have one (not two) Reference Numbers.

REQUEST 3: REQUEST BY "ARU WRITTLE" (TRADING AS ANGLIA RUSKIN UNIVERSITY AND WRITTLE COLLEGE LIMITED) TO BE HEARD AT AN ISSUE SPECIFIC HEARING AND TO WHICH ESSEX COUNTY COUNCIL (AS THE COUNTY EDUCATION AUTHORITY) BE INVITED TO ATTEND BY THE EXAMINING AUTHORITY

23. On behalf of "ARU Writtle (the trademark of Anglia Ruskin University and Writtle College Limited)", Anglia Ruskin University and Writtle College Limited requests that:

    a) its detailed witness evidence on the Socio-Economic Effects resulting from the proposals be heard at a single Issue Specific Hearing, in particular in respect of the statutory safeguarding of children and physical collision risks between horses and construction vehicles and between pedestrians and construction vehicles ; and

    b) the Examining Authority formally invite the County Education Authority, Essex County Council, to attend and make representations also on important and relevant topics including the statutory requirement to ensure the safeguarding of children, envisaged by National Grid to be placed at real risk or breached by the execution of its proposals over and through the campus land of Anglia Ruskin University and Writtle College Limited at its Equine Facility at Cow Watering Land.

24. The detail and volume of the witness evidence of Anglia Ruskin University and Writtle College Limited and the resulting questions that the Examining Authority are likely to have in the discharge of their obligation under *Secretary of State for Education v Tameside* [1977] AC 1014, at page 1065 ("*Tameside*") (see attached at **Appendix D**) by which to ascertain "the relevant information" to enable their assessment of the representations of those two parties, their relative status, and the nature of their real concerns. Further, given the nature and number of witnesses who have given evidence, there is a real risk that the Representations of these two entities will be unable to be heard fairly, or appropriately, or appropriately questioned if the Examining Authority were under time pressure to hear others at the same time, if heard *combined* with other parties in a potentially more generalised (albeit in some ways, targeted) Issue Specific Hearing.

25. Further, Essex County Council has expressed to Anglia Ruskin University and to Writtle College Limited its strong desire to attend an Issue Specific Hearing by which to support those two Interested Parties.

REQUEST 4: REQUEST BY "ARU WRITTLE" (TRADING AS ANGLIA RUSKIN UNIVERSITY AND WRITTLE COLLEGE LIMITED) THAT THE EXAMINING AUTHORITY UNDERTAKE A SITE VISIT TO THE EQUINE FACILITY AT COW WATERING LANE

26. On behalf of "ARU Writtle (the trademark of Anglia Ruskin University and Writtle College Limited)", and putatively as Interested Parties Reference Numbers, respectively F1201D06F and NTOT-AFP2247, Anglia Ruskin University and Writtle College Limited request that the Examining Authority make an accompanied Site Visit to the Equine Facility at the ARU Writtle campus.

27. The physical facts of the existing route, physical constraints and traffic type, along part of which National Grid proposes a route along Plot 8/42 of Sheet 8 in Section F of the Land Plans require to be observed by the Secretary of State's Examining Authority and in order to test the asserted justification of National Grid (by means of its colouring that Plot yellow and encompassing it inside of the Order Limits) for the compulsory acquisition of that Plot for construction and maintenance access.

28. In addition, the Examining Authority would properly benefit from seeing in real life the low height of the rising ground identified as "Plot 8/37 situated between the Victoria Road highway (envisaged to be subject to traffic regulation orders made by National Grid) and the adjacent Plot 8/29, and the absence of real challenge to National Grid taking construction and maintenance access from that highway directly into the Order Limits (instead of by the route coloured yellow of Plot 8/42).

29. The foregoing is supported by the common law in the *Tameside* case (referred to above) that requires the Secretary of State to: "ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?" See **Appendix D** attached hereto. A site visit is such a reasonable step and by which the Secretary of State will be able to ascertain relevant information not immediately apparent from documentation and in relation to the proposed compulsory acquisition by National Grid of the campus land at Equine Facility where Anglia Ruskin University and Writtle College Limited provide Higher and Further Education subject to the statutory safeguarding provisions relating to students.

REQUEST 5: REQUEST BY "ARU WRITTLE" (TRADING AS ANGLIA RUSKIN UNIVERSITY AND WRITTLE COLLEGE LIMITED) TO BE HEARD AT A COMPULSORY ACQUSITION HEARING

30. Pursuant to the request of the Examining Authority that Interested Parties make a request by Deadline 1 to be heard at a Compulsory Acquisition Hearing, each of Anglia Ruskin University (pursuant to Request 1, putatively IP Reference F1201D06F), and Writtle College Limited (pursuant to Request 2, putatively IP Reference NTOT-AFP2247), request that they be so heard. The *Tameside* duty on the Secretary of State is also relevant to the hearing of the two Interested Parties representations by which to ascertain all relevant information from those parties and to ascertain the absence of relevant information from National Grid. See **Appendix D** attached hereto.

31. Because Writtle College Limited is a wholly owned subsidiary of Anglia Ruskin University, the interests of both parties in relation to the proposals of National Grid align, as does their evidence (including that set out in the witness statements accompanying the Written Submissions of "ARU Writtle (the trademark of Anglia Ruskin University and Writtle College Limited)" and as do their Submissions. Therefore, no additional time would be required for either to be heard separately. Instead, time would be saved by hearing the representations and evidence of these Interested Parties simultaneously.

CHRISTIAAN ZWART

39, Essex Chambers,
81, Chancery Lane,
London WC2A 1DD

26th February 2026

Project information (/projects/EN020027)

Documents (/projects/EN020027/documents)

Relevant representations (registration comments)

Examination timetable (/projects/EN020027/examination-timetable)

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Norwich to Tilbury

Representation by Savills (UK) Ltd on behalf of ARU Writtle

Date submitted	27 November 2025
Submitted by	Members of the public/businesses

Executive Summary: Impact of National Grid's Norwich-to-Tilbury Project on ARU Writtle

Background; Land-based provision of research and education at Writtle has a long and prestigious history, stretching back to the 19th century. In recent times, Writtle has bred Olympic-winning horses, pioneered research into new agricultural technologies, and forged innovative partnerships with a range of global industries across the land-based sector. This provision, recently merged with Anglia Ruskin University (February 2024), and, with the added reach and scope of a "full-service" general and award winning university, is now on a clear trajectory of growth, as we build on that illustrious history to deliver new education and research that is central to the animal welfare, international food supply resilience and agritech breakthroughs. ARU Writtle delivers award-winning Further and Higher Education programmes in agriculture, animal sciences, and equine studies.

The Equine Unit at Cow Watering Lane is central to practical learning for approximately 500 students across 17 courses, including veterinary physiotherapy and equine management. The campus also houses around 90 horses and supports research, competitions, and industry partnerships. It is also directly affected by the proposed power lines and pylons, both during the construction and operational phases, putting at risk the growth potential that ARU Writtle offers, just at a time when it is once again beginning to thrive. This will have an impact locally, nationally and internationally, in crucial areas of the world's economy.

Direct Impact of Project on ARU Writtle; The access and construction through the Equine Centre will create severe College operational disruption: 1. Equine Centre: a. Proposed access route runs through the centre of the Equine Centre, cutting across access and parking areas, passing teaching rooms, stabling blocks, and the menage (riding arena).This poses huge Health and Safety concern. b. Due to

the ‘flighty’ nature of horses, this will enforce a halt on practical teaching sessions, compromise safeguarding, and create unacceptable safety hazards for students and staff. c. Movement of scaffolding lorries and heavy machinery through these areas poses collision risks and obstructs emergency evacuation routes.

2. Grazing Paddocks; a. Overhead lines will be erected directly above horse grazing areas, making them unusable during and after construction. This directly affects students, the horses in livery at Writtle, and visiting equine teams and experts. b. Horses will lose access to turnout fields, forcing prolonged stabling, increasing stress and health risks (colic, ulcers). c. Reinstated groundworks take 12+ months to become equine-safe, creating long-term disruption. Engagement History Two site visits have taken place with National Grid and their agents to explain the operational, educational, and welfare challenges posed by the proposed overhead line route, associated access and construction works. Despite these meetings and the obvious impact on this thriving regional and national resource, no amendments have been made to mitigate the identified risks, and there has been a lack of meaningful engagement to find a workable solution. ARU has repeatedly urged consideration of alternative routes and construction methods (e.g., horizontal directional drilling), but these proposals have not been adopted. Key Issues

3. Educational Disruption o Practical learning is irreplaceable; disruptions will affect 17 courses, including FE, UG, and PG programmes. o Hands-on assessments and clinical exams cannot be delivered safely under current plans. o Risk of regulatory non-compliance with Office for Students (OfS) and Department for Education for example. o Student wellbeing will be significantly impacted- many students have declared needs, SEMH and EHCPs and will find noisy disruption dis-regulating and therefore unsafe.

4. Financial & Reputational Impact o Potential tuition losses exceed £750,000 per cohort over 3–4 years; international student income at risk (>£1M over three years). o If learning is not made up for modules that are affected, the general rule is 50% fee reimbursement for the hours that were missed for a module up to 50% of the whole module cost if it has been a significant impact. o Additional operational costs: stabling (£20,000/month), veterinary care, and horse procurement (~~£165,000). o External bookings (clinics, competitions, training days) will be cancelled, damaging partnerships and revenue streams. o Loan horse scheme compromised due to lack of turnout, forcing costly horse purchases (~~£165,000). o Reputational damage could affect recruitment, partnerships, and accreditation. from perceived unsafe and disrupted campus environment will affect recruitment and retention. o Staff may need to be redeployed or placed on temporary leave, resulting in inefficient use of allocated salary budgets and possible additional costs. o The presence of additional distractions and elevated risk factors necessitates increased staff supervision during practical activities. o External bookings (clinics, competitions, training days) will be cancelled, damaging partnerships and revenue streams. o Loan horse scheme compromised due to lack of turnout, forcing costly horse purchases (~£165,000). o Reputational damage

5. Safety & Welfare o Horses are highly sensitive to noise and machinery, construction risks spooking, accidents, and compromised welfare. o Increased hazards for students (including under-18s) and staff during practical sessions; emergency evacuation routes may be obstructed, falling debris, noise pollution and increased risk of collision with machinery. o Victoria Road to

the end of Cow Watering Lane is also a singletrack, and subject to extra traffic at peak times.

6. Equine & Ecological Concerns o Stress, health risks, and behavioural changes in horses due to noise, vibrations, and EMFs. o Restricted grazing and compromised fencing pose long-term welfare challenges. o Disturbance to wildlife habitats on Writtle's 150-hectare estate.

Proposed Solutions; • Reconsideration of OHL route to avoid grazing paddocks and equine facilities. (western alternatives suggested). • Alternative construction method if above option not an Option: Horizontal directional drilling under road adjoining Victoria Road • Exclude construction traffic from Cow Watering Lane and internal equine areas to maintain safety and continuity of teaching. • If excluding as specified above: Agree specific access rights including timings, type of vehicles, number of movements from Cow Watering Lane to maintain education, safety and access. • Reprovision of the equine centre facilities and housing to an alternative location within the vicinity of ARU Writtle, so freeing up this land for other developments and ensuring this world-leading equine provision is unaffected by the OHLs and pylons.

Related guides

The process for Nationally Significant Infrastructure Projects (NSIPs) (/decision-making-process-guide)

Have your say about a national infrastructure project (/having-your-say-guide)

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Planning Inspectorate
Arolygiaeth Gynllunio

Application by National Grid Electricity Transmission (NGET) for an Order Granting Development Consent for the Norwich to Tilbury Project

Planning Act 2008 – Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – rule 8 and 9

Examination timetable and procedure

Interested Party Reference number: F1201D06F

(You must quote your Interested Party Reference number in all correspondence with the Planning Inspectorate).

Dear Sir/Madam

Please find below a link to a letter from the Examining Authority (ExA) that has been published on the National Infrastructure Planning website.

The letter provides the Examination Timetable for the above application (the 'Rule 8' letter), details of the publication of the

Examining Authority's Written Questions and other important information about the Examination.

https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN020027-001177-R8%20Letter%20and%20Annexes.pdf

You can also view the letter under the Documents tab on the project webpage of the National Infrastructure Planning website:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN020027

Yours faithfully

Norwich to Tilbury Case Team
National Infrastructure Planning
Helpline: 0303 444 5000
Email: NorwichToTilbury@planninginspectorate.gov.uk

Web: https://infrastructure.planninginspectorate.gov.uk/ (National Infrastructure Planning)
Web: Welcome to Find a National Infrastructure Project (planninginspectorate.gov.uk) (The Planning Inspectorate)
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Planning Inspectorate
Arolygiaeth Gynllunio

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ARU WRITTLE
[redacted]

1038705001/09478 [1/1]

National Infrastructure
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Our Ref: EN020027

17 February 2026

Application by National Grid Electricity Transmission (NGET) for an order granting development consent for the Norwich to Tilbury project

Planning Act 2008 – Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 8 and 9

Examination timetable and procedure

Interested Party Reference number [redacted]

(You must quote your Interested Party Reference number in all correspondence with the Planning Inspectorate).

A letter from the Examining Authority (ExA) has been published on the National Infrastructure Planning website.

The letter provides the Examination Timetable for the above application (the 'Rule 8' letter), details of the publication of the Examining Authority's Written Questions and other important information about the Examination

You can view the letter using the website address (URL) below or by scanning the QR code at the bottom of this letter.

nsip-documents.planninginspectorate.gov.uk/published-documents/EN020027-001177-R8%20Letter%20and%20Annexes.pdf

If you are not able to access the letter or have any other queries, please contact the Case Team:

Project email: NorwichToTilbury@planninginspectorate.gov.uk
Telephone: 0303 444 5000

You have received this notification by post because the Planning Inspectorate does not have an email address to contact you. To avoid delays in keeping you informed about this project it would be helpful if you could provide the case team with a contact email address as soon as possible. We will then send you email notifications and not postal letters.

Yours faithfully

Norwich to Tilbury Case Team

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[HOUSE OF LORDS]

SECRETARY OF STATE FOR EDUCATION AND SCIENCE . . . . . APPELLANT

AND

TAMESIDE METROPOLITAN BOROUGH COUNCIL . . . . . RESPONDENTS

1976 July 22, 23, 26 — Lord Denning M.R., Scarman and Geoffrey Lane L.JJ.

1976 July 29, 30, 31; Aug. 2; Oct. 21 — Lord Wilberforce, Viscount Dilhorne, Lord Diplock, Lord Salmon and Lord Russell of Killowen

Education—School—Secretary of State, powers of—Local education authority proposing to introduce comprehensive system of education—Scheme approved by Secretary of State—Control of authority passing to political opponents committed to retention of grammar schools—Authority proposing selective entry to grammar schools—Direction by Secretary of State to implement scheme of comprehensive education—Whether lawful—Whether authority "proposing to act unreasonably"—Whether sufficient time for authority to put proposals into effect—Duty of teachers to cooperate—Education Act 1944 (7 & 8 *Geo.* 6, *c.* 31), *ss.* 1 (1), 8 (1), 13 (1) (4), 68 [1] (*as amended by Education Act* 1968 (*c.* 17), *s.* 1 (2)

A local education authority proposed to bring all the schools in their area under the comprehensive principle. Their scheme was approved by the Secretary of State for Education and Science in November 1975, and implementation of the scheme was envisaged by the beginning of the school year in September 1976. In May 1976 local government elections were held, and in the authority's area the survival of the grammar schools was a strongly fought issue on which the opposition party took a stand. The opposition party gained control of the authority, and considered that they had a mandate to reconsider their predecessors' education policy. The new authority proposed to continue and complete three new comprehensive schools which were in the course of construction, to continue 16 secondary modern schools and to postpone plans for conversion of three grammar schools into comprehensive schools or sixth form colleges. In a letter to the Secretary of State on June 7, they said that the schools in their area were not ready for the changed roles proposed by their predecessors and that implementation of those proposals in September would have caused grave disruption to the children's education. They summarised their present plans as being "the maintenance of

[1] Education Act 1944, as amended, ss. 1 (1), 8 (1): see post, p. 1053B, C–E.
S. 13: "(1) . . . where a local education authority intend to make any significant change in the character, . . . of a county school, they shall submit proposals for that purpose to the Secretary of State. . . . (4) Any proposals submitted to the Secretary of State under this section may be approved by him after making such modifications therein, if any, as appear to him to be desirable: . . ."
S. 68: see post, p. 1046E–F.

the status quo with the least disturbance and disruption to the children's education pending any longer term, well thought out proposals." All allocations of pupils for the forthcoming year made by their predecessors—some 3,000—would be honoured subject to parents' agreement. Two of the grammar schools would remain grammar schools open to 11-year-old entry, making 240 selective places available. All parents of 11-year-olds were to be given the right to apply for reallocation. If, as was likely, the number of applicants exceeded the number of places available, those pupils most suitable and most likely to benefit from that type of education would be selected by a combination of reports, records and interviews. There would be no formal 11-plus examination. (In the event, there were 783 applications by parents of 11-year-olds for the 240 places in response to letters sent out to 3,200 parents.)

On June 11 the Secretary of State, acting under section 68 of the Education Act 1944, directed the authority to give effect to the proposals approved by him in November 1975 and to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming year on a non-selective basis. His letter of direction stated "A change of plan at this stage of the year, designed to come into effect less than three months later, must . . . give rise to considerable difficulties . . ."

On June 18, 1976, the Secretary of State applied for an order of mandamus ordering the authority to comply with his direction. The Divisional Court held that the Secretary of State was justified in saying that in the circumstances there was no time to carry out the proposed selection procedure by September and that accordingly there had been material on which he had been entitled to express himself as satisfied that the authority were going to act unreasonably. They made the order of mandamus.

The Court of Appeal received evidence to the effect that the selection procedure proposed by the authority (on the basis of reports, records and interviews) was well known and tried and workable and that sufficient teachers were available to form a selection panel. They allowed the authority's appeal and quashed the order of mandamus.

On appeal by the Secretary of State:—

Held, dismissing the appeal, that under the Act of 1944 a local education authority were entitled to have a policy, and section 68 did not entitle the Secretary of State to require them to abandon it because he disagreed with it; that he could give a direction only if they were acting unreasonably in doing what they were entitled to do; that his objection that their policy was creating a dilemma for parents was insupportable in view of the fact that the electorate, including many parents, had voted for a selective basis of secondary education and the authority were providing it; that the critical question was whether on June 11, 1976, the Secretary of State had had a sufficient factual basis for believing that the change proposed by the authority would lead to educational chaos or undue disruption, bearing in mind that the electorate must have accepted that there would be some disruption; that the question which the Secretary of State should have considered was whether a reasonable authority would have attempted to carry out the selection procedure proposed in the time available or at all; that he did not appear to have directed his mind properly or at all to that question; that although the authority's letter stating that selection would be by a combination of

reports, records and interviews was lacking in specification it must have conveyed sufficient to the experts at the Department of Education and Science to have enabled them to understand what was meant, and such defects as there were in the proposed procedure did not enable it to be said that no reasonable authority would have attempted to carry it out; that the teachers were public servants with responsibility for their pupils and a duty to produce reports and it could not have been unreasonable for the authority to have taken the view that if the Secretary of State did not intervene the teachers would cooperate; and that, accordingly, there had been no ground on which the Secretary of State, properly directed, could have found that the authority were acting or proposing to act unreasonably (post, pp. 1046H—1047C, 1048B–C, 1050H—1051A, E–G, 1052A, E–G, 1054C, 1058H—1059A, 1061D, F–G, 1062E–G, 1064B, E, G—1065B, 1066B–C, E–F, G—1067A, 1070B–D, F–G, 1071B–C, H, 1072B–C, 1073B–C, 1074D–E, 1075F, G–H, 1076C–D).

Per Lord Russell of Killowen. "Unreasonably" is a very strong word indeed (post, p. 1075C). Facts subsequently brought forward as existing on June 11 could not properly be relied on as showing that the authority's proposals were not unreasonable unless they were of such a character that they could be taken to have been within the knowledge of the Secretary of State (post, p. 1076E).

Decision of the Court of Appeal, post, pp. 1020H et seq., affirmed.

The following cases are referred to in their Lordships' opinions:

Associated Provincial Picture Houses Ltd. v. *Wednesbury Corporation* [1948] 1 K.B. 223; [1947] 2 All E.R. 680, C.A.

Secretary of State for Employment v. *ASLEF (No. 2)* [1972] 2 Q.B. 455; [1972] 2 W.L.R. 1370; [1972] 2 All E.R. 949, C.A.

W. (An Infant), In re [1971] A.C. 682; [1971] 2 W.L.R. 1011; [1971] 2 All E.R. 49, H.L.(E.).

The following additional cases were cited in argument in the House of Lords:

Cumings v. *Birkenhead Corporation* [1972] Ch. 12; [1971] 2 W.L.R. 1458; [1971] 2 All E.R. 881, C.A.

McEldowney v. *Forde* [1971] A.C. 632; [1969] 3 W.L.R. 179; [1969] 2 All E.R. 1039, H.L.(N.I.).

Padfield v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, H.L.(E.).

Reg. v. *Minister of Housing and Local Government, Ex parte Chichester Rural District Council* [1960] 1 W.L.R. 587; [1960] 2 All E.R. 407, D.C.

Rex v. *Bishop of Sarum* [1916] 1 K.B. 466.

Sadler v. *Sheffield Corporation* [1924] 1 Ch. 483.

The following cases are referred to in the judgments of the Court of Appeal:

Associated Provincial Picture Houses Ltd. v. *Wednesbury Corporation* [1948] 1 K.B. 223; [1947] 2 All E.R. 680, C.A.

City of Plymouth (City Centre) Declaratory Order 1946, In re; Robinson v. *Minister of Town and Country Planning* [1947] K.B. 702; [1947] 1 All E.R. 851, C.A.

Liversidge v. *Anderson* [1942] A.C. 206; [1941] 3 All E.R. 338, H.L.(E.).
Nakkuda Ali v. *Jayaratne* [1951] A.C. 66, P.C.
Padfield v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, C.A. and H.L.(E.).
Ridge v. *Baldwin* [1964] A.C. 40; [1963] 2 W.L.R. 935; [1963] 2 All E.R. 66, H.L.(E.).
Secretary of State for Employment v. *ASLEF* (*No.* 2) [1972] 2 Q.B. 455; [1972] 2 W.L.R. 1370; [1972] 2 All E.R. 949, C.A.
W. (*An Infant*), *In re* [1971] A.C. 682; [1971] 2 W.L.R. 1011; [1971] 2 All E.R. 49, H.L.(E.).

The following additional cases were cited in argument in the Court of Appeal:

Bradbury v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311; [1967] 3 All E.R. 434, C.A.
British Oxygen Co. Ltd. v. *Board of Trade* [1969] 1 Ch. 57; [1968] 3 W.L.R. 1; [1968] 2 All E.R. 177.
Cumings v. *Birkenhead Corporation* [1972] Ch. 12; [1971] 2 W.L.R 1458; [1971] 2 All E.R. 881, C.A.
Hanks v. *Minister of Housing and Local Government* [1963] 1 Q.B. 999; [1962] 3 W.L.R. 1482; [1963] 1 All E.R. 47.
Mountview Court Properties Ltd. v. *Devlin* (1970) 21 P. & C.R. 689, D.C.
Sadler v. *Sheffield Corporation* [1924] 1 Ch. 483.
Watt v. *Kesteven County Council* [1955] 1 Q.B. 408; [1955] 2 W.L.R. 499; [1955] 1 All E.R. 473, C.A.

APPEAL from the Divisional Court of the Queen's Bench Division.

On June 11, 1976, the Secretary of State for Education and Science, in the exercise of the powers conferred by section 68 of the Education Act 1944 and vested in him by the Secretary of State for Education and Science Order 1964, directed the Tameside local education authority, the Tameside Metropolitan Borough Council, to give effect to proposals which he had approved on November 11, 1975, and accordingly to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming school year on a non-selective basis and to make such other provision relating to the staffing of the schools, alterations to school premises and other matters as were required to give effect to the proposals. His letter of direction read:

"I am directed by the Secretary of State for Education and Science to refer to correspondence between the department and the authority beginning with Mr. J. I. Langtry's letter of May 11 which asked whether the authority intended to implement the secondary reorganisation proposals approved by the Secretary of State on November 11, 1975, and, in the event of the authority deciding not to implement those in September, for full details of the arrangements proposed for the transfer of pupils to county secondary schools in September. On May 19 the education services committee recommended that the authority should not implement the approved proposals but made no statement of any alternative arrangements for the transfer of pupils for the coming school year. On May 20 the authority were invited to discuss the situation with the Secretary of State in the week beginning May 24, but were unable to do so. The department accordingly wrote to the authority again on May 26 asking for a precise and detailed

statement of the plans which the authority hoped to put into effect in September. As a result of that letter, a meeting took place on Wednesday, June 9, between the Secretary of State and representatives of the authority including Councillor Grantham, leader of the council, and Councillor Thorpe, chairman of the education services committee.

"The background to the meeting is that on March 19, 1975, the authority submitted to the Secretary of State proposals under section 13 of the Education Act 1944. These proposals provided for changes in the character of all their county secondary grammar and modern schools in September 1976 in such a way as to end selection by ability and aptitude and to establish a comprehensive system of secondary education. The Secretary of State approved the proposals on November 11, 1975. Since that date extensive preparations have been made to put the proposals into effect. Much progress has been made in the staffing of the proposed comprehensive schools; teachers have been planning courses for them; building work directly related to changes in the character of some schools has been put in hand; and over 3,000 children due to transfer from primary schools this year have been allocated to secondary schools without reference to ability or aptitude, the former selective processes being no longer appropriate, and largely by reference to parental choice.

"At the meeting on June 9 the authority's representatives informed the Secretary of State that the council had on June 8 resolved to continue the 21 schools which were the subject of the proposals approved under section 13, the five grammar schools as '11 to 18 academic high schools' and the remainder as '11 to 16 secondary schools,' and accordingly to modify the arrangements already made for the allocation of pupils to secondary schools for the coming year. Their reasons for these proposals were set out in a letter from the chairman of the education services committee dated June 7 and the proposals themselves were explained in detail by the authority's representatives at the meeting.

"The Secretary of State has given the most careful consideration to the representations made to him. He is satisfied that the authority are proposing to act unreasonably with respect to the exercise of the powers conferred, and the performance of the duties imposed, by and under the Education Acts 1944 to 1976* regarding the provision of secondary education for their area and in particular with respect to their powers and duties (express and implied) under sections 8 and 17 of the Education Act 1944 regarding the admission of pupils to secondary schools on transfer from primary schools at the beginning of the coming school year, i.e., on September 1, 1976. A change of plan at this stage of the year, designed to come into effect less than three months later, must in his opinion give rise to considerable difficulties. The authority's revised proposals confront the parents of children due to transfer in September with the dilemma of either adhering to secondary school allocations for their children which they may no longer regard as appropriate, or else submitting to an improvised selection procedure (the precise form of which, the Secretary of State understands, has even now not been settled) carried out in circumstances and under a timetable which raise substantial doubts about its educational

* *Reporter's note.* "1976" refers to the Education Bill.

validity. Furthermore it is clear from the terms of paragraph 10 of the resolution adopted at the special council meeting of June 8, which were elaborated in the course of the meeting of June 9 by the authority's representatives, that an abnormally high proportion of pupils might need to be reallocated to different secondary schools during, or at the end of, the educational year beginning in September 1976. This would impose a further measure of disturbance on top of the present uncertainty. In addition the change of plan at this time in the educational year threatens to give rise to practical difficulties in relation to the appointments of staff already made and the construction of buildings for the new comprehensive schools and to create a degree of confusion and uncertainty which could impair the efficient working of the schools.

" In the exercise of the powers conferred by section 68 of the Education Act 1944, and vested in him by the Secretary of State for Education and Science Order 1964, the Secretary of State hereby directs the authority to give effect to the proposals which he approved on November 11, 1975, and accordingly to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming school year on a non-selective basis and to make such other provision relating to the staffing of the schools, alterations to school premises and other matters as is required to give effect to the proposals."

By notice of motion dated June 18, 1976, the Secretary of State applied pursuant to leave granted by the Divisional Court on that date for an order of mandamus directed to the council requiring them to exercise the powers conferred and duties imposed on them by and under the Education Acts 1944 to 1976 [sic] in accordance with his directions dated June 11, 1976, on the grounds that he, having been satisfied that the council were proposing to act unreasonably with respect to the exercise of the powers conferred, and the performance of the duties imposed, by and under the the Acts of 1944 to 1976 [sic] regarding the provision of secondary education for their area, as he had been entitled to do by section 68 of the Act of 1944, as amended, had given directions to the council dated June 11, 1976; that it had been then and thereafter the duty of the council to comply with that direction and that they did not intend to do so unless required to do so by the court.

On July 12, 1976, the Divisional Court granted the order. In his judgment, Lord Widgery C.J. said:

> " In the end Mr. Woolf's argument, as it seems to me, was this. He said there are lots of things which are going to cause trouble if we get a sudden change of plan at the last minute like this. There are all sorts of difficulties arising and all sorts of wasted building work will occur, but absolutely crucial in this case is the fact that there are 240 grammar school places to fill. They are available to be filled in September. The children have been warned suitably in advance. Yet, says Mr. Woolf, there is nothing in the proposals of the Tameside authority as to how this selection is to be carried out either in the time available or at all.
>
> " We can only set aside the Secretary of State's directions if we are satisfied that he has gone outside his jurisdiction and has made this order when there is no ground upon which it can lawfully be made.

Although I have not found this an easy case, and although, I confess, my opinion of the conclusion has wavered from time to time from one side to the other, I think in the end Mr. Woolf has satisfied us that there was here before the Secretary of State material upon which he could express himself as satisfied that the local authority were going to act unreasonably.

"This is not in any sense a victory for comprehensive education or selective education. It is simply a conclusion that, when the Secretary of State says there is no time to get this done by September, I think he is right on that one point. I am not required to go into any other grounds. On the question of whether there was time to get this done by September he says he thought not. In my view there was material upon which, if he thought fit, he could reach that conclusion."

Cusack J. agreed. May J., also agreeing, said:

"Having heard the argument on both sides, I have ultimately come to the conclusion that there was relevant material upon which the Secretary of State was entitled to come to the conclusion to which he did come. Shortness of time coupled with the lack of cooperation from some of the teachers in the area I think provided him with sufficient evidence to entitle him to decide as he did. On the affidavits and exhibits before us, I am not impressed with the other grounds referred to by the Secretary of State—the fresh contracts which it is contended have been entered into with teachers within the new comprehensive system; the building work which it is alleged has been put in hand; still less the planning of the new courses which it is said has been done. Further, had the local authority had the cooperation of the teachers concerned, it would I think have been difficult for the Secretary of State to have contended that there was then any relevant material before him upon which he could have reached the necessary conclusion under section 68 of the Act of 1944. Without that cooperation, however, it is certainly arguable that it is difficult to see how all the children under the aegis of this local authority could fairly have been allocated to appropriate secondary schools in time for the new term in September next, and in the end I have come to the conclusion that this was sufficient material upon which a Secretary of State could decide as the Secretary of State in fact did."

The council appealed.

Anthony Lloyd Q.C., *Leon Brittan* and *Andrew Caldecott* for the council.

David McNeill Q.C. and *J. J. Hodgson* for six parents.

T. H. Bingham Q.C. and *Harry Woolf* for the Secretary of State.

LORD DENNING M.R. There is a controversy on this question: should the grammar schools be turned into comprehensive schools? Most educationalists and parents know what the controversy is all about, but for others who do not know the background perhaps I may say a word. The difference lies in the way the children are selected on and after the age of 11.

In order to go to a grammar school, a boy or girl of age 11 has to show some marked ability or aptitude. When he gets there, he or she will mingle with other bright youngsters and be taught there right through until the age of 18. But a comprehensive school takes any boy or girl of age 11 without reference to his or her ability or aptitude. The bright and the dull start together in classes, but they are divided into different streams as they develop in ability or aptitude. They remain at the comprehensive school until they are 16. Most of them then leave to go to work. But those who wish can go on for two more years at a sixth form college where they are given more advanced teaching. That is from 16 to 18.

Each system has its advocates. Those who support the grammar schools point to their long and distinguished record going back before the Reformation. They were, says Trevelyan, " the typical unit of Elizabethan education . . . where the cleverest boys of all classes were brought up together ": see *Trevelyan, English Social History* (1944), p. 162 [Illustrated English Social History (1949–1952), vol. 2, p. 23]. Those who seek to retain them claim that they retain the inherited virtues of sound learning and hard work leading to fine achievement: and many parents, they say, wish still to send their children to a grammar school, if it is available, rather than to a comprehensive. In contrast the comprehensive schools are of recent origin. Those who support them claim that they give equally good education for the able children as the grammar schools; and, what is more, they provide better education for the many others. So much support is now given to comprehensive schools that a bill before Parliament seeks to declare that " the comprehensive principle " is to be applied throughout our educational system. It says that pupils are *not* to be selected " by reference to ability or aptitude."

We, of course, in this court support neither side in this controversy: but we have to take notice that the political parties are concerned in it. This is shown by the dispute which is now before the court. It is about education in the Tameside metropolitan area (which was formed in 1974 as a part of Lancashire and Cheshire). Before May 1976 the council was controlled by the Labour party. But on May 6, 1976, there were local elections which brought the Conservatives to power. Whilst the Labour councillors were in the majority, they had made plans to change over to the " comprehensive principle " as soon as it could be done. On March 19, 1975, they made detailed proposals to the minister whereby they were going (1) to put into use three new purpose-built comprehensive schools; (2) to bring 16 secondary modern schools into the comprehensive principle; and (3)—this is the particular proposal now in question—to shut down five grammar schools and to turn three of them into three comprehensive schools and the other two into two sixth form colleges. The buildings for this changeover were not to be purpose-built. The staff and pupils were still to be in the old grammar school buildings. On November 11, 1975, these proposals of the old council were approved by the Secretary of State. But they were opposed by the Conservative party in the council as being premature. At the local elections in 1975 and 1976 the Conservative councillors made it one of their planks in their election campaign. Their leaflets put it in this way:

" Education.
" Present comprehensive plan will not be implemented.
" A review of complete education system will be undertaken to improve opportunities for all children together with freedom of parental choice."

On May 6, 1976, the Conservative party gained control. They approved and adopted much that their predecessors had done towards the comprehensive principle. For instance, three new comprehensive schools had been built—purpose-built—as comprehensive schools. The Conservative party considered these as a valuable nucleus for the future. They also approved the proposal that the 16 existing secondary modern schools should be brought into line with the comprehensive principle. But here is the point: they proposed to postpone the plans for the five grammar schools because they thought that the changes would themselves cause much disruption and disturbance to the children's education and it would be better to continue the five grammar schools as they were for a time so that the position could be reviewed. Their policy was, they said, to maintain " the status quo with the least disturbance and disruption to the children's education pending any longer term, well thought out proposals."

When the Secretary of State heard of the postponement by the new council he was much concerned. He thought that the plans of the previous council had gone too far to be put into reverse in this way. He thought that the new council were acting, or proposing to act, unreasonably in postponing the changeover. On June 11, 1976, he directed the new council that they were to implement the old council's proposals and a week later, on June 18, 1976, he followed this up by applying to the Divisional Court for an order of mandamus commanding the new council to implement the old council's proposal. On July 12, 1976, the Divisional Court granted the mandamus. The new council appeal to this court and are supported by some of the parents of the children affected.

Before I go into what the minister has done and his reasons, I will consider the facts by summarising the arguments put on either side on this proposed postponement. The new council—that is, the local authority—rely on the result of the May election. They say that the issue was put plainly before the electorate. The new council consider that they have a mandate for postponing the old council's proposals and that they are morally bound to honour that mandate if they can legitimately do so. That is their first argument.

The new council also say that the old council were proceeding with too much haste to implement the changeover. They say that if the proposals of the old council were implemented immediately—without a pause for review—it would lead to disruption of the studies of many pupils, especially those already in the sixth form (where they spend two years) and those due to go up into it. Those pupils who had been there for one year already would have to stay in the old grammar schools for their last year, taught, they expect, by junior teachers. Those going up into the sixth form at age 16 would have to go to the new sixth form colleges for their last two years in new surroundings and with new teachers and with building work not started or not completed and this, they say, would be at a crucial

time when they were to take their examinations (such as the " A " levels) on which their future careers depend. Those are not all, but only some, of the arguments which were being adduced by the new council.

On the other hand, there are arguments on the other side. The Secretary of State has strong arguments against any postponement. He says that many preparations have been made for the changeover to take place on September 1, 1976, and it would cause unwarranted disruption if these were now to be put into reverse. These preparations were summarised by the department in these words in the letter of June 11:

> " Much progress has been made in the staffing of the proposed comprehensive schools; teachers have been planning courses for them; building work . . . has been put in hand; and over 3,000 children " (of 11) ". . . have been allocated [places] without reference to ability or aptitude."

Those are the principal arguments being put forward by the Secretary of State.

But to these arguments the new council make their answer. They admit that if the proposals were to be postponed there would be some disruption, but they assert that there would be not nearly so much disruption as the department fears. Staffing, they suggest, will present few problems because 95 per cent. of the teachers will remain in the same schools anyway, and their new contracts will be honoured. The new courses, they say, have not been planned in detail and can readily be revised before the new term starts. Little building work has been put in hand, and a great deal will not be completed in time for the new term. As to the 3,000 new 11-year-olds who are coming up, they say that the great majority of parents are content with the places allocated to them. They have written to all those parents with youngsters who are coming up to 11, and have had replies from all. Only 783 wish their children to go to a grammar school, if available. The new council admit that, if the grammar schools are to be retained for a year pending review, there will be only 240 places available. (These will arise because of the change back from the proposed sixth form colleges, Ashton and Hyde.) So the new council will have 240 places available for those 783. It will be necessary to find some way of selecting the 240 children to fill them; and furthermore to make the selection in time for the new term starting in September 1976. Eventually, as the argument proceeded, it seemed that this selection became the main crux of the difference between the parties before us.

Now it is most important to remember that we have to view the matter —as the parties had to view the matter—as at June 11, 1976, when the Secretary of State made his decision. What were the materials then before the new council? They were hopeful that those 240 could have been selected well and fairly before the end of the summer term. It would not end until July 23. So they had six weeks, and they say that it could have been done if the teachers and staff had been willing to cooperate with the new council in making the selection. They would go through the records and recommendations from the primary schools. They would have standardised reasoning tests and then the selection could be well and truly made if only the teachers and staff were willing to cooperate. But unfortunately it

appears that some of the trade unions, speaking through the teachers consultative committee, said that they were unwilling to cooperate in this changeover. Faced with the unwillingness of some at least of the teachers to cooperate, the new council had then in their minds—and have since formulated in affidavits before us—a plan to overcome this difficulty. They say that they will be able to get the records of the 783 pupils from the primary schools and that they can get a "selection panel" of 20 teachers who are willing to serve on a selection board. The chairman is to be the headmaster of a junior school of much experience. He says in his affidavit:

> "If I had a selection panel of 20 teachers (10 couples) I am of the opinion that a fair, feasible and practicable selection of 240 places from 783 applications can comfortably be made within one week."

If this view of the new council is accepted, then it does appear that, although it would be far from perfect, a selection can be made out of the 783 children whereby 240 of the best and brightest of these youngsters can be allocated places at the grammar schools. It can be done even now with only five weeks to go before the new term. All the more so could it have been done on June 11, 1976, when the matter has to be tested. They had good reason then to believe that a fair selection could be made.

Now we have to come to the point: Was the Secretary of State warranted in the course which he took on June 11, 1976? He said he was satisfied that the new council was acting or proposing to act unreasonably. He relied on his powers under section 68 of the Education Act 1944. The question for the court today is whether he was lawfully exercising his powers under that section or not. So I must read it, because the whole case turns upon it. It says, as amended:

> "If the Secretary of State is satisfied, either on complaint by any person or otherwise, that any local education authority . . . [has] acted or [is] proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may . . . give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient."

The governing words which we have to consider here are, first, "If the Secretary of State is satisfied," and, secondly, "that any local education authority . . . [has] acted or [is] proposing to act unreasonably." So much depends on the interpretation of those words that I must say something upon them.

So far as "satisfied" is concerned, it is suggested—and was suggested by the chief officers of the local authority on June 21, 1976—that once the Secretary of State said that he was "satisfied" his decision could not be challenged in the courts unless it was shown to have been made in bad faith. We were referred by Mr. Bingham to *Liversidge* v. *Anderson* [1942] A.C. 206, where Lord Atkin drew attention to cases where the Defence Regulations required the Secretary of State to be "satisfied" of something or other. Lord Atkin said, at p. 233: "In all these cases it is plain that unlimited discretion is given to the Secretary of State, assuming as everyone does that he acts in good

faith," to which I would add a similar passage by Somervell L.J. in *In re City of Plymouth (City Centre) Declaratory Order 1946: Robinson* v. *Minister of Town and Country Planning* [1947] K.B. 702, 721. Those statements were made, however, in relation to regulations in war time or immediately after the war when the decisions of the executive had to be implemented speedily and without question. That was pointed out by Lord Radcliffe in *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66, 77 and by Lord Reid in *Ridge* v. *Baldwin* [1964] A.C. 40, 73. Those statements do not apply today. Much depends on the matter about which the Secretary of State has to be satisfied. If he is to be satisfied on a matter of opinion, that is one thing. But if he has to be satisfied that someone has been guilty of some discreditable or unworthy or unreasonable conduct, that is another. To my mind, if a statute gives a minister power to take drastic action if he is "satisfied" that a local authority has acted or is proposing to act improperly or unreasonably, then the minister should obey all the elementary rules of fairness before he finds that the local authority is guilty or before he takes drastic action overruling them. He should give the party affected notice of the charge of impropriety or unreasonableness and a fair opportunity of dealing with it. I am glad to see that the Secretary of State did so in this case. He had before him the written proposals of the new council and he met their leaders. In addition, however, the minister must direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to that which he has to consider and the decision to which he comes must be one which is reasonable in this sense: that it is, or can be, supported with good reasons or at any rate is a decision which a reasonable person might reasonably reach. Such is, I think, plain from *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997 which is a landmark in our administrative law and which we had in mind in *Secretary of State for Employment* v. *ASLEF (No. 2)* [1972] 2 Q.B. 455, 493, 510. So much for the requirements if the minister is to be "satisfied."

Now I turn to the other important words in this section: that he is satisfied that the local education authority have acted or are proposing to act "unreasonably." The question often arises whether someone has acted, is acting or is proposing to act "unreasonably." To decide this question, it must be remembered, as Lord Hailsham of St. Marylebone L.C. said in *In re W. (An Infant)* [1971] A.C. 682, 700:

> "Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."

It is one thing to say to a person: "I think you are wrong. I do not agree with you." It is quite another thing to say to him: "You are being quite unreasonable about it." I know it is often done. It is commonplace to say to your adversary: "You are being very unreasonable" when all you mean is: "I think you are wrong." Such hyperbole is excusable in ordinary mortals but not in those who have to consider and apply Acts of Parliament. No one can properly be labelled as being unreasonable unless

he is not only wrong but unreasonably wrong, so wrong that no reasonable person could sensibly take that view. A

All the more so when a man—be he a judge or a minister— is entrusted by Parliament with the task of deciding whether another person has acted, is acting or is proposing to act unreasonably. Especially when the one who has to decide has himself his own views—and perhaps his own strong views—as to what should or should not be done. He must be very careful then not to fall into the error—a very common error—of B thinking that anyone with whom he disagrees is being unreasonable. He may himself think the solution so obvious that the opposite view cannot be reasonably held by anyone. But he must pause before doing so. He must ask himself: "Is this person so very wrong? May he not quite reasonably take a different view?" It is only when the answer is: "He is completely wrong. No reasonable person would take that view" C that he should condemn him as being unreasonable. During the argument I was interested in the question which Scarman L.J. put to Mr. Bingham, and which he accepted: In order for the new local authority to be unreasonable, it must be apparent to them that in all probability the solution which they are suggesting will not work. Put in another way, it seems to me that if, on June 11, 1976, the new council reasonably took the view that their solution would work, and in particular that a D fair selection of the 240 could be made in time for the new term, it could not be said that they were acting unreasonably.

It is on this point—on the interpretation of unreasonableness—that I think the minister must have misdirected himself. In his decision letter of June 11, 1976, he has set out the reasons why he thinks the new council are acting wrongly in postponing the changeover. He says: "A change of plan at this stage . . . must . . . give rise to considerable diffi- E culties," that the parents will be confronted with a "dilemma," and that the "improvised selection procedure" is such as to "raise substantial doubts about its educational validity." All these are reasons why the minister thinks that the new council are acting, or proposing to act, *erroneously.* But none of them in my view are reasons for saying that the new council are acting, or proposing to act, *unreasonably.* It seems to me that in con- F sidering whether they are acting unreasonably or not there are many considerations to be borne in mind besides those expressly mentioned by the minister. There is the mandate itself which the council believe they have obtained from the electorate. There is the disruption which they feel will result from the premature implementation of the old council's proposals. They admit that the selection tests in the circumstances of the case are not perfect, but they believe they will work. All these are G considerations showing they were acting reasonably: and there is no trace that the minister had regard to them. All things considered, I do not find any evidence on which the minister could declare himself satisfied that they had acted or were proposing to act unreasonably.

In the circumstances, it seems to me that the minister's directions were not validly made in accordance with the Act of Parliament. Being invalid, H it is not a case for any issue of an order of mandamus to the new council.

One word more on a technical point. It was said that mandamus did not lie directly for a failure to obey directions under section 68, and

that, before applying for mandamus, the minister ought to have gone through the extra procedure of a declaration of default under section 99. If I am right in thinking the directions under section 68 were invalid that point does not arise for decision in this case, and therefore I will say nothing on it.

But on the principal point in the case it seems to me that the minister was not justified in asserting that he was satisfied that the new council were acting or proposing to act unreasonably. It is therefore no case for a mandamus. I would allow the appeal accordingly.

SCARMAN L.J. This appeal raises two questions. One is of technical law, the meaning of the adverb "unreasonably" in section 68 of the Education Act 1944. The other is a question of legal principle in the field of administrative law—the scope of judicial review where what has to be resolved is a dispute as to their powers between two elected authorities, one being the central government and the other a local authority.

I need not rehearse the facts. The dispute is between the Secretary of State for Education and Science and a local education authority, the metropolitan borough council of Tameside. The Secretary of State has directed that proposals previously made by the authority and approved by him for the introduction into the area of universal comprehensive education be implemented. The council, whose political control has changed hands in a recent election, has changed its policy and no longer wishes to implement the proposals. The Secretary of State says that he is satisfied that the council is, or is proposing, to act unreasonably in the exercise of its powers or in the performance of its duty under the Act and has issued his direction under section 68. The council having made plain that they do not consider themselves bound to comply with the direction, he asks the court for an order of mandamus requiring them to do so.

It is sufficient, for the purposes of my judgment, to bear in mind (1) that on November 11, 1975, the Secretary of State gave his approval under section 13 of the Education Act 1944 to proposals (which I shall call the section 13 proposals) put forward by the local education authority for introducing universal comprehensive education into the area, beginning on September 1, 1976; (2) that his approval of those proposals imposed no duty upon the local education authority to implement them; (3) that in the election of May 6 of this year control of the authority passed from the Labour party, who supported the section 13 proposals, to the Conservatives who did not, and do not; (4) that the local education authority, now under Conservative control, informed the minister in May that they intended not to implement the section 13 proposals but to retain the existing mixed pattern of education, which includes three comprehensive schools, 16 secondary modern schools and five grammar schools, until such time as a new, well thought out system of education might be devised for the area; (5) that, after receiving the written representations of the local education authority, and after according their representatives a meeting to discuss, in particular, the detailed proposals for the change of plan, the Secretary of State invoked section 68 of the Act of 1944 and

issued by letter dated June 11 his direction to the local education authority to implement the section 13 proposals.

The authority challenges the lawfulness of his direction. It is, as I have said, a dispute between two public authorities. Judicial review can resolve it: but the review has to embrace not only the lawfulness, or otherwise, of the Secretary of State's direction but also the validity of the local education authority's decision not to implement the section 13 proposals.

Ultimately there is, I think, only one issue: whether the direction of the Secretary of State was lawful. For, if it was, there can be no doubt, in my judgment, but that mandamus must go. I reject the submission that, even if the direction be lawful, the court in the discretion which it undoubtedly possesses should refuse the order sought. But the submission as to discretion, though it must be rejected, has drawn attention to an aspect of the case of considerable importance, namely, that the local education authority is entitled to have its decision treated with the same respect and approached in the same way as the minister's. The case is no more an appeal against the decision of the local education authority not to implement the section 13 proposals than it is an appeal against the Secretary of State's direction to the authority to implement it. In respect of each decision the court's role is strictly limited to judicial review.

As I have said, the Secretary of State acted under section 68 of the Education Act 1944. Being satisfied that the Tameside local education authority—that is to say, the metropolitan borough council of Tameside—was proposing to act unreasonably, he issued his direction by letter of June 11, 1976. He expressed his satisfaction in these terms:

> "He"—that is, the Secretary of State—"is satisfied that the authority are proposing to act unreasonably with respect to the exercise of the powers conferred, and the performance of the duties imposed, by and under the Education Acts . . . regarding the provision of secondary education for their area and in particular with respect to their powers and duties (express and implied) under sections 8 and 17 of the Education Act 1944 regarding the admission of pupils to secondary schools on transfer from primary schools at the beginning of the coming school year, i.e., on September 1, 1976."

His direction in the same letter was put in these terms:

> "In the exercise of the powers conferred by section 68 of the Education Act 1944, and vested in him by the Secretary of State for Education and Science Order 1964, the Secretary of State hereby directs the authority to give effect to the proposals which he approved on November 11, 1975, and accordingly to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming school year on a non-selective basis and to make such other provision relating to the staffing of the schools, alterations to school premises and other matters as is required to give effect to the proposals."

I accept the submission of Mr. Bingham, for the Secretary of State, that

we must look primarily to the letter for the reasons for his satisfaction, though the Secretary of State is not to be precluded from relying on other reasons if they existed when he gave his direction. The primary reason given in the letter was put as follows:

> "The authority's revised proposals confront the parents of children due to transfer in September with the dilemma of either adhering to secondary school allocations for their children which they may no longer regard as appropriate, or else submitting to an improvised selection procedure (the precise form of which, the Secretary of State understands, has even now not been settled) carried out in circumstances and under a timetable which raise substiantal doubts about its educational validity."

The letter does refer to additional difficulties arising from the change of plan by the local education authority. But undoubtedly the real reason for the Secretary of State's direction was his concern over the difficulties of selection and reallocation arising from the change of plan. The other difficulties loom large—surprisingly large, I venture to think—in the evidence by which the Secretary of State seeks to persuade the court to grant him the order he seeks. But I agree with Lord Widgery C.J. when he said, in giving judgment in the Divisional Court, that the allocation problem was the "situation . . . very largely relied upon in the end by the Secretary of State. . . ." Lord Widgery C.J. examined the other matters relied on by the Secretary of State and thought little of them. He based his judgment "on that one point," that is to say, that the selection of children to fill the 240 places made available by the change of plan at the two grammar schools (which under the section 13 proposals were to become sixth form colleges) could not be carried out "in the time available or at all." Cusack J. agreed with him: and so did May J. in a judgment which revealed his profound scepticism as to the validity of the other reasons advanced.

As always with judicial review, it is vital to determine, and then strictly to follow, the correct judicial approach to the problem placed before the court. Mr. Bingham put it correctly when he submitted that the letter of June 11 was crucial to the Secretary of State's case, and that it must be read fairly, not legalistically, and must be studied in its contemporary context, that is to say, as things were on June 11. Mr. Bingham was also right to remind the court that it is not suggested (a) that in the letter any reliance was placed on extraneous or irrelevant matters; (b) that the Secretary of State had omitted or failed to take into consideration any relevant matters (unless being misinformed is such a failure); (c) that the Secretary of State in using his power of direction under section 68 had any intention other than to secure compliance with the policy and intendment of the statute; (d) that there was bad faith on his part. He submitted—rightly, in my opinion—that *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997 is not directly in point, since in that case the minister's reasons for refusing to appoint a committee of investigation were held to be outside the policy and intendment of the statute. When, however, Mr. Bingham came to summarise the law, he put it, I think, a little too narrowly. He submitted—and, if I may, I will

put his submissions in my own words and not necessarily his—that (1) section 68 confers on the Secretary of State a "subjective" discretion; (2) while judicial review of the exercise of the discretion is not excluded by the section, the court can declare the Secretary of State's direction unlawful only if there be proved to exist one or other of the following situations: bad faith on the part of the Secretary of State, misdirection in law, taking account of irrelevant matters or omitting to consider relevant matters, and finally a situation where the Secretary of State has taken a view which on the material and the information available to him no reasonable man could have taken; (3) the court must assume the discretion to have been lawfully exercised, until the contrary be shown; (4) the court must always bear in mind that the discretion is the minister's, not the court's. He relied on a well known line of cases, of which the familiar landmarks are *Liversidge* v. *Anderson* [1942] A.C. 206 (particularly the dissenting speech of Lord Atkin, at pp. 232, 235 and 245) and *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223. I agree with the great majority of Mr. Bingham's submissions. But, first, I think that the epithet "subjective" is of no assistance in this context. The point of principle is simply that it is not a judicial but a ministerial discretion in an administrative matter which is under review. Of course, the unusual feature of the present case is that we have under review two administrative decisions, each by a different authority: the Secretary of State's decision to use his section 68 power of direction, and the local education authority's earlier decision not to implement the section 13 proposals, the decision which in fact led the Secretary of State to act under section 68.

Secondly, I do not accept that the scope of judicial review is limited quite to the extent suggested by Mr. Bingham. I would add a further situation to those specified by him: misunderstanding or ignorance of an established and relevant fact. Let me give two examples. The fact may be either physical, something which existed or occurred or did not, or it may be mental, an opinion. Suppose that, contrary to the minister's belief, it was the fact that there was in the area of the local education authority adequate school accommodation for the pupils to be educated, and the minister acted under the section believing that there was not. If it were plainly established that the minister was mistaken, I do not think that he could substantiate the lawfulness of his direction under this section. Now, more closely to the facts of this case, take a matter of expert professional opinion. Suppose that, contrary to the understanding of the minister, there does in fact exist a respectable body of professional or expert opinion to the effect that the selection procedures for school entry proposed are adequate and acceptable. If that body of opinion be proved to exist, and if that body of opinion proves to be available both to the local education authority and to the minister, then again I would have thought it quite impossible for the minister to invoke his powers under section 68.

Lord Denning M.R. has briefly referred to some of the case law on the matter; and in the short time available I have looked to see if there is authority which would belie what I believe to be the law, and there is none. I think that the law which I believe to exist follows from the

cases to which Lord Denning M.R. has referred, and is really to be deduced from a well-known passage in *S.A. de Smith, Judicial Review of Administrative Action*, 3rd ed. (1973), p. 320, where he says:

> "Secondly, a court may hold that it can interfere if the competent authority has misdirected itself by applying a wrong legal test to the question before it, or by misunderstanding the nature of the matter in respect of which it has to be satisfied. Such criteria are sufficiently elastic to justify either a broad or a narrow test of validity; and they seem to have become increasingly popular. Thirdly, a court may state its readiness to interfere if there are no grounds on which a reasonable authority could have been satisfied as to the existence of the conditions precedent. This test can be combined with the first and the second."

I would add by way of parenthesis and somewhat out of place that in the present case the evidence now before the court does show that the Secretary of State either misunderstood or was not informed as to the nature and effect of the professional educational advice available to the local education authority.

I have already put in my own words the situation which I think, in addition to those more commonly described, enables the court to exercise its power of review. I would now try to put that situation into a formula; and my formula would be as follows: that the Secretary of State cannot lawfully be satisfied that the local education authority is proposing to act unreasonably unless upon the information that was or ought to have been available to him the local education authority, acting reasonably, could not have acted, or proposed to act, as it in fact did. In other words, while it is not for the court to substitute its view for the minister's, it is also the law that the minister cannot substitute his view for that of the local education authority, provided always that an authority, acting reasonably, could have made the decision that in fact it made.

Turning to the facts, I think that it is likely that the Secretary of State was not as fully informed as he might have been upon the possibilities of setting up a viable and acceptable method of selecting pupils for the two grammar schools. The weight of advice available to him was that it was not possible to make an acceptable selection between June 11, the date of his direction, and September 1, the beginning of the new school year. But we know, and the minister ought to have been apprised of the fact, that the local education authority could rely on perfectly respectable professional advice that it was possible. Unless this advice can be shown to be unsound, I do not see how it was possible for the Secretary of State to be satisfied that the local education authority was proposing to act unreasonably. We have admitted, without objection, evidence which was not before the Divisional Court, evidence from which it is abundantly clear that, though there might be difficulties, there was no insuperable problem in setting up and carrying through selection tests after June 11 and in time for the new school year beginning on September 1. I would refer to paragraph 6 in the affidavit of Mr. Thomas, one of Her Majesty's chief inspectors of schools. It is to be remembered that on June 11 there

were still almost six weeks of term left in which to have whatever discussions or interviews were needed with teachers or pupils.

There was no suggestion that this period of term time was not enough. The real point was that the teachers' associations, being strongly opposed to the local education authority's change of plan, would not cooperate to get the work done. The point is hypothetical: for no one knows what the teachers would have done had the Secretary of State accepted the decision of the local education authority. But from the mere possibility that the unions might in any event have urged their members not to cooperate with the local education authority one is not, in my judgment, to infer that the local education authority was proposing to act unreasonably. Moreover, as we now know from the evidence adduced in this court and as could have been discovered by the Secretary of State prior to June 11, there was, and is, a sufficient number of teachers willing to cooperate in the selection tests and, as I have already mentioned, a respectable body of professional opinion that the job of selection not only could have been, if started in June, which is the critical moment of time, but can even now be acceptably accomplished by September 1.

Thus, while there are differences of opinion as to the acceptability of the tests proposed, there is none, as I understand the evidence, as to the time factor. There was time enough in June. How can, then, the Secretary of State have been satisfied that the course of action proposed by the local education authority was unreasonable? It may have been unwelcome, attended by some risk and one that called for effort and drive. But none of these factors could, in isolation or accumulatively, constitute unreasonableness. And, when the local education authority had to balance the difficulties associated with "going comprehensive" by September 1, which, as the evidence shows, were genuine difficulties, against those associated with a decision to revert to the existing mixed pattern of comprehensive, secondary modern and grammar school education, I find it impossible to say that there existed grounds on which the Secretary of State could have been satisfied that the local education authority was proposing to act unreasonably. "Unreasonably" must mean in the context of section 68 not "unreasonably policy-wise" but "unreasonably" in the administrative sense: for the Secretary of State very properly concedes that section 68 is not an appropriate vehicle for imposing an unwelcome educational policy upon a local education authority. Moreover, the word "unreasonably" means not "mistakenly" nor even "wrongly" but refers only to a situation in which the authority is acting or proposing to act in a way in which, in the circumstances prevailing and on the expert advice available, no reasonable authority could have acted. The local education authority, being a public authority, is entitled to have its acts assessed by the Secretary of State on that basis.

Finally, there is and can be no suggestion that the Secretary of State has allowed political considerations to influence his decision in this case. The truth is that the Secretary of State was not fully informed as to the practicability of what the local education authority had in mind to do. His advisers may have jumped to the conclusion that the local education authority's proposals were unworkable and unacceptable. But we now know that they were practicable and that their acceptability is recognised

by respectable professional opinion. The local education authority, like the Secretary of State, is a democratically elected authority entitled to have its opinion of administrative problems within the area of its responsibility respected. If grounds cannot be shown to exist for treating their decision as unreasonable, it should not be too difficult to show that the Secretary of State had no grounds for being satisfied that they were proposing to act unreasonably. I think that they have shown that he had none: and I would allow the appeal, declaring that no order of mandamus should go.

Mr. Lloyd, for the local education authority, did raise a further point upon section 99 of the Education Act 1944. He submitted that the machinery for taking action in the event of default by a local education authority under that section was exclusive of the right of the Secretary of State to bring mandamus proceedings in any case in which that statutory machinery had not been invoked. Like Lord Denning M.R., I reserve my opinion on the point, but I will say that I would be very surprised if Mr. Lloyd was right.

GEOFFREY LANE L.J. On June 11 of this year the Secretary of State for Education and Science gave a directive to the metropolitan borough of Tameside under section 68 of the Education Act 1944. That directive was that the borough should implement proposals approved by the Secretary of State in November 1975 under section 13 of that Act.

That directive the borough has declined to obey for all practical purposes. Thereupon the Secretary of State on July 12 moved the Divisional Court for and succeeded in obtaining an order of mandamus requiring the borough to comply with his directive. From that order the borough appeals.

The principal if not the only question to be decided is whether the directive from the Secretary of State was a lawful and valid order which under the terms of the Act the borough was obliged to obey.

The details of the unhappy differences between the Secretary of State and the new councillors for Tameside have already been given, and it is unnecessary for me to repeat them. The two sides of the dispute can perhaps be conveniently summarised as follows. The Secretary of State is saying that there is already in process of being implemented a scheme approved by him for replacing the selection of pupils by merit with the so-called comprehensive system of education. The proposal, he says, of the borough to revert to the old merit system and to retain the grammar schools in their old capacity is an unworkable proposal and is therefore unreasonable. Therefore, he says, "I, the Secretary of State, direct you the borough to discontinue your plan and to implement the comprehensive system which I have already approved."

On their side the borough reply by saying that they appreciate that there are difficulties in the path of their proposals. But, they say, there are difficulties of at least comparable size in the path of the comprehensive system proposed by the minister. Their own difficulties, they say, can all be overcome.

At the root of the dispute, and there is no advantage in closing one's eyes to the fact, are the two opposing views as to the better form of secon-

dary education. Unfortunately the argument has become politically aligned, with the result that the true issues may sometimes become lost in the dust of political battle.

One thing is, however, clear in the present case and that is that both sides are fervently and genuinely convinced that their own view is the correct one—not only that their own scheme is the best for the pupils, but that their own scheme is practicable.

The situation is somewhat unusual. We are concerned to decide not the question whether the Secretary of State is in breach of a duty cast upon him by law, but whether the directive from the Secretary of State requiring the borough to act was a lawful order. There are thus two stages rather than the more usual one single stage. What is being judged is the Secretary of State's judgment of the actions of the borough. It is of course not for the court to substitute its own views for those of the Secretary of State. The task of the court, in the present circumstances, is to decide whether there was any foundation of fact upon which the Secretary of State could properly come to the conclusion on June 11, 1976, that the borough had acted as no reasonable local authority could have acted in refusing to implement the comprehensive scheme. If there was such a foundation, then he was entitled to issue the directive even though the court may differ from his view.

What then were the grounds upon which the Secretary of State reached his conclusion? In the affidavit sworn on his behalf by Mr. Jenkins the reasons for his decision are not expressly set out. Reference is made to the letter of June 11, and one is left to extract such reasons as one can from that and also from the statements in the affidavit. Mr. Lloyd, on behalf of the borough, submits that there are five such reasons. Four, he says, are plainly wrong and the fifth (which he suggests was an afterthought) is on closer examination no better. Mr. Bingham, for the Secretary of State, submits that the first four so-called reasons were not reasons at all, but only part of the historical background, and that Mr. Lloyd's fifth reason was a more than adequate basis for the Secretary of State's directive. I, myself, have no doubt at all that the four items were being put forward as reasons by the Secretary of State, and not merely as part of the history. There was no reason, otherwise, for selecting them as part of the historical background rather than a hundred other facts. Those four reasons are set out in the affidavit of Mr. Jenkins, that affidavit being dated June 17, and there is no need for me to read them in full here. It is clear in short, to my mind, that none of those four grounds has any substance and indeed I have to say that Mr. Jenkins' affidavit is something less than frank on one of them—that is, the second—which suggests on first reading that a large number of transfers of staff had been made to implement the original scheme; when, however, one comes to examine the figures in detail it seems that only 35 transfers have been made and the rest were promotions and other appointments. It is the fifth ground which is really the nub of the case, and that is the suggestion that in the time available it is not possible to operate a sufficiently accurate merit selection system which is the foundation of the borough's whole scheme. The objection is that it is impossible to carry out the selection procedure in time for the beginning of the new term on September 1. This has been complicated,

it seems, by the attitude of some of the teachers' unions who have encouraged their members not to cooperate with the borough's proposals. Affidavits from Mr. Beard, who has accepted an invitation to act as chairman of the selection panel, and from Mr. Potts, who is a very experienced educationalist, which are before this court make it clear that even in the short time of five weeks available from today it will be possible to carry out a reasonably accurate selection for the 780-odd children who are involved in the difficulty. The one matter which could frustrate that objective would be if the heads of the junior schools refused to release the records of pupils. These records belong to the borough, and I find it hard to believe that any of the heads involved would take such a step as to withhold those documents from the people who are entitled to have them. I think we should assume that they will not withhold them. There will, it is true, be insufficient time for a standardised verbal reasoning test to be carried out. Such a test is desirable in order to cater for the differing standards amongst the junior schools, but its lack is not fatal to a selection procedure, as Mr. Thomas, one of Her Majesty's chief inspectors of schools, in an affidavit made clear. The furthest that he goes is to say in the final paragraph of his affidavit:

> "I conclude that the arrangements for the selection of pupils for grammar schools in Tameside this year which are referred to in Mr. Beard's affidavit would not, with reasonable certainty, allow a fair selection between border-line candidates."

That, it seems to me, is a tentative statement, and it was a statement made on July 21 of this year. We are now at the end of July. Had the Secretary of State allowed the borough's plans to go forward on June 11 instead of placing an embargo upon them, then these difficulties would, practically speaking, have no doubt disappeared. I do not believe that the teachers would have taken the attitude which they have taken if that directive had not been given by the Secretary of State. I believe that the heads would have cooperated. Thus the minister's action is itself partly responsible for the existing situation.

I find it quite impossible to say that there were any valid grounds for the Secretary of State's decision when it was given that no reasonable local authority could have acted as the borough did here. No doubt the Secretary of State is convinced that the borough's decision is wrong and even deplorable. No doubt the borough think the same of the Secretary of State's attitude. But that is not to say that either is acting unreasonably or that anyone can legitimately come to the conclusion that either is being unreasonable. I would allow the appeal on this ground, and I agree that that decision makes it unnecessary to consider Mr. Lloyd's further point and ancillary argument based on his interpretation of section 99. I would allow the appeal.

Appeal allowed with costs.
Leave to appeal refused.

Solicitors: *Oswald Hickson, Collier & Co.; Vaudrey, Osborne & Mellor, Manchester; Treasury Solicitor.*

A. H. B.

On July 29, 1976, the Secretary of State petitioned the House of Lords for leave to appeal. A

T. H. Bingham Q.C. and *Harry Woolf* for the Secretary of State. It is accepted that you are not entitled to say that a person is unreasonable because he disagrees with you. The question is whether, viewed objectively, the decision is unreasonable or not. The fact that discretion is entrusted to a minister by Parliament does not mean that his exercise of it is not open B to review by the courts. It can be challenged if it can be shown that he has misdirected himself in law. But neither the council here, while saying that the Secretary of State's letter of June 11 is a misdirection, nor the Divisional Court, have been able to show that it contains a misdirection in law. It is not suggested that the matters in paragraph 2 of the letter are matters to which the Secretary of State should not have paid attention. C The moment the court says that what the Secretary of State was being told about the selective system was wrong, it is entering into the discretion which has been entrusted to the Minister. The principle enunciated by Scarman L.J. regarding new evidence, ante, p. 1030E, is not only new but wrong. It is a vastly important extension of the field of judicial review, and potentially very extensive. If the Secretary of State took the view that the council's selection system could not be put into operation fairly, then that D entitled him to take the view that the council were being unreasonable. He did not take into account things which he ought not to have taken into account, etc., and in so far as the Court of Appeal took new evidence into account that was a new principle and ought to be gone into. The Court of Appeal were wrong in not confining their decisions to saying that there was material on which the Secretary of State could say that the council were acting unreasonably. They strayed into being conditioned, E at least, by material which had not been available to the Secretary of State. The new evidence to the effect that the council's procedure would be satisfactory is not accepted.

While the court should be astute to restrain a minister from acting in excess of his powers—that is recognised as a function of the rule of law—the converse applies too: the minister should be free to exercise his execu- F tive authority within its field. The Court of Appeal here has nullified a decision which the Secretary of State was perfectly entitled to make. They relied on grounds which were not legitimate for doing what they did.

Anthony Lloyd Q.C., Leon Brittan and *Andrew Caldecott* for the council. The council make the following points. 1. Three judges in the Court of Appeal have all come to the conclusion on the facts that there was no G ground here on which the Secretary of State could lawfully be satisfied that the council were acting or proposing to act unreasonably: see, e.g., *per* Lord Denning M.R., ante, p. 1026D. He drew the inference, at p. 1026G, that the Secretary of State must have misdirected himself as to the question which he should ask: not, did he agree with the council, but, was the council acting unreasonably? The section 76 point is a difficult one. It H is easier to carry out one's policy if the electorate is with you. Geoffrey Lane L.J., ante, p. 1035F, allowed the appeal on the basis that there were no valid grounds on which the Secretary of State could have come to his

conclusion. Much the same view was in fact taken by Lord Widgery C.J. in the Divisional Court, ante, pp. 1019G—1020C, and by May J., ante, p. 1020C–F.

The teachers' consultative committee have met, and invited the head teachers to hand in the reports. Seven have, and there is no reason to suppose that the others will not. This does not bear on the rightness of the Secretary of State's decision, but had it been before the Divisional Court they would not have taken the view that the Secretary of State had established grounds for making his direction because of the opposition to the council's scheme. At that stage the teachers were in dispute. If it had been apparent to the council that they would not be able to put their scheme into operation, they would not have attempted to do so. The three judges in the Divisional Court would have come to the same conclusion as the Court of Appeal if they had had this evidence. So the council's case is a strong one on the facts.

2. There is no great question of law here. It is fundamentally a question of fact whether there were grounds for the Secretary of State's decision. If there is a great question of constitutional law here, it is not seemly to deal with so important a question at too great a pace.

3. It may be that the importance of the case has been, or could be, exaggerated in other respects, besides that of the law. If here the future of 3,000 children were at stake, it would be a very serious matter, but that is not the case. The council are proposing simply to maintain the status quo for a year, not to rush into anything in September. The effect of preserving the status quo in relation to the two grammar schools is that 240 places will be available for boys and girls. The council could have left the 240 places empty without affecting the character of the schools. By not turning them into sixth form colleges they simply have 240 places available. Against that background, it is almost absurd to talk of jeopardising the whole educational position of this age group. There will be no imbalance between boys and girls. There have been only 198 applications by girls out of the total of 783 applications. That is the same proportion—a quarter— as the places available for girls (60).

Although Scarman L.J.'s judgment is important, it is not of such importance that your Lordships should give the Secretary of State leave to appeal. In his petition for leave, the Secretary of State seems to be saying that, assuming that the Court of Appeal were right on the evidence before them, they should have shut their eyes to that evidence and decided the appeal solely on the material which had been placed before the Secretary of State. That, if correct, is a remarkable proposition. The Court of Appeal rightly asked themselves: could the Secretary of State have been satisfied on the evidence? The Secretary of State's reasons for his decision should be considered together: one cannot subtract the bad reasons and ask whether the rest were all right. It is not right to say that the Court of Appeal equated the role of the Secretary of State in relation to the council to that of the court reviewing a decision of the Secretary of State, but none the less there are distinct similarities (see *per* Lord Upjohn in *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997).

David McNeill Q.C. and *J. J. Hodgson* for the six parents adopted the submissions for the council.

Bingham Q.C. in reply. Lord Widgery C.J. correctly directed himself as to the question of law which he had to answer, and correctly answered it. A

The Appeal Committee (Lord Wilberforce, Viscount Dilhorne, Lord Diplock, Lord Salmon and Lord Russell of Killowen) granted the Secretary of State leave to appeal. The hearing of the appeal took place on July 30 and 31.

B

T. H. Bingham Q.C. and *Harry Woolf* for the Secretary of State. It was a question in the Court of Appeal whether section 8 of the Education Act 1944, beginning "It shall be the duty . . .," imposed any duty with regard to allocation to schools. There was a decision in 1972 that it did, and it is not really contested. *Cumings* v. *Birkenhead Corporation* [1972] Ch. 12 shows that it is an administrative discretion which has to be exercised fairly and reasonably. If the authority are acting unreasonably, they are acting in breach of the power in section 8. The Secretary of State's approval under section 13 is only a starting point: it gives leave; it does not impose an obligation. The authority do not have to go ahead if they do not want to. The two criteria in section 13 (10) of the Act of 1944, added by section 1 (2) of the Education Act 1968 are satisfied here: alterations in age, and alterations in admission arrangements by reference to ability and aptitude. The relevance of section 17 is that it is in some sense the counterpart of section 8: a particular choice at particular schools. Under section 37 there is a right of parental choice unless good reason is given. The Secretary of State cannot hold examinations, but he can satisfy himself that the selection procedure is satisfactory. Here, a system is proposed which is not satisfactory. 500 parents are likely to complain. The Secretary of State will find himself in a position in which he cannot satisfy himself that the selection procedure is satisfactory. These are not mere difficulties, but are very substantial obstacles to the proper performance of his duty to resolve disputes when they arise. [Reference was made to section 68 and 99 of the Act of 1944.] A week before June 11, the teachers were stating their view. The crux may be whether they were going to cooperate, and here is material on which the Secretary of State was clearly entitled to take the view that they were not. *Provided* that the council had had the cooperation of all concerned, perhaps they would have been entitled to act as they did, but, on the material before the Secretary of State, they did not have that cooperation. Strictly, one has to judge their reasonableness as at that moment, though the same state of affairs persisted thereafter. C D E F

Just because the Secretary of State has given reasons for his decision, he cannot be shut out from saying that his mind was affected by other things, even if he does not refer to them specifically. The collective disputes procedure in operation between three of the teachers' unions and the council is not so far outside what he had referred to that it ought to be shut out. It is clearly capable of being regarded as evidence of unreasonableness on the part of the council when someone says that they are going ahead despite those factors. On the other side, see the report of the chief executive, the director of education and the director of administration to the council on June 21, 1976. There was evidence on which the G H

A Secretary of State could take the view that what the council were proposing to do was (having regard to the time scale) unreasonable and their objections to the implementation of the approved comprehensive scheme were trivial compared with the objections the other way.

As regards the giving of reasons, the Secretary of State relies on what Scarman L.J. said, ante, pp. 1028H—1029A. Where reasons are given in fairly general terms, the court should not exclude material falling within B the ambit of those reasons if it appears likely that it will have affected the mind of the person giving them.

The principles governing the approach of the Court of Appeal to ministerial discretion in this case are as follows. 1. Its function is to see that the Secretary of State does not exceed his power. 2. The scope of review is determined by the language of the grant of power. "Satisfied" leads C to a different review from "has reason to believe" (*Liversidge* v. *Anderson* [1942] A.C. 206) or "if it appears to the Minister." The Secretary of State does not know of any other section with language comparable to that of section 68. 3. The Secretary of State's decision can be impugned if it can be shown that he misdirected himself in law, on the familiar grounds. 4. The Secretary of State's duty is to take such steps as are reasonably necessary to satisfy himself. 5. His decision may, depending D on the circumstances, be open to challenge if he is shown to have misdirected himself in fact on the material before him. The authority for this proposition is extremely slender (see *Secretary of State for Employment* v. *ASLEF (No. 2)* [1972] 2 Q.B. 455. It would be contrary to principle for the Secretary of State's decision to be impugned on the basis of material which comes into existence after it has been made. [Reference was made to *S.A. de Smith, Judicial Review of Administrative Action*, 3rd ed. E (1973), p. 320; *Reg.* v. *Minister of Housing and Local Government, Ex parte Chichester Rural District Council* [1960] 1 W.L.R. 587.]

There is no reason to suppose that the Secretary of State was not fully alive to the meaning of "reasonable" and gave it proper consideration. [Reference was made to *McEldowney* v. *Forde* [1971] A.C. 632, *per* Lord Diplock, at p. 659.] There is no substantial support for some of F the passages in *de Smith* quoted by Scarman L.J. in the Court of Appeal.

Lastly, reasonableness is a matter of fact and degree, so long as there is some evidence of it: see *per* Lord Hailsham of St. Marylebone L.C. in *In re W. (An Infant)* [1971] A.C. 682, 699. The teachers' non-cooperation is at the heart of this matter.

Anthony Lloyd Q.C., *Leon Brittan* and *Andrew Caldecott* for the council. The council's propositions are as follows. 1. The question which G the Secretary of State should ask himself under the Act is: "Am I satisfied that the council are proposing to act in a way in which no reasonable council would act in the particular circumstances?" It would not be enough for him merely to disagree with them or think them wrong. "Unreasonably" must be interpreted in its full sense (this is now probably common ground): see *per* Lord Hailsham of St. Marylebone L.C. in H *In re W. (An Infant)* [1971] A.C. 682, 699–700. "Reasonably" should not be whittled down. It is used in the context of the Act where there is an elaborate balance of powers and duties. The Act did not intend a collision unless the local authority were acting unreasonably.

2. The Court of Appeal is entitled, indeed bound, to look at the reasons given by the Secretary of State for saying that he is satisfied. If the Court of Appeal takes the view that no reasonable person could be satisfied on those reasons, there is no doubt that it can set the Secretary of State's decision aside. The field of review is already set very narrowly. Because that is so, while being fair to the Secretary of State, one should perhaps not give him the benefit of the doubt.

If the council had been neglecting the view that there might be non-cooperation by the teachers, that would make their view unreasonable.

Assuming that the Secretary of State is a reasonable man, he must have misdirected himself on some question of law or fact. So approached, the case is well within *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997: see *per* Lord Denning M.R., at p. 1006; the council also rely on *Secretary of State for Employment* v. *ASLEF* (*No.* 2) [1972] 2 Q.B. 455. A misdirection in fact means a misdirection on the facts as they really were at the time, not just on the facts which were before the Secretary of State.

3. Having regard to the reasons given in the Secretary of State's letter of direction, and particularly in his letter of May 26, 1976, and in Mr. Jenkins's affidavit, the Secretary of State is not just saying (if he is saying it at all) that it is too late now to carry out a proper selection test. What he is saying is that the progress towards comprehensive reorganisation has now gone so far that it would be unreasonable for the council to turn back.

There is no distinction between a reason which is intrinsically irrelevant and a reason which is potentially relevant but which has no substance in fact. The reasons regarding staff and buildings, which were originally put forward by the Secretary of State with vigour (less so in the Court of Appeal), have now virtually gone. Really the only reasons which are put forward are those in the Secretary of State's letter of May 26, 1976. The Secretary of State ignored responsible and professional opinion as to the feasibility of selection tests; the council adopt what the Court of Appeal said on this.

It is not right as a matter of law to say that the court is confined to looking at the material which the Secretary of State himself had, or ought to have had, unless by that one means all the relevant material. Suppose that he genuinely thought that on the material which he had the selection process could not be completed by September; the highest at which the matter could then be put in his favour would be: "how can he be said to have acted unreasonably when on the material which he had a reasonable person could have taken the view which he has in fact taken?" That illustrates the fallacy in the Secretary of State's argument regarding confining the matter to the material which was before him. The question is not whether the Secretary of State himself subjectively was acting reasonably or unreasonably. The question is objective: on the reasons which he has given, do those reasons objectively support the view his view on the material which was available at the time, not just the material which he in fact had? Suppose that the Secretary of State decided to close down a school on the ground that there were too many schools in the area, and without his knowledge another school had burned down. That sort of argument would get nowhere. The question, on a judicial review,

whenever one is dealing with a misdirection in fact, as in law, does not depend on the material actually before the Secretary of State, or on what he ought to know (unless one assumes that he ought to know all the material facts). One assumes that he is going to know all the relevant facts, not just that he is going to do his best. He must inform himself of all the relevant facts.

The question which the Secretary of State asks in relation to the authority is, is it acting reasonably or unreasonably? The court does not ask, is the Secretary of State acting reasonably (subjectively). If he has not all the relevant facts, his decision, objectively, goes. If his function is, as it is, to have regard to the true facts, evidence was admissible in the Divisional Court to establish what those facts were. As to what Scarman L.J. said, the test is not what he knew or ought to have known. Scarman L.J., rather than going too far, does not go far enough. His judgment is a valuable reformulation of the law rather than an extension of judicial review. The question is not whether there was a body of opinion available to the Secretary of State, but whether it existed. The Secretary of State has a duty to inform himself of all relevant facts, not just to take all reasonable steps to do so.

To summarise the council's argument on the selection point: 1. It is an obvious point that parents did not have to apply on behalf of their children for the 240 places. There was no pressure on them to reply; they were merely invited to do so. To talk of a "dilemma" is extravagant, just as it is to talk of the educational provision for the whole age group being put in jeopardy. 2. In the very broadest sense (only), it was not unreasonable for the council to attempt to put into practice the policy which they had indicated to the electorate in two elections. 3. It was not unreasonable—again in the broadest sense—for the council to *attempt* to fill the 240 places which would have been left empty by not going ahead with the sixth form colleges. If the worst came to the worst, they could have left the places empty. 4. The council have not attempted at any stage to "override" the views of the teachers; they have attempted to carry the teachers (or their unions) with them. 5. When they were asked to explain their plans, they did so in considerable detail in their letter of June 7, 1976. It was a very reasonable letter to write, both in content and in manner. 6. It was not unreasonable for them to hope that the teachers would cooperate, although it was true that they had declared a dispute, at least to the extent that they would hand over the reports and records. If the worst came to the worst, the council could have compelled them to do so. If necessary, they would have taken that course.

In this connection, the council now apply to put before the House an affidavit bringing this matter up to date. It shows, first, what may have been true of the attitude of the teachers on June 11: that they are now prepared to hand over the records. Secondly, on the question of discretion: if the House feels that it is now too late for the council to go ahead with their plans, it should be aware that the records are now being handed over. It is evidence of a state of mind.

Bingham Q.C. The affidavit should not be let in without an opportunity being given to the Secretary of State of answering it.

[LORD WILBERFORCE. The House will not admit the affidavit at this stage.]

Lloyd Q.C. continuing. There was no material on which the Secretary of State could properly come to the conclusion that it was unreasonable for the council to try to put their plan into operation. He should at least have allowed them to try a bit longer.

The disturbance to the pupils if the approved plans had been carried out would have been much greater than if the council's selection system were operated. It would clearly have been sensible to wait for a year until the buildings were completed before putting the approved plan into operation. The council had to choose between two courses, each involving some disruption. How can it be said that in choosing one difficulty rather than the other they were acting in a way in which no reasonable council would have acted? It comes down to one point: all that the Secretary of State is putting forward is grounds on which one might disagree with what the council are doing, but there is no ground sufficient in law to say that they were unreasonable in what they were doing.

The Act does not say on what basis the Secretary of State decides. The question is not between comprehensive and selective education, but between one comprehensive scheme and another.

There are the following additional points. When the court is looking at the reasons for a decision, it infers two things: (1) that the reasons given are the best reasons; (2) that all the reasons played some part in the decision-making process. It follows from (1) that the Secretary of State cannot add to his reasons: there is neat authority for this in *Reg.* v. *Minister of Housing and Local Government, Ex parte Chichester Rural District Council* [1960] 1 W.L.R. 587. What is added will be second best. The reason is one of policy as much as anything. Equally, the Secretary of State cannot subtract from his reasons, because all are presumed to have played some part in the decision-making process. [Reference was made to *Sadler* v. *Sheffield Corporation* [1924] 1 Ch. 483.] This point is another way of saying that if the Secretary of State takes into account irrelevant considerations then his decision must fall.

Discretion only arises if the council are wrong in their argument so far. The Secretary of State arrived at a correct decision, but on what is now known it had no substance in fact, and, assuming that the court had no power to declare his decision invalid—the council says that it had—no court in the circumstances would enforce it by mandamus.

On section 68, the only people who have the right to choose a school are the parents or the Secretary of State, not the local authority. One would think that it would be provided that the local authority should allocate the children between schools, but that provision simply is not there: there is no such power or duty.

On section 99, a procedural point, the council would accept that once a direction is given under section 68 there is a duty on the local authority to comply with the direction, provided, of course, that it is valid. Until the direction is given, however, there is no duty to implement the section 13 proposal, even though it has been approved by the Secretary of State. The duty arises for the first time under section 68. The question then is how it is to be enforced: normally by mandamus. Most statutes, however

(see, e.g., the Housing Finance Act 1972, section 95), especially those regulating procedure between local and central government, have a procedure by way of default orders. Turning to the default section in the Act of 1944, section 99 (1), this lays down how the Secretary of State is to enforce the duty in case of a default. Here, the Secretary of State has jumped a step, eliding the step which he should have gone through in section 99. In every case where action is being brought by central government against the local authority under this Act which provides for a default order, this default order is an important step which must be complied with.

Bingham Q.C. in reply. It would be odd to find the Secretary of State in his decision letter saying: "I have given 'unreasonable' the following meaning. . . ." Nor should the court say "It is 50/50 what he meant." It should approach his decision on the basis that he is likely to have directed himself correctly regarding an expression common in statutes. It is not desirable that he should be cross-examined as to what he meant.

Regarding the correspondence leading up to the Secretary of State's direction, it is unlikely that the department would have specified express concern about selection if it had known what was proposed about selection. Everything which the Secretary of State relies on is covered by the wording which he uses. It is not tied to a particular intake of pupils, or to a particular aspect of the matter. He cannot be said to have thought of things ex post facto. He should certainly have asked himself: "If I do not intervene, will the teachers do their duty?" The construction of section 68 for which the council contend would make it virtually a dead letter: the Secretary of State could never discover all the facts. He is dealing with a local authority which ex hypothesi is proposing to act unreasonably. He is entitled to rely on the educated knowledge and experience within his department.

In *Reg.* v. *Minister of Housing and Local Government, Ex parte Chichester Rural District Council* [1960] 1 W.L.R. 587 the minister was obliged to give reasons. His decision could not be upheld on the basis of reasons which he had not given. The case is distinguishable.

As to discretion, where there is a public duty to perform, mandamus will lie. Discretion has a very small part to play. [Reference was made to *Rex* v. *Bishop of Sarum* [1916] 1 K.B. 466, 470.]

Section 8 creates a power *and* a duty. Lord Denning M.R. so treated it in *Cumings* v. *Birkenhead Corporation* [1972] Ch. 12, 35–36.

There are four distinctions between section 99 and section 68. (1) Section 99 has been in the Education Acts in one form or another for a long time, first in section 16 of the Act of 1902 (public inquiry held first), then in section 150 of the Act of 1921. Section 68 was first included in 1944. (2) Section 68 is both prospective and retrospective, section 99 retrospective only. (3) Section 68 refers to powers and duties, section 99 to duties alone. (4) Section 99 makes express reference to mandamus; section 68 does not. There are two explanations for these distinctions. First, historical: in 1902 it was sought to make it clear that mandamus would lie. Secondly, to make it clear that mandamus was available at the suit of the Secretary of State and not of anybody else.

The real objection to the council's argument is the practical one. On that argument, if the Secretary of State were satisfied that a local authority

were proposing to act unreasonably, he would take the following course: (i) give a direction; (ii) wait to see what course the local authority would follow; (iii) make a default order under section 99; again, a pause, then (iv) apply for mandamus. One would need very strong arguments on construction to conclude that the legislature intended anything so unwieldy: see, again, *Cumings* v. *Birkenhead Corporation* [1972] Ch. 12. A real remedy is provided, not just a press-button for section 99.

The six parents did not appear and were not represented at the hearing of the appeal.

August 2. Their Lordships announced that they were of the opinion, for reasons to be announced, that the appeal failed.

Their Lordships took time for consideration.

October 21. LORD WILBERFORCE. My Lords, this appeal is concerned with secondary education in the metropolitan borough of Tameside. Tameside is a new unit of local government created under the Local Government Act 1972; it includes areas formerly in Cheshire and Lancashire. Its resources in secondary education included 16 secondary modern and five grammar schools and three purpose-built comprehensive schools under construction. Soon after its creation the council, as local education authority, put forward a scheme for bringing all the schools in the area under the comprehensive principle—"comprehensive" in this context not bearing its normal meaning in English, or the meaning it bore in the Education Act 1944, but its meaning in modern political jargon of a system which, in theory, lets everyone in to any school without selection by aptitude or ability. Grammar schools, by contrast, allocate places by selection. This scheme was brought in and, as the law required, was laid before the Secretary of State for Education and Science on March 10, 1975; it was very detailed and would clearly take some time to implement. Briefly, it provided (1) for setting up three new purpose-built comprehensive schools (those mentioned above) (2) for bringing the 16 secondary modern schools into the comprehensive principle (3) for abolition of the five grammar schools by turning three of them into comprehensives and two into sixth form colleges. These proposals in due course, on November 11, 1975, received the Secretary of State's approval, and the council then became entitled to put them into effect: but—and this is important—the Secretary of State's approval imposed no duty on the council to implement them. In fact, the council did take some steps towards their initial implementation by the beginning of the school year in September 1976. These steps were of a rather hurried nature, and, the respondents now contend, premature, and made not without an eye upon the local government elections to be held in May 1976. It is certainly fair to say that it was and is clear that necessary buildings for the changeover could not be completed, or in some cases more than just begun, by September 1976, and that if the new proposals were to start at that date there would be a good deal of improvisation and temporary disruption. There was some impressive evidence of this from a number of experienced teachers.

Local elections were held on May 6, 1976. The issues no doubt were numerous and of varying importance, but the survival of the grammar schools as selective entry schools was one issue strongly fought, and on which the opposition party took its stand. A large number of parents had signed a petition against the 1975 proposals and no doubt supported the opposition. The opposition gained control of the council, and they considered themselves to have been given a mandate to reconsider their predecessors' education policy. They formulated their own proposals as not involving a total reversal of that policy. They set them out in a carefully thought out and moderate letter addressed to the Secretary of State on June 7, 1976. They proposed to adopt what had already been done in the direction of comprehensive education—the three new comprehensives would be continued and completed as "a valuable nucleus of any future scheme." The 16 secondary moderns would be continued. But they did not propose to implement at once the plans for conversion of the grammar schools. They proposed to postpone these plans and to continue the schools for a time so that the position could be reviewed, in the light, amongst other things, of the new Education Bill then before Parliament. Their policy was

> "... the maintenance of the status quo with the least disturbance and disruption to the children's education pending any longer term, well thought out proposals."

The Secretary of State, and his department, were greatly concerned with the difficulties likely to be brought about by a change in control of the local education authority. Undoubtedly such changes are an administrator's nightmare. The department had approved the "comprehensive" plan, and they knew and approved that the authority had planned to start introducing it in September 1976. A change of course only three months before the new school year was to start very naturally worried the officials. There was correspondence between the department and the authority in May and June in which the authority was asked to explain its plans, particularly with regard to the selection of pupils; there was a meeting on June 9, which does not seem to have been amicable or conclusive. The Secretary of State remained of the opinion that it was too late to reverse the previous council's plans and that the new council were acting unreasonably in doing so. So on June 11, 1976, he gave a direction to the council to implement their predecessors' proposals, and on June 18, 1976, he asked for an order of mandamus that they should do so. This order was granted by the Divisional Court but on July 26, 1976, on appeal by the authority, it was discharged by the Court of Appeal, leave to appeal being refused. By an emergency procedure which started with an application for leave to appeal on July 29 and which phased into a full hearing of the appeal, your Lordships heard full, and I must say admirable, arguments on a complete documentary record on July 29 to 31. I would like to acknowledge the efforts and cooperation of those advising each side which enabled this exceptionally quick procedure to be carried out. The argument was concluded on July 31, and on August 2 it was announced that their Lordships were of opinion, for reasons to be announced and now set forth, that the appeal failed.

I must now set the legal scene. The direction of June 11, 1976, was given under section 68 of the Education Act 1944. Education is still governed by this notable statute, as amended, and it is necessary to understand its structure. Under the Act responsibility for secondary education rests upon a fourfold foundation: the Minister (as he was then called); local authorities; parental wishes; and school managers and governors. All have their part to play. The primary responsibility rests on the Minister. He has to promote the education of the people of England and

> ". . . to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive" (old meaning) "educational service in every area." (section 1.)

But local education authorities, which are elected, have their place defined. It is they who are responsible for "providing secondary education" in schools

> ". . . sufficient in number, character, and equipment to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities, and aptitudes, . . ." (section 8.)

Section 13 is an important section—it is that which was acted on in 1975. It enables local education authorities to make "significant changes" in the character of any school but requires them to make proposals to that effect to the Secretary of State. So the initiative is theirs: ultimate control is with the Secretary of State: there is no obligation, before or after his approval, on the authority to carry its proposals out. Section 68 must be quoted in full:

> "If the Secretary of State is satisfied, either on complaint by any person or otherwise, that any local education authority or the managers or governors of any county or voluntary school have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may, notwithstanding any enactment rendering the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the managers or governors, give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient . . ."

This section does not say what the consequences of the giving of directions are to be, but I accept, for the purposes of the appeal, that the consequences are to impose on the authority a statutory duty to comply with them which can be enforced by an order of mandamus.

Analysis of the section brings out three cardinal points.

(1) The matters with which the section is concerned are primarily matters of educational administration. The action which the Secretary of State is entitled to stop is unreasonable action with respect to the exercise of a power or the performance of a duty—the power and the duty of the authority are presupposed and cannot be interfered with. Local education authorities are entitled under the Act to have a policy, and this section

does not enable the Secretary of State to require them to abandon or reverse a policy just because the Secretary of State disagrees with it. Specifically, the Secretary of State cannot use power under this section to impose a general policy of comprehensive education upon a local education authority which does not agree with the policy. He cannot direct them to bring in a scheme for total comprehensive education in their area, and if they have done so he cannot direct them to implement it. If he tries to use a direction under section 68 for this purpose, his direction would be clearly invalid. A direction under section 68 must be justified on the ground of unreasonable action in doing what under the Act the local authority is entitled to do, and under the Act it has a freedom of choice. I do not think that there is any controversy upon these propositions.

The critical question in this case, and it is not an easy one, is whether, on a matter which appears to be one of educational administration, namely whether the change of course proposed by the council in May 1976 would lead to educational chaos or undue disruption, the Secretary of State's judgment can be challenged.

(2) The section is framed in a "subjective" form—if the Secretary of State "is satisfied." This form of section is quite well known, and at first sight might seem to exclude judicial review. Sections in this form may, no doubt, exclude judicial review on what is or has become a matter of pure judgment. But I do not think that they go further than that. If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is for the Secretary of State alone, the court must inquire whether those facts exist, and have been taken into account, whether the judgment has been made upon a proper self-direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account. If these requirements are not met, then the exercise of judgment, however bona fide it may be, becomes capable of challenge: see *Secretary of State for Employment* v. *ASLEF (No. 2)* [1972] 2 Q.B. 455, *per* Lord Denning M.R., at p. 493.

(3) The section has to be considered within the structure of the Act. In many statutes a minister or other authority is given a discretionary power and in these cases the court's power to review any exercise of the discretion, though still real, is limited. In these cases it is said that the courts cannot substitute their opinion for that of the minister: they can interfere on such grounds as that the minister has acted right outside his powers or outside the purpose of the Act, or unfairly, or upon an incorrect basis of fact. But there is no universal rule as to the principles on which the exercise of a discretion may be reviewed: each statute or type of statute must be individually looked at. This Act, of 1944, is quite different from those which simply create a ministerial discretion. The Secretary of State, under section 68, is not merely exercising a discretion: he is reviewing the action of another public body which itself has discretionary powers and duties. He, by contrast with the courts in the normal case, may substitute his opinion for that of the authority: this is what the section allows, but he must take account of what the authority, under the statute, is entitled to do. The authority—this is vital—is itself elected, and is given specific powers as to the kind of schools it wants in its area. Therefore two

situations may arise. One is that there may be a difference of policy between the Secretary of State (under Parliament) and the local authority: the section gives no power to the Secretary of State to make his policy prevail. The other is that, owing to the democratic process involving periodic elections, abrupt reversals of policy may take place, particularly where there are only two parties and the winner takes all. Any reversal of policy if at all substantial must cause some administrative disruption—this was as true of the 1975 proposals as of those of the respondents. So the mere possibility, or probability, of disruption cannot be a ground for issuing a direction to abandon the policy. What the Secretary of State is entitled, by a direction if necessary, to ensure is that such disruptions are not "unreasonable," i.e., greater than a body, elected to carry out a new programme, with which the Secretary of State may disagree, ought to impose upon those for whom it is responsible. After all, those who voted for the new programme, involving a change of course, must also be taken to have accepted some degree of disruption in implementing it.

The ultimate question in this case, in my opinion, is whether the Secretary of State has given sufficient, or any, weight to this particular factor in the exercise of his judgment.

I must now inquire what were the facts upon which the Secretary of State expressed himself as satisfied that the council were acting or proposing to act unreasonably. The Secretary of State did not give oral evidence in the courts, and the facts on which he acted must be taken from the department's letters at the relevant time—i.e., on or about June 11, 1976—and from affidavits sworn by its officers. These documents are to be read fairly and in bonam partem. If reasons are given in general terms, the court should not exclude reasons which fairly fall within them: allowance must be fairly made for difficulties in expression. The Secretary of State must be given credit for having the background to this actual situation well in mind, and must be taken to be properly and professionally informed as to educational practices used in the area, and as to resources available to the local education authority. His opinion, based, as it must be, upon that of a strong and expert department, is not to be lightly overriden.

The first letter from the department to the local education authority was dated May 26, 1976. This refers to "a great deal of educational and administrative planning" which had taken place since approval of the "comprehensive" plan in November 1975. Particular matters mentioned without details were (i) allocation of children to schools; (ii) progress in staffing arrangements including the offer and acceptance of contracts; (iii) planning of curricula and courses; (iv) some building work. Reference is also made to the "continuing absence of any precise alternative plans." Tameside answered this on June 7, 1976, in a long letter. I must summarise it at some length because argument has tended to become concentrated on one or two narrow points rather than upon a balanced overall view of the council's plans. I have already commented on the general character and tone of this letter, which is moderate and appreciative of the difficulties, and which shows at least an intention and purpose to reduce them to the minimum.

The letter begins with a narrative section stating that no comprehensive

reorganisation in Tameside had yet taken place. The schools were not ready for their changed roles; building works were not completed, and not in most cases begun. Implementation (sc. of the 1975 proposals) in September 1976 would have caused grave disruption to the children's education. A particular case of this would be disruption of the education of 16-year-old pupils, who under the 1975 proposals would have been turned out of the sixth forms of three grammar schools and transferred to two non-selective sixth form colleges. I do not think that any of this is disputed. The authority's own plans were set out under 10 points, which involved continuation of the five grammar schools, continuation and completion of the three new purpose-built comprehensives and continuation of the remaining secondary schools. Their policy as regards allocation to schools is spelt out in five paragraphs. All allocations of pupils for the forthcoming year—about 3,000 in all—made by the old council would be honoured subject to agreement by the parents concerned. Ashton and Hyde grammar schools—by the old council destined to become sixth form colleges—would remain grammar schools and would be open to 11-year-old entry, thus making 240 selective places available. All parents of 11-year-olds were to be given the right to apply for reallocation of their children, but if they were satisfied with the existing allocations those allocations would stand. Then it is said (paragraph 7):

> "If the number of applicants to the grammar schools exceeds the number of places available, as is likely, then those pupils most suitable and most likely to benefit from that type of education will be selected by a combination of reports, records and interviews. There will be no formal 11-plus examination."

Finally, it was said that there would be a review of the first year entries, and a very flexible transfer system would be operated at the end of the first year, or earlier if required. I do not think that we need to consider this proposal since there is plenty of time for it to be reconsidered.

The letter also stated that, apart from these immediate plans, longer term proposals would have to be worked out and would need to comply with whatever terms might be contained in the pending Education Bill as and when enacted.

The proposals in this letter were explained, it is said, at a meeting held at the House of Commons on June 9.

On June 11, the direction under section 68 was given in a letter of that date. The letter stated that the Secretary of State was satisfied that the authority was proposing to act unreasonably according to the formula used in section 68 of the Act. A change of plan designed to come into effect in less than three months must, in the opinion of the Secretary of State, give rise to "considerable difficulties." It pointed out that over 3,000 pupils transferring from primary schools had already been allocated and allotted places. Then followed this paragraph (which I shall call "paragraph A").

> "The authority's revised proposals *confront* the parents of children due to transfer in September *with the dilemma* of either adhering to secondary school allocations for their children which they may no longer regard as appropriate, or else *submitting* to an improvised

selection procedure (the precise form of which, the Secretary of State understands, has even now not been settled) carried out in circumstances and under a timetable which raise substantial doubts about its educational validity." (My emphasis.)

A further objection was taken to the proposed possible reallocation during or after the first year—I have commented on this above. The change of plan at this time in the educational year threatened to give rise to practical difficulties in relation to the appointments of staff already made and the construction of buildings for the new comprehensive schools and to create a degree of confusion and uncertainty which could impair the efficient working of the schools.

These arguments were restated and expanded in the affidavit sworn on behalf of the Secretary of State in support of the application for mandamus. The affidavit stated three points.

Point (i): that 653 of the 802 transfers, promotions and other appointments (of teachers) required to implement the reorganisation had been made.

Point (ii): that contracts had been entered into for building work directly related to the change in character of two of the schools and work had started under the contracts. In the case of a third school, the authority had entered into commitments for such building work.

Point (iii): that preparations had been made for courses on the basis that the proposals communicated to the Secretary of State would be put into effect.

These points (i), (ii) and (iii) were dealt with fully by the authority and I need say no more about them than that they were completely exploded. They were held to have no substance in them by five of the six learned judges who have considered this matter: the sixth indicated general agreement without specific discussion and indeed point (ii) was criticised with some severity by one of the learned Lords Justices in the Court of Appeal.

Some attempt was made to rehabilitate these points in this House, but learned counsel decided, no doubt wisely, to concentrate on the allocation issue. But these three points cannot just be discarded as if they had never been made. They form part of a composite set of facts relied upon as showing unreasonable conduct, and I am not at all sure that the disappearance of so many planks does not fatally weaken the stability of the platform. At the least—and I will give the department the benefit of this assumption—the remaining factual basis would need to be strong and clear if it alone were to be the basis for the Secretary of State's "satisfaction" as to unreasonable conduct.

So I come to the question of allocation, which was at the centre of the case as argued, and it can best be approached via "paragraph A" above, a paragraph which I regard as revealing. It shows a very strange attitude toward the decision taken by the authority. After the electorate, including no doubt a large number of parents, had voted the new council into office on the platform that some selective basis would be preserved, to say that this created "a dilemma" for the parents, with the undertone that this was something unreasonable, appears to me curious and para-

doxical. Parents desired to have a chance of selective places. The new council was giving it to them. If they did not want selective places, they had no need and no obligation to apply for them. Unless the creation of freedom of choice, where no such freedom existed previously, is intrinsically an evil, it seems hard to understand how this so-called dilemma could be something unreasonably created. The impression which it gives of upsetting 3,000 places is entirely a false one since over 90 per cent. of these would remain unaltered. Then, to refer to "submitting to an improvised selection procedure" hardly does justice to the authority's plan. Some selection procedure was inherent in what the electorate had voted for, a choice which, if it meant anything, must involve some change in allocations for the forthcoming school year and, unless exactly 240 parents applied for the 240 places, some selection. It would seem likely that in voting for this change in May 1976 the electors must have accepted, if not favoured, some degree of improvisation. The whole paragraph forces the conclusion that the Secretary of State was operating under a misconception as to what would be reasonable for a newly elected council to do, and that he failed to take into account that it was entitled—indeed in a sense bound—to carry out the policy on which it was elected, and failed to give weight to the fact that the limited degree of selection (for 240 places out of some 3,000) which was involved, though less than perfect, was something which a reasonable authority might accept and which the parents concerned clearly did accept.

What the Secretary of State was entitled to do, under his residual powers, was to say something to the effect: "the election has taken place; the new authority may be entitled to postpone the comprehensive scheme: this may involve some degree of selection and apparently the parents desire it. Nevertheless from an educational point of view, whatever some parents may think, I am satisfied that in the time available this, or some part of it, cannot be carried out, and that no reasonable authority would attempt to carry it out." Let us judge him by this test—though I do not think that this was the test he himself applied. Was the procedure to be followed for choosing which of the applicants were to be allotted the 240 selective places such that no reasonable authority could adopt it? The authority's letter of June 7 said that selection would be by "a combination of reports, records and interviews." They had about three months in which to carry it out. The plan was lacking in specification, but it must have conveyed sufficient to the experts at the department to enable them to understand what was proposed. Selection by 11-plus examination was not the only selection procedure available. Lancashire, part of which was taken over by Tameside, had evolved and operated a method of selection by head teacher recommendation, ranking of pupils, reports and records and standardised verbal reasoning tests. The Tameside authority had set up in May a panel of selection to operate a procedure of this kind, the chairman of which was experienced in the Lancashire method. He, as he deposed in an affidavit before the Court of Appeal, was of opinion that even though a verbal reasoning test might not be practicable in the time there would be no difficulty in selecting the number of pupils required. There were other opinions, expressed

with varying degrees of confidence by experts, and no doubt the procedure could not be said to be perfect, but I do not think that such defects as there were could possibly, in the circumstances, having regard to the comparatively small number of places involved, enable it to be said that the whole of the authority's programme of which this was a part was such that no reasonable authority would carry it out.

But there is a further complication. The authority's selection plans were opposed by a number of the teachers' unions, and there was the likelihood of non-cooperation by some of the head teachers in the primary schools in production of records and reports. The department letters and affidavits do not rely upon this matter, for understandable reasons, but they must be assumed to have had it in mind. Is this a fact upon which the Secretary of State might legitimately form the judgment that the authority was acting unreasonably?

To rephrase the question: on June 11, 1976 (this is the date of the direction, and we are not entitled to see what happened thereafter), could it be said that the authority was acting unreasonably in proceeding with a selection procedure which was otherwise workable in face of the possibility of persistent opposition by teachers' unions and individual teachers, or would *the only* (not " the more ") reasonable course have been for the authority to abandon its plans? This is, I think, the ultimate factual question in the case. And I think that it must be answered in the negative—i.e., that it could not be unreasonable, in June 1976, and assuming that the Secretary of State did not interfere, for the authority to put forward a plan to act on its approved procedure. The teachers, after all, are public servants, with responsibility for their pupils. They were under a duty to produce reports. These reports and the records in the primary schools are public property. I do not think that it could be unreasonable (not " was unreasonable ") for the authority to take the view that if the Secretary of State did not intervene under his statutory powers the teachers would cooperate in working the authority's procedure—a procedure which had, in similar form, been operated in part of this very area.

On the whole case, I come to the conclusion that the Secretary of State, real though his difficulties were, fundamentally misconceived and misdirected himself as to the proper manner in which to regard the proposed action of the Tameside authority after the local election of May 1976: that if he had exercised his judgment on the basis of the factual situation in which this newly elected authority was placed—with a policy approved by its electorate, and massively supported by the parents—there was no ground—however much he might disagree with the new policy, and regret such administrative dislocation as was brought about by the change—upon which he could find that the authority was acting or proposing to act unreasonably. In my opinion the judgments in the Court of Appeal were right and the appeal must be dismissed.

VISCOUNT DILHORNE. My Lords, in this appeal the comparative merits of comprehensive education and the system it replaces have no relevance to the issues to be determined. All we have to decide is whether the

Secretary of State had power to direct the Tameside Metropolitan Borough Council on June 11, 1976, to implement the proposals which that council, when it had a Labour majority, had submitted to him on March 19, 1975, and which he had approved on November 11, 1975, for the reorganisation of secondary education in their area.

Section 1 (1) of the Education Act 1944 imposes on the Secretary of State the duty

> ". . . to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area."

Section 6 (1) of that Act provides that the local education authority for each county borough shall be the council of the county borough, and section 8 (1) imposes on every local education authority the duty, inter alia, to secure that there shall be available for their area sufficient schools

> ". . . (*b*) for providing secondary education, that is to say, full-time education suitable to the requirements of senior pupils, other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education . . . ; and the schools available for an area shall not be deemed to be sufficient unless they are sufficient in number, character and equipment to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities, and aptitudes, and of the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their respective needs."

In the discharge of this duty local education authorities are subject to the general supervision of the Secretary of State. Their relationship is not that of master and servant. He has to secure the effective execution of the national policy. They have to carry it out in their areas and they enjoy a considerable degree of autonomy. The Secretary of State is given power by section 68 of the Act to secure that they do so. That section reads as follows:

> "If the Secretary of State is satisfied, either on complaint by any person or otherwise, that any local education authority or the managers or governors of any county or voluntary school have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may, . . . give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient . . ."

Until the Secretary of State had approved the proposals submitted to him in March 1975, the council had no power to give effect to them, but the giving of that approval, while it gave them power, did not, the Secretary of State recognises, impose on them any duty to do so. Nevertheless, it is his contention that in deciding not to implement them fully but to

modify them the council had acted unreasonably and so he had power to direct them

> ". . . to give effect to the proposals which he approved on November 11, 1975, and accordingly to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming school year on a non-selective basis and to make such other provision relating to the staffing of the schools, alteration to school premises and other matters as is required to give effect to the proposals."

It is not for the courts to usurp the functions of the Secretary of State. If the council had acted or were proposing to act unreasonably, he was entitled to give them these directions or any other directions he thought necessary in discharge of his duty under section 1 of the Act.

In this House it was common ground that the question whether a local authority was acting or was proposing to act unreasonably had to be viewed objectively. It did not suffice that in his opinion the conduct of the authority was unreasonable. For him to have power to give directions, the conduct had to be such that no reasonable authority would engage in it.

The proposals submitted on March 19, 1975, and approved by the Secretary of State were as follows.

Three of the five grammar schools in the area were to be made comprehensive and in the school year beginning on September 1, 1976, 11-year-old children from the primary schools would be admitted to them without being subjected to any test of their ability. So that year and for the next four years the pupils at these schools would consist of selected and non-selected children and it was only after that that these schools would be fully comprehensive.

The remaining two grammar schools were to be converted into sixth form colleges to which pupils would be admitted on September 1, 1976. Those under 16 at this date would be transferred to comprehensive schools.

There was at this time one comprehensive school in existence and two others were being constructed.

The proposals submitted by the Tameside council to the department at the department's request on June 7, 1976, were to continue the five grammar schools as "11 to 18 academic high schools," to continue and complete the three comprehensive schools which, they said, formed "a valuable nucleus of any future scheme" and to continue the remaining 11 to 16 secondary schools.

They proposed that all allocations to schools for 11-year-olds made by their predecessors immediately before the local elections should be honoured and maintained subject to the continued agreement and acceptance by the parents concerned but that parents of 11-year-olds could apply for reallocation if they were dissatisfied with their present allocation.

As the two grammar schools which were to become sixth form colleges were to remain grammar schools and no allocations of 11-year-olds had been made to them under the approved proposals, there would be 240 school places in these schools to be filled; and if the number of applicants for these places exceeded the number of places available they proposed that the pupils most suitable and most likely to benefit from that type of

education should be selected in the light of "reports, records and interviews."

So the new Tameside council only proposed to disturb the allocation on a non-selective basis to secondary schools of the 3,200 or so 11-year-old children leaving primary schools to the extent of selecting 240 from those who applied for admission to the two grammar schools which were not to be made into sixth form colleges.

It was not disputed before us that whether the approved proposals should be implemented was a major issue at the local government elections in 1976. Having gained control of the council on May 6, 1976, the Conservatives could claim to have obtained a mandate not to implement them in the same way as a party which has won a general election can claim to have a mandate to carry out the proposals in its manifesto.

Shortly before polling day, May 6, and presumably because the question was a live issue, the Tameside Teachers Consultative Committee which consisted of representatives of the National Union of Teachers, the National Association of Head Teachers, the National Association of Schoolmasters/Union of Women Teachers and the "Joint Four," which I understand is the name given to four small unions or associations consisting mainly of grammar school teachers, published the following statement:

> "It" (the committee) "wishes it to be clearly known that in its wholly professional opinion, one which is devoid of any political bias, it considers the process of secondary reorganisation too far advanced for any postponement or modification of the present plans."

In a letter dated June 4, 1976, to the department, this committee stated that immediately after this announcement the "Joint Four" had "declared its intention of supporting whatever new proposals might be made, as, indeed, did individual members within the other associations."

Five days after polling day, on May 11, a member of the department wrote to the Tameside council saying that he was directed by the Secretary of State to ask whether it was the intention of the council to implement the approved proposals by September 1, 1976, and, if not, to ask that

> "... full details of the arrangements made or proposed for the transfer of pupils to county secondary schools next September be forwarded ... as a matter of urgency."

On May 12 solicitors acting for the National Association of Head Teachers and the Tameside Head Teachers Association wrote to the council referring to a resolution passed by those bodies in which it had been said that if their members were instructed to implement selection procedures they would invoke "collective disputes procedures" of which it was said that one of the cardinal features was that no action should be taken to implement decisions relating to the dispute until those procedures had been fully implemented.

On May 19 the National Association of Head Teachers, the National Association of Schoolmasters/Union of Women Teachers and the National Union of Teachers (hereinafter referred to as "the unions") declared the dispute to be official.

On May 26, Mr. Jenkins of the department wrote to the council saying:

> "The Secretary of State is aware that since he approved the proposals in November a great deal of educational and administrative planning has taken place with the intention of putting them into effect in September 1976. Children have been allocated to schools, considerable progress has been made in staffing arrangements including, in many cases, the offer and acceptance of contracts and teachers have been planning curricula and courses for the new comprehensive schools. Some building work has also been put in hand.
>
> "The Secretary of State is extremely concerned that the sudden cessation of this planned and orderly development and the continuing absence of any precise alternative plans is causing such uncertainty that the education service as a whole, and the educational provision for the age group about to transfer to secondary schools in particular, are being put in jeopardy. He has asked me, therefore, to request that the authority should provide him with a precise and detailed statement of the plans which it hopes to put into effect in September. This statement should reach him not later than Friday, June 4.
>
> "I am to add that if in the Secretary of State's judgment the authority's revised proposals would involve unwarrantable disruption, he would have to consider whether he should use his powers under section 68 of the Education Act 1944 to direct the authority to implement the original proposals."

By letter dated June 4 the unions informed Mr. Jenkins of their attitude and commented on the council's new proposals which had been communicated to them. In the course of that letter it was said:

> "The corner-stone of our dispute would still be that in the time available it is impossible to do justice to even a straightforward process of assessment let alone one as complicated as this. Head teachers in particular would feel the burden of responsibility intolerable in what is now such an emotive issue."

On June 7 the council wrote telling Mr. Jenkins what they proposed. They first drew attention to a number of matters which they felt had not received the consideration they deserved. They can be summarised as follows. 1. There was no question of a comprehensive reorganisation having taken place and being reversed. It had not yet taken place. 2. Even if the approved proposals met the wishes of the parents and the needs of the children, the schools were not yet ready for their proposed roles, building works had not been completed and in most cases not even begun and thus " . . . implementation in September 1976 would have caused great disruption to the children's education." 3. The planning that had gone on had been totally inadequate in the time available and had the marks of being a rushed job for political reasons. 4. While they regretted the precipitate action of their predecessors in attempting to appoint teachers and make contracts with them before the schools were ready, they would honour the obligations entered into. 5. The approved

proposals were not popular with the people of Tameside and not considered to be in the best interests of the children.

> ". . . we must go back to the drawing board and try again with a more considered, well thought out scheme. At all costs the disruption in children's education which would have been caused by the implementation of the present proposals must be avoided in any future plan."

6. Insufficient attention had been paid to the plight of the 16-year-olds. They would have been turned out of the sixth forms of three grammar schools and have been forced to move to one of the two non-selective sixth form colleges with dislocation of their work and have to work ". . . in the far less academic atmosphere of an open entry sixth form college . . ."

The council then said that their present plans might be summarised as being

> ". . . the maintenance of the status quo with the least disturbance and disruption of the children's education pending any longer term, well thought out proposals."

In addition to the proposals to which I have already referred, the council proposed that 16-year-olds from both the five grammar schools and all other secondary schools who applied and were accepted for "A" level courses might pursue them within the sixth forms of the five grammar schools and at the Tameside College of Technology and they anticipated that wherever possible pupils would wish to stay at their own school where it had a sixth form, but final choice would depend on the particular course chosen. They also proposed that there should be a review of the first year entries and that there would be a very flexible transfer system at the end of the first year (or earlier if required in certain circumstances) to assist pupils, following consultation and agreement with the parents and teachers concerned, to transfer to other schools within Tameside where the child's ability and aptitude during the course of the year had shown that the child would be happier and better suited to a school or course elsewhere. They did not however anticipate that widespread transfers would be necessary or requested.

On June 9 there was a meeting at the House of Commons between the Secretary of State and his officials and Mr. Grantham, the leader of the council, and Mr. Thorpe, the chairman of the education services committee of the council. In affidavits Mr. Grantham and Mr. Thorpe said that at the meeting the Secretary of State appeared already to have made up his mind. Mr. Jenkins in an affidavit sworn on July 2 denied this and said that at the meeting the Tameside representatives were

> ". . . apparently unable to offer any satisfactory detailed explanation of how they proposed to assess, in a sound way from an educational point of view and in the very limited time then remaining to them, the large number of children whose parents had by then requested reallocation for the school term beginning in September 1976."

The large number was 783 applications by parents of 11-year-olds for

the 240 grammar school places in response to letters sent out to 3,200 parents. There were also 190 applications by fifth form pupils in secondary modern schools for grammar school places. Of these 178 had been provided by June 30 and Mr. Thorpe was confident that the remaining 12 applications could be granted.

On June 11 Mr. Jenkins by letter conveyed to the council the Secretary of State's decision to direct them to implement the proposals he had approved. He said, repeating what had been said in the letter of May 26, that since the proposals had been approved on November 11, 1975,

> ". . . extensive preparations have been made to put the proposals into effect. Much progress has been made in the staffing of the proposed comprehensive schools; teachers have been planning courses for them; building work directly related to changes in the character of some schools has been put in hand; and over 3,000 children due to transfer from primary schools this year have been allocated to secondary schools . . ."

The only interference with this allocation that the council proposed was the filling of 240 grammar school places.

In the penultimate paragraph of the letter, Mr. Jenkins stated the reasons for the Secretary of State's decision. That paragraph began with the sentence: "The Secretary of State has given the most careful consideration to the representations made to him." There was no other reference to the matters mentioned at the beginning of the council's letter of June 7 to which reference has been made. The council were given no indication of the result of the most careful consideration of those matters.

The paragraph went on to say that the Secretary of State was satisfied that the authority were proposing to act unreasonably with respect to their statutory powers and duties

> ". . . regarding the provision of secondary education for their area and in particular . . . regarding the admission of pupils to secondary schools . . . at the beginning of the coming school year, i.e., on September 1, 1976."

This echoed what had been said in the letter of May 26 though then the Secretary of State did not know, as he did by June 11, that the only change the council proposed to make in the allocations already made was the selection of 240 11-year-old children for grammar school places.

The paragraph went on to say that a change of plan at that time of year must in his opinion give rise to very considerable difficulties, and that the authority's revised proposals

> ". . . confront the parents of children due to transfer in September with the dilemma of either adhering to secondary school allocations for their children which they may no longer regard as appropriate, or else submitting to an improvised selection procedure . . . carried out in circumstances and under a timetable which raise substantial doubts as to its educational validity."

This is an interesting and curious paragraph. Giving parents the choice of either adhering to the allocation already made or of applying for admission to a grammar school is called confronting them with a dilemma.

Implementation of the approved proposals in full meant that they would have no such choice—and a choice which the result of the election might indicate a large number of parents wished to have.

It was not said that in the time available a selection of 11-year-olds to fill the 240 places could not be made, only that the selection procedure would be of doubtful educational validity. It may strike some as curious that the Secretary of State should be so concerned about the validity of the selection procedure adopted to fill 240 places when under the proposals he had approved there was to be no selection procedure at all.

The paragraph then went on to say that

> ". . . an abnormally high proportion of pupils might need to be reallocated to different secondary schools during, or at the end of, the educational year beginning in September 1976."

No reasons were given for this opinion nor was it explained why this might result from the filling of 240 grammar school places when the other allocations of 11-year-olds were not affected.

Reference was then made to practical difficulties in relation to the appointments of staff already made, and the construction of buildings for the new comprehensive schools.

In their letter of June 7 the council did not refer to the attitude of the unions and no direct reference was made to that in the letters of May 11 and 26 and June 11 written by the department though in argument in this House it was contended on behalf of the Secretary of State that the reference to the circumstances in which the selection was to be made was a veiled reference to the attitude of the unions. What is clear beyond doubt is that the Secretary of State did not in the letter of June 11 base his decision to give directions on the ground that the policy of non-cooperation by the unions meant that selection of the 240 could not be achieved. Indeed it was only in his second affidavit sworn on July 2 in reply to one sworn by Mr. Thorpe in which he referred to the unions that Mr. Jenkins mentioned them, exhibiting the letter of June 4 which they had sent to the department and saying that a formal dispute had been declared. He did not then assert that the unions' attitude meant that selection could not be made.

As the council were not prepared to comply with the directions, the Secretary of State applied for an order of mandamus. The Divisional Court (Lord Widgery C.J., Cusack and May JJ.) granted his application giving judgment on July 12.

Lord Widgery C.J. did not base his conclusion on anything other than the allocation of the 240 grammar school places. The council's proposals with regard to the two grammar schools which were not to be converted into sixth form colleges were, he thought, ". . . of the utmost importance because they really seem to me to be the core of the case against the local authority." After referring to the contention that the council had not put forward any proper plan for the selection of pupils for these places, Lord Widgery said:

> "To make matters worse—indeed really to clinch matters on this point—there is a difference of opinion of a substantial character between the new Tameside authority and the official organisation of the

teachers, and amongst the other results from that unhappy situation is the fact that the teachers are not prepared to help in devising some kind of selective entry test to take the place of the 11-plus examination which never materialised and the provision of which, in the view of anyone who accepts that the entry should be selective, is absolutely essential."

He said that his opinion had wavered from time to time but that his was

"... simply a conclusion that when the Secretary of State says there is no time to get this" (the selection) "done by September, I think he is right on that one point."

Cusack J. agreed entirely with Lord Widgery and May J. was of the opinion that shortness of time for the selection coupled with the lack of cooperation from some of the teachers entitled the Secretary of State to decide as he did. He went on to say:

"... had the local authority had the cooperation of the teachers concerned, it would I think have been difficult for the Secretary of State to have contended that there was any relevant material before him upon which he could have reached the necessary conclusion under section 68 of the Act of 1944."

So the Divisional Court's decision was based solely on the unions' non-cooperation making it not possible to select 240 pupils for the grammar school places by September 1—and that was not stated in the letter of June 11 to be a reason for the Secretary of State's decision.

Before the hearing in the Court of Appeal further affidavits were filed. In his second affidavit Mr. Thorpe said that when the unions made it clear that they were not prepared to cooperate the council decided to appoint a panel of experienced teachers to carry out a selection procedure which he said was well known, based on head teachers' assessments, pupils' reports and records. By the end of May, 20 senior grammar school teachers and one primary school teacher had said that they were willing to help in this process and 20 teachers were appointed to a selection panel. Mr. Beard, who had served on the selection panel for Lancashire Division 24 since the early 1960s, described this selection procedure in detail and said that it had been followed in that division since that time. In his opinion a fair, feasible and practical selection might be made by a panel of 20 teachers of children to fill the 240 places in one week. Mr. Potts, who had many years' experience of selection procedures, said that in the London Borough of Barnet eight panels of three heads would complete the selection of 850 pupils from approximately 3,000 in 10 working days. He entirely agreed with Mr. Beard and so did Mr. Gilyatt. They all disagreed with Mr. Milroy who had been chief education officer of Gloucester whose view was that such a selection procedure could only operate in term time and would take 12 weeks to operate and that even if the teachers had been prepared to cooperate there would have been insufficient time before September 1 to complete any proper selection and allocation process.

This selection procedure, Mr. Thorpe said, had been that of which they had told the Secretary of State at their meeting on June 9. It is inconceivable

that, operated as it had been for many years in different parts of the country, it was unknown to the department.

It may be that views as to the efficacy of this procedure differ and that it is thought by some to be of doubtful "educational validity," but can it be said that the council in seeking before June 11—for that is the vital date—were acting in a way no reasonable council would in deciding to operate this long established procedure? Were it not for the attitude of the unions, I do not think that that possibly could be said.

So the question to be determined comes down to this: should the council have abandoned the policy for which they had a mandate within just over a month from the election because of the unions' attitude? Were they, the elected body responsible for the education in their area, acting in a way no reasonable council would in not submitting before June 11 to the pressure applied to them? In the course of his excellent argument for the Secretary of State Mr. Bingham conceded that there would have been time to carry out proper tests if the teachers had been prepared to cooperate but it was his contention that before June 11 the council knew or ought to have known that on account of the unions' attitude the procedure they proposed would not work.

I see no grounds for saying that by June 11 the council knew or ought to have known that the selection procedures they proposed would not work. They may have thought it possible that they could persuade the unions to change their attitude and as not beyond the bounds of possibility that sufficient responsible teachers, recognising that the children might otherwise suffer, might cooperate. The unions admitted that some of their members did not agree with their policy. Once the Secretary of State had given his directions, there was no possibility of the unions reviewing their policy, but we have to consider the position not after those directions were given but before.

Further, in the letter of June 11 it was not said that the selection could not be made, only that it was of doubtful "educational validity." If the department was not then prepared to say that it would not work, what warrant was there for condemning the council as acting unreasonably in not recognising that it would not work and for seeking to carry out their policy?

In my opinion there is no ground for holding that because of the difficulties in selecting pupils to fill 240 grammar school places the council acted or were proposing to act prior to June 11 in a way no reasonable council would in deciding not to implement the approved proposals and to maintain the status quo for the time being.

I am inclined to think that too much importance has been attached to this question of selection and insufficient to the disturbance and dislocation that would be caused by implementing the approved proposals by September 1.

The major difference between those proposals and the council's was that the two grammar schools would not be converted into sixth form colleges. The availability of the 240 places was a consequence of that.

One of the matters to which the council drew attention in their letter of June 7 was the plight of the 16-year-olds who would, they said, have been turned out of the sixth forms of three grammar schools and have had

to move to these colleges. Miss Mullenger, a school mistress for 20 years, deposed—and her affidavit sworn on June 30 was supported by many other teachers—that at one of the colleges only the footings for the necessary extension had been put in hand and at the other the necessary extensions and alterations had been delayed. She said it was within her knowledge

> ". . . that if the approved proposals take effect in September, pupils attending the two sixth form colleges would only receive education on a ' part-time ' basis, that is to say that they would be able to attend at the school premises only when they had lessons. For private study, there would be no room to work in classrooms and they would have to work at home or in public libraries or wherever they could find room to do so."

Miss Gabbat, a teacher at the Ashton Grammar School which was to be converted into a sixth form college, in her affidavit sworn on July 20 said that the foundations of the extension proposed there had been laid but that the building could not be completed by September 1976. The original library had been demolished and many of the books would have to be stored in cardboard boxes. Adequate library facilities would not be available until the gymnasium had been converted into a library and work on that had not been started.

In the light of this evidence there were valid grounds for the council thinking that implementation of the approved proposals by September 1 would cause grave disruption of the children's education and they were entitled not unreasonably to conclude that as the sixth form colleges would not be ready for use by September 1 they should seek to maintain the status quo for the time being.

In all the circumstances it does not appear to me that on June 11 there were any valid grounds for concluding that the council were acting or were proposing to act in a way no reasonable council would. Like Lord Denning M.R. I do not find any evidence on which, applying the right test, the Secretary of State could properly have decided that the council proposed to act unreasonably. Either in deciding that he was entitled to give directions he applied the wrong test—and the letter of June 11 and those that preceded it show no indication that he applied the right one and the language of that of June 11 is consistent with the application of the wrong one—or, if he applied the right test, he must have misdirected himself and there is no indication that he attached any weight to the sixth form colleges not being ready for use as such by September 1.

In my opinion the Court of Appeal came to the right conclusion and for the reasons I have stated this appeal should be dismissed.

LORD DIPLOCK. My Lords, the principal Act of Parliament which confers upon the Secretary of State and the Tameside council respectively the cognate powers which each was claiming to exercise in the period between the local government elections on May 6 and the direction given by the Secretary of State on June 11, 1976, is the Education Act 1944. It had been promoted by a coalition government in which all political parties were then represented and at a time when, as I recollect, the social purpose which the system of public education was designed to serve was not, as it

has since become, a matter of acute political controversy upon party lines. The minor amendments that have been made since 1944 do not affect the scheme of the Act.

The responsibility for carrying out the national policy for education is distributed by the Act between the Minister of Education (now the Secretary of State) and local education authorities, acting in partnership, as Lord Widgery C.J. aptly put it, and also governors and managers of the individual schools, with whose function this appeal is not concerned. To these three kinds of public authority concerned with education I would add, and not as junior partners only, the parents of children of school age upon whom by section 36 is placed the primary duty of causing their children to receive efficient full-time education suitable to their ages, abilities and aptitudes. Parental wishes as to the school to be attended by the child (see section 37) and what he is to be taught there are to prevail so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (see section 76).

Under the Act the actual provision of public education services in each local government area is exclusively the function of the local education authority, i.e., the county or borough council representative of and elected by the inhabitants of the area served by the schools to be provided by the authority. The functions of the Secretary of State, apart from contributing to the cost of the provision of educational services (see section 100), are supervisory only. The execution by the local authorities of the national policy for education is described in section 1 as being under his control and direction; but the extent to which the Secretary of State is empowered to fetter a local authority's choice as to the method of implementing the national policy which it considers to be best suited to its own area is limited by the provisions of the Act. The only question for your Lordships in the instant appeal is whether in giving his direction of June 11, 1976, the Secretary of State trespassed beyond the statutory limits to his powers.

The Act does not leave the national policy for education to be determined from time to time by successive Secretaries of State. The Act itself says what the policy is. In section 1 its purpose is described as being for "providing a varied and comprehensive educational service in every area." In this context "comprehensive" bears its dictionary meaning and not the narrower connotation it has since acquired in the controversy between the rival educational and social merits of secondary schools to which entry is by selection according to ability and those to which it is not. What is to be provided by way of secondary education in accordance with the national policy is expanded in section 8. The number, *character* and equipment of the secondary schools provided by a local authority in its area must be such as

> ". . . to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities, and aptitudes, . . . including practical instruction and training appropriate to their respective needs."

I pause here to draw attention to the underlying assumptions, as disclosed by the Act read as a whole, and in particular by sections 1, 7, 8 and 36, (a) that the contribution to be made by education towards ". . . the

spiritual, moral, mental, and physical development of the community . . ." (see section 7) is by developing the particular abilities and aptitudes of the individual pupil; (b) that individual pupils differ from one another in ability and aptitude; and (c) that these differences will call for different methods of teaching for pupils of differing ability or aptitude if the statutory policy for education is to be carried out.

The Act leaves to local education authorities a broad discretion to choose what in their judgment are the means best suited to their areas for providing the variety of instruction called for by those provisions which I have mentioned. It is not necessary to discuss here what were the respective responsibilities of the minister and local education authorities in the formulation of the original development plans for primary and secondary education in each area under section 11 of the Act. In Tameside, as elsewhere, this was all in the distant past. It is now common ground that in the spring of 1976, as a result of the approval by the Secretary of State of the proposals of the Tameside council when controlled by a Labour majority, there were two courses lawfully open to the newly elected council. One was to carry out their predecessor's proposals for making entry to all the secondary schools non-selective; the other was to leave the character of all the secondary schools in the area the same as in the previous year, i.e., with selective entry to the five grammar schools according to the pupil's aptitude for academic learning and with non-selective entry to the remaining schools. As between these two courses the right to choose was prima facie that of the council alone. The Secretary of State's power to overrule their choice by giving them a direction under section 68 to act in some other way that he himself preferred and they did not was exercisable only if he had satisfied himself that the council were proposing to act " unreasonably."

My Lords, in public law " unreasonable " as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.

The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. It has from beginning to end of these proceedings been properly conceded by counsel for the Secretary of State that his own strong preference and that of the government of which he is a member for non-selective entry to all secondary schools is not of itself a ground upon which he could be satisfied that the Tameside council would be acting unreasonably if they gave effect to their contrary preference for the retention of selective entry to the five grammar schools in their area. What he had to consider was whether the way in which they proposed to give effect to that preference would, in the light of the circumstances as they existed on June 11, 1976, involve such interference with the provision of efficient instruction and training in secondary schools in their area that no sensible authority acting with due appreciation of its responsibilities under the Act could have decided to adopt the course which the Tameside council were then proposing.

It was for the Secretary of State to decide that. It is not for any court of

law to substitute its own opinion for his; but it is for a court of law to determine whether it has been established that in reaching his decision unfavourable to the council he had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider: see *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, *per* Lord Greene M.R., at p. 229. Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?

There has never been the least suggestion in this case that the Secretary of State acted otherwise than in good faith. So one can take the reasons contained in his letter of June 11 as indicating with candour those matters which had influenced his mind in reaching his conclusion that the council proposed to act unreasonably. The material parts of that letter have been cited and the events to which it relates have been analysed in so many judgments in the courts below and speeches in this House that it would be tedious for me to repeat them here. The references in the letter to staffing arrangements, planning of curricula and courses and building work have not been relied upon in the proceedings for mandamus as capable of justifying the Secretary of State's decision. It seems likely that he had been inadequately informed of the facts. What is left then are his criticisms of the way in which the council proposed to allocate to grammar schools the pupils who would be leaving the primary schools in July 1976, at the end of the summer term. There were two aspects of this. First, there were pupils whose abilities and aptitudes suited them for a grammar school education, but who had been allocated to schools which were now to remain secondary modern schools. Secondly, there were pupils who had already been allocated to three of the five grammar schools, but whose abilities and aptitudes made them more suitable for the less academic training provided in secondary modern schools. This second category has not bulked large in the arguments before the courts below or in this House. The evidence discloses that in any system involving selective entry at the age of 11 plus some misfits manifest themselves as the educational year progresses and are transferred to more suitable schools. The council proposed that misfits resulting from the non-selective allocation of unsuitable pupils to grammar schools should be dealt with in this, the usual, way, though there would no doubt be more of them than if the original allocation had been selective.

The argument has largely turned upon the council's proposals for allocating pupils to the 240 places which would be available for entry to the lower forms at Ashton and Hyde grammar schools. What was proposed by the council for these places was selection by a combination of reports, records and interviews. Selection based on reports and records obtained from the pupils' primary schools, together with the use of one of several alternative aids for evaluating possible differences in the standards of assessment adopted in reports from different primary schools, is a well tried system of selection which had been in use in areas as far apart as Lancashire and Barnet and had been adopted in Tameside itself as the selection process in the preceding year. A proposal to adopt it for the school year starting

in September 1976 in circumstances in which it could be carried out effectively could not be " unreasonable " in the sense required by section 13. A

It has not been seriously contended before your Lordships that the time available between June 11 and September 1, when the new term at secondary schools began, was insufficient to enable this method to be carried out effectively, if reasonable cooperation were obtainable from head teachers at the primary schools. However, three of the teachers' trade unions, including those to which the majority of head teachers of primary schools belonged, B had threatened to withhold the cooperation of their members. So the question that the Secretary of State had to ask himself was: in face of the trade unions' threat that their members would refuse to cooperate was the council on June 11 acting unreasonably in not having abandoned by that date all plans for reintroducing selective entry to grammar schools in their area?

The letter of June 11 contains no indication that the Secretary of State C directed his mind to this question, let alone that he realised that it lay at the heart of what he had to decide. In the passage dealing with selection, on which my noble and learned friend, Lord Wilberforce, has already commented, the Secretary of State, despite the weight which the Act itself requires him to attach to parental choice, refers to the opportunity to be afforded to parents of having some choice in the kind of secondary school D their children were to attend as confronting the parents with a dilemma.

The only passage capable of referring, even eliptically, to the unions' threat is the reference to the selection procedure being " . . . carried out in circumstances and under a timetable which raise substantial doubts about its educational validity."

A relevant question to which the Secretary of State should have directed his mind was the extent to which head teachers would be likely to persist E in a policy of non-cooperation if he himself was known to have declined to stop the council from proceeding with their plan. There is no suggestion in the letter, nor in either of the affidavits sworn on his behalf by Mr. Jenkins, that the Secretary of State ever directed his mind to this particular question or formed any view about it. Indeed, it is not until the second affidavit that it is disclosed that the teachers' trade unions had been writing F directly to the department on the matter at all. It is not for a court of law to speculate as to how the Secretary of State would have answered that question had he directed his mind to it, though like others of your Lordships and members of the Court of Appeal I find it difficult to believe that responsible head teachers, regardful of the interests of their pupils, would have persisted in a refusal to do their best to make the selection procedure work fairly and effectively if the Secretary of State had made it clear to G them by his decision that he was not prepared himself to interfere with the council's proceeding with its plans. Assuming, however, that he had formed the view that cooperation by head teachers was likely to be only partial so that the selection process would be liable to greater possibility of error than where full cooperation could be obtained, the Secretary of State would have to consider whether the existence of such a degree of imperfection in the H selection system as he thought would be involved was so great as to make it unreasonable conduct for the council to attempt to fulfil the mandate which they had so recently received from the electors. Again, there is no

indication that the Secretary of State weighed these two considerations against one another.

Like all your Lordships, I would dismiss this appeal, although I prefer to put it on the ground that, in my view, the respondents have succeeded in establishing in these proceedings that the Secretary of State did not direct his mind to the right question; and so, since his good faith is not in question, he cannot have directed himself properly in law.

LORD SALMON. My Lords, in 1975 Tameside had five grammar schools, 16 secondary modern schools, one completed comprehensive school and two others in the course of construction. In March 1975 the local education authority, the metropolitan borough council of Tameside (then under the control of the Labour party), put forward proposals to the Secretary of State for Education and Science under section 13 of the Education Act 1944 for introducing an entirely comprehensive system of education and abolishing all the grammar schools on September 1, 1976. The Secretary of State approved these proposals on November 11, 1975. This approval imposed no obligation on the authority to implement the proposals. They were free to change their mind without obtaining the Secretary of State's permission. It was however unlikely that they would have done so but for the result of the election held on May 6, 1976, when the control of the local authority passed from the Labour party to the Conservative party. One of the chief issues before the electorate of Tameside had been whether or not their grammar schools should be abolished. It is perhaps unfortunate that such an important educational question had become a party political issue, about which feelings ran high and a great deal of heat had been engendered. Broadly, the Labour party is for abolishing grammar schools and the Conservative party for preserving them. There are many impressive reasons which can be advanced by each side in favour of its own point of view. Certainly it is completely outside the province of the courts or this House in its judicial capacity to express any opinion upon the rights and wrongs of this dispute: moreover, it has nothing whatever to do with the determination of this appeal.

The Conservative party having won the election in Tameside on May 6 the authority rightly considered that they had a mandate from the electors to preserve the Tameside grammar schools—the question as to whether or not the grammar schools were to be preserved having been one of the chief issues in the election. The Secretary of State not unnaturally foresaw that the local authority were likely to carry out their mandate and decide not to implement the proposals approved by him in the previous November. On May 11, 1976 (five days after the result of the election had been announced), he caused a letter to be written to the authority asking that

> "... full details of the arrangements made or proposed for the transfer of pupils to county secondary schools next September be forwarded to the Department [of Education] as a matter of urgency."

On May 26, 1976, the Secretary of State caused another letter to be written to the authority expressing his extreme concern that the proposals which he had approved were not being carried out and requesting the

authority to provide him with a "precise and detailed statement of the plans which [the authority] hopes to put into effect in September." The letter ends with a warning or threat that if the authority's plans would, in the Secretary of State's view, involve "unwarrantable disruption" the Secretary of State would have to consider whether he should use his powers under section 68 of the Education Act 1944 to direct the authority to implement the original proposals.

In the meantime some of the trade unions concerned had advised their members (comprising most of the teachers and staff in the primary and secondary schools) not to cooperate with the authority in putting into effect any plans inconsistent with the 1975 proposals. If, as seems to me not improbable, the teachers were apprised of the contents of the letter of May 26 to which I have referred, this certainly would not have discouraged them from complying with the advice which they had received from the trade unions. It must have appeared likely to them that when the Secretary of State came to make his decision he would decide (as he in fact did) to give the authority directions to implement the original proposals and that any time or effort which, in the meantime, might have been spent on furthering the authority's plan would have been wasted.

On June 7, 1976, the authority wrote what I regard as a most courteous, sensible, full, fair and well reasoned reply to the letter of May 26 in which they explained with precision their plans for the future. This is an important letter and I am afraid that I must quote from it at some length:

> "In detail these immediate plans are as follows: 1. Continuation of the five grammar schools in Tameside as 11 to 18 academic high schools. 2. Continuation and completion of the three comprehensive schools as already agreed and for which money has already been spent. We believe that these *purpose-built* comprehensive schools form a valuable nucleus of any future scheme. 3. Continuation of the remaining 11 to 16 secondary schools. 4. All allocations to schools for 11-year-olds made by our predecessors immediately before the local elections to be honoured and maintained subject to the continued agreement and acceptance by the parents concerned. 5. Ashton and Hyde grammar schools now to be open for an 11-year-old entry. Since no 11-year-old allocations to these two schools had been made by our predecessors, this creates approximately 240 selective school places in addition to those already allocated. 6. All parents of 11-year-olds transferring to secondary schools have been invited to reapply for reallocation if they are dissatisfied with their present allocation. If they are satisfied, then of course they need not apply and no reallocation will be made. 7. If the number of applicants to the grammar schools exceeds the number of places available, as is likely, then those pupils most suitable and most likely to benefit from that type of education will be selected by a combination of reports, records and interviews. There will be no formal 11-plus examination. 8. Those not applying for grammar school places, or those unsuccessful in obtaining a grammar school place, will still be offered a reallocation to one of the other secondary schools in Tameside if the parent requests and provided the places are available. It is not intended to follow any neighbourhood

zoning. 9. 16-year-olds from both the five grammar schools, and all other secondary schools, who apply, and are accepted for, "A" level courses may pursue these within the sixth forms of the five grammar schools, or at Tameside College of Technology. It is anticipated that wherever possible pupils will wish to stay at their own school where it has a sixth form, but final choice will of course depend upon the particular courses chosen. 10. A review of the first year entries will be made and there will be a very flexible transfer system at the end of the first year (or earlier if required in certain circumstances) to assist pupils, following consultation and agreement with the parents and teachers concerned, to transfer to other schools within Tameside where the child's ability and aptitude during the course of the year has shown that the child would be happier and better suited to a school or a course elsewhere. It is not anticipated that widespread transfers will be necessary or requested, but the facility to do so will be there.

"I apologise for the length of this letter but I think it important that the Secretary of State should be fully informed of the present position and of our concern for the welfare of Tameside children. For his information I also enclose a copy of a letter which has been sent to all parents in Tameside setting out the position and inviting those who wish to to reapply for secondary school allocation. Whilst we have been advised that we might take action over the unreasonable behaviour of our predecessors in their precipitous action taken only days before the elections, we do not propose to pursue such a course. We believe that it would be in the best interests of Tameside, and of the children, to concentrate on matters of education and to work for the continuing, gentle, considered evolution of our schools to meet parental demands and pupils' needs."

On June 11, 1976, the Secretary of State made his decision and communicated it to the authority by letter of that date. The letter stated that:

"[The Secretary of State] is satisfied that the authority are proposing to act unreasonably with respect to the exercise of the powers conferred, and the performance of the duties imposed, by . . . the Education Acts 1944–1976 [sic] . . . with respect to their . . . duties . . . under sections 8 and 17 of the Education Act 1944 regarding the admission of pupils to secondary schools from primary schools at the beginning of the coming school year, i.e., on September 1, 1976."

It then sets out the grounds on which the Secretary of State is so satisfied (to which I shall refer later) and concludes:

"In the exercise of the powers conferred by section 68 of the Education Act 1944, and vested in him . . . , the Secretary of State hereby directs the authority to give effect to the proposals which he approved on November 11, 1975, and accordingly to implement the arrangements previously made for the allocation of pupils to secondary schools for the coming school year on a non-selective basis and to make such other provision relating to the staffing of the schools, alterations to

school premises and other matters as is required to give effect to the proposals." A

The question that arises in this appeal is one of considerable constitutional importance—was the Secretary of State acting lawfully or unlawfully when on June 11, 1976, he gave the authority the directions which I have recited? Under the Education Act 1944 the local education authorities have the duty imposed on them of securing the provision of primary and secondary schools in their respective areas, and they are invested with the powers necessary to carry out these duties—see sections 8 and 9. They cannot however establish a new county school or close an established one without putting their proposals for doing so before the minister and obtaining his consent—see section 13. Hence the reason for the Tameside authority in 1975 putting the proposals for closing their grammar schools before the Secretary of State. His acceptance of these proposals as I have already observed did not however of itself cast any obligation on the authority to carry them out. B C

As the law stands at present, neither the Secretary of State nor any other member of the executive has any power, in ordinary circumstances, to order local authorities to close down their grammar schools or convert them into comprehensive schools. Accordingly the Secretary of State's directions given on June 11 are unlawful unless they can be brought within the powers conferred upon the Secretary of State by section 68 of the Act of 1944 which reads as follows: D

> "If the Secretary of State is satisfied . . . that any local education authority . . . have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by . . . this Act, he may, notwithstanding any enactment rendering the exercise of the power or the performance of the duty contingent upon the opinion of the authority . . . give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient." E

In my opinion, section 68, on its true construction, means that before the Secretary of State can lawfully issue directions under it he must satisfy himself not only that he does not agree with the way in which the authority have acted or are proposing to act nor even that the authority is mistaken or wrong. The question he must ask himself is: "Could any reasonable local authority act in the way in which this authority has acted or is proposing to act?" If, but only if, he is satisfied on any material capable of satisfying a reasonable man that the answer to the crucial question is "No," he may lawfully issue directions under section 68. I would adopt what Lord Hailsham of St. Marylebone L.C. said in *In re W. (An Infant)* [1971] A.C. 682, 700: F G

> "Two reasonable [persons] can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable . . . Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable." H

There is certainly no evidence as to how the Secretary of State construed section 68 nor as to the questions he asked himself before deciding to issue his directions set out in the letter of June 11. Neither of the affidavits sworn by Mr. Jenkins, an assistant secretary in the schools branch of the Department of Education and Science, throw any light upon this matter. It may be that the Secretary of State misconstrued section 68, asked himself the wrong question (e.g. " do I agree with the action proposed by the authority? ") and therefore misdirected himself in law. On that assumption, the Secretary of State's directions to the authority on June 11, 1976, would have to be overruled on the grounds of their illegality. Assuming however that he asked himself the right questions and decided that no reasonable authority would act as this authority now proposed to act, I cannot discern any valid ground upon which such a decision could be justified. The grounds upon which the Secretary of State purported to act under section 68 are set out in the letter of June 11; there were five of them. Four of these, which I need not itemise, appeared to the Divisional Court and to the Court of Appeal to have no substance in them. They were not pressed in this House and I do not consider that they lend any support to the Secretary of State's case. Nor am I any more impressed by the fifth ground upon which the Secretary of State succeeded in the Divisional Court and upon which he chiefly relied thereafter. It was only hinted at in the letter of June 11. This was that no reasonable authority in the position of the Tameside authority could have concluded that it had time between June 11 and September 1, 1976, to make a fair and efficient selection on merit of 240 pupils out of the 783 applicants for the 240 places which would be available in the grammar schools on September 1, 1976. The Divisional Court with considerable hesitation decided this question in favour of the Secretary of State only, I think, because of an uncontradicted affidavit by a former chief education officer of Gloucestershire filed at a late stage on July 2 stating that the whole process of selection normally takes a full term of 12 weeks to complete and therefore there was no chance of the test being completed before September 1.

The authority's letter of June 7 had pointed out (paragraph 7) that pupils most suitable and likely to benefit from the type of education would be selected by a combination of reports, records and interviews instead of by an 11-plus examination. The evidence of a number of distinguished educationalists, produced without objection before the Court of Appeal, showed that this alternative method of selection had been widely used since the 1960s in areas as far separated as Lancashire Division 24, close to Tameside, and the London Borough of Barnet and that it had proved entirely satisfactory. With a selection panel of 20 teachers (10 couples) the whole operation of making a fair and accurate selection of 240 from 783 applications could have been comfortably carried out in Tameside within one week. In the London Borough of Barnet for the period 1965 to 1970 eight panels—each consisting of three teachers—yearly completed a fair selection of 850 pupils from about 3,000 in 10 working days.

It seems incredible to me that these facts were unknown to the Department of Education and not available to the Secretary of State on June 11, 1976. It follows that if the Secretary of State before making his decision had asked himself the right question—" could any reasonable authority in

the position of Tameside have reasonably come to the conclusion that a fair selection could have been made to fill the 240 vacancies before September 1, 1976? "—the answer could only have been "yes." It may be that some authorities might have preferred the views of the expert witness upon whose evidence the Secretary of State relied in the Divisional Court to the views of the witnesses upon whose evidence the Tameside authority relied in the Court of Appeal. I find it impossible however to accept that any reasonable man could have been satisfied that no reasonable authority on the evidence could take the view that a satisfactory selection of candidates for the 240 places in the grammar schools could have been made between June 11 and September 1, 1976. Therefore either the Secretary of State must have erred in law by misconstruing section 68 and failing to ask himself the right question or he asked himself that question and answered it "no" without any valid ground for doing so.

It has been argued that before June 11, 1976, the majority of the teachers had refused to cooperate with the authority and that without their cooperation no selection would have been possible. No doubt they were hoping and expecting that the Secretary of State would give directions to the authority to carry out the 1975 proposals—a hope and expectation which must have been fortified by the warning or threat at the end of the letter of May 26 which the Secretary of State caused to be sent to the authority. Even so, 20 of them were prepared to form a panel to carry out the selection under the chairmanship of Mr. Beard, the very experienced former headmaster of a junior county school who had served on the selection panel for Lancashire Division 24 since this type of selection began in the early 1960s.

The facts deposed to in the affidavits of Mr. Beard and Mr. Potts (also a most experienced educationalist) make it plain that in their view the panel of 20 would have plenty of time even between August 2 (the date when your Lordships' decision was announced) and September 1 to make a reasonably accurate selection from amongst the 783 applicants to fill the 240 vacancies in the grammar schools for the beginning of the next term. On June 11 they would have had ample time to make the most meticulous selection well before September 1.

Towards the end of May 1976 the 49 head teachers of the primary schools were asked by the authority to make their records, reports and written personal assessments of the 783 candidates for the 240 vacancies in the grammar schools available to the selection panel appointed by the authority. Only three agreed to do so. The remainder refused on the ground that their trade unions had advised them not to comply with the authority's request. As I have already said, it is, in my view, a fair inference that the trade unions and many of the teachers were hoping and expecting that the Secretary of State would soon be giving the directions threatened in the letter of May 26 and which he in fact gave on June 11. On the other hand, any reasonable authority could reasonably expect, for the reasons stated in their letter of July 7, that the Secretary of State would decide not to give the directions which he did in fact give on June 11 or that, if he gave them, they would be held by the courts to be unlawful either on the ground that the Secretary of State in giving such directions had

misdirected himself in law or that there was no legal ground to support them.

If on June 11 the Secretary of State had, as in my view he should have done, decided, and announced his decision, against giving any directions under section 68 and had allowed the authority's plan for the grammar schools to go forward, I believe that the teachers would have changed the attitude which they had taken up when they were expecting a ministerial embargo. Like Geoffrey Lane L.J. (ante p. 1035E–F), I cannot believe that once they knew that there was to be no ministerial embargo they would have continued to be non-cooperative in an attempt to thwart the authority in carrying out the policy of preserving the grammar schools in Tameside in accordance with the mandate which the authority had been given by the inhabitants of Tameside in the recent democratically held election. I believe that the vast majority of the teachers including all the head teachers in the primary schools would have done their duty and loyally cooperated with the authority which employed them.

The teachers no more than the executive (as I am sure they both recognise) can lawfully impose a policy relating to grammar schools, namely, that of abolishing them, merely because they do not approve of the policy of preserving them which the authority has lawfully adopted.

I am convinced that there are no valid grounds for holding that the authority acted or were proposing to act unreasonably within the meaning of section 68. The directions given by the Secretary of State on June 11, 1976, were in my view unlawful. Accordingly, there is no necessity for me to express any opinion on the point taken by Mr. Anthony Lloyd under section 99 of the Education Act 1944.

My Lords, I would dismiss the appeal.

LORD RUSSELL OF KILLOWEN. My Lords, I would remark upon some matters introductory to consideration of this appeal.

1. In my judicial capacity I must have no preference for a particular system of state supported education, whether mixed or comprehensive. In my personal capacity I have in fact no preference for any particular system, and this fact, while it may disable me from arriving at a conclusion that a particular view is wrong, may assist me in arriving at a correct conclusion as to whether a proposed course of action, motivated in whole or part by a particular view, is "unreasonable." In this latter respect I may indeed, because of my very neutrality, or if you please indifference, be in a position of relative advantage in concluding what may be considered unreasonable, while at the same time (though not paradoxically) being at a disadvantage in concluding which system is the better.

2. There was no obligation whatever in law on the local authority to implement its 1975 proposals, albeit they had been approved by the Secretary of State. Prima facie the local authority was within its rights and duties to change its mind and continue the existing mixed system.

3. In concluding whether the local authority was truly proposing to act unreasonably, the Secretary of State was in a position of considerable disadvantage. His duty in approaching the question was to adopt a

posture of complete neutrality between the educational merits of the comprehensive and the mixed systems: but he was committed in view to the former—I speak here not at all of party politics—and his departmental advisers had deliberated and worked for many months before approving the detailed 1975 proposals which the local authority now proposed at least to defer. It is in that context that I have ventured to refer to a possible advantage, in reaching a true conclusion on the crucial question, of my own neutrality or indifference.

I leave those general considerations to address myself to the particular question in the case: whether there were grounds upon which the Secretary of State on June 11 could properly be satisfied that the local authority was then proposing to act unreasonably. It is, my Lords, no doubt a most serious matter for the judiciary to overset a conclusion of a minister with overall responsibility in a field of such importance to the national welfare as education, when it is not suggested either that the conclusion was motivated by partly political considerations or that it involved bad faith. On the other hand it is not my understanding that the mere expression by the Secretary of State of his satisfaction that particular proposals are unreasonable deprives the court of the ability to decide that there were no sufficient grounds for that satisfaction and that consequently the Secretary of State must in some respect have misdirected himself in applying his mind to the problem. Further I would observe that it is equally a most serious matter for the organisation of education in an area, which is, under the statute (with exceptions), the province of the local authority, to be taken out of its hands by the central government on the ground that the former is proposing to act "unreasonably"—which I take to mean that the course that is proposed is one that in the circumstances no reasonable local authority, with the interests at heart of the education of the young in its area, would take.

The details of the documents leading up to the letter written for the Secretary of State on June 11, 1976, have been set out by my noble and learned friends, and I do not repeat them; nor do I rehearse in any detail the facts of the case, for that would involve tedious repetition. The letter from the newly constituted local authority, whose new constitution was based at least in part upon acceptance by the electorate of proposals to defer implementation of the 1975 scheme, cannot be said to bear the stamp of irrationality or unreasonableness. It stated in sober fashion the objections to implementation of the 1975 proposals in September 1976. It recognised the problems involved in applying the brake to those proposals which of course had acquired a degree of momentum. It arrived at a considered view on balance of disadvantages. From a neutral standpoint on systems of state education I find it quite impossible to conclude that this attitude was one of an unreasonable education authority. I have no doubt that the Secretary of State was satisfied that the local authority was *wrong* to put the brake on the 1975 proposals. Equally I have no doubt that the reconstituted local authority was satisfied that the previously constituted local authority and the Secretary of State were *wrong* to propose and approve the 1975 proposals for initial implementation in September 1976. But to my mind it is quite unacceptable in either case to

proceed from "wrong" to "unreasonable." If by statute comprehensive education is introduced throughout there will no doubt be many who will consider that it is wrong so to do: but it could not be objectively unreasonable, whatever the disruptions resulting from introduction into selected entry schools of non-selected entry primary school children, or the move of 16-year-old children to a different school, or any other change. Equally I apprehend that if in an area a fully comprehensive system of education is established it would not be right to describe a proposed reversion to a mixed system as "unreasonable" as opposed to a view that it would be "wrong." History is replete with genuine accusations of unreasonableness when all that is involved is disagreement, perhaps passionate, between reasonable people. In summary, my Lords, "unreasonably" is a very strong word indeed, the strength of which may easily fail to be recognised and which in my opinion has not been recognised in the instant case by the Secretary of State.

I have, my Lords, referred to the reasonable letter from the local authority. I now refer in slightly more detail to the letter of decision of June 11, 1976. As indicating grounds of unreasonableness on the part of the local authority it appears to me to be unsatisfactory. It does not grapple with the arguments or contentions of the local authority supporting its attitude: it refers only in general terms to consideration of points made. It states that a change of plan at this stage (June 11) ". . . must . . . give rise to considerable difficulties." It refers (as such difficulties) to a number of features, none of them very dogmatically stated, as follows.

(i) Parents of children are presented with a dilemma: this must refer to parents whose child has been allotted (under the 1975 proposals) to a comprehensive based school but who (under the new proposal) would like the child to be considered for one of the 240 places available under the 1976 proposals at the two now retained grammar schools which were to become sixth form schools: the dilemma is either to retain the allocation at a comprehensive or secondary modern or to try for one of the newly available grammar school places. The dilemma suggested is that the parent (who ex hypothesi would prefer a grammar school placing if possible) would in pursuit of that aim risk an unthorough vetting for the vacancies. I do not find it easy to understand this so-called dilemma. Half a loaf is better than no bread for one who seeks bread.

(ii) The system of selection for the 240 grammar school places is to be "improvised" (the precise form of which has not been settled), "carried out in circumstances and under a timetable which raise substantial *doubts* about its educational validity." Assuming that this is a delicate reference ("circumstances") to the fact that at that date a substantial number of teachers for various reasons were refusing to cooperate in tests for the 240 grammar school places, I find it hard to believe that if the Secretary of State had held his hand on June 11 (when there was ample time for a full vetting for the 240 grammar school places) the relevant teachers, who are after all professionals dedicated to the interests of child education, would have refused to do their best for the children under them. The Secretary of State certainly says nothing to the contrary.

(iii) The letter of June 11 referred next to paragraph 10 of the local authority's representations. That paragraph (ante, p. 1069B–C) has

recognised that adherence to the non-selective allocations of the 3,000-odd primary school leavers, already made under the 1975 proposals on the assumption that all the secondary schools were ultimately to become fully comprehensive, might result in some square pegs in round holes under the revised system: for example, a child unsuited to a grammar school might find itself at one of the three. But the paragraph showed that in the view of the local authority a flexible system of interchange in such cases could be operated after or during the first term and that "widespread transfers" would be unnecessary. The department's letter of June 11 stressed that this "might" involve ". . . an abnormally high proportion of pupils [needing] to be reallocated to different secondary schools . . ." What is meant by "abnormally high" except more than usual? This was recognised by the local authority in its letter. And, supposing it to be so, how high is abnormal and what is its contribution to "unreasonably"?

In the end in argument the whole matter of "unreasonableness" came down to the question of the reliability of selection procedures for 240 grammar school places in the time available out of some 800 parental applications. This had to be considered on June 11 by the Secretary of State. Could it then have been described (as it was *not* by the letter of June 11) as unreasonable on the part of the local authority to suppose that the teachers would do their best for the children in this regard? I cannot think so.

Accordingly, my Lords, I am of opinion that the Secretary of State in his letter of June 11 exceeded his powers and this appeal fails.

I would add this. The question whether the Secretary of State was justified in his conclusion that the proposals of the local authority were unreasonable falls to be decided at the date of his conclusion, June 11: that is common ground. I would not however subscribe to the view that facts subsequently brought forward as then existing can properly be relied upon as showing that the proposals were not unreasonable unless those facts are of such a character that they can be taken to have been within the knowledge of the department.

Appeal dismissed with costs.

Solicitors: *Treasury Solicitor; Oswald Hickson, Collier & Co.*

M. G.

END OF VOLUME AND OF APPEAL CASES FOR 1977.

APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC FOR A DEVELOPMENT CONSENT ORDER PURSUANT TO SECTION 37 PLANNING ACT 2008 FOR THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

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DEADLINE 1: WRITTEN SUBMISSIONS OF "ARU WRITTLE" (BEING THE COLLECTIVE TRADING NAME AND TRADEMARK FOR THE ENTITIES: ANGLIA RUSKIN UNIVERSITY AND WRITTLE COLLEGE LIMITED)

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INTERESTED PARTY REFERENCE NUMBER: F1201D065, NTOT-AFP2247

SUBMITTED 26 FEBRUARY 2026

EXECUTIVE SUMMARY

1. This is the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU") in relation to the land known as the "Equine Facility" forming part of the Anglia Ruskin University Writtle College situated at Cow Watering Lane, Writtle, to the West of Chelmsford. Both Anglia Ruskin University ("ARU") and of Writtle College Limited ("WCL") are "Affected Parties" for the purposes of the Planning Act 2008.

2. ARU provides education to students from a range of campuses across East Anglia, owns the campus at ARU Writtle College ("ARU Writtle Campus") and provides there, with WCL, further and higher education nationally and internationally to students aged 16 to 21 as part of ARU. The Equine Facility situated in the Western part of ARU Writtle College is the heart of that College and is home to a herd of 90 horses whilst educating 500 students in that Equine Facility. The age of students engages statutory requirements under the Education Act 2002 and Safeguarding Vulnerable Groups Act 2006 by which ARU and WCL must ensure students are safeguarded throughout the geographical extent of the Equine Facility. Some students have particular challenges in relation to their learning also that are required to be appropriately managed. In addition, the functioning of the Equine Facility entails the simultaneous day to day movement throughout the Equine Facility of the 90 horses and the 500 students along the access ways within that Equine Facility.

3. Within Section F of its plans for a development consent order under the Planning Act 2008, National Grid proposes to erect above ground electric lines traversing the Western part of the Equine Facility and that are envisaged to hang between two new pylons identified as "TB 165" and "TB 166". National Grid proposes to compulsorily acquire the land of ARU identified as "Plot 8/42" to create a construction and maintenance access traversing (in apparent perpetuity) the Equine Facility and <u>through</u> which it proposes

to pass and repass with vehicles containing drivers and passengers inside of the Equine Facility notwithstanding the Equine Facility is subject to requirements to safeguard children and the introduction of third party traffic into a route congested daily by horses and students would be inherently dangerous.

4. As a provider of education in the national and international interest, ARU (and WCL) recognize the installation of the new pylons and the line is also of national interest and aims to ensure that the safe education of students can continue simultaneously with additional access for such construction. To that end, ARU (and WCL) propose Protective Provisions to enable such access along Plot 8/42 as may be desired by National Grid in addition to its proposed accesses to TB165 and TB166, after the completion of which two installations National Grid would be precluded from so using the notional route of Plot 8/42, its existence as notional route would disappear, and the Order Limits would truncate to exclude Plot 8/42.

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2) Professor Roderick Watkins, Vice Chancellor, Anglia Ruskin University;

3) Joanne Wareham, Assistant Principal Safeguarding and Inclusion for Anglia Ruskin University;

4) James Rolfe, Chief Operating Officer for Anglia Ruskin University Writtle;

5) Liz Craig, Strategic Estates Manager, Estates & Facilities Services, Anglia Ruskin University Writtle;

6) Mark Saunders, Head of Health & Safety, Anglia Ruskin University Writtle;

7) Daniel Cook, Head of Equine Resources, Anglia Ruskin University Writtle;

8) Isabella Taylor, Undergraduate Student, Anglia Ruskin University Writtle;

9) Jane Kenny, Savills.

SECTION E – BOOK OF REFERENCE AMENDMENTS

SECTION F – LEGAL FRAMEWORK

SECTION G – EXTRACT, PROTECTIVE PROVISIONS, RIVERSIDE ENERGY PARK ORDER 2020

SECTION H – CASE LAW

INTRODUCTION

5. These are the Written Submissions of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University ("ARU") and Writtle College Limited ("WCL")) for Deadline 1 in the Examination of the application, reference EN020027, for a development consent order ("DCO") for a nationally significant infrastructure project ("NSIP") within section 14(1)(b) of the Planning Act 2008 ("PA 2008") on the draft terms of the DCO submitted in August 2025 ("the dDCO") by National Grid ("NGET") for the "installation of an electric line above ground" across East Anglia between Norwich and Tilbury. For the purposes of these Written Submissions, references to ARU include WCL.

6. The route of the electric line is divided, for convenience, into Sections A-H. Within Section F of the route, the electric line passes to the West of Chelmsford close to, and also West of, the settlement of Writtle.

7. Writtle is the location of part of the ARU campus known as "ARU Writtle Campus", a facility that provides for further education ("FE") for a children up to the age of 18, and higher education ("HE") for young adults. That education encompasses the education provided to some 500 students at the Equine Facility of ARU Writtle Campus on the North side of Cow Watering Lane a little to the East of the junction of that highway with Victoria Road ("the Equine Facility"). ARU Writtle Campus is itself part of the nationally and internationally renowned Anglia Ruskin University that has a number of campuses across East Anglia. The age of the students results in access into the Equine Facility being regulated under section 175 of the Education Act 2002 and the Safeguarding Vulnerable Groups Act 2006, whose terms apply to the geographical extent of the Equine Facility, as well as under the provisions for special educational needs and disabilities legislation ("SEND"). The Equine Facility is the home also for a herd of some 90 horses that form its educational heart and reside in stable buildings and paddocks at the Equine Facility.

8. The NGET proposal is in 'outline' form and relies on the "*Rochdale* Envelope" concept to create, by means of the terms of the dDCO, a notional 3-dimensional box anywhere inside of which would be situated the above ground electric line (and related pylons) and the ground parameter of which is the extent of a red line called the "Order Limits" inside of which <u>all</u> of the dDCO powers would apply. NGET proposes to construct its electrical line immediately inside the Western part of the Equine Facility, within "Works 17" (the sub-part of the line described by NGET as "Route TB"). Pylons are envisaged to support the cables along Route TB and at notional (only) locations identified as TB 165 (North West of the Equine Facility) and TB 166 (to the West of the Equine Facility) indicating that the overhead line (alone) would *cross over* the Western paddocks of the Equine Facility.

9. Somewhat alarmingly, NGET propose to extend the Order Limits *through* the Equine Facility *for access*. As an education provider in the public interest, ARU (and WCL) propose Protective Provisions to enable the *safe* education of its students *simultaneously* with affording construction access opportunity to NGET.

SUMMARY: THE ISSUE AND THE SOLUTION

10. In line with the Relevant Representation made by ARU, through its brand name "ARU Writtle" on 27th November 2025, the issue at the heart of this Written Submission is this: ARU (and its ARU Writtle Campus Equine Facility) is a nationally, and internationally renowned, actively functioning, provider of further and higher education to some 500 students at that Equine Facility based on a herd of 90 horses. That provision remains subject to statutory Safeguarding and Health and Safety obligations to ensure the safety in the widest sense of those students and horses from harm and risk of harm. Perhaps inadvertently, the evidence shows NGET to have assumed the Equine Facility to be a cluster of mere farm buildings or a merely local community facility – but ARU Writtle Campus is neither. In their mistake, in addition to oversailing a safeguarded area, NGET has taken it upon itself to extend the Order Limit area Eastwards from its Route TB pylon line at ground level *through* the paddock accommodation area and *through* the Equine Facility Buildings area to the highway of Cow Watering Lane, for the envisaged construction of an *above* ground level line (there being no pylons shown as accessible from the Equine Facility land) and envisaged maintenance over 40 years of the same above ground level lines and using drones.

11. ARU expresses its profound surprise that a national organisation such as NGET should to propose to oversail cables into safeguarded area, to indicate use of drones in such an area, and to envisage driving construction vehicles (for whatever period and in whatsoever numbers) *through* a safeguarded functioning educational environment populated by 90 horses and upwards of 500 students aged between 16 and 21. It should be evident that no third party, in whatever interest, can bypass the statutory requirements of section 175, Education Act, the Safeguarding Vulnerable Groups Act 2006, or those of the Health and Safety Act 1974, *before* contemplating whether or not to create a potential dangerous state of affairs between horses, pedestrians and construction vehicles in the narrow confines of the Equine Facility.

12. NGET propose an accident(s) waiting to happen. As a national (and international) organisation, ARU is not averse to an additional construction of Route TB in the West of its Equine Facility – so long as it is safely carried out in respect to horses and students and paddock ground and access are reinstated to their current state.

13. In line with section 120(3) and (4) of the PA 2008, Schedule 5, Part 1, paragraph 10, and the precedent of the Riverside Energy Park DCO 2020/419, Article 1(1) and Schedule 10, paragraph 1 *et seq*., ARU propose the issue be solved by means of Protective Provisions on terms authorizing construction access inside its Equine Facility not otherwise than during education vacation periods by agreement with ARU, at the

conclusion of which construction, the extent of the Order Limits (coloured yellow on the Land Plan, Section F, Sheet 8, Plots 8/42) on ARU land cease to exist, the Order Limits truncate to exclude Plot 8/42, and that Plot be treated as deleted from the Book of Reference. This approach aligns with that of NGET, at paragraph 9.3.2 of Document 5.15 Design Development, to avoid (by timing) risks of traffic coincidences. See **Section A**.

THE OWNER AND OCCUPIER AND THE GEOGRAPHICAL LAYOUT OF THE EQUINE FACILITY AT ARU WRITTLE CAMPUS

14. The geographical disposition of the Equine Facility is shown on the diagrammatic plans in **Section B**.

15. **HM Land Registry Plan**: shows the location of the Equine Facility at the Western end of ARU Writtle Campus. Anglia Ruskin University owns and occupies the land edged red on this land registry plan, including the Equine Facility and it is also occupied by Writtle College Limited.

16. **ARU Writtle, Plan A**, shows shaded blue the area of the freehold land of ARU Writtle Campus, that it is owned by ARU, is occupied by Writtle College Limited, and is comprised of educational paddocks and educational buildings (adjacent to the highway of Cow Watering Lane). Together, that Equine Facility is home to 90 horses and provides further and also higher education for 500 students aged between 16 and 21.

17. The actual extent of the area shaded blue remains subject to the statutory obligations of: section 175 of the Education Act 2002, and the related statutory guidance in respect of the safeguarding of children; the Safeguarding Vulnerable Groups Act 2006; and the Health and Safety at Work Act 1974. Those Acts, and their obligations, override the provisions of secondary legislation such as a development consent order.

18. Plan A also shows the *notional* centre line of the above ground cable proposed by NGET (in purple) to oversail the land of ARU that is subject to the statutory safeguarding requirements. ARU notes that that NGET has evidenced that it uses drones to inspect cables and, were the line to oversail the ARU land, then the use by NGRT of drones on the land of ARU would also be subject to the those safeguarding (and health and safety) requirements in light of the presence of children and horses at ground level close to the said lines. It also shows the alternatives proposed by ARU (in green and blue) which have to date been ignored.

19. **ARU Writtle, Plan B** shows the layout and purposes of the buildings in the Equine Facility, the existing entrance from Cow Watering Lane to the Equine Facility, and the one way system for incoming and exiting traffic operating at the Equine Facility, as well as the internal road layout of the Equine Facility and the existing access along the central corridor from the entrance to the paddocks to the North and West of the buildings.

20. In particular, the purposes of the buildings can be seen from the key to Plan B, and so too can the physical proximity of the buildings and the existing access route be seen from Plan B.

21. **ARU Writtle, Plan C** is a diagrammatic overlay of the part of Section F, Sheet 8, Land Plans (that relates to ARU Writtle) overlaid onto an aerial photograph of ARU Writtle Campus Equine Facility. Plan C shows how NGET desires to superimpose, inside of the extent of the area outlined in red and coloured yellow, a perpetual entitlement in its favour over the part of the Order Limit coloured yellow onto the Equine Facility, by which to traverse with construction vehicles of uncapped and unidentified range of types, and carrying unidentified third parties, and to traverse the same for purported periodic maintenance of electrical cables proposed to be situated many metres above ground level over at least 40 years from conclusion of the Project in 2031.

FACTS

22. The Facts are set out in **Section C**.

WITNESS STATEMENTS

23. The Witness Statements of the following are in **Section D**:

a) Philip Grant, Principal, who speaks on Anglia Ruskin University and its ARU Writtle Campus, explains how these providers are of national and international status and importance, as well as the impact on the provision of education of the NGET proposed construction and maintenance route through ARU Writtle Campus Equine Facility;

b) Professor Roderick Watkins, Vice Chancellor, who speaks on Anglia Ruskin University and its ARU Writtle Campus, and explains how these providers are of national and international status and importance;

c) Joanne Wareham, Assistant Principal Safeguarding and Inclusion for ARU, who speaks on Safeguarding of students under the Safeguarding Vulnerable Groups Act 2006;

d) James Rolf, Chief Operating Officer for Anglia Ruskin University Writtle, who speaks on the educational impact from the NGET proposals and as foreseeably manifested by the resulting financial impacts;

e) Liz Craig, Strategic Estates Manager, Estates & Facilities Services, Anglia Ruskin University Writtle, who speak on the impact of the access and proposals by NGET on the ARU Writtle Campus, and facilities;

f) Mark Saunders, Head of Health & Safety, who speaks on the health and safety impacts on ARU Writtle Campus arising from the NGET access and proposals

g) Daniel Cook, Head of Equine Resources, who speaks on the resources impacts and equine impacts engendered by the NGET access and proposals and the practical implications;

h) Student Isabel Taylor, who speak on the impact of their course, studies, and on horses;

i) Jane Kenny, Savills, who speaks on use of access and proposals, and including Engagement and feasible Alternatives including access in the South West Paddock, evidences that the yellow route is demonstrably purposeless to go nowhere, and the nature of 90 degree turn excludes longer vehicles.

BOOK OF REFERENCE AMENDMENTS AND LEGAL FRAMEWORK

24. Amendments to the Book of Reference are in **Section E**.

25. The Legal Framework is set out in **Section F**, including extracts from the Riverside Energy Park DCO 2020/419 in **Section G** and the related Case Law is attached in **Section H**.

DRAFT DEVELOPMENT CONSENT ORDER

26. The draft development consent order (August 2025) ("the dDCO") contains provisions that would apply inside of the extent of the Order Limits demarcated by the area outlined in red including the land of ARU.

27. The DCO envisages *wide* powers, attaching to the extent of the land outlined in red that overlaps with the Equine Facility of Writtle College Campus, under Articles of the DCO including: 3(1)-(8), 4(1)-(2), 17 (Access to works), 21 (Protective Works), 22 (Surveys), 24 (Compulsory acquisition of land), 25 (Compulsory Acquisition of rights), 27 (Temporary Use of Land), 29 (Temporary use of land for maintaining the authorised development), 38 (Extinguishment and suspension of private rights), 39-40, (power to override easements and other rights, and statutory authority to override easements and other rights), 48 (defence to statutory nuisance), 49 (Traffic regulation), and 56 (Safeguarding).

28. The authorisation relates to the Works identified in Schedule 1, and in particular in relation to ARU Writtle Campus, to Works No. 17 (Route TB), and to the works identified in the wide scope of the Associated Development including paragraph (u). ARU and its ARU Writtle Campus appear in Section F of the pylon route, Sheet 8, of each of the various Land Plans, Works Plans, and Traffic Regulation Plans.

29. A simple comparison of those Works Plans with the situation of ARU Writtle Campus on ARU Writtle Plan C demonstrates the proposal by National Grid for: above ground electric cables to traverse the Western part of the Equine Facility; a 'dog-leg' or inverted L-shaped red outlined area extending Eastwards of the Route TB and then Southwards bisecting the operational campus of Writtle College (Equine Facility) before

then connecting to the highway at the Equine Facility entrance; and certain works to the Northern boundary of the Equine Facility (outside of the area of the paddocks). The Plans shows the area envisaged for access as coloured yellow by which National Grid desire a *permanent* right of vehicle access to entitle them in perpetuity to drive vehicles back and forth through the Equine Facility of ARU Writtle Campus.

30. The powers that attach to the Order Limits under the dDCO also all attach to the extent of the red line of the Order Limits as extended over the ARU Writtle Campus. The powers include powers of compulsory acquisition and the taking of rights of access from ARU as well as rights to situated above ground electric cables in the air above ARU Writtle Campus paddocks. As a result, ARU Writtle and ARU and Writtle College Limited are statutory Affected Parties and remain entitled to be heard at the Compulsory Acquisition Hearing before the Examining Authority. This Written Submission operates as a Request to be heard by each at that Hearing.

DECISION-MAKING UNDER THE PLANNING ACT 2008

31. Section 104 of the Planning Act 2008 provides for decision making where a national policy statement ("NPS") has effect.

32. In particular:

> *1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.*
> *2) In deciding the application the Secretary of State must have regard to –*
> *a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),*
> *b) …*
> *c) …*
> *d) any other matters which the Secretary of State thinks are both important and relevant to [the Secretary of State's decision…*

33. For the purposes of section 104(2)(a), the "relevant national policy statement" is "Overarching National Policy Statement for Energy, EN-1" (January 2024) ("EN-1") and "National Policy Statement for Electricity Networks Infrastructure", EN-5 (January 2024) ("EN5").

34. The NPS: Overarching National Policy Statement for Energy, EN-1 requires, under Section 5, the assessment of "Generic Impacts" include: Land Use under Section 5.11 and Socio-Economic Impacts under Section 5.13.

35. In respect of Land Use impacts: (Emphasis added)

> *5.11.1 An energy infrastructure project will have a direct effect on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development…*

5.11.8 The ES (see Section 4.3) should identify existing and proposed[252] land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing…
5.11.23 Although in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some of that use can still be retained post project construction) applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project and the protection of soils

36. In respect of Socio-Economic Impacts: (Emphasis added)

5.13.4 The applicant's assessment should consider all relevant socio-economic impacts, which may include:…
- *the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities…*
- *effects (positive and negative) on … other users of the area impacted*

5.13.5 Applicants should describe the existing socio-economic conditions in the areas surrounding the proposed development and should also refer to how the development's socio-economic impacts correlate with local planning policies…
5.13.8 The Secretary of State should consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development…
5.13.9 The Secretary of State should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the Secretary of State considers to be both relevant and important to its decision.
5.13.10 The Secretary of State may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).

37. The NPS: National Policy Statement for Electricity Networks Infrastructure, EN-5, requires consideration of Noise and Vibration and of Electric Magnetic Fields (EMFs). In particular:

2.9.2 Applicants must provide information on relevant impacts as directed by this NPS and the Secretary of State…
2.9.26 All high voltage transmission lines have the potential to generate noise under certain conditions….
2.9.34 Transmission line audible noise is generally categorised as 'crackle' or 'hum', according to its tonal content…
2.9.44 Power frequency EMFs arise from generation, transmission, distribution and use of electricity and will occur around power lines and electric cables and around domestic, office or industrial equipment that uses electricity.
2.9.45 EMFs comprise electric and magnetic fields. Electric fields are the result of voltages applied to electrical conductors and equipment. Fences, shrubs and buildings easily block electric fields. Magnetic fields are produced by the flow of electric current; however, unlike electric fields, most materials do not readily block magnetic fields. The intensity of both electric fields and magnetic fields diminishes with increasing distance from the source.
2.9.46 All overhead power lines produce EMFs. These tend to be highest directly under a line and decrease to the sides at increasing distance. ...
2.9.47 The direct effects occur in terms of impacts on the central nervous system resulting in its normal functioning being affected. Indirect effects occur through electric charges building up on the surface of the body producing a microshock on contact with a grounded object, or vice versa, which, depending on

the field strength and other exposure factors, can range from barely perceptible to being an annoyance or even painful…
2.9.51 The levels of EMFs produced by power lines in normal operation are usually considerably lower than the ICNIRP 1998 reference levels…
2.9.58 There is little evidence that exposure of crops, farm animals or natural ecosystems to transmission line EMFs has any agriculturally significant consequences…

38. For the purposes of section 104(2)(a), and also paragraph 5.13.9 of EN-1, the witness statements from ARU appended to this Written Submission provide the evidence required to underpin the very real *socio-economic impacts* that would result from the NGET proposals over and through the land of ARU at the Equine Facility.

39. These sworn witness statements evidence direct, adverse, and consequential effects including as follows:

    a) the direct effect on the existing use of the Equine Facility that would result from the proposed authorisation of a construction access route through the Equine Facility upon the existing horse and pedestrian traffic simultaneously continuing to use the same route, and the introduction of third party construction vehicles to that same route;

    b) the direct effect of statutory safeguarding obligations (that pertain to the Equine Facility in respect of children being provided with Further Education) resulting from entry onto and passage through the Equine Facility by third parties in vehicles and the requiring of such third parties to be physically barred from the Equine Facility in the absence of required safeguarding verification procedures being satisfied;

    c) the direct effect on health and safety considerations of combining construction-related traffic with existing horse and pedestrian traffic using the same route day to day and the statutory consequences;

    d) the resulting creation of a foreseeable dangerous state of affairs by authorizing the area coloured yellow over the Equine Facility in respect of horse/vehicle collision risk or vehicle/pedestrian collision risk, and the liability of the Secretary of State for authorizing the same;

    e) the resulting impediment to ongoing Further and Higher Educational provision at the Equine Facility that would result from the presence and use of the construction access route through the Equine Facility;

    f) the resulting interruption to Further and Higher Educational provision at the Equine Facility that would result from the peripatetic use of the access route through the Equine Facility for maintenance, and use of drones;

g) the resulting presence of behavioral difficulties in horses using the paddocks below the location of aboveground electric lines to the West of the Equine Facility, and related consequences for student riders; and

h) the resulting reputational harm to ARU and practical harm to the educational provision of its students.

40. The Secretary of State is referred to the detailed content of the witness statements in **Section D**.

41. For the purposes of section 104(2)(d), the witness statement evidence of Professor Roderick Watkin, Vice Chancellor and Chief Executive of Anglia Ruskin University, explains the importance of ARU. His evidence is supported by the detailed witness statements of colleagues that describe the foreseeable impacts on the Equine Facility that would result from: a) the extension of the Order Limits area outlined in red and coloured yellow as a construction access and maintenance access route *through* the Equine Facility useable by National Grid and its third party contractors; b) the traversing of the Western part of the Equine Facility by overhead electrical lines; c) use of drones over a Equine Facility subject to statutory safeguarding requirements that educates children.

ENVIRONMENTAL INFORMATION AND MITIGATION

42. For planning development purposes, the National Planning Policy Framework (2024), at paragraph 20(c), categories "community facilities" as including "education …infrastructure"). The Equine Facility is such educational infrastructure.

43. The Application for the DCO is accompanied by an Environmental Statement. In its Socio-Economic Chapter 15 (Document 6.15), the Environmental Statement summarises the effects of the proposal on Community Facilities in Tables 15.14, 1521, and 15.27 that includes the Equine Facility. But, the assessment of the effect of the proposals on the Equine Facility appears to have been underscored because it appears to not have recognized matters including: a) the Equine Facility's nature as a nationally important, internationally recognized, active and functioning educational facility providing Further and Higher Education to some 500 students and based on a herd of 90 horses; b) the real impacts of introducing construction vehicle traffic and its passengers into a regulated educational environment including for children; c) the practical consequences for collision risk between the on-site horse herd using the current access route simultaneously with the proposed introduction of construction vehicles.

44. The foregoing Tables expressly rely on "Mitigation" terms asserted by National Grid as "embedded" to result in the absence of a likely significant effect of its proposals on the Equine Facility. That reliance is misplaced.

45. It is correct to note that dDCO Requirement 4, on page 106 of Document 3.1 ensures the production of specified "Construction Management Plans" that include: a) a "Code of Construction Practice"; and b) a "Construction Traffic Management Plan", and that each is required to be based on the outline version of these plans forming part of the Application documents.

46. However, on their close reading: a) the "Code of Construction Practice" contains no provisions including respect of the safeguarding of children, no guarantees by which to avoid collision risk with horses and pedestrians, nor guarantees in respect of ground-reinstatement for horse paddocks, and; b) the "Construction Traffic Management Plan" relates to *highway* mitigation and to specified sites and contains no express reference to the Equine Facility, (nor, for completeness, to Cow Watering Lane nor to Victoria Road highways).

47. Therefore, the references in Tables 15.14, 15.21, and 15.27 by which (so-called) "embedded" mitigation is relied on by National Grid adds nothing to sustain its asserted conclusion that no significant adverse effects would result from its proposals to the land use and/or socio-economics of the Equine Facility.

48. Further, the law does not permit the mere reliance on an asserted statement of mitigation by which to defer the evaluation of the mitigation to a subsequent decision maker in the sphere of environmental impact assessment. In *Smith v First Secretary of State* [2003] Env. L.R. 32, the Court of Appeal considered the legal scope of the *Rochdale* Envelope, the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199) and the Directive 85/337/EEC on environmental assessment (as amended) and from which the Regulations derived.

49. That Court held as follows, in particular, at paragraph 33 in respect of the *terms* of the *constraints* for "mitigation", what the instant decision maker was required to consider, and also the requirement for the downstream decision maker to have relevant environmental objectives as part of its decision making process: (Emphasis added)

> *33. In my view it is a further important principle that when consideration is being given to the impact on the environment in the context of a planning decision, it is permissible for the decision maker to contemplate the likely decisions that others will take in relation to details where those others have the interests of the environment as one of their objectives. The decision maker is not however entitled to leave the assessment of likely impact to a future occasion* ***simply*** *because he contemplates that the future decision maker will act competently.* ***Constraints must be placed*** *on the planning permission* ***within which*** *future details can be worked out, and* ***the decision maker must form a view about the likely details and their impact on the environment****.*

50. There is no evidence from National Grid in its Application to address paragraph 33 in respect of each mitigation provision at this state of the DCO Application process, nor in particular by which to counter the evidence of ARU by its witness statements. Indeed, National Grid has yet to appoint a main contractor and

cannot be in a position to know at this time the evidenced outcome of the likely details and their impact on the environment from such terms as yet fall to be agreed pursuant to the discharge of Requirement 4.

51. Regulation 3(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 defines "environmental information" to include both the environmental statement and "*any representations duly made by any other person about the environmental effects of the development ".* ARU is such another person and has made representations about the environmental effects of the development on the Equine Facility.

52. Regulation 4(2) prohibits the Secretary of State from making an order granting development consent unless an EIA has been carried out in respect of the application. Regulation 5 defines "EIA" and paragraph (2) requires *that EIA* to "*identify, describe and assess" "the direct and indirect significant effects of the proposed development"* on specified factors and the inter-action between them. In light of the demonstrable underscoring by National Grid of the assessment of the Equine Facility, Regulation 4(2) remains engaged.

ALTERNATIVES

53. ARU made representations to National Grid about alternatives to the situation of pylons, above ground electrical lines, and construction access and maintenance routes through its land at the Equine Facility.

54. The evidence in the witness statements of ARU demonstrates, again, the somewhat obdurate or confusedly underscoring by National Grid of the nature and status of the Equine Facility as a local or "school" facility and not as a nationally important educational facility of international renown, and that National Grid appears also to have regarded as a "farm" and not in fact as nationally and internationally important educational infrastructure. See the witness statement of Liz Craig, paragraph 5.2.

55. In this respect, Document 5.15, Design Development Report, includes in Section 9.3, consideration of the pylon cable route West of Writtle, with particular attention being given by National Grid to the "International" 4 yearly "Scout Jamboree" held at a site North-West of Writtle shown in Figure 9.4. The <u>basis</u> of that particular consideration appears to be due to the "international" nature of the Scout Jamboree and resulted in National Grid affirming: (Emphasis added)

> *9.3.2 Alternative routes to avoid or reduce the potential interaction with the site currently used for the Scout Jamboree have been considered and are shown on Figure 9.4. An alternative arrangement would be to restrict the timing of construction works so that there was no potential for coincidence of construction with this event and for some restrictions to be placed on activities under the alignment once constructed. With other restrictions due to the crossing of a gas pipeline, feedback has indicated that the organisers consider that the event would not be sustainable…*

9.3.3 … Through direct engagement National Grid is exploring opportunities to restrict local construction activities so as not to restrict the scheduled 2028 Jamboree proceeding on the site and is also exploring opportunities to support the relocation of the event to an alternative site.

56. By contrast, the representations of ARU were rejected for apparently spurious reasons:

    9.3.5 Localised adjustments to the alignment around Writtle have been considered but no change has been made due to the restrictions imposed by infrastructure constraints (various pipelines) which prevent a change or because a change would lead to a transfer of effects for example resolving perceived impacts on a view from one property but at the consequence of effects transferring to the view from another residential property.

57. ARU has also promoted two alternative Options 1 and 2 to National Grid for the entrance to the Route TB West of the Equine Facility. See the evidence of Jane Kenny in paragraph 6.1 of her witness statement. It is clear from paragraph 6.2 of her witness statement that National Grid had no real interest in considering alternatives for its construction access through the Equine Facility because it had *already* fixed the red line *without* having *first* considered alternative access options to acquisition of the same from ARU.

58. ARU proposes a Protective Provision by which to safely enable ongoing education and construction access.

COMPULSORY ACQUSITION OF LAND

Articles 24, 27 and 29 of the draft DCO and the Equine Facility

59. The dDCO includes proposed powers for the compulsory acquisition of land by National Grid.

60. For convenience, the Land Plans, Section F, Sheet 8, show in their key the categorisation of 7 types of land proposed to be compulsorily acquired by National Grid. The reader is also referred to the relevant provisions of the dDCO, Part 5: Acquisition and Possession of Land. Part 5 includes under Article 24 the Compulsory Acquisition of Land, under Article 27 the Temporary Possession of Land on a perpetual recurring basis, and under Article 29 for maintaining the pylons and overhead lines. That is, Part 5 properly categorises both types of land possession as being sub-sets of "Compulsory Acquisition".

61. ARU Plan C, Overlay, shows in diagrammatic form the areas of the Equine Facility that would be subject to the powers under Part 5 of the dDCO.

62. Within Part 7 of the Planning Act 2008, section 120 provides for the content of a DCO that may include provisions referred to in Schedule 5, Part 1.

63. Part 1, paragraph 1 provides:

    The acquisition of land, compulsorily or by agreement.

64. Part 1, paragraph 2 provides:

    The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.

65. Further, paragraph 10 of Part 1, of Schedule 5 provides for provisions within the scope of:

The protection of the property or interests of any person.

66. Under section 159, "land" is defined for the purposes of Part X of the PA 2008 as follows:

1) This section applies for the purposes of this Part.

2) "Land" includes any interest in or right over land.

3) Acquiring a right over land includes acquiring it by the creation of a new right as well as by the acquisition of an existing one.

67. Article 24 of the dDCO properly qualifies *within* paragraph 1. Articles 27 and 29 of the dDCO properly qualify *within* paragraph 2. In particular, paragraph 2 categories the creation of an interest in or right over land as being either being ensured "compulsorily or by agreement". On its face, Articles 27 and 29 are categories of compulsory acquisition. Further, the interest in land held by a person is, under paragraph 10, also "land".

68. Further, the Supreme Court in *R(Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437 held, at paragraph 12: (Emphasis added)

Recently, in the High Court of Australia, French CJ said in R & R Fazzolari Pty Ltd v Parramatta City Council [2009] HCA 12 , paras 40, 42, 43:

"40. Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These protections are not absolute but take the form of interpretative approaches where statutes are said to affect such rights."

"42. The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights …

"43. The terminology of 'presumption' is linked to that of 'legislative intention'. As a practical matter it means that, where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights."

69. On their correct construction at law, in Schedule 5 to the Planning Act 2008, Part 1: a) the scope of paragraph 2 properly encompasses the draft terms of Articles 27 and 29 of the dDCO such that the taking of temporary possession of land (including on a recurring basis) is a compulsory acquisition of land; and b) the scope of paragraph 10 properly encompasses any person including ARU such that the Secretary of State is entitled to impose a Protective Provision in favour of ARU by which to ensure its ongoing functioning as an educational provider in respect of its land at the Equine Facility on such terms as ARU considers would result in the safe provision of that education provision at that Equine Facility, simultaneously with its agreement to construction-related access and ground-scape reinstatement for the

purpose of horse paddocks. In this respect, ARU has included a draft Protective Provision in **Section A** hereto.

70. Section 120(1) provides for requirements to be imposed on a development consent order whereas section 120(3) provides for provisions to be included in such an order. In this respect, under section 120(7), sections 120(3)-(6) (that provide for provisions) are expressly "subject to" the subsequent provisions of Chapter in which section 120 is situated. Section 122 is a subsequent provision.

Compulsory Acquisition under the Planning Act 2008

71. Section 122, Purpose for which compulsory acquisition may be authorised, includes:

> *1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*
> *2) The condition is that the land—*
> *a) is required for the development to which the development consent relates,*
> *b) is required to facilitate or is incidental to that development, or*
> *c) …*
> *3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.*

72. Consequently, the proposed powers under Part 5 of the dDCO, in particular Articles 24, 27 and 29, must be lawfully justified (in law and in fact) under section 122 of the Planning Act 2008 by National Grid.

73. *Because* under the dDCO ARU is subject to the compulsory acquisition of parts of its land at the Equine Facility, the common law requires the correct approach to the consideration of its Written Submission be adopted by the Examining Authority and the Secretary of State. See Legal Framework in **Section F**.

74. In particular, as affirmed in *Sainsbury's* by the Supreme Court (se above) in *Prest v Secretary of State for Wales* (1983) 266 EG 527, the Court of Appeal held: (Emphasis added)

> *It is clear that no Minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced — for or against compulsory acquisition then the decision — by whomsoever it is made — should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid, see Attorney-General v. De Keyser's Royal Hotel Ltd. (1920) A.C. 508 . If there is any **reasonable** doubt on the matter, the balance must be resolved in favour of the citizen. This principle was well applied by Mr. Justice Forbes in Brown v. Secretary of State for the Environment (1978) P. & C.R. 285 , where there were alternative sites available to the local authority, including one owned by them. He said (at page 291):*
>
> *"It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary … If, in fact, the acquiring authority is itself in possession of other suitable land other land that is wholly suitable*

for that purpose – then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose."

75. "Reasonable" doubt does not mean "*Wednesbury*" reasonable doubt, as in, whether the acquiring authority considers there to be a "doubt". In law, "reasonable doubt" means the *existence of a doubt* based on the objective *evidence* or a gap in the evidence or the nature of that evidence as being in draft.

76. Further, the Secretary of State's "Planning Act: Guidance related to procedures for the compulsory acquisition of land" (September 2013) applies and requires evaluation by the Examining Authority and Secretary of State of the following: (Emphasis added)

> *8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.*
>
> *9. The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below).*
>
> *10. The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.*

77. Further, and in particular: (Emphasis added)

> *11. Section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first of these is related to the purpose for which compulsory acquisition is sought. These three purposes are set out in section 122(2):*
>
> *(i) the land is required for the development to which the development consent relates*
>
> *For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development….*
>
> *12. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.*
>
> *13. For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.*

14. In determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition…

16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.

78. Lastly: (Emphasis added)

25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.

National Grid's asserted "requirement" for another construction and maintenance access route

79. The evidence of the witness statement of Jane Kenny shows the proposed construction route through the Equine Facility to be *purposeless* because: the combination of constrained widths, unsuitable surfacing, fixed fencing, and the non-negotiable 90-degree turn renders the route physically incapable of safely accommodating long or heavy vehicles and also of safely accommodating construction vehicle traffic through the campus and the periodic passing of maintenance vehicles of also unidentified size and type envisaged to service pylons and/or overhead cables above fields. It is difficult to see how there can be any connection between constructional vehicles small enough to use the ground level construction access desired and the proposed overhead cables *many metres* above ground level and above such vehicles.

80. Further, the Works Plans, Section F, Sheet 8, show: a) construction accesses to the West of the pylon location of TB 165 (to the North of the Equine Facility) and to the East of pylon location TB 166 (to the South-West of the Equine Facility); b) no pylon proposed to be situated East of Victoria Road inside of the land of the Equine Facility; c) access to and from space between pylon locations TB165 and TB166 to be taken from Victoria Road itself; and d) only overhead cables traversing the paddocks of the Equine Facility.

81. Consequently, there is no actual need, nor can there be any form of "requirement" (including to facilitate or incidentally) for the extension of the Order Limits Eastwards from the Easternmost edge of the Limits of Deviation through the Equine Facility, and then Southwards through the buildings of that Equine Facility to the highway at Cow Watering Lane, in which to create a vehicular construction and maintenance access.

82. In this respect, the evidence shows that it cannot be said that there is no doubt that an access through the Equine Facility is necessary for the construction of overhead lines, including because access can be taken from a range of closer locations inside of the Order Limits. Further, nor can it be said that the *evidence*

"decisively" demands a *further* access above and beyond the numerous locations near to the proposed sites of TB 165 and TB166. See *Prest*. It follows that, in law, National Grid, on whom the legal burden of proving its proposed acquisition rests, cannot justify the creation of a construction or maintenance access route over the Equine Facility.

83. Furthermore, ARU propose Protective Provisions evidencing that the ongoing safe functioning of the Equine Facility can occur simultaneously with such access as National Grid may desire to take from Cow Watering Lane to the paddocks to the West of the Equine Facility. The foregoing paragraph applies equally to those Provisions.

84. ARU submits that the acquisition of the land edged red and coloured yellow as Plot 8/42 cannot be justified by National Grid as necessary rather than as desirable and, in turn, the Secretary of State is not entitled under section 120(1) and (2) of the Planning Act 2008 to authorise compulsory acquisition of the land edged red and coloured yellow on the Land Plan, Section F, Sheet 8, Plot 8/42 so far as it relates to the Equine Facility.

National Grid's asserted "Compelling Case"

85. Section 122(3) also requires that National Grid evidence a "compelling" case in the public interest for the superimposition over the Equine Facility of a further construction and maintenance access route that would connect the highway at Cow Watering Lane with a paddock over which National Grid proposes to string a high level electrical line and to which location it can reach by means of adjacent land inside the Order Limits to the South, West and North of that location. On its face, it cannot be said there is a "compelling" case for acquisition, nor a case "in the public interest" for such acquisition.

86. Further, the evidence in the witness statements from ARU, itself an educational institute that functions in the public interest to provide Further and Higher Education, shows that the counter-veiling public interest in the safe ongoing operation of the Equine Facility outweighs the provision of yet a further construction and maintenance access in favour of National Grid.

87. Furthermore, National Grid itself has led no evidence in its Application for a DCO showing that it can itself ensure safe ongoing operation of the Equine Facility simultaneously with National Grid desiring to use the existing internal access route inside of the Equine Facility for its construction and maintenance vehicle traffic.

88. ARU submits that the acquisition of the land edged red and coloured yellow cannot be justified by National Grid as compelling and, in turn, the Secretary of State is not entitled under section 120(1) and (3) of the Planning Act 2008 to authorise compulsory acquisition of the land edged red and coloured yellow on the Land Plan, Section F, Sheet 8, so far as it relates to the Equine Facility.

Cables Proposed to be Overhead the Paddocks of the Equine Facility, the use of Drones and EMF

89. Under section 120(1) of the Planning Act 2008, the Secretary of State may impose requirements in connection with the development for which consent is granted.

90. ARU has submitted evidence in its witness statements that demonstrate that horses can be affected adversely by electromagnetic fields emanating from overhead power cable lines, and that these affects can result in disturbed horse behaviours and resulting risks to students and student riders in proximity to such overhead electrical lines.

91. Further, National Grid has evidenced in Document 6.4, the Project Description, paragraph 4.10.4: "National Grid also has a fleet of drones, which allows inspections of parts of the transmission network that are more difficult or costly to reach". ARU refers the Secretary of State to the witness evidence of Joanne Wareham that explains how drones can photograph or video record children in the paddocks, in breach of statutory safeguarding requirements. Ms Wareham's evidence shows the real need to preclude drone flights over the Equine Facility.

92. In this respect, ARU Writtle, Plan A, shows the area shaded blue of the Equine Facility. Thae blue-shaded area is the extent of the Equine Facility that is subject to statutory requirements in relation to safeguarding of children. Those requirements are not confined in height above ground level. Instead, the blue-shaded area can be notionally extended in the vertical dimension to include within that notional volume the electric cables shown on Plan A to be oversailing the paddock ground level blue-shaded land of the Equine Facility. Those statutory safeguarding requirements cannot be overridden by the secondary legislation of the dDCO.

93. The Works Plans, Section F, Sheet 8, show the geometry of the Limits of Deviation immediately to the West of the blue-shaded area of the Equine Facility. It can be seen that the micro-siting of the illustrative locations of pylon references TB165 and TB166 can be situated inside of those Limits but farther West. So situated, the line of the overhead cables between TB165 and TB166 would be outside of the Equine Facility.

94. In turn, there would be no need for the drones of National Grid to enter the volume of the safeguarded volume of the blue-shaded area of the Equine Facility identified in ARU Writtle Plan A.

95. ARU submits that the Secretary of State impose a requirement on the dDCO precluding any overhead cable lines from traversing the land of the Equine Facility. The reason for this requirement is: in the interests of ensuring the safeguarding of children educated at the Equine Facility and for the protection of students from adverse horse behaviors.

96. The practical outcome of the proposed requirement is that it can be satisfied by National Grid ensuring the micro-siting of pylons references TB165 and TB166 farther Westwards whilst simultaneously such micrositing ensures no cable traverses the Equine Facility land. In turn, the education of students by ARU and WCL can continue safely in the widest sense. In further turn, National Grid then would have no desire (let alone any asserted need) for Plot 8/42 and no safeguarding issues would then appear to arise nor concerns about construction access to land not traversed at all by above ground electrical lines.

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26th February 2026

DRAFT PROTECTIVE PROVISIONS

INTRODUCTION

1. These draft Protective Provisions form part of the Written Submissions by "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and Writtle College Limited) ("ARU").
2. ARU provides with WCL at an Equine Facility at its ARU Writtle campus education to students pursuant to the statutory requirements of: a) section 175 of the Education Act 2002, and its statutory guidance; and b) the Safeguarding Vulnerable Groups Act 2006. Those statutory safeguarding obligations apply to all of the land shaded blue on ARU Writtle Plan A.
3. National Grid proposes to construct an overhead electric line between Norwich and Tilbury that will pass over the Western side of the Equine Facility. National Grid envisages taking access for construction vehicles *through* the Equine Facility in relation to part of the electrical line proposed to be above the paddocks in the Western part of the Facility.
4. By section 120(3) and (4) of the Planning Act 2008, and Schedule 5, Part 1, paragraph 10, the Secretary of State may include provisions for the protection of property or interests of any person.
5. A draft of the Protective Provisions is anticipated to be provided in due course to the Secretary of State's Examining Authority.

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26th February 2026

SECTION H – CASE LAW

INTRODUCTION

1. This is Section H, Case Law, Statutory Guidance and Decisions, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and Writtle College Limited) ("ARU").
2. This Section contains:

    1) The Department for Education statutory guidance: "Keeping children safe in education (2025)" (most recently) in September 2025.

    2) *Kane v New Forest District Council* [2002] 1 WLR 312 at paragraphs 23 and 28;

    3) *Kent County Council v Secretary of State for the Environment* (1977) 33 P&CR 70 at 76;

    4) *Prest v Secretary of State for Wales* (1983) 266 EG 527;

    5) *Chilton v Telford Development Corporation* [1987] 1 WLR 872;

    6) *R. v Secretary of State for the Environment ex parte Leicester City Council* (1988) 55 P&CR 364

    7) *Sharkey v Secretary of State for the Environment* (1991) 62 P&CR 126

    8) *Sharkey and Another v Secretary of State for the Environment* (1992) 63 P&CR 332

    9) *R v Rochdale MBC, ex parte Milne* [2001] Env. L.R. 22;

    10) *Smith v First Secretary of State* [2003] Env. L.R. 32;

    11) *R(oao Sainsbury's Supermarkets Ltd) Wolverhampton City Council* [2011] 1 AC 437 at paragraphs 1-11;

    12) Highways England (M27 Southampton Junction 8 Improvement Scheme – M27 Junction 8 and Windover Roundabout)(Special Road) Compulsory Purchase Order 2021, Decision of the Secretary of State for Transport (8th June 2023);

    13) *CG Fry & Son Limited v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35, at paragraph 65.

Department for Education

Keeping children safe in education 2025

Statutory guidance for schools and colleges

September 2025

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Summary

The status of this guidance

This is statutory guidance from the Department for Education ('the Department') issued under Section 175 of the Education Act 2002 (as amended), the Education (Independent School Standards) Regulations 2014, the Non-Maintained Special Schools (England) Regulations 2015 and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended). Schools and colleges in England **must** have regard to it when carrying out their duties to safeguard and promote the welfare of children. For the purposes of this guidance children includes everyone under the age of 18.

About this guidance

We use the terms **"must"** and **"should**" throughout the guidance. We use the term "**must**" when the person in question is legally required to do something, and "**should**" when the advice set out should be followed unless there is good reason not to. The guidance **should** be read alongside:

- statutory guidance Working Together to Safeguard Children, and
- departmental advice What to do if you're worried a child is being abused: advice for practitioners

Unless otherwise specified:

- '**school**' means: all schools whether maintained, non-maintained or independent schools (including academies, free schools and alternative provision academies), maintained nursery schools[1] and pupil referral units.
- '**college**' means further education colleges and sixth-form colleges as established under the Further and Higher Education Act 1992 and institutions designated as being within the further education sector.[2] College also means providers of post-16 Education as set out in the Apprenticeships, Skills, Children and Learning Act 2009 (as amended).[3]16-19 Academies, Special Post-16 institutions and

[1] The Early Years Foundation Stage Framework (EYFS) is mandatory for all early years' providers. It applies to all schools, including maintained nursery schools that have early years provision. Maintained nursery schools, like the other schools listed under 'About this guidance', must have regard to Keeping children safe in education when carrying out duties to safeguard and promote the welfare of children (by virtue of section 175(2) of the Education Act 2002 – see footnote 19 for further detail on this requirement).
[2] Under section 28 of the Further and Higher Education Act 1992 ('designated institutions').
[3] Apprenticeships, Skills, Children and Learning Act 2009 (as amended)

Independent Training Providers. For colleges, the guidance relates to their responsibilities towards children who are receiving education or training at these institutions.

Victims and alleged perpetrator(s)

For the purposes of this guidance, we, in places, use the term '**victim**'. It is a widely recognised and understood term. It is important that schools and colleges recognise that not everyone who has been subjected to abuse considers themselves a victim or would want to be described in this way. Ultimately, schools and colleges should be conscious of this when managing any incident and be prepared to use any term with which the child is most comfortable.

For the purpose of this guidance, we, in places, use the term '**alleged perpetrator(s)**' and where appropriate '**perpetrator(s)**'. These are widely used and recognised terms and the most appropriate to aid effective drafting of guidance. However, schools and colleges should think very carefully about terminology, especially when speaking in front of children, not least because in some cases the abusive behaviour will have been harmful to the perpetrator as well. As above, the use of appropriate terminology will be for schools and colleges to determine, as appropriate, on a case-by-case basis.

Who this guidance is for

This statutory guidance should be read and followed by:

- **governing bodies of maintained schools** (including maintained nursery schools) and colleges which includes providers of post-16 Education as set out in the Apprenticeships, Skills, Children and Learning Act 2009 (as amended): 16-19 Academies, Special Post-16 institutions and Independent Training Providers
- **proprietors of independent schools** (including academies, free schools and alternative provision academies) and non-maintained special schools. In the case of academies, free schools and alternative provision academies, the proprietor will be the academy trust
- **management committees of pupil referral units** (PRUs), and
- **senior leadership teams**

Throughout the guidance, reference to '**governing bodies and proprietors**' includes management committees unless otherwise stated.

School and college staff

It is essential that **everybody** working in a school or college understands their safeguarding responsibilities. Governing bodies and proprietors should ensure that those staff who work directly with children read **at least** Part one of this guidance.

Governing bodies and proprietors, working with their senior leadership teams and especially their designated safeguarding lead, should ensure that those staff who do not work directly with children read either Part one or Annex A (a condensed version of Part one) of this guidance. This is entirely a matter for the school or college and will be based on their assessment of which guidance will be most effective for their staff to safeguard and promote the welfare of children.

Governing bodies and proprietors should ensure that mechanisms are in place to assist staff to understand and discharge their roles and responsibilities as set out in Part one (or Annex A if appropriate) of this guidance.

What this guidance replaces

This guidance replaces Keeping children safe in education September 2024 version. A table of changes is included at Annex F.

Part one: Safeguarding information for all staff

What school and college staff should know and do

A child centred and co-ordinated approach to safeguarding

1. Schools and colleges and their staff are an important part of the wider safeguarding system for children. This system is described in the statutory guidance Working Together to Safeguard Children.

2. Safeguarding and promoting the welfare of children is everyone's responsibility. 'Children' includes everyone under the age of 18. Everyone who comes into contact with children and their families has a role to play. In order to fulfil this responsibility effectively, all practitioners should make sure their approach is child centred. This means that they should consider, at all times, what is in the best interests of the child.

3. No single practitioner can have a full picture of a child's needs and circumstances. If children and families are to receive the right help at the right time, everyone who comes into contact with them has a role to play in identifying concerns, sharing information and taking prompt action. Safeguarding and promoting the welfare of children is defined for the purposes of this guidance as:

- providing help and support to meet the needs of children as soon as problems emerge
- protecting children from maltreatment, whether that is within or outside the home, including online
- preventing the impairment of children's mental and physical health or development
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care
- taking action to enable all children to have the best outcomes

The role of school and college staff

4. School and college staff are particularly important, as they are in a position to identify concerns early, provide help for children, promote children's welfare and prevent concerns from escalating.

5. All staff have a responsibility to provide a safe environment in which children can learn.

6. All staff should be prepared to identify children who may benefit from early help.[4] Early help means providing support as soon as a problem emerges at any point in a child's life, from the foundation years through to the teenage years.

7. Any staff member who has any concerns about a child's welfare should follow the processes set out in paragraphs 49-55. Staff should expect to support social workers and other agencies following any referral.

8. Every school and college should have a designated safeguarding lead who will provide support to staff to carry out their safeguarding duties and who will liaise closely with other services such as local authority children's social care.

9. The designated safeguarding lead (and any deputies) are most likely to have a complete safeguarding picture and be the most appropriate person to advise on the response to safeguarding concerns.

10. The Teachers' Standards 2012 state that teachers (which includes headteachers) should safeguard children's wellbeing and maintain public trust in the teaching profession as part of their professional duties.[5]

What school and college staff need to know

11. All staff should be aware of systems within their school or college which support safeguarding, and these should be explained to them as part of staff induction. This should include the:

- child protection policy (which should amongst other things also include the policy and procedures to deal with child-on-child abuse)
- behaviour policy (which should include measures to prevent bullying, including cyberbullying, prejudice-based and discriminatory bullying).[6]
- staff behaviour policy (sometimes called a code of conduct) should amongst other things, include low-level concerns, allegations against staff and whistleblowing
- safeguarding response to children who are absent from education, particularly on repeat occasions and/or prolonged periods

[4] Detailed information on early help can be found in Working Together to Safeguard Children.
[5] Teachers' standards.
[6] All schools are required to have a behaviour policy (full details are here). If a college chooses to have a behaviour policy it should be provided to staff as described above.

- role of the designated safeguarding lead (including the identity of the designated safeguarding lead and any deputies)

Copies of policies and a copy of Part one (or Annex A, if appropriate) of this document should be provided to **all** staff at induction.

12. All staff should receive appropriate safeguarding and child protection training (including online safety which, amongst other things, includes an understanding of the expectations, applicable roles and responsibilities in relation to filtering and monitoring – see para 140 for further information) at induction. The training should be regularly updated. In addition, all staff should receive safeguarding and child protection (including online safety) updates (for example, via email, e-bulletins, and staff meetings), as required, and at least annually, to continue to provide them with relevant skills and knowledge to safeguard children effectively.

13. All staff should be aware of their local early help process and understand their role in it.

14. All staff should be aware of the process for making referrals to local authority children's social care and for statutory assessments.[7] under the Children Act 1989, especially section 17 (children in need) and section 47 (a child suffering, or likely to suffer, significant harm) that may follow a referral, along with the role they might be expected to play in such assessments.

15. All staff should know what to do if a child tells them they are being abused, exploited, or neglected. Staff should know how to manage the requirement to maintain an appropriate level of confidentiality. This means only involving those who need to be involved, such as the designated safeguarding lead (or a deputy) and local authority children's social care. Staff should never promise a child that they will not tell anyone about a report of any form of abuse, as this may ultimately not be in the best interests of the child.

16. All staff should be able to reassure victims that they are being taken seriously and that they will be supported and kept safe. A victim should never be given the impression that they are creating a problem by reporting any form of abuse and/or neglect. Nor should a victim ever be made to feel ashamed for making a report.

17. All staff should be aware that children may not feel ready or know how to tell someone that they are being abused, exploited, or neglected, and/or they may not

[7] Detailed information on statutory assessments can be found in Working Together to Safeguard Children

recognise their experiences as harmful. For example, children may feel embarrassed, humiliated, or are being threatened. This could be due to their vulnerability, disability and/or sexual orientation or language barriers. This should not prevent staff from having a professional curiosity and speaking to the designated safeguarding lead if they have concerns about a child. It is also important that staff determine how best to build trusted relationships which facilitate communication with children and young people.

What school and college staff should look out for

Early help

18. Any child may benefit from early help, but all school and college staff should be particularly alert to the potential need for early help for a child who:

- is disabled or has certain health conditions and has specific additional needs
- has special educational needs (whether or not they have a statutory Education, Health and Care plan)
- has a mental health need
- is a young carer
- is showing signs of being drawn in to anti-social or criminal behaviour, including gang involvement and association with organised crime groups or county lines
- is frequently missing/goes missing from education, home or care
- has experienced multiple suspensions, is at risk of being permanently excluded from schools, colleges and in Alternative Provision or a Pupil Referral Unit
- is at risk of modern slavery, trafficking, sexual and/or criminal exploitation
- is at risk of being radicalised or exploited
- has a parent or carer in custody, or is affected by parental offending
- is in a family circumstance presenting challenges for the child, such as drug and alcohol misuse, adult mental health issues and domestic abuse
- is misusing alcohol and other drugs themselves
- is at risk of so-called ‘honour’-based abuse such as Female Genital Mutilation or Forced Marriage
- is a privately fostered child.

Abuse, neglect and exploitation

19. All staff should be aware of the indicators of abuse, neglect and exploitation (see below), understanding that children can be at risk of harm inside and outside of the school/college, inside and outside of home, and online. Exercising professional curiosity and knowing what to look for is vital for the early identification of abuse and neglect so that staff are able to identify cases of children who may be in need of help or protection.

20. All school and college staff should be aware that abuse, neglect, exploitation, and safeguarding issues are rarely standalone events and cannot be covered by one definition or one label alone. In most cases, multiple issues will overlap.

21. All staff, but especially the designated safeguarding lead (and deputies) should consider whether children are at risk of abuse or exploitation in situations outside their families. Extra familial harms take a variety of different forms and children can be vulnerable to multiple harms including (but not limited to) sexual abuse (including harassment and exploitation), domestic abuse in their own intimate relationships (teenage relationship abuse), criminal exploitation, serious youth violence, county lines and radicalisation.

22. All staff should be aware that technology is a significant component in many safeguarding and wellbeing issues. Children are at risk of abuse and other risks online as well as face to face. In many cases abuse and other risks will take place concurrently both online and offline. Children can also abuse other children online, this can take the form of abusive, harassing, and misogynistic/misandrist messages, the non-consensual sharing of indecent images, especially around chat groups, and the sharing of abusive images and pornography to those who do not want to receive such content.

23. **In all cases, if staff are unsure, they should always speak to the designated safeguarding lead or a deputy.**

Indicators of abuse and neglect

24. **Abuse**: a form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm or by failing to act to prevent harm. Harm can include ill treatment that is not physical as well as the impact of witnessing ill treatment of others. This can be particularly relevant, for example, in relation to the impact on children of all forms of domestic abuse, including where they see, hear or experience its effects. Children may be abused in a family or in an institutional or community setting by those known to them or, more rarely, by others. Abuse can

take place wholly online, or technology may be used to facilitate offline abuse. Children may be abused by an adult or adults or by another child or children.

25. **Physical abuse**: a form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

26. **Emotional abuse**: the persistent emotional maltreatment of a child such as to cause severe and adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability as well as overprotection and limitation of exploration and learning or preventing the child from participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyberbullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, although it may occur alone.

27. **Sexual abuse:** involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing, and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse. Sexual abuse can take place online, and technology can be used to facilitate offline abuse. Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children. The sexual abuse of children by other children is a specific safeguarding issue in education and all staff should be aware of it and of their school or college's policy and procedures for dealing with it.

28. **Neglect**: the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy, for example, as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion

from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate caregivers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

Safeguarding issues

29. **All** staff should have an awareness of safeguarding issues that can put children at risk of harm. Behaviours linked to issues such as drug taking and/or alcohol misuse, unexplainable and/or persistent absences from education, serious violence (including that linked to county lines), radicalisation and consensual and non-consensual sharing of nude and semi-nude images and/or videos.[8] can be signs that children are at risk. Below are some safeguarding issues all staff should be aware of.

Additional information on these safeguarding issues and information on other safeguarding issues is included in Annex B.

Child-on-child abuse

30. **All** staff should be aware that children can abuse other children (often referred to as child-on-child abuse), and that it can happen both inside and outside of school or college and online. **All** staff should be clear as to the school or college's policy and procedures with regard to child-on-child abuse and the important role they have to play in preventing it and responding where they believe a child may be at risk from it.

31. **All** staff should understand that even if there are no reports in their schools or colleges it does not mean it is not happening. It may be the case that abuse is not being reported. As such it is important that when staff have **any** concerns regarding child-on-child abuse they should speak to their designated safeguarding lead (or a deputy).

32. It is essential that **all** staff understand the importance of challenging inappropriate behaviours between children that are abusive in nature. Examples of which are listed below. Downplaying certain behaviours, for example dismissing sexual harassment as "just banter", "just having a laugh", "part of growing up" or "boys being boys" can lead to a culture of unacceptable behaviours, an unsafe

[8] Consensual image sharing, especially between older children of the same age, may require a different response. It might not be abusive – but children still need to know it is illegal- whilst non-consensual is illegal and abusive. UKCIS provides detailed advice about sharing of nudes and semi-nude images and videos.

environment for children and in worst case scenarios a culture that normalises abuse leading to children accepting it as normal and not coming forward to report it.

33. Child-on-child abuse is most likely to include, but may not be limited to:

- bullying (including cyberbullying, prejudice-based and discriminatory bullying)
- abuse in intimate personal relationships between children (sometimes known as 'teenage relationship abuse')
- physical abuse such as hitting, kicking, shaking, biting, hair pulling, or otherwise causing physical harm (this may include an online element which facilitates, threatens and/or encourages physical abuse)
- sexual violence[9] such as rape, assault by penetration and sexual assault; (this may include an online element which facilitates, threatens and/or encourages sexual violence)
- sexual harassment[10] such as sexual comments, remarks, jokes and online sexual harassment, which may be standalone or part of a broader pattern of abuse
- causing someone to engage in sexual activity without consent, such as forcing someone to strip, touch themselves sexually, or to engage in sexual activity with a third party
- consensual and non-consensual sharing of nude and semi-nude images and/or videos[11] (also known as sexting or youth produced sexual imagery)
- upskirting[12] which typically involves taking a picture under a person's clothing without their permission, with the intention of viewing their genitals or buttocks to obtain sexual gratification, or cause the victim humiliation, distress, or alarm, and
- initiation/hazing type violence and rituals (this could include activities involving harassment, abuse or humiliation used as a way of initiating a person into a group and may also include an online element).

[9] For further information about sexual violence see Part 5 and Annex B.
[10] For further information about sexual harassment see Part 5 and Annex B.
[11] UKCIS guidance: Sharing nudes and semi-nudes advice for education settings
[12] For further information about 'upskirting' see Annex B.

Child criminal exploitation (CCE) and child sexual exploitation (CSE)

34. Both CCE and CSE are forms of abuse that occur where an individual or group takes advantage of an imbalance in power to coerce, manipulate or deceive a child into taking part in criminal or sexual activity. It may involve an exchange for something the victim needs or wants, and/or for the financial advantage or increased status of the perpetrator or facilitator and/or through violence or the threat of violence. CCE and CSE can affect children, both male and female and can include children who have been moved (commonly referred to as trafficking) for the purpose of exploitation.

Child criminal exploitation (CCE)[13]

35. Some specific forms of CCE can include children being forced or manipulated into transporting drugs or money through county lines, working in cannabis factories, shoplifting or pickpocketing. They can also be forced or manipulated into committing vehicle crime or threatening/committing serious violence to others.

36. Children can become trapped by this type of exploitation, as perpetrators can threaten victims (and their families) with violence or entrap and coerce them into debt. They may be coerced into carrying weapons such as knives or begin to carry a knife for a sense of protection from harm from others. As children involved in criminal exploitation often commit crimes themselves, their vulnerability as victims is not always recognised by adults and professionals, (particularly older children), and they are not treated as victims despite the harm they have experienced. They may still have been criminally exploited even if the activity appears to be something they have agreed or consented to.

37. It is important to note that the experience of girls who are criminally exploited can be very different to that of boys. The indicators may not be the same, however professionals should be aware that girls are at risk of criminal exploitation too. It is also important to note that both boys and girls being criminally exploited may be at higher risk of sexual exploitation.

Child sexual exploitation (CSE)

38. CSE is a form of child sexual abuse. Sexual abuse may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing, and touching outside

[13] See information on CCE definition on page 48 of Home Office's Serious Violence Strategy

clothing. It may include non-contact activities, such as involving children in the production of sexual images, forcing children to look at sexual images or watch sexual activities, encouraging children to behave in sexually inappropriate ways or grooming a child in preparation for abuse including via the internet.

39. CSE can occur over time or be a one-off occurrence and may happen without the child's immediate knowledge for example through others sharing videos or images of them on social media.

40. CSE can affect any child who has been coerced into engaging in sexual activities. This includes 16- and 17-year-olds who can legally consent to have sex. Some children do not realise they are being exploited and may believe they are in a genuine romantic relationship.

Domestic abuse

41. Domestic abuse can encompass a wide range of behaviours and may be a single incident or a pattern of incidents. That abuse can be, but is not limited to, psychological, physical, sexual, financial or emotional. Children can be victims of domestic abuse. They may see, hear, or experience the effects of abuse at home and/or suffer domestic abuse in their own intimate relationships (teenage relationship abuse). All of which can have a detrimental and long-term impact on their health, well-being, development, and ability to learn.

Female genital mutilation (FGM)

42. Whilst **all** staff should speak to the designated safeguarding lead (or a deputy) with regard to any concerns about female genital mutilation (FGM), there is a specific **legal duty on teachers**.[14] If a teacher, in the course of their work in the profession, discovers that an act of FGM appears to have been carried out on a girl under the age of 18, the teacher **must** report this to the police. See page 161 for further information.

Mental health

43. **All** staff should be aware that mental health problems can, in some cases, be an indicator that a child has suffered or is at risk of suffering abuse, neglect or exploitation.

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[14] Under section 5B(11) (a) of the Female Genital Mutilation Act 2003, "teacher" means, in relation to England, a person within section 141A(1) of the Education Act 2002 (persons employed or engaged to carry out teaching work at schools and other institutions in England).

44. Only appropriately trained professionals should attempt to make a diagnosis of a mental health problem. Education staff, however, are well placed to observe children day-to-day and identify those whose behaviour suggests that they may be experiencing a mental health problem or be at risk of developing one. Schools and colleges can access a range of advice to help them identify children in need of extra mental health support, this includes working with external agencies.

45. If staff have a mental health concern about a child that is also a safeguarding concern, immediate action should be taken to follow their school or college's child protection policy and by speaking to the designated safeguarding lead or a deputy.

Serious violence

46. **All** staff should be aware of the indicators, which may signal children are at risk from, or are involved with, serious violent crime. These may include increased absence from school or college, a change in friendships or relationships with older individuals or groups, a significant decline in educational performance, signs of self-harm or a significant change in wellbeing, or signs of assault or unexplained injuries. Unexplained gifts or new possessions could also indicate that children have been approached by, or are involved with, individuals associated with criminal networks or gangs and may be at risk of criminal exploitation.

Additional information and support

47. Departmental advice What to do if you're worried a child is being abused: advice for practitioners provides more information on understanding and identifying abuse and neglect. Examples of potential indicators of abuse and neglect are highlighted throughout that advice and will be particularly helpful for school and college staff. The NSPCC website also provides useful additional information on abuse and neglect and what to look out for.

48. **Annex B contains important additional information about specific forms of abuse, exploitation and safeguarding issues. School and college leaders and those staff who work directly with children should read Annex B.**

What school and college staff should do if they have concerns about a child

49. Staff working with children are advised to maintain an attitude of '**it could happen here**' where safeguarding is concerned. When concerned about the welfare of a child, staff should always act in the **best interests** of the child.

50. If staff have **any concerns** about a child's welfare, they should act on them **immediately**. See page 24 for a flow chart setting out the process for staff when they have concerns about a child.

51. If staff have a concern, they should follow their own organisation's child protection policy and speak to the designated safeguarding lead (or a deputy).

52. Options will then include:

- managing any support for the child internally via the school or college's own pastoral support processes
- undertaking an early help assessment,[15] or
- making a referral to statutory services,[16] for example as the child could be in need, is in need or is suffering, or likely to suffer harm.

53. The designated safeguarding lead (or a deputy) should always be available to discuss safeguarding concerns. If in exceptional circumstances, the designated safeguarding lead (or a deputy) is not available, this should not delay appropriate action being taken. Staff should consider speaking to a member of the senior leadership team and/or take advice from local authority children's social care. In these circumstances, any action taken should be shared with the designated safeguarding lead (or a deputy) as soon as is practically possible.

54. Staff should not assume a colleague, or another professional will take action and share information that might be critical in keeping children safe. They should be mindful that early information sharing is vital for the effective identification, assessment, and allocation of appropriate service provision, whether this is when problems first emerge, or where a child is already known to local authority children's social care (such as a child in need or a child with a protection plan). Information sharing: advice for practitioners providing safeguarding services to children, young people, parents and carers supports staff who have to make decisions about sharing information. This advice includes the seven golden rules

[15] Further information on early help assessments, provision of early help services and accessing services is in Working Together to Safeguard Children.

[16] Working Together to Safeguard Children sets out that the safeguarding partners should publish a threshold document that should include the criteria, including the level of need, for when a case should be referred to local authority children's social care for assessment and for statutory services under section 17 and 47. Local authorities, with their partners, should develop and publish local protocols for assessment. A local protocol should set out clear arrangements for how cases will be managed once a child is referred into local authority children's social care.

for sharing information and considerations with regard to the Data Protection Act 2018 (DPA) and UK General Data Protection Regulation (UK GDPR).

55. **DPA and UK GDPR do not prevent the sharing of information for the purposes of keeping children safe and promoting their welfare.** If in any doubt about sharing information, staff should speak to the designated safeguarding lead (or a deputy). Fears about sharing information **must not** be allowed to stand in the way of the need to safeguard and promote the welfare of children.

Early help assessment

56. If early help is appropriate, the designated safeguarding lead (or a deputy) will generally lead on liaising with other agencies and setting up an inter-agency assessment as appropriate. Staff may be required to support other agencies and professionals in an early help assessment, in some cases acting as the lead practitioner. Further guidance on effective assessment of the need for early help can be found in Working Together to Safeguard Children. Any such cases should be kept under constant review and consideration given to a referral to local authority children's social care for assessment for statutory services if the child's situation does not appear to be improving or is getting worse.

Statutory children's social care assessments and services

57. **Where a child is suffering, or is likely to suffer from harm, it is important that a referral to local authority children's social care and if appropriate the police,** (see when to call the police: guidance for schools and colleges (npcc.police.uk)) **is made immediately**. Referrals should follow the local referral process.

58. Local authority children's social care assessments should consider where children are being harmed in contexts outside of the home[17], so it is important that schools and colleges provide as much information as possible as part of the referral process. This will allow any assessment to consider all the available evidence and enable a contextual approach to address such harm. Additional information is available here: Contextual Safeguarding.

59. The online tool Report child abuse to your local council directs to the relevant local authority children's social care contact details.

[17] See working together for further information about extra-familial harms and environments outside the family home

Children in need

60. A child in need is defined under the Children Act 1989 as a child who is unlikely to achieve or maintain a reasonable level of health or development, or whose health and development is likely to be significantly or further impaired, without the provision of services; or a child who is disabled. Local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their welfare. Children in need may be assessed under section 17 of the Children Act 1989.

Children suffering or likely to suffer significant harm:

61. Local authorities, with the help of other organisations as appropriate, have a duty to make enquiries under section 47 of the Children Act 1989 if they have reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm. Such enquiries enable them to decide whether they should take any action to safeguard and promote the child's welfare and must be initiated where there are concerns about maltreatment. This includes all forms of abuse, neglect and exploitation.

What will the local authority do?

62. Within one working day of a referral being made, a local authority social worker should acknowledge its receipt to the referrer and make a decision about the next steps and the type of response that is required. This will include determining whether:

- the child requires immediate protection and urgent action is required
- any services are required by the child and family and what type of services
- the child is in need and should be assessed under section 17 of the Children Act 1989. Working Together to Safeguard Children provides details of the assessment process
- there is reasonable cause to suspect the child is suffering or likely to suffer significant harm, and whether enquiries must be made, and the child assessed under section 47 of the Children Act 1989. Working Together to Safeguard Children provides details of the assessment process, and
- further specialist assessments are required to help the local authority to decide what further action to take.

63. The referrer should follow up if this information is not forthcoming.

64. If social workers decide to carry out a statutory assessment, staff should do everything they can to support that assessment (supported by the designated safeguarding lead (or a deputy) as required).

65. If, after a referral, the child's situation does not appear to be improving, the referrer should consider following local escalation procedures to ensure their concerns have been addressed and, most importantly, that the child's situation improves.

Record keeping

66. All concerns, discussions and decisions made, and the reasons for those decisions, should be recorded in writing. This will also help if/when responding to any complaints about the way a case has been handled by the school or college. Information should be kept confidential and stored securely. It is good practice to keep concerns and referrals in a separate child protection file for each child.

Records **should** include:

- a clear and comprehensive summary of the concern
- details of how the concern was followed up and resolved, and
- a note of any action taken, decisions reached and the outcome.

67. If in doubt about recording requirements, staff should discuss with the designated safeguarding lead (or a deputy).

Why is all of this important?

68. It is important for children to receive the right help at the right time to address safeguarding risks, prevent issues escalating and to promote children's welfare. Research and local child safeguarding practice reviews have repeatedly shown the dangers of failing to take effective action.[18] Further information about local child safeguarding practice can be found in Working Together to Safeguard Children. Examples of poor practice include:

- failing to act on and refer the early signs of abuse and neglect
- poor record keeping
- failing to listen to the views of the child

[18]An analysis of serious case reviews can be found at gov.uk/government/publications/serious-case-reviews-analysis-lessons-and-challenges

- failing to re-assess concerns when situations do not improve
- not sharing information with the right people within and between agencies
- sharing information too slowly, and
- a lack of challenge to those who appear not to be taking action.

What school and college staff should do if they have a safeguarding concern or an allegation about another staff member

69. Schools and colleges should have processes and procedures in place to manage any safeguarding concern or allegation (no matter how small) about staff members (including supply staff, volunteers, and contractors).

70. If staff have a safeguarding concern or an allegation of harming or posing a risk of harm to children is made about another member of staff (including supply staff, volunteers, and contractors), then:

- this should be referred to the headteacher or principal
- where there is a concern/allegation about the headteacher or principal, this should be referred to the chair of governors, chair of the management committee or proprietor of an independent school, and
- in the event of a concern/allegation about the headteacher, where the headteacher is also the sole proprietor of an independent school, or a situation where there is a conflict of interest in reporting the matter to the headteacher, this should be reported directly to the local authority designated officer(s) LADO(s). Details of your local LADO should be easily accessible on your local authority's website.

71. If staff have a safeguarding concern or an allegation about another member of staff (including supply staff, volunteers or contractors) that does not meet the harm threshold, then this should be shared in accordance with the school or college low-level concerns policy. Further details can be found in Part four of this guidance.

What school or college staff should do if they have concerns about safeguarding practices within the school or college

72. All staff and volunteers should feel able to raise concerns about poor or unsafe practice and potential failures in the school or college's safeguarding provision and know that such concerns will be taken seriously by the senior leadership team.

73. Appropriate whistleblowing procedures should be put in place for such concerns to be raised with the school or college's senior leadership team.

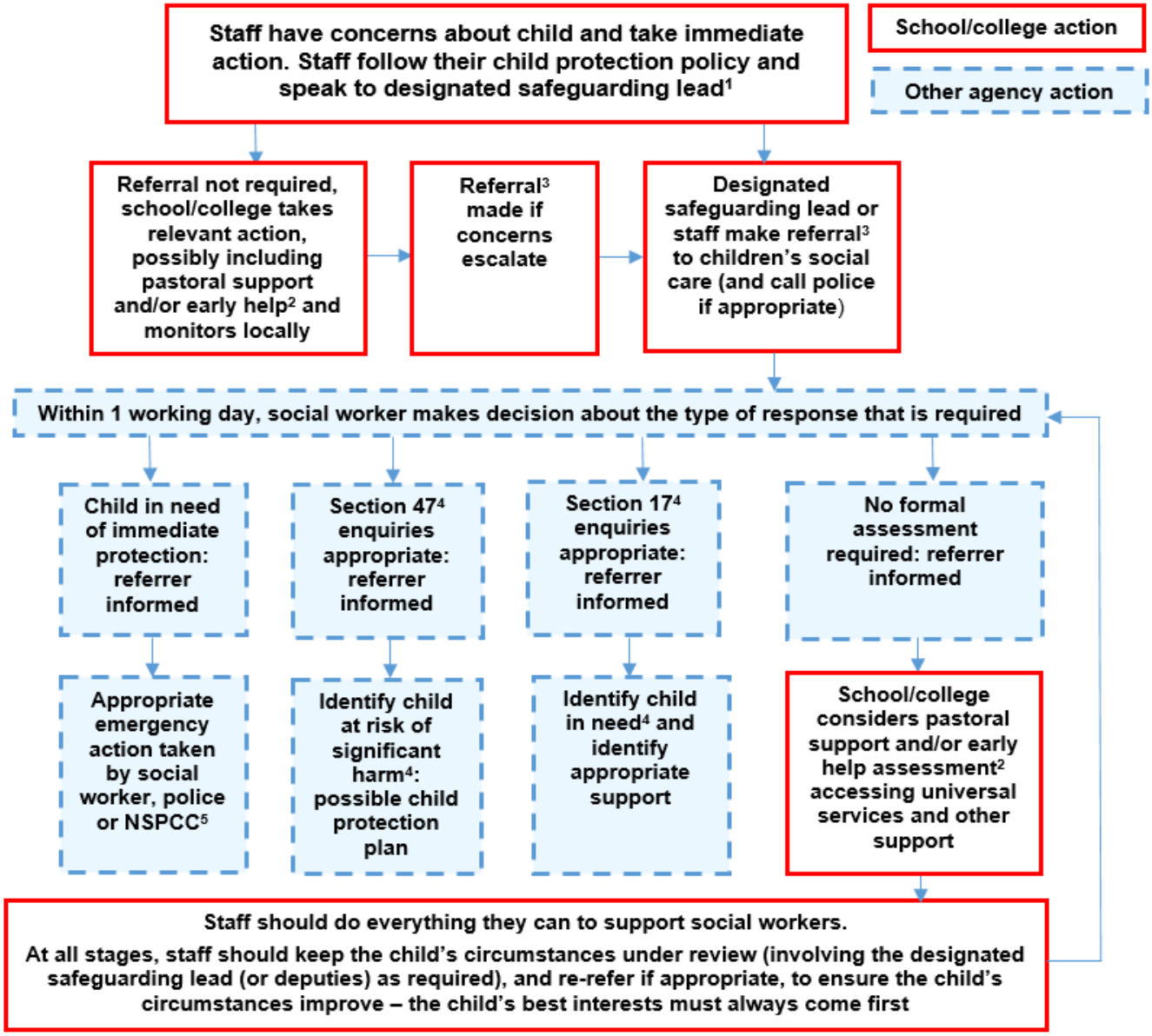
74. Where a staff member feels unable to raise an issue with their employer, or feels that their genuine concerns are not being addressed, other whistleblowing channels are open to them:

- general advice on whistleblowing can be found at whistleblowing for employees
- the NSPCC Whistleblowing Advice Line is available as an alternative route for staff who do not feel able to raise concerns regarding child protection failures internally, or have concerns about the way a concern is being handled by their school or college. Staff can call 0800 028 0285 – and the line is available from 08:00 to 20:00 Monday to Friday, and 09:00 to 18:00 at weekends. The email address is help@nspcc.org.uk[19]

[19] Alternatively, staff can write to: National Society for the Prevention of Cruelty to Children (NSPCC), Weston House, 42 Curtain, Road, London EC2A 3NH.

A flowchart setting out the actions taken where there are concerns about a child

Figure 1



[1] In cases which also involve a concern or an allegation of abuse against a staff member, see Part four of this guidance.

[2] Early help means providing support as soon as a problem emerges at any point in a child's life. Where a child would benefit from co-ordinated early help, an early help inter-agency assessment should be arranged. Working Together to Safeguard Children provides detailed guidance on the early help process.

[3] Referrals should follow the process set out in the local threshold document and local protocol for assessment. See Working Together to Safeguard Children.

[4] Under the Children Act 1989, local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their welfare. Children in need may be assessed under section 17 of the Children Act 1989. Under section 47 of the Children Act 1989, where a local authority has reasonable cause to suspect that a child is suffering or likely to suffer significant harm, it has a duty to make enquiries to decide whether to take action to safeguard or promote the child's welfare. Full details are in Working Together to Safeguard Children.

[5] This could include applying for an Emergency Protection Order (EPO).

Part two: The management of safeguarding

75. This part of the guidance sets out the responsibility of governing bodies, proprietors and management committees.

Legislation and the law

76. Governing bodies and proprietors[20] have a strategic leadership responsibility for their school or college's safeguarding arrangements and must ensure that they comply with their duties under legislation. They must have regard to this guidance, ensuring policies, procedures and training in their schools or colleges are effective and comply with the law at all times.[21] Headteachers and principals should ensure that the policies and procedures, adopted by their governing bodies and proprietors (particularly those concerning referrals of cases of suspected abuse and neglect), are understood, and followed by all staff.

77. Where a school or college has charitable status, Charity Commission guidance on charity and trustee duties to safeguard children is available at GOV.UK.

78. Governing bodies and proprietors should have a senior board level (or equivalent) lead to take leadership responsibility for their school or college's safeguarding arrangements[22].

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[20] In the case of academies, free schools and alternative provision academies the proprietor will be the academy trust.

[21] Section 175 of the Education Act 2002 requires governing bodies of maintained schools and colleges, in relation to their functions relating to the conduct of the school or the institution to make arrangements for ensuring that such functions are exercised with a view to safeguarding and promoting the welfare of children who are either pupils at the school or are receiving education or training at the institution. The Education (Independent School Standards) Regulations 2014 apply a duty to proprietors of independent schools (which in the case of academies and free schools is the academy trust) to ensure that arrangements are made to safeguard and promote the welfare of children. The Non-Maintained Special Schools (England) Regulations 2015 oblige non-maintained special schools to comply with certain requirements as a condition of their approval and whilst approved by the Secretary of State. One condition of approval is that the proprietor must make arrangements for safeguarding and promoting the health, safety and welfare of pupils, which have regard to any guidance including where appropriate, the National Minimum Standards, about safeguarding and promoting the health, safety and welfare of pupils and, in the case of schools already approved, that these arrangements at the school with respect to these matters are in accordance with the approval given by the Secretary of State. The Apprenticeships, Skills, Children and Learning Act 2009 (as amended) requires 16-19 Academies, Special Post-16 institutions and Independent Training Providers to make arrangements to ensure that the proprietor's functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution. For colleges, non-maintained special schools and independent schools: the definition of 'children' applies to the statutory responsibilities for safeguarding and promoting the welfare of children i.e. those under 18.

[22] Working Together to Safeguard Children.

79. Governing bodies and proprietors should ensure that all governors and trustees receive appropriate safeguarding and child protection (including online) training at induction. This training should equip them with the knowledge to provide strategic challenge to test and assure themselves that the safeguarding policies and procedures in place in schools and colleges are effective and support the delivery of a robust whole school approach to safeguarding. Their training should be updated regularly.

80. Governing bodies and proprietors should be aware of their obligations under the Human Rights Act 1998[23], the Equality Act 2010[24], (including the Public Sector Equality Duty[25]), and their local multi-agency safeguarding arrangements.[26]

Human Rights Act 1998

81. The Human Rights Act 1998 (HRA) sets out the fundamental rights and freedoms that everyone in the UK is entitled to and contains the Articles and protocols of the European Convention on Human Rights (ECHR) (the Convention) that are deemed to apply in the UK. It compels public organisations to respect and protect an individual's human rights when they make individual decisions about them.

82. Under the HRA, it is unlawful for schools and colleges to act in a way that is incompatible with the Convention. The specific Convention rights applying to schools and colleges are:

- Article 3: the right to freedom from inhuman and degrading treatment (an absolute right)
- Article 8: the right to respect for private and family life (a qualified right) includes a duty to protect individuals' physical and psychological integrity
- Article 14: all of the rights and freedoms set out in the Act must be protected and applied without discrimination.[27] and
- Protocol 1, Article 2: protects the right to education.

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[23] Human Rights Act 1998 (legislation.gov.uk)
[24] Equality Act 2010 Advice for schools
[25] The Public Sector Equality Duty is a legal requirement for schools and colleges that are public bodies. Public Sector Equality Duty (advice for schools)
[26] See paragraphs 106-113 on multi-agency working
[27] As a matter of law, Article 14 only applies where the act complained of falls within the ambit of another Convention right, but in this context, it should always be assumed that either through Article 8 or Article 2 of Protocol 1, or both, Article 14 will be engaged.

83. Being subjected to harassment, violence and or abuse, including that of a sexual nature, may breach any or all of these rights, depending on the nature of the conduct and the circumstances. Further information (including on absolute and qualified rights) can be found at Equality and Human Rights Commission (equalityhumanrights.com).

Equality Act 2010

84. Schools and colleges have obligations under the Equality Act 2010 (the Equality Act).

85. According to the Equality Act schools and colleges must not unlawfully discriminate against pupils, students or staff because of their sex, race, disability, religion or belief, gender reassignment, pregnancy and maternity, or sexual orientation (protected characteristics).

86. Whilst all of the above protections are important in the context of safeguarding, this guidance and the legal duties placed on schools and colleges, in relation to safeguarding and promoting the welfare of children, governing bodies and proprietors should carefully consider how they are supporting their pupils and students with regard to particular protected characteristics - including disability, sex, sexual orientation, gender reassignment and race.

87. Provisions within the Equality Act allow schools and colleges to take positive action, where it can be shown that it is proportionate, to deal with particular disadvantages affecting pupils or students with certain protected characteristics in order to meet their specific need. A school or college, could, for example, consider taking positive action to support girls if there was evidence that they were being disproportionately subjected to sexual violence or sexual harassment. There is also a duty to make reasonable adjustments for disabled children and young people.

88. Guidance to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act can be found at Equality Act 2010: advice for schools.GOV.UK it may also be useful for colleges. For further information see Guidance | EHRC (equalityhumanrights.com)

Public Sector Equality Duty

89. The Public Sector Equality Duty (PSED) is found in the Equality Act. Compliance with the PSED is a legal requirement for state-funded schools and colleges, advice on this – including on specific duties, is set out in the advice linked in paragraph 88.

90. The PSED places a general duty on schools and colleges to have, in the exercise of their functions, due regard to the need to eliminate unlawful discrimination, harassment and victimisation (and any other conduct prohibited under the Equality Act), to advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who do not. The duty applies to all protected characteristics (see paragraph 85) and means that whenever significant decisions are being made or policies developed, specific consideration must be given to the equality implications of these such as, for example, the need to eliminate unlawful behaviours that relate to them, such as sexual violence and sexual harassment, misogyny/misandry and racism. This is one reason why good record-keeping and monitoring of all forms of abuse and harassment is essential.

91. The PSED helps those schools and colleges subject to it to focus on key issues of concern and how to improve pupil and student outcomes. Some pupils or students may be more at risk of harm from specific issues such as sexual violence, homophobic, biphobic or transphobic bullying or racial discrimination. Such concerns will differ between education settings, but it is important schools and colleges are conscious of disproportionate vulnerabilities and integrate this into their safeguarding policies and procedures. For further information please see Technical Guidance on the Public Sector Equality Duty: England | Equality and Human Rights Commission (equalityhumanrights.com).

Data Protection Act 2018 and the UK GDPR

92. It is important that governing bodies and proprietors are aware that among other obligations, the Data Protection Act 2018, and the UK General Data Protection Regulation (UK GDPR) place duties on organisations and individuals to process personal information fairly and lawfully and to keep the information they hold safe and secure. See ICO guidance 'For Organisations' which includes information about your obligations and how to comply, including protecting personal information, and providing access to official information.

93. In addition, see the DfE Data Protection guidance for schools, which will help school staff, governors and trustees understand how to comply with data protection law, develop their data policies and processes, know what staff and pupil data to keep and follow good practices for preventing personal data breaches.

Whole school and college approach to safeguarding

94. Governing bodies and proprietors should ensure they facilitate a whole school or college approach to safeguarding. This means involving everyone in the

school or college, and ensuring that safeguarding, and child protection are at the forefront and underpin all relevant aspects of process and policy development. Ultimately, all systems, processes and policies should operate with the best interests of the child at their heart.

95. Where there is a safeguarding concern, governing bodies, proprietors and school or college leaders should ensure the child's wishes and feelings are taken into account when determining what action to take and what services to provide.

96. The school or college's safeguarding policies and procedures (some of which are listed below) should be transparent, clear, and easy to understand for staff, pupils, students, parents, and carers. Systems should be in place, and they should be well promoted, easily understood and easily accessible for children to confidently report, any form of abuse or neglect, knowing their concerns will be treated seriously, and knowing they can safely express their views and give feedback.

Safeguarding policies and procedures

97. Governing bodies and proprietors should ensure there are appropriate policies and procedures in place in order for appropriate action to be taken in a timely manner to safeguard and promote children's welfare.

98. These policies should include individual schools and colleges having:

- an **effective child protection policy** which:
    - reflects the whole school/college approach to child-on-child abuse (see paragraph 156 and Part five)
    - reflects reporting systems as set out at paragraph 96
    - describes procedures which are in accordance with government guidance
    - refers to locally agreed multi-agency safeguarding arrangements put in place by the safeguarding partners (see paragraphs 106-113)
    - includes policies as reflected elsewhere in Part two of this guidance, such as online safety (see paragraph 134), and special educational needs and disabilities (SEND) (see paragraphs 201-203)
    - is reviewed annually (as a minimum) and updated if needed, so that it is kept up to date with safeguarding issues as they emerge and evolve, including lessons learnt; and
    - is available publicly either via the school or college website or by other means.

- a **behaviour policy**[28], which includes measures to prevent bullying (including cyberbullying, prejudice-based and discriminatory bullying).
- a **staff behaviour policy** (sometimes called the code of conduct) which should, amongst other things, include low-level concerns, allegations against staff and whistleblowing, plus acceptable use of technologies (including the use of mobile devices), staff/pupil relationships and communications including the use of social media.[29]
- **appropriate safeguarding arrangements** in place to respond to children who are absent from education, particularly on repeat occasions and/or for prolonged periods. (More information is provided at paragraph 177).

99. The above is not intended to be an exhaustive list. These policies and procedures, along with Part one (or Annex A if appropriate) of this guidance and information regarding the role and identity of the designated safeguarding lead (and deputies), should be provided to all staff on induction.

100. Governing bodies and proprietors should take a proportionate risk-based approach to the level of information that is provided to temporary staff, volunteers and contractors.

101. In addition, governing bodies and proprietors should ensure:

- **child protection files** are maintained as set out in Annex C
- **appropriate safer recruitment policies** in accordance with Part three of this guidance are in place, embedded and effective and,
- where reasonably possible, schools and colleges hold **more than one emergency contact number** for each pupil or student. This goes beyond the legal minimum.[30] It is good practice to give the school or college additional options to make contact with a responsible adult when a child missing education is also identified as a welfare and/or safeguarding concern. Further information for schools can be found in the department's statutory guidance '[Working together to improve school attendance]'.

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[28] All schools are required to have a behaviour policy (full details are here). If a college chooses to have a behaviour policy, it should be provided to staff at induction as described above.
[29] When drafting the staff behaviour policy, schools and colleges should bear in mind the offence under section 16 of The Sexual Offences Act 2003, which provides that it is an offence for a person aged 18 or over (e.g. teacher, youth worker) to have a sexual relationship with a child under 18 where that person is in a position of trust in respect of that child, even if the relationship is consensual. A situation where a person is in a position of trust could arise where the child is in full-time education and the person looks after children under 18 in the same establishment as the child, even if they do not teach the child.
[30] See The Education (Pupil Registration) (England) Regulations 2006, available at legislation.gov.uk.

The designated safeguarding lead

102. Governing bodies and proprietors should ensure an appropriate senior member of staff, from the school or college leadership team, is appointed to the role of designated safeguarding lead.[31] It is not appropriate for the proprietor to be the designated safeguarding lead. The designated safeguarding lead should take lead responsibility for safeguarding and child protection (including online safety and understanding the filtering and monitoring systems and processes in place). This should be explicit in the role holder's job description.

103. Governing bodies and proprietors should ensure the designated safeguarding lead has the appropriate status and authority within the school or college to carry out the duties of the post. The role carries a significant level of responsibility and the postholder should be given the additional time, funding, training, resources, and support needed to carry out the role effectively.

104. It is for individual schools and colleges to decide whether they choose to have one or more deputy designated safeguarding leads. Any deputy (or deputies) should be trained to the same standard as the designated safeguarding lead.

105. See Annex C, which describes the broad areas of responsibility and activities related to the role.

Multi-agency working

106. Schools and colleges have a pivotal role to play in multi-agency safeguarding arrangements. Governing bodies and proprietors should ensure that the school or college contributes to multi-agency working in line with statutory guidance Working Together to Safeguard Children.

107. Safeguarding partners (the local authority; Integrated Care Boards (previously known as clinical commissioning group) for an area within the local authority; and the chief officer of police for an area any part of which falls within the local authority area) will make arrangements to work together with appropriate

[31] When a school has a sole proprietor rather than a governing body, appropriate steps should be taken to ensure that the member of the senior leadership team who is appointed as designated safeguarding lead (DSL) is able to discharge that role with sufficient independence, particularly in relation to any allegations involving the proprietor or members of the proprietor's family. This may involve including in the appointment as DSL, written confirmation that part of the duties of the post involve contacting the Local Authority Designated Officer (LADO) on any matter that the DSL considers cannot be properly dealt with internally. Consideration could also be given to providing the DSL with access to external advice from an appropriate company or legal service.

relevant agencies to safeguard and promote the welfare of local children, including identifying and responding to their needs.

108. Safeguarding partners have a shared and equal duty to work together to safeguard and promote the welfare of children. To fulfil this role, they must set out how they will work together and with any relevant agencies.[32] Relevant agencies are those organisations and agencies whose involvement the safeguarding partners consider may be required to safeguard and promote the welfare of children with regard to local need.

109. Working Together to Safeguard Children is very clear that all schools (including those in multi-academy trusts) and colleges in the local area should be fully engaged, involved, and included in safeguarding arrangements. It is expected that, locally, the safeguarding partners will name schools and colleges as relevant agencies. Safeguarding partners will set out in their published arrangements which organisations and agencies they will be working with, and the expectations placed on any agencies and organisations by the arrangements. Once named as a relevant agency, schools and colleges, in the same way as other relevant agencies, are under a statutory duty to co-operate with the published arrangements. They must act in accordance with the safeguarding arrangements.

110. It is especially important that schools and colleges understand their role within the local safeguarding arrangements. Governing bodies, proprietors, and their senior leadership teams, especially their designated safeguarding leads, should make themselves aware of and follow their local arrangements.

111. Governing bodies and proprietors should understand the local criteria for action[33] and the local protocol for assessment[34] and ensure they are reflected in their own policies and procedures. They should also be prepared to supply information as requested by the safeguarding partners.[35]

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[32] For the list of relevant agencies see The Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018 available at legislation.gov.uk. Schools and colleges are included.

[33] The safeguarding partners should publish a document which sets out the local criteria for action in a way that is transparent, accessible and easily understood. This should include: the process for the early help assessment and the type and level of early help services to be provided; the criteria, included level of need, for when a case should be referred to local authority children's social care for assessment and for statutory services under section 17, 20, 31 and 47 of the Children Act 1989; and clear procedures and processes for cases relating to the exploitation of children, children managed within the youth secure estate and disabled children.

[34] The local authority, with their partners should develop and publish local protocols for assessment. Protocols should set out clear arrangements for how cases will be managed once a referral is made to local authority children's social care.

[35] More details on information requests by the safeguarding partners is provided in Working Together to Safeguard Children.

112. Schools and colleges should work with local authority children's social care, the police, health services and other services to promote the welfare of children and protect them from harm. This includes providing a coordinated offer of early help when additional needs of children are identified and contributing to inter-agency plans to provide additional support to children subject to child protection plans.

113. All schools and colleges should allow access for local authority children's social care from the host local authority and, where appropriate, from a placing local authority, for that authority to conduct, or to consider whether to conduct, a section 17 or a section 47 assessment.

Information sharing

114. Information sharing is vital in identifying and tackling all forms of abuse, neglect, and exploitation, and in promoting children's welfare, including in relation to their educational outcomes. Schools and colleges have clear powers to share, hold and use information for these purposes.

115. As part of meeting a child's needs, it is important for governing bodies and proprietors to recognise the importance of information sharing between practitioners and local agencies. This should include ensuring arrangements are in place that set out clearly the processes and principles for sharing information within the school or college and with local authority children's social care, the safeguarding partners and other organisations, agencies, and practitioners as required.

116. School and college staff should be proactive in sharing information as early as possible to help identify, assess and respond to risks or concerns about the safety and welfare of children, whether this is when problems are first emerging, or where a child is already known to local authority children's social care.

117. It is important that governing bodies and proprietors are aware that among other obligations, the Data Protection Act 2018, and the UK General Data Protection Regulation (UK GDPR) place duties on organisations and individuals to process personal information fairly and lawfully and to keep the information they hold safe and secure.

118. Governing bodies and proprietors should ensure relevant staff have due regard to the relevant data protection principles, which allow them to share (and withhold) personal information, as provided for in the Data Protection Act 2018 and the UK GDPR.

This includes:

- being confident of the processing conditions which allow them to store and share information for safeguarding purposes, including information, which is sensitive and personal, and should be treated as 'special category personal data'
- understanding that 'safeguarding of children and individuals at risk' is a processing condition that allows practitioners to share special category personal data. This includes allowing practitioners to share information without consent where there is good reason to do so, and that the sharing of information will enhance the safeguarding of a child in a timely manner. It would be legitimate to share information without consent where: it is not possible to gain consent; it cannot be reasonably expected that a practitioner gains consent; and, if to gain consent would place a child at risk, and
- for schools, not providing pupils' personal data where the serious harm test under the legislation is met.[36] For example, in a situation where a child is in a refuge or another form of emergency accommodation, and the serious harm test is met, they must withhold providing the data in compliance with schools' obligations under the Data Protection Act 2018 and the UK GDPR. Where in doubt schools should seek independent legal advice.

119. **The Data Protection Act 2018 and UK GDPR do not prevent the sharing of information for the purposes of keeping children safe. Fears about sharing information must not be allowed to stand in the way of the need to safeguard and promote the welfare and protect the safety of children.**

120. Further details on information sharing can be found:

- in Working Together to Safeguard Children, which includes a myth-busting guide to information sharing
- at Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers. The seven golden rules for sharing information will be especially useful
- at The Information Commissioner's Office (ICO), which includes information about your obligations and how to comply, including protecting personal information, and providing access to official information
- in Data protection: toolkit for schools - Guidance to support schools with data protection activity, including compliance with the UK GDPR.

[36] The harm test is explained on the Disclosure and Barring service website on GOV.UK. Section 31(9) of the Children Act 1989 as amended by the Adoption and Children Act 2002, available at legislation.gov.uk

121. Where children leave the school or college, the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, and within 5 days for an in-year transfer or within the first 5 days of the start of a new term to allow the new school or college to have support in place for when the child arrives. The designated safeguarding lead should ensure secure transit, and confirmation of receipt should be obtained. For schools, this should be transferred separately from the main pupil file. Receiving schools and colleges should ensure key staff such as designated safeguarding leads and special educational needs co-ordinators (SENCOs) or the named persons with oversight for special educational needs and disabilities (SEND) in a college, are aware as required.

122. In addition to the child protection file, the designated safeguarding lead should also consider if it would be appropriate to share any information with the new school or college in advance of a child leaving. For example, information that would allow the new school or college to continue supporting children who have had a social worker and been victims of abuse, or those who are currently receiving support through the 'Channel' programme and can have that support in place for when the child arrives. More information on the child protection file is in Annex C.

Staff training

123. Governing bodies and proprietors should ensure that all staff undergo safeguarding and child protection training (including online safety which, amongst other things, includes an understanding of the expectations, applicable roles and responsibilities in relation to filtering and monitoring – see para 140 for further information) at induction. The training should be regularly updated. Induction and training should be in line with any advice from local safeguarding partners.

124. In addition, all staff should receive regular safeguarding and child protection updates, including online safety (for example, via email, e-bulletins, staff meetings) as required, and at least annually, to continue to provide them with relevant skills and knowledge to safeguard children effectively.

125. Governing bodies and proprietors should recognise the expertise staff build by undertaking safeguarding training and from managing safeguarding concerns on a daily basis. Opportunity should therefore be provided for staff to contribute to and shape safeguarding arrangements and the child protection policy.

126. Governing bodies and proprietors should ensure that, as part of the requirement for staff to undergo regular updated safeguarding training, including in relation to online safety (paragraph 134) and for children to be taught about safeguarding, including in relation to online safety (paragraph 128), that

safeguarding training for staff, including online safety training, is integrated, aligned and considered as part of the whole school or college safeguarding approach and wider staff training and curriculum planning.

127. Whilst considering the above training requirements, governing bodies and proprietors should have regard to the Teachers' Standards[37] which set out the expectation that all teachers manage behaviour effectively to ensure a good and safe educational environment and requires teachers to have a clear understanding of the needs of all pupils.

Opportunities to teach safeguarding

128. Governing bodies and proprietors should ensure that children are taught about how to keep themselves and others safe, including online. It should be recognised that effective education will be tailored to the specific needs and vulnerabilities of individual children, including children who are victims of abuse, and children with special educational needs and/or disabilities (SEND).

129. In schools, relevant topics will be included within Relationships Education (for all primary pupils), and Relationships and Sex Education (for all secondary pupils) and Health Education (for all primary and secondary pupils). In teaching these subjects schools must have regard to the statutory guidance,[38] which can be found here (revised for introduction September 2026). Colleges may cover relevant issues through tutorials.

130. Schools and colleges play a crucial role in preventative education. Preventative education is most effective in the context of a whole-school or college approach that prepares pupils and students for life in modern Britain and creates a culture of zero tolerance for sexism, misogyny/misandry, homophobia, biphobic and sexual violence/harassment. The school/college will have a clear set of values and standards, upheld and demonstrated throughout all aspects of school/college life. These will be underpinned by the school/college's behaviour policy and pastoral support system, as well as by a planned programme of evidence based RSHE delivered in regularly timetabled lessons and reinforced throughout the whole curriculum. Such a programme should be fully inclusive and developed to be age and stage of development appropriate (especially when considering the needs of

[37] Teachers' Standards.
[38] With the exception that the regulations and guidance in relation to Health Education do not apply to independent schools that are not academies – separate regulations apply).

children with SEND and disabilities and other vulnerabilities). This programme will tackle, at an age-appropriate stage, issues such as:

- supporting children to develop the skills that form the building blocks of all positive relationships
- healthy and respectful relationships
- boundaries, consent and kindness in relationships
- stereotyping, prejudice and equality
- body confidence and self-esteem
- how to recognise and report concerns about an abusive relationship, including coercive and controlling behaviour
- the concepts of, and laws relating to – all forms of sexual harassment, and abuse, and how to access support, and
- what constitutes sexual harassment and sexual violence and why these are always unacceptable, emphasising that it is never the fault of the person experiencing it

131. The department has produced a one-stop hub for teachers which can be accessed here: Teaching about relationships, sex and health – GOV.UK. This includes teacher training modules on the RSHE topics and non-statutory implementation guidance.

132. The following resources may also help schools and colleges understand and teach about safeguarding:

- DfE advice for schools: teaching online safety in schools
- UK Council for Internet Safety (UKCIS).[39] guidance: Education for a connected world
- UKCIS guidance: Sharing nudes and semi-nudes: advice for education settings working with children and young people
- The UKCIS external visitors guidance will help schools and colleges to ensure the maximum impact of any online safety sessions delivered by external visitors
- National Crime Agency's CEOP Education Programme: Protecting children and young people from online child sexual abuse through education

[39] UK Council for Internet Safety Education subgroup is made up of sector experts who collaborate to produce advice and guidance to support schools and colleges keep their children safe online.

- Public Health England[40]: Every Mind Matters
- Harmful online challenges and online hoaxes - this includes advice on preparing for any online challenges and hoaxes, sharing information with parents and carers and where to get help and support.

133. Whilst it is essential that governing bodies and proprietors ensure that appropriate filtering and monitoring systems are in place, they should be careful that "over blocking" does not lead to unreasonable restrictions as to what children can be taught with regard to online teaching and safeguarding.

Online safety

134. It is essential that children are safeguarded from potentially harmful and inappropriate online material. An effective whole school and college approach to online safety empowers a school or college to protect and educate pupils, students, and staff in their use of technology and establishes mechanisms to identify, intervene in, and escalate any concerns where appropriate.

135. The breadth of issues classified within online safety is considerable and ever evolving, but can be categorised into four areas of risk:

content: being exposed to illegal, inappropriate, or harmful content, for example: pornography, racism, misogyny, self-harm, suicide, antisemitism, radicalisation, extremism, misinformation, disinformation (including fake news) and conspiracy theories.

contact: being subjected to harmful online interaction with other users; for example: peer to peer pressure, commercial advertising and adults posing as children or young adults with the intention to groom or exploit them for sexual, criminal, financial or other purposes.

conduct: online behaviour that increases the likelihood of, or causes, harm; for example, making, sending and receiving explicit images (e.g. consensual and non-consensual sharing of nudes and semi-nudes and/or pornography, sharing other explicit images and online bullying, and

commerce: risks such as online gambling, inappropriate advertising, phishing and or financial scams. If you feel your pupils, students or staff are

[40]Public Health England: has now been replaced by the UK Health Security Agency and the Office for Health Improvement and Disparities (OHID), which is part of the Department of Health and Social Care, and by the UK Health Security Agency, however branding remains unchanged.

at risk, please report it to the Anti-Phishing Working Group (https://apwg.org/).

136. Governing bodies and proprietors should ensure online safety is a running and interrelated theme whilst devising and implementing their whole school or college approach to safeguarding and related policies and procedures. This will include considering how online safety is reflected as required in all relevant policies and considering online safety whilst planning the curriculum, any teacher training, the role and responsibilities of the designated safeguarding lead (and deputies) and any parental engagement.

Online safety policy

137. Online safety and the school or college's approach to it should be reflected in the child protection policy which, amongst other things, should include appropriate filtering and monitoring on school devices and school networks. Considering the 4Cs (above) will provide the basis of an effective online policy. The school or college should have a clear policy on the use of mobile and smart technology, which will also reflect the fact many children have unlimited and unrestricted access to the internet via mobile phone networks (i.e. 3G, 4G and 5G). This access means some children, whilst at school or college, sexually harass, bully, and control others via their mobile and smart technology, share indecent images consensually and non-consensually (often via large chat groups) and view and share pornography and other harmful content. Schools and colleges should carefully consider how this is managed on their premises and reflect this in their mobile and smart technology policy and their child protection policy.

Remote education

138. Guidance to support schools and colleges understand how to help keep pupils, students and staff safe whilst learning remotely can be found at Safeguarding and remote education - GOV.UK (www.gov.uk) and Providing remote education: guidance for schools - GOV.UK (www.gov.uk).

139. Schools and colleges are likely to be in regular contact with parents and carers. Those communications should be used to reinforce the importance of children being safe online and parents and carers are likely to find it helpful to understand what systems schools and colleges use to filter and monitor online use. It will be especially important for parents and carers to be aware of what their children are being asked to do online, including the sites they will be asked to access and be clear who from the school or college (if anyone) their child is going to be interacting with online.

Filtering and monitoring

140. Whilst considering their responsibility to safeguard and promote the welfare of children and provide them with a safe environment in which to learn, governing bodies and proprietors should be doing all that they reasonably can to limit children's exposure to the above risks from the school or college's IT system. As part of this process, governing bodies and proprietors should ensure their school or college has appropriate filtering and monitoring systems in place and regularly review their effectiveness. They should ensure that the leadership team and relevant staff have an awareness and understanding of the provisions in place and manage them effectively and know how to escalate concerns when identified. Governing bodies and proprietors should consider the number of and age range of their children, those who are potentially at greater risk of harm and how often they access the IT system along with the proportionality of costs versus safeguarding risks.

141. The appropriateness of any filtering and monitoring systems are a matter for individual schools and colleges and will be informed in part, by the risk assessment required by the Prevent Duty.[41]

142. The Department for Education's filtering and monitoring standards set out that schools and colleges should:

- identify and assign roles and responsibilities to manage filtering and monitoring systems.
- review filtering and monitoring provision at least annually.
- block harmful and inappropriate content without unreasonably impacting teaching and learning.
- have effective monitoring strategies in place that meet their safeguarding needs.
- schools can use the department's 'plan technology for your school service' to self-assess against the filtering and monitoring standards and receive personalised recommendations on how to meet them.

143. Governing bodies and proprietors should review the standards and discuss with IT staff and service providers what more needs to be done to support schools and colleges in meeting this standard. Additional guidance on "appropriate" filtering and monitoring can be found at:

[41] The Prevent duty Departmental advice for schools and childcare providers and Home Office Statutory guidance: Prevent duty guidance.

- UK Safer Internet Centre: https://saferinternet.org.uk/guide-and-resource/teachers-and-school-staff/appropriate-filtering-and-monitoring. The UK Safer Internet Centre produced a series of webinars for teachers on behalf of the Department. These webinars were designed to inform and support schools with their filtering and monitoring responsibilities and can be assessed at Filtering and monitoring webinars available – UK Safer Internet Centre.
- South West Grid for Learning (swgfl.org.uk) has created a tool to check whether a school or college's filtering provider is signed up to relevant lists (CSA content, Sexual Content, Terrorist content, Your Internet Connection Blocks Child Abuse & Terrorist Content).
- Support for schools when considering what to buy and how to buy it is available via the: schools' buying strategy with specific advice on procurement here: buying for schools.
- The Department has published Generative AI: product safety expectations to support schools to use generative artificial intelligence safely, and explains how filtering and monitoring requirements apply to the use of generative AI in education.

Information security and access management

144. Education settings are directly responsible for ensuring they have the appropriate level of security protection procedures in place in order to safeguard their systems, staff and learners and review the effectiveness of these procedures periodically to keep up with evolving cyber-crime technologies. Guidance on e-security is available from the National Education Network. In addition, schools and colleges should consider taking appropriate action to meet the Cyber security standards for schools and colleges which were developed to help them improve their resilience against cyber-attacks. Broader guidance on cyber security including considerations for governors and trustees can be found at National Cyber Security Centre – NCSC.

Reviewing online safety

145. Technology, and risks and harms related to it, evolve, and change rapidly. Schools and colleges should consider carrying out an annual review of their approach to online safety, supported by an annual risk assessment that considers and reflects the risks their children face. A free online safety self-review tool for schools can be found via the 360 safe website or LGfL online safety audit.

146. UKCIS has published Online safety in schools and colleges: Questions from the governing board. The questions can be used to gain a basic understanding of

the current approach to keeping children safe online; learn how to improve this approach where appropriate; and find out about tools which can be used to improve the approach. It has also published an Online Safety Audit Tool which helps mentors of trainee teachers and newly qualified teachers induct mentees and provide ongoing support, development and monitoring.

147. When reviewing online safety provision, the UKCIS external visitors guidance highlights a range of resources which can support educational settings to develop a whole school approach towards online safety.

Further information and support

148. There is a wealth of additional information available to support schools, colleges and parents to keep children safe online. A sample is provided in Annex B.

Inspection

149. Ofsted's inspections of early years, schools and post-16 provision are carried out under: Education inspection framework (EIF) - GOV.UK (www.gov.uk). Inspectors will always report on whether or not arrangements for safeguarding children and learners are effective.

150. In addition to the framework and inspections handbooks, the Ofstednews YouTube channel provides webinars on a range of topics that may help schools and colleges.

151. The Independent Schools Inspectorate (ISI) is approved to inspect certain independent schools and will also report on safeguarding arrangements. ISI has a published framework which informs how it inspects at Independent Schools Inspectorate.

What school and college staff should do if they have a safeguarding concern or an allegation is made about another staff member

152. Governing bodies and proprietors should ensure there are procedures in place as described in paragraph 69 - 71, to manage any safeguarding concerns (no matter how small) or allegations that do not meet the harm threshold, about staff members (including supply staff, volunteers, and contractors). 'Low-level' concerns should be addressed as set out in Section two of Part four of this guidance.

153. Governing bodies and proprietors should ensure there are procedures in place, as described in paragraphs 69 - 71, for staff to report concerns or allegations that may meet the harm threshold about staff members (including supply staff,

volunteers, and contractors). These should be addressed as set out in Section one of Part four of this guidance.

154. There must be procedures in place to make a referral to the Disclosure and Barring Service (DBS) if a person in regulated activity has been dismissed or removed due to safeguarding concerns or would have been had they not resigned.[42] This is a legal duty and failure to refer when the criteria are met is a criminal offence.[43] More detail is provided at paragraph 350.

155. Where a teacher's employer, including an agency, dismisses or ceases to use the services of a teacher because of serious misconduct, or might have dismissed them or ceased to use their services had they not left first, they must consider whether to refer the case to the Secretary of State (via the Teaching Regulation Agency). Details about how to make a referral to the Teaching Regulation Agency can be found on GOV.UK.

Child-on-child abuse

156. All staff should recognise that children are capable of abusing other children (including online). All staff should be clear about their school or college's policy and procedures with regard to child-on-child abuse.

157. Governing bodies and proprietors should ensure that their child protection policy includes:

- procedures to minimise the risk of child-on-child abuse
- the systems in place (and they should be well promoted, easily understood and easily accessible) for children to confidently report abuse, knowing their concerns will be treated seriously
- how allegations of child-on-child abuse will be recorded, investigated, and dealt with
- clear processes as to how victims, perpetrators and any other children affected by child-on-child abuse will be supported
- a recognition that even if there are no reported cases of child-on-child abuse, such abuse may still be taking place and is simply not being reported
- a statement which makes clear there should be a zero-tolerance approach to abuse, and it should never be passed off as "banter", "just having a laugh",

[42] Section 35 of the Safeguarding Vulnerable Groups Act 2006.
[43] Section 38 of the Safeguarding Vulnerable Groups Act 2006.

"part of growing up" or "boys being boys" as this can lead to a culture of unacceptable behaviours and an unsafe environment for children

- recognition that it is more likely that girls will be victims and boys perpetrators, but that all child-on-child abuse is unacceptable and will be taken seriously, and
- the different forms child-on-child abuse can take, such as:
    - bullying (including cyberbullying, prejudice-based and discriminatory bullying)
    - abuse in intimate personal relationships between children (also known as teenage relationship abuse)
    - physical abuse which can include hitting, kicking, shaking, biting, hair pulling, or otherwise causing physical harm
    - sexual violence and sexual harassment. Part five of this guidance sets out how schools and colleges should respond to reports of sexual violence and sexual harassment
    - consensual and non-consensual sharing of nude and semi-nude images and/or videos.[44] (also known as sexting or youth produced sexual imagery): the policy should include the school or college's approach to it. The department provides Searching Screening and Confiscation Advice for schools. The UKCIS Education Group has published Sharing nudes and semi-nudes: advice for education settings working with children and young people which outlines how to respond to an incident of nude and/or semi-nude images and/or videos being shared
    - causing someone to engage in sexual activity without consent, such as forcing someone to strip, touch themselves sexually, or to engage in sexual activity with a third party
    - upskirting (which is a criminal offence[45]), which typically involves taking a picture under a person's clothing without their permission, with the intention of viewing their genitals or buttocks to obtain sexual gratification, or cause the victim humiliation, distress, or alarm, and
    - initiation/hazing type violence and rituals.

[44] Consensual image sharing, especially between older children of the same age, may require a different response. It might not be abusive but children still need to know it is illegal, whilst non-consensual is illegal and abusive.

[45] Voyeurism (Offences) Act 2019 (legislation.gov.uk)

Boarding schools, residential special schools, residential colleges and children's homes

158. Boarding schools, residential special schools, residential colleges and children's homes have additional factors to consider with regard to safeguarding.

159. Schools and colleges that provide such residential accommodation and/or are registered as children's homes should, amongst other things, be alert to the extra vulnerabilities of children with special educational needs and disabilities in such settings, inappropriate pupil or student relationships and the potential for child-on-child abuse, particularly in schools and colleges where there are significantly more girls than boys or vice versa. They should, generally led by the designated safeguarding lead, work closely with the host local authority and, where relevant, any local authorities that have placed their children there.

160. Boarding schools, residential special schools, residential colleges, and children's homes have additional requirements in regard to safeguarding. These relate to National Minimum Standards and regulations for the relevant setting and all schools and colleges with residential provision for children must comply with their obligations relating to them.

161. The relevant standards and guidance for each sector are on GOV.UK and the relevant links are listed below:

- The National Minimum Standards for Boarding Schools
- The National Minimum Standards for Residential Special Schools
- Further Education residential accommodation: National Minimum Standards
- Guide to the Children's Homes Regulations

162. In addition, The Visits to Children in Long-Term Residential Care Regulations 2011 apply to children living away from home in residential settings for periods of three months or more (including those placed in residential schools and colleges). An appropriate representative from the accommodating local authority **must** visit these settings to ensure the welfare of these children.

The use of 'reasonable force' in schools and colleges

163. There are circumstances when it is appropriate for staff in schools and colleges to use 'reasonable force' to safeguard children. The term 'reasonable force' covers the broad range of actions used by staff that involve a degree of physical contact to control or restrain children. This can range from guiding a child to safety by the arm, to more extreme circumstances such as breaking up a fight or

where a child needs to be restrained to prevent violence or injury. 'Reasonable' in these circumstances means 'using no more force than is needed'. The use of force may involve either passive physical contact, such as standing between pupils or blocking a pupil's path, or active physical contact such as leading a pupil by the arm out of the classroom.

164. The department believes that the adoption of a 'no contact' policy at a school or college can leave staff unable to fully support and protect their pupils and students. The department therefore encourages principals, governing bodies, and proprietors to adopt sensible policies, which allow and support their staff to make appropriate physical contact. The decision on whether or not to use 'reasonable force' to control or restrain a child is down to the professional judgement of the staff concerned within the context of the law and should always depend on individual circumstances.

165. When using 'reasonable force' in response to risks presented by incidents involving children with SEND, mental health problems or with medical conditions, schools and colleges should in considering the risks carefully recognise the additional vulnerability of these groups. They should also consider their duties under the Equality Act 2010 (see paragraphs 84-91), for example in relation to making reasonable adjustments and their Public Sector Equality Duty. By planning positive and proactive behaviour support, for instance through drawing up individual behaviour plans for more vulnerable children, and agreeing them with parents and carers, schools and colleges can reduce the occurrence of challenging behaviour and the need to use 'reasonable force'.

- Departmental advice for schools is available at Use of Reasonable Force in Schools
- HM Government guidance Reducing the need for restraint and restrictive intervention sets out how to support children and young people with learning disabilities, autistic spectrum conditions and mental health difficulties who are at risk of restrictive intervention in special education settings, however all schools and colleges may find the information helpful.

Use of school or college premises for non-school/college activities

166. Where governing bodies or proprietors hire or rent out school or college facilities/premises to organisations or individuals (for example to community groups, sports associations, and service providers to run community or extra-curricular activities) they should ensure that appropriate arrangements are in place to keep children safe.

167. When services or activities are provided by the governing body or proprietor, under the direct supervision or management of their school or college staff, their arrangements for child protection will apply. However, where services or activities are provided separately by another body this is not necessarily the case. The governing body or proprietor should therefore seek assurance that the provider concerned has appropriate safeguarding and child protection policies and procedures in place (including inspecting these as needed); and ensure that there are arrangements in place for the provider to liaise with the school or college on these matters where appropriate. This applies regardless of whether or not the children who attend any of these services or activities are children on the school roll or attend the college. The governing body or proprietor should also ensure safeguarding requirements are included in any transfer of control agreement (i.e. lease or hire agreement), as a condition of use and occupation of the premises; and that failure to comply with this would lead to termination of the agreement. The guidance on Keeping children safe in out-of-schools settings details the safeguarding arrangements that schools and colleges should expect these providers to have in place.

Alternative Provision

168. Where a school places a pupil with an alternative provision provider, it continues to be responsible for the safeguarding of that pupil and should therefore be satisfied that the placement meets the pupils needs.

169. The cohort of pupils in Alternative Provision often have complex needs, it is important that governing bodies and proprietors of these settings are aware of the additional risk of harm that their pupils may be vulnerable to. Schools should obtain written information from the alternative provider that appropriate safeguarding checks have been carried out on individuals working at their establishment (i.e. those checks that schools would otherwise perform on their own staff). This includes written confirmation that the alternative provider will inform the commissioning school of any arrangements that may put the child at risk (i.e. staff changes), so that the commissioning school can ensure itself that appropriate safeguarding checks have been carried out on new staff.

170. Schools should always know where a child is based during school hours. This includes having records of the address of the alternative provider and any subcontracted provision or satellite sites the child may attend. They should regularly review the alternative provision placements they make. Reviews should be frequent enough (at least half termly) to provide assurance that the child is regularly attending and the placement continues to be safe and meets the child's

needs. Where safeguarding concerns arise, the placement should be immediately reviewed, and terminated, if necessary, unless or until those concerns have been satisfactorily addressed.

171. The department has issued two pieces of statutory guidance to which commissioners of Alternative Provision should have regard:

- Alternative Provision DFE statutory guidance and
- Education for children with health needs who cannot attend school - GOV.UK (www.gov.uk) – DFE statutory guidance.

Children potentially at greater risk of harm

172. Whilst all children should be protected, it is important that governing bodies and proprietors recognise (and reflect in their policies and procedures) that some groups of children, are potentially at greater risk of harm than others (both online and offline). The list below, is not exhaustive, but highlights some of those groups.

Children who need a social worker (Child in Need and Child Protection Plans)

173. Children may need a social worker due to safeguarding or welfare needs. Children may need this help due to abuse and/or neglect and/or exploitation and/or complex family circumstances. A child's experiences of adversity and trauma can leave them vulnerable to further harm, as well as educationally disadvantaged in facing barriers to attendance, learning, behaviour, and mental health.

174. Local authorities should share the fact a child has a social worker, and the designated safeguarding lead should hold and use this information so that decisions can be made in the best interests of the child's safety, welfare and educational outcomes. This should be considered as a matter of routine. There are clear powers to share this information under existing duties on both local authorities and schools and colleges to safeguard and promote the welfare of children.

175. Where children need a social worker, this should inform decisions about safeguarding (for example, responding to unauthorised absence or to a child missing education where there are known safeguarding risks) and about promoting welfare (for example, considering the provision of pastoral and/or academic support, alongside action by statutory services).

176. Findings from the Children in Need review, 'Improving outcomes of children in need: Literature review' contains further information; the conclusion of the

review, 'Help, protection, education' provides detail about the action the government is taking to support this.

Children who are absent from education

177. Children being absent from education for prolonged periods and/or on repeat occasions can act as a vital warning sign to a range of safeguarding issues including neglect, child sexual and child criminal exploitation - particularly county lines. It is important the school or college's response to persistently absent pupils and children missing education supports identifying such abuse, and in the case of absent pupils, helps prevent the risk of them becoming a child missing education in the future. This includes when problems are first emerging but also where children are already known to local authority children's social care and need a social worker (such as a child who is a child in need or who has a child protection plan, or is a looked after child), where being absent from education may increase known safeguarding risks within the family or in the community. Further information and support, includes:

- The department's statutory guidance on school attendance Working together to improve school attendance which sets out how schools must work with local authority children's services where school absence indicates safeguarding concerns.
- Information regarding schools' duties regarding children missing education, including information schools **must** provide to the local authority when removing a child from the school roll at standard and non-standard transition points, can be found in the department's statutory guidance: Children Missing Education.
- further information for colleges providing education for a child of compulsory school age can be found in: Full-time-Enrolment of 14 to 16 year olds in Further Education and Sixth Form Colleges.
- general information and advice for schools and colleges can be found in the Government's Missing Children and Adults Strategy.

Elective home education (EHE)

178. Many home educated children have a positive learning experience. We would expect the parents' decision to home educate to be made with their child's best education at the heart of the decision. However, this is not the case for all. Elective home education can mean that some children are not in receipt of suitable education and are less visible to the services that are there to keep them safe and supported in line with their needs.

179. In accordance with the School Attendance (Pupil Registration) (England) Regulations 2024, a school must make a return to the local authority when a pupil's name is deleted from the admission register.[46]

180. Where a parent/carer has expressed their intention to remove a child from school with a view to educating at home, we recommend that local authorities, schools, and other key professionals work together to coordinate a meeting with parents/carers where possible. This would be before a final decision has been made, to ensure the parents/carers have considered what is in the best interests of each child. This is particularly important where a child has special educational needs or a disability, and/or has a social worker, and/or is otherwise vulnerable. Where a child has an Education, Health and Care plan local authorities will need to review the plan, working closely with parents and carers.

181. DfE guidance for local authorities on Elective home education sets out the role and responsibilities of local authorities and their powers to engage with parents. Although this is primarily aimed at local authorities, schools should also be familiar with this guidance.

Children requiring mental health support

182. Schools and colleges have an important role to play in supporting the mental health and wellbeing of their pupils.

183. Mental health problems can, in some cases, be an indicator that a child has suffered or is at risk of suffering abuse, neglect or exploitation. Governing bodies and proprietors should ensure they have clear systems and processes in place for identifying possible mental health problems, including routes to escalate and clear referral and accountability systems.

184. Most schools already have a mental health lead in place. The department provides practical evidence informed resources to support mental health leads to fulfil their role including a targeted support toolkit . Additional guidance, and resources can be found in its Promoting and supporting mental health and wellbeing in schools and colleges website on Gov.uk.

[46] This requirement does not apply where a pupil's name is deleted after they have completed the final year at the school (e.g. Year 6 at a typical primary school) unless the local authority have asked to be informed about such deletions.

185. Public Health England[47] has produced a range of resources to support secondary schools to promote positive health, wellbeing and resilience among children including its guidance Promoting children and young people's emotional health and wellbeing. Its resources include social media, forming positive relationships, smoking, and alcohol. See Rise Above: Resources for School from Public Health England, from the Education People, which has links to all materials and lesson plans.

186. The department has also published, 'Every interaction matters' a pre-recorded webinar which provides staff with a simple framework for promoting wellbeing, resilience, and mental health. This sits alongside our Wellbeing for education recovery program content, which covers issues such as bereavement, loss, anxiety, stress and trauma.

187. The department has published advice and guidance on Preventing bullying (which may also be useful for colleges). The Promoting and supporting mental health and wellbeing in schools and colleges guidance sets out how schools and colleges can help prevent mental health problems by promoting resilience as part of an integrated, whole school/college approach to social and emotional wellbeing, which is tailored to the needs of their pupils and students.

[47] Public Health England: has now been replaced by the UK Health Security Agency and the Office for Health Improvement and Disparities (OHID), which is part of the Department of Health and Social Care, and by the UK Health Security Agency. However, branding remains unchanged.

Looked after children and previously looked after children

188. The most common reason for children becoming looked after[48] is as a result of abuse and/or neglect. Governing bodies and proprietors should ensure that staff have the skills, knowledge and understanding to keep looked after children safe.

189. In particular, they should ensure that appropriate staff have access to the information they need in relation to a child's looked after legal status (whether they are looked after under voluntary arrangements with consent of parents, or on an interim or full care order) and the child's contact arrangements with birth parents or those with parental responsibility.

190. They should also have information about the child's care arrangements and the levels of authority delegated to the carer by the authority looking after him/her. The designated safeguarding lead[49] should have details of the child's social worker and the name of the Virtual School Head (see para 194) in the authority that looks after the child.

191. A previously looked after child potentially remains vulnerable and all staff should have the skills, knowledge and understanding to keep previously looked after children safe. When dealing with looked after children and previously looked after children, it is important that all agencies work together and prompt action is taken when necessary to safeguard these children, who are a particularly vulnerable group.

The designated teacher

192. Governing bodies of maintained schools and proprietors of academies must appoint a designated teacher[50] and should work with local authorities to promote the educational achievement of registered pupils who are looked after. With the commencement of sections 4 to 6 of the Children and Social Work Act 2017, designated teachers have responsibility for promoting the educational achievement of children who have left care through adoption, special guardianship or child arrangement orders or who were adopted from state care outside England and

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[48] A child who is looked after by a local authority (referred to as a looked-after-child) as defined in section 22 Children Act 1989, means a child who is subject to a care order (interim or full care order) or who is voluntarily accommodated by the local authority.

[49] In maintained schools and academies the designated safeguarding lead should work closely with the designated teacher.

[50] Section 20 of the Children and Young Persons Act 2008 sets this requirement for maintained schools. This legislation and accompanying statutory guidance on the role of designated teacher applies to academies through their funding agreements.

Wales.[51] The designated teacher must have appropriate training and the relevant qualifications and experience.[52] In other schools and colleges, an appropriately trained teacher should take the lead.

193. Statutory guidance: Designated teacher for looked-after and previously looked-after children contains further information on the role and responsibilities of the designated teacher.

Virtual School Heads

194. Virtual School Heads[53] manage pupil premium plus for looked after children;[54] and receive this funding based on the latest published number of children looked after by the local authority. In maintained schools and academies, the designated teacher should work with the Virtual School Head to discuss how funding can be best used to support the progress of looked after children in the school and meet the needs identified in the child's personal education plan.[55] The designated teacher should also work with the Virtual School Head to promote the educational achievement of previously looked after children. In other schools and colleges, an appropriately trained teacher should take the lead.

195. As with designated teachers, following the commencement of sections 4 to 6 of the Children and Social Work Act 2017, Virtual School Heads have responsibilities towards children who have left care through adoption, special guardianship, or child arrangement orders or who were adopted from state care outside England or Wales. Their primary role for this group will be the provision of information and advice to relevant parties.[56]

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[51] For the purposes of the role of the Virtual School Head and designated teacher, under the Children and Social Work Act 2017, previously looked-after children are those who: are no longer looked after by a local authority in England and Wales (as defined by the Children Act 1989 or Part 6 of the Social Services and Well-being (Wales) Act 2014) because they are the subject of an adoption, special guardianship or child arrangements order; or were adopted from 'state care' outside England and Wales.
[52] Section 20(3) of the Children and Young Persons Act 2008 and regulation 3 of the Designated Teacher (Looked-After Pupils etc) (England) Regulations 2009.
[53] Section 22(3B) of the Children Act 1989 requires local authorities in England to appoint at least one person for the purpose of discharging the local authority's duty to promote the educational achievement of its looked after children. That person (known as the Virtual School Head) must be an officer employed by the authority or another local authority in England.
[54] Pupil premium plus for previously looked after children is managed by their school.
[55] All looked after children must have a personal education plan (PEP). This is part of the care plan that the local authority looking after the child must have in place and review regularly.
[56] Any person that has parental responsibility for the child; providers of funded early years education, designated teachers for previously looked-after children in maintained schools and academies, and any other person the authority considers appropriate for promoting the educational achievement of relevant children.

196. Statutory guidance on Promoting the education of looked-after and previously looked-after children contains further information on the roles and responsibilities of Virtual School Heads.

197. In addition to their statutory duties, the role of Virtual School Heads was extended in June 2021, to include a non-statutory responsibility for the strategic oversight of the educational attendance, attainment, and progress of children with a social worker.

198. In offering advice and information to workforces that have relationships with children with social workers, Virtual School Heads should identify and engage with key professionals, helping them to understand the role they have in improving outcomes for children. This should include designated safeguarding leads, social workers, headteachers, governors, special educational needs co-ordinators (SENCOs), mental health leads, other local authority officers, including Designated Social Care Officers for SEND, where they exist.

199. In September 2024, the role of Virtual School Heads was further extended to include a non-statutory responsibility to promote the educational achievement of all children in kinship care. Non-statutory guidance on Promoting the education of children with a social worker and children in kinship care arrangements contains further information on the roles and responsibilities of Virtual School Heads.

Care leavers

200. Local authorities have on-going responsibilities to the children who cease to be looked after and become care leavers.[57] That includes keeping in touch with them, preparing an assessment of their needs and appointing a Personal Advisor who develops a pathway plan with the young person. That plan describes how the local authority will support the care leaver to participate in education or training. Designated safeguarding leads should therefore have details of the local authority Personal Advisor appointed to guide and support the care leaver and should liaise with them as necessary regarding any issues of concern affecting the care leaver.

Children with special educational needs, disabilities or health issues

201. Children with special educational needs or disabilities (SEND) or certain medical or physical health conditions can face additional safeguarding challenges

[57] A care leaver who is 16 or 17 (referred to in legislation as a 'relevant child' is defined in section 23A(2) of the Children Act 1989 as a child who is (a) not looked after (b) aged 16 or 17, and (c) was, before ceasing to be looked after by a local authority, looked after for a period of 13 weeks, or periods amounting in total to 13 weeks, beginning after they have reached the age of 14 and ended after they have reached the age of 16.

both online and offline. Governing bodies and proprietors should ensure their child protection policy reflects the fact that additional barriers can exist when recognising abuse, neglect and exploitation in this group of children. These can include:

- assumptions that indicators of possible abuse such as behaviour, mood and injury relate to the child's condition without further exploration
- these children being more prone to peer group isolation or bullying (including prejudice-based bullying) than other children
- the potential for children with SEND or certain medical conditions being disproportionately impacted by behaviours such as bullying, without outwardly showing any signs
- communication barriers and difficulties in managing or reporting these challenges
- cognitive understanding – being unable to understand the difference between fact and fiction in online content and then repeating the content/behaviours in schools or colleges or the consequences of doing so.

202. Any reports of abuse involving children with SEND will therefore require close liaison with the designated safeguarding lead (or a deputy) and the special educational needs coordinator (SENCO) or the named person with oversight for SEND in a college.

203. Schools and colleges should consider extra pastoral support and attention for these children, along with ensuring any appropriate support for communication is in place. Further information can be found in the department's:

- SEND Code of Practice 0 to 25 years, and
- Supporting Pupils at School with Medical Conditions.

And from specialist organisations such as:

- The Special Educational Needs and Disabilities Information and Support Services (SENDIASS). SENDIASS offer information, advice and support for parents and carers of children and young people with SEND. All local authorities have such a service: Find your local IAS service (councilfordisabledchildren.org.uk)
- Mencap - Represents people with learning disabilities, with specific advice and information for people who work with children and young people
- NSPCC - Safeguarding children with special educational needs and disabilities (SEND) and NSPCC - Safeguarding child protection/deaf and disabled children and young people

Children who are lesbian, gay, bisexual, or gender questioning

We expect to publish the revised guidance on gender questioning children soon. Once published, we will signpost to this guidance in KCSIE 2025.

204. A child or young person being lesbian, gay, or bisexual is not in itself an inherent risk factor for harm, however, they can sometimes be targeted by other children. In some cases, a child who is perceived by other children to be lesbian, gay, or bisexual (whether they are or not) can be just as vulnerable as children who are.

205. However, the Cass review identified that caution is necessary for children questioning their gender as there remain many unknowns about the impact of social transition and children may well have wider vulnerabilities, including having complex mental health and psychosocial needs, and in some cases additional diagnoses of autism and/or attention deficit hyperactivity disorder.

206. It recommended that when families/carers are making decisions about support for gender questioning children, they should be encouraged to seek clinical help and advice. When parents are supporting pre-pubertal children, clinical services should ensure that they can be seen as early as possible by a clinical professional with relevant experience.

207. As such, when supporting a gender questioning child, schools should take a cautious approach and consider the broad range of their individual needs, in partnership with the child's parents (other than in the exceptionally rare circumstances where involving parents would constitute a significant risk of harm to the child), including any clinical advice that is available and how to address wider vulnerabilities such as the risk of bullying.

208. Risks can be compounded where children lack trusted adults with whom they can be open. It is therefore vital that staff endeavour to reduce the additional barriers faced and create a culture where they can speak out or share their concerns with members of staff.

Part three: Safer recruitment

209. This part of the guidance has four sections providing schools and colleges with the legal requirements '**must** do', what they **should** do, what is considered **best practice** and **important information** about:

i. the recruitment and selection process

ii. pre-appointment and vetting checks, regulated activity and recording of information

iii. other checks that may be necessary for staff, volunteers and others, including the responsibilities on schools and colleges for children in other settings

iv. how to ensure the ongoing safeguarding of children and the legal reporting duties on employers.

Recruitment and selection process

210. This section focuses on ensuring potential applicants are given the right messages about the school and college's commitment to recruit suitable people.

211. It is vital that as part of their whole school or college approach to safeguarding governing bodies and proprietors create a culture that safeguards and promotes the welfare of children in their school or college. As part of this culture, it is important that they adopt robust recruitment procedures that deter and prevent people who are unsuitable to work with children from applying for or securing employment, or volunteering opportunities in schools and colleges.

212. Governing bodies and proprietors should ensure that those involved with the recruitment and employment of staff to work with children have received appropriate safer recruitment training, the substance of which should at a minimum cover the content of this part (Part three) of this guidance.

213. The School Staffing (England) Regulations 2009.[58] and the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007.[59] require governing bodies of maintained schools and management committees of pupil referral units (PRUs) to ensure that at least one of the persons who conducts an

[58] The School Staffing (England) Regulations 2009 (legislation.gov.uk) regulation 9.

[59] The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (legislation.gov.uk)

interview has completed safer recruitment training. Governing bodies of maintained schools and management committees of PRUs may choose appropriate training and may take advice from the safeguarding partners in doing so.

Advert

214. Schools and colleges should think about including the following information when defining the role (through the job or role description and person specification):

- the skills, abilities, experience, attitude, and behaviours required for the post, and
- the safeguarding requirements, i.e. to what extent will the role involve contact with children and will they be engaging in regulated activity relevant to children. See page 67 for further information about regulated activity.

215. The advert should include:

- the school or college's commitment to safeguarding and promoting the welfare of children and make clear that safeguarding checks will be undertaken
- the safeguarding responsibilities of the post as per the job description and personal specification, and
- whether the post is exempt from the Rehabilitation of Offenders Act (ROA) 1974. The amendments to the ROA 1974 (Exceptions Order 1975, (amended 2013 and 2020)) provide that when applying for certain jobs and activities, certain spent convictions and cautions are 'protected', so they do not need to be disclosed to employers, and if they are disclosed, employers cannot take them into account. The MOJ's guidance on the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1975, provides information about which convictions must be declared during job applications and related exceptions and further information about filtering offences can be found in the DBS filtering guide.

Application forms

216. Where a role involves engaging in regulated activity relevant to children, schools and colleges should include a statement in the application form or elsewhere in the information provided to applicants that it is an offence to apply for

the role if the applicant is barred from engaging in regulated activity relevant to children.[60]

217. Schools and colleges should also provide a copy of the school or college's child protection policy and practices and policy on employment of ex-offenders in the application pack or refer to a link on its website.

218. Schools and colleges should require applicants to provide:

- personal details, current and former names, current address and national insurance number
- details of their present (or last) employment and reason for leaving
- full employment history, (since leaving school, including education, employment and voluntary work) including reasons for any gaps in employment
- qualifications, the awarding body and date of award
- details of referees/references (see below for further information), and
- a statement of the personal qualities and experience that the applicant believes are relevant to their suitability for the post advertised and how they meet the person specification.

219. Schools and colleges should only accept copies of a curriculum vitae alongside an application form. A curriculum vitae on its own will not provide adequate information.

Shortlisting

220. Shortlisted candidates should be asked to complete a self-declaration of their criminal record or information that would make them unsuitable to work with children. Self-declaration is subject to Ministry of Justice guidance on the disclosure of criminal records, further information can be found on GOV.UK. For example:

- if they have a criminal history
- if they are included on the children's barred list
- if they are prohibited from teaching
- if they are prohibited from taking part in the management of an independent school

[60] Section 7(1)(a) of the SVGA 2006 (Legislation.gov.uk).

- information about any criminal offences committed in any country in line with the law as applicable in England and Wales, not the law in their country of origin or where they were convicted
- if they are known to the police and children's local authority social care
- if they have been disqualified from providing childcare (see paras 268-272), and,
- any relevant overseas information.

221. This information should only be requested from applicants who have been shortlisted. The information should not be requested in the application form to decide who should be shortlisted.

222. Applicants should be asked to sign a declaration confirming the information they have provided is true. Where there is an electronic signature, the shortlisted candidate should physically sign a hard copy of the application at point of interview.

223. The purpose of a self-declaration is so that candidates will have the opportunity to share relevant information and allow this to be discussed and considered at interview before the DBS certificate is received.

224. Schools and colleges should:

- ensure that at least two people carry out the shortlisting exercise (it is recommended that those who shortlist carry out the interview for a consistent approach)
- consider any inconsistencies and look for gaps in employment and reasons given for them, and,
- explore all potential concerns.

225. In addition, as part of the shortlisting process schools and colleges should consider carrying out an online search as part of their due diligence on the shortlisted candidates. This may help identify any incidents or issues that have happened, and are publicly available online, which the school or college might want to explore with the applicant at interview. Schools and colleges should inform shortlisted candidates that online searches may be done as part of due diligence checks. See Part two - Legislation and the Law for information on data protection and UK GDPR, the Human Rights Act 1998 and the Equality Act 2010.

Employment history and references

226. The purpose of seeking references is to allow employers to obtain factual information to support appointment decisions. Schools and colleges should obtain

references before interview, where possible, this allows any concerns raised to be explored further with the referee and taken up with the candidate at interview.

227. Schools and colleges should:

- not accept open references e.g. to whom it may concern
- not rely on applicants to obtain their reference
- ensure any references are from the candidate's current employer and have been completed by a senior person with appropriate authority (if the referee is school or college based, the reference should be confirmed by the headteacher/principal as accurate in respect of any disciplinary investigations)
- obtain verification of the individual's most recent relevant period of employment where the applicant is not currently employed
- secure a reference from the relevant employer from the last time the applicant worked with children (if not currently working with children), if the applicant has never worked with children, then ensure a reference from their current employer
- always verify any information with the person who provided the reference
- ensure electronic references originate from a legitimate source
- contact referees to clarify content where information is vague or insufficient information is provided
- compare the information on the application form with that in the reference and take up any discrepancies with the candidate
- establish the reason for the candidate leaving their current or most recent post, and,
- ensure any concerns are resolved satisfactorily before appointment is confirmed.

228. When asked to provide references, schools and colleges should ensure the information confirms whether they are satisfied with the applicant's suitability to work with children and provide the facts (not opinions) of any substantiated safeguarding concerns/allegations that meet the harm threshold. They should not include information about concerns/allegations which are unsubstantiated, unfounded, false, or malicious. Further guidance on references, including on the position regarding low-level concerns, is set out in Part four. References are an important part of the recruitment process and should be provided in a timely manner and not hold up proceedings. Any repeated concerns or allegations which do not meet the harm threshold which have all been found to be false, unfounded, unsubstantiated or malicious should not be included in any reference.

Selection

229. Schools and colleges should use a range of selection techniques to identify the most suitable person for the post. Those interviewing should agree structured questions.

230. These should include:

- finding out what attracted the candidate to the post being applied for and their motivation for working with children
- exploring their skills and asking for examples of experience of working with children which are relevant to the role, and,
- probing any gaps in employment or where the candidate has changed employment or location frequently, asking about the reasons for this.

231. The interviews should be used to explore potential areas of concern and to determine the applicant's suitability to work with children. Areas that may be concerning and lead to further probing include:

- implication that adults and children are equal
- lack of recognition and/or understanding of the vulnerability of children
- inappropriate idealisation of children
- inadequate understanding of appropriate boundaries between adults and children, and,
- indicators of negative safeguarding behaviours.

232. Any information about past disciplinary action or substantiated allegations should be considered in the circumstances of the individual case.

233. Pupils/students should be involved in the recruitment process in a meaningful way. Observing short listed candidates and appropriately supervised interaction with pupils/students is common and recognised as good practice.

234. All information considered in decision making should be clearly recorded along with decisions made.

ii. Pre-appointment vetting checks, regulated activity and recording information

235. This section provides the legal requirements that governing bodies and proprietors need to understand (and which **must** be carried out) when appointing individuals to engage in regulated activity relating to children. It covers the importance of ensuring the correct pre-appointment checks are carried out. These

checks will help identify whether a person may be unsuitable to work with children (and in some cases is legally prohibited from working with children and/or working as a teacher). These checks should be seen as part of the wider whole school or college safeguarding regime, which will continue following appointment. This section also explains what information schools and colleges **must** record on the single central record.

236. The Education and Training (Welfare of Children) Act 2021 extended safeguarding provisions to providers of post 16 Education: 16-19 Academies, Special Post-16 institutions and Independent Training Providers. Some safer recruitment regulations do not apply to these providers and as such some of the "musts" for colleges do not apply to them. These checks are an essential part of safeguarding, carried out to help employers check the suitability of candidates. Therefore, the providers set out above should carry out these pre-appointment checks. This has been made clear via footnotes.

237. All offers of appointment should be conditional until satisfactory completion of the **mandatory pre-employment checks**. All schools and colleges must:

- verify a candidate's identity, it is important to be sure that the person is who they claim to be, this includes being aware of the potential for individuals changing their name. Best practice is checking the name on their birth certificate, where this is available. Further identification checking guidelines can be found on the GOV.UK website.[61]
- obtain (via the applicant) an enhanced DBS check (including children's barred list information, for those who will be engaging in regulated activity with children).[62] [63] [64] [65] Note that when using the DBS update service, you still need

[61] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should verify the candidate's identity.
[62] 16-19 Academies, Special Post-16 institutions and Independent Training Providers must carry out a DBS check with barred list information as per their funding agreement.
[63] Where the individual will be or is engaging in regulated activity, schools and colleges will need to ensure that they confirm on the DBS application that they have the right to barred list information.
[64] Regulations 12 and 24 of The School Staffing (England) Regulations 2009 for maintained schools also apply to the management committee of pupil referral units through the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007. Part 4 of the Schedule to The Education (Independent School Standards) Regulations 2014 applies to independent schools, including free schools and academies. The Schedule to The Non-Maintained Special Schools (England) Regulations 2015 applies to non-maintained special schools.
[65] Regulation 5 of The Further Education (Providers of Education) (England) Regulations 2006 applies to further education institutions. Further Education providers should also note Regulation 10 of the Further Education (Providers of Education) (England) Regulations 2006, which requires that members of staff (other than agency staff) who move from positions not involving the provision of education into a position involving the provision of education are to be treated as new staff members.

to obtain the original physical certificate (see paragraphs 254-257).[66]

- obtain a separate children's barred list check if an individual will start work in regulated activity with children before the DBS certificate is available; See paragraph 266-267 on how to obtain a separate children's barred list check. **This does not apply to 16-19 academies, special post-16 institutions and independent training providers.**[67]
- verify the candidate's mental and physical fitness to carry out their work responsibilities.[68] A job applicant can be asked relevant questions about disability and health in order to establish whether they have the physical and mental capacity for the specific role.[69] [70]
- verify the person's right to work in the UK, including EU nationals. If there is uncertainty about whether an individual needs permission to work in the UK, then schools and colleges should follow advice on the GOV.UK website
- if the person has lived or worked outside the UK, make any further checks the school or college consider appropriate (see paras 285-289) and,
- verify professional qualifications, as appropriate. The Teaching Regulation Agency's (TRA) Employer Access Service should be used to verify any award of qualified teacher status (QTS), and the completion of teacher induction or probation.

In addition:

- independent schools, including academies and free schools, **must** check that a person taking up a management position as described at paragraph 261 is not subject to a section 128 direction made by the Secretary of State
- all schools **must** ensure that an applicant to be employed to carry out teaching work[71] is not subject to a prohibition order issued by the Secretary of State (see paragraph 258) for prohibition checks or any sanction or restriction imposed

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[66] See the status checking section of the DBS update service employer guide
[67] A separate barred list check is not available to these providers. As such they should not allow an individual to start work in regulated activity until they obtain an enhanced DBS plus barred list check.
[68] Education (Health Standards) (England) Regulations 2003
[69] See legislation.gov.uk section 60 of the Equality Act 2010.
[70] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should - verify the candidate's mental and physical fitness to carry out their work responsibilities, check the person's right to work in the UK; make further checks if the candidate has lived or worked outside the UK and verify professional qualifications where appropriate.
[71] Each of the following activities is teaching work for the purposes of The Teachers' Disciplinary (England) Regulations 2012: planned and preparing lessons and courses for pupils; delivering lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils.

(that remains current) by the GTCE (see paragraph 260), before its abolition in March 2012

- before employing a person to carry out teaching work in relation to children, colleges **must** [72] take reasonable steps to establish whether that person is subject to a prohibition order issued by the Secretary of State
- all schools and colleges providing childcare[73] **must** ensure that appropriate checks are carried out to ensure that individuals employed to work in reception classes, or in wraparound care for children up to the age of 8, are not disqualified from working in these settings under the 2018 Childcare Disqualification Regulations. Further details about the application of these arrangements are provided at paragraphs 268-272.

Applicant moving from previous post

238. There is no requirement for a school to obtain an enhanced DBS certificate or carry out checks for events that may have occurred outside the UK if, during a period which ended not more than three months before the person's appointment, the applicant has worked, in a school in England, in a post:

- which brought the person regularly into contact with children, or
- to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons, or
- in another institution within the further education sector in England, or in a 16-19 academy, in a post which involved the provision of education which brought the person regularly into contact with children or young persons.

239. For a college[74] there is no requirement to obtain an enhanced DBS certificate or carry out checks for events that may have occurred outside the UK if, during a period which ended not more than three months before the person's appointment, the applicant has worked in:

- a school in England in a position which brought him or her regularly into contact with persons aged under 18, or

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[72] Where employing teachers 16-19 Academies, Special Post-16 institutions and Independent Training Providers should contact employer.access.gov.uk to check that the individual is not prohibited from teaching.

[73] Childcare Act 2006 (legislation.gov.uk) section 76(2).

[74] The three-month rule does not apply for 16-19 Academies, Special Post-16 institutions and Independent Training Providers. An enhanced DBS certificate (with barred list information where appropriate) is required.

- another institution within the further education sector in England, or in a 16 to 19 academy, in a position which involved the provision of education and caring for, training, supervising or being solely in charge of persons aged under 18.

240. Whilst there is no requirement to carry out an enhanced DBS check in the circumstances described above, schools or colleges should carefully consider if it would be appropriate to request one, to ensure they have up to date information. Schools and colleges **must** still carry out all other relevant pre-appointment checks (as listed at paragraph 235), including where the individual is engaging in regulated activity with children, a separate children's barred list check (see paragraphs 266-267 on how to carry out a barred list check).

Regulated activity

241. In summary, a person will be engaging in regulated activity with children if, as a result of their work, they:

- will be responsible, on a regular basis in a school or college, for teaching, training instructing, caring for or supervising children
- will be working on a regular basis in a specified establishment, such as a school, or in connection with the purposes of the establishment, where the work gives opportunity for contact with children, or
- engage in intimate or personal care or healthcare or any overnight activity, even if this happens only once.

Further details on regulated activity below.

Regulated activity

The full legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012. HM Government has produced Factual note on regulated activity in relation to children: scope.

Regulated activity includes:

a. teaching, training, instructing, caring for (see (c) below) or supervising children if the person is unsupervised, or providing advice or guidance on physical, emotional or educational well-being, or driving a vehicle only for children;

b. work for a limited range of establishments (known as 'specified places', which include schools and colleges), with the opportunity for contact with children, but not including work done by supervised volunteers.

Work under (a) or (b) is regulated activity only if done regularly.[75] Some activities are always regulated activities, regardless of frequency or whether they are supervised or not. This includes:

c. relevant personal care, or health care provided by or provided under the supervision of a health care professional:
    - personal care includes helping a child with eating and drinking for reasons of illness or disability or in connection with toileting, washing, bathing and dressing for reasons of age, illness of disability;[76]
    - health care means care for children provided by, or under the direction or supervision of, a regulated health care professional.

Regulated activity will not be:

- paid work in specified places which is occasional and temporary and does not involve teaching, training; and
- supervised activity which is paid in non-specified settings such as youth clubs, sports clubs etc.

[75] The Safeguarding Vulnerable Groups Act 2006 provides that the type of work referred to at (a) or (b) will be regulated activity if "it is carried out frequently by the same person" or if "the period condition is satisfied". Paragraph 10 of Schedule 4 to this Act says the period condition is satisfied if the person carrying out the activity does so at any time on more than three days in any period of 30 days and, for the purposes of the work referred to at (a), apart from driving vehicle only for children, it is also satisfied if it is done at any time between 2am and 6am and it gives the person the opportunity to have face to face contact with children.

Types of DBS checks

242. These are the types of checks available.

- **Basic DBS check** – this provides details of convictions and conditional cautions considered to be 'unspent' under the terms of the Rehabilitation of Offenders Act 1974.
- **Standard DBS check** –this provides information about convictions, cautions, reprimands and warnings held on the Police National Computer (PNC), regardless or not of whether they are spent under the Rehabilitation of Offenders Act 1974. The law allows for certain old and minor matters to be filtered out.
- **Enhanced DBS check** – this provides the same information about convictions, cautions, reprimands and warnings held on the Police National Computer (PNC) as a Standard DBS check, plus additional information held by the police such as interviews and allegations. Additional information will only be disclosed where a chief police officer reasonably believes it to be relevant and considers that it ought to be disclosed. The position being applied for/or activities being undertaken **must** be covered by an exempted question in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and by provisions in the Police Act 1997 (Criminal Records) Regulations 2002.[77]
- **Enhanced DBS check with children's barred list information** – where people are working or seeking to work in regulated activity relating to children, this allows an additional check, to be made, about whether the person appears on the children's barred list, along with a check of the Police National Computer records plus additional information held by the police as above. The position being applied for, or activities being undertaken, **must** be eligible for an enhanced DBS check as above and be for a purpose listed in the Police Act 1997 (Criminal Records) (No2) Regulations 2009 as qualifying for a barred

[76] It is not intended that personal care includes such activities as, for example, parent volunteers helping with costumes for school plays or helping a child lace up football boots.

[77] This legislation does not provide a list of job roles that are eligible for this check – such a list does not exist. Instead, The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 sets out the 'exempted questions' for which a Standard DBS check can be obtained. Similarly, The Police Act 1997 (Criminal Records) Regulations 2002 set out the purposes for which an Enhanced DBS check can be obtained, and The Police Act 1997 (Criminal Records) (No 2) Regulations 2009 list the circumstances in which an application for an Enhanced DBS check can also include suitability information relating to children (a children's barred list check and confirmation as to whether an individual is subject to a s.128 direction). It is important to note that the Regulations can also remove roles, duties or activities through the removal of an exempted question or of a particular purpose. Any individual (including an applicant for a job which does not involve working with children) can be asked to apply for a Basic criminal record check. This will show only unspent convictions and cautions. Further details can be found on gov.uk.

list(s) check. In addition, this check **can** also include information as to whether an individual is subject to a section 128 direction. However, they have to use specific wording in the position applied for field (see paragraph 264).

Considering which type of check is required

243. Most staff in a school and those in colleges working with children will be engaging in regulated activity relating to children, in which case an enhanced DBS check which includes children's barred list information, will be required.

244. For all other staff (e.g. contractors) who have an opportunity for regular contact with children who are not engaging in regulated activity, an enhanced DBS certificate, which does not include a barred list check, will be appropriate.

245. Barred list information must not be requested on any person who is not engaging in or seeking to engage in regulated activity.

246. The flowchart below (page 71) provides more information on the decision-making process.

247. Where a DBS certificate is required, it must be obtained from the candidate before, or as soon as practicable after, the person's appointment, including when using the DBS update service (see paragraph 254 - 257).

248. Once the checks are complete, the DBS will send a DBS certificate to the applicant. The applicant must show the original paper DBS certificate to their potential employer before they take up post, or as soon as practicable afterwards. Schools and colleges will be able to compare any information disclosed on the certificate with any information shared by the applicant during the recruitment process. DBS guidance on how to check a DBS certificate can be found on GOV.UK.

249. Schools and colleges should assess cases fairly, on an individual basis. A decision not to appoint somebody because of their conviction(s) should be clearly documented, so if challenged the school or college can defend its decision, in line with its policy on the recruitment of ex-offenders.

250. When assessing any disclosure information on a DBS certificate, schools and colleges should take into consideration the explanation from the applicant, including for example:

- the seriousness of any offence and relevance to the post applied for
- how long ago the offence occurred
- whether it was a one-off incident or a history of incidents
- the circumstances around the incident, and,

- whether the individual accepted responsibility for their actions.

251. The school or college should also consider the incident in the context of the Teachers' standards and Teacher misconduct guidance, if the applicant is applying for a teaching post.

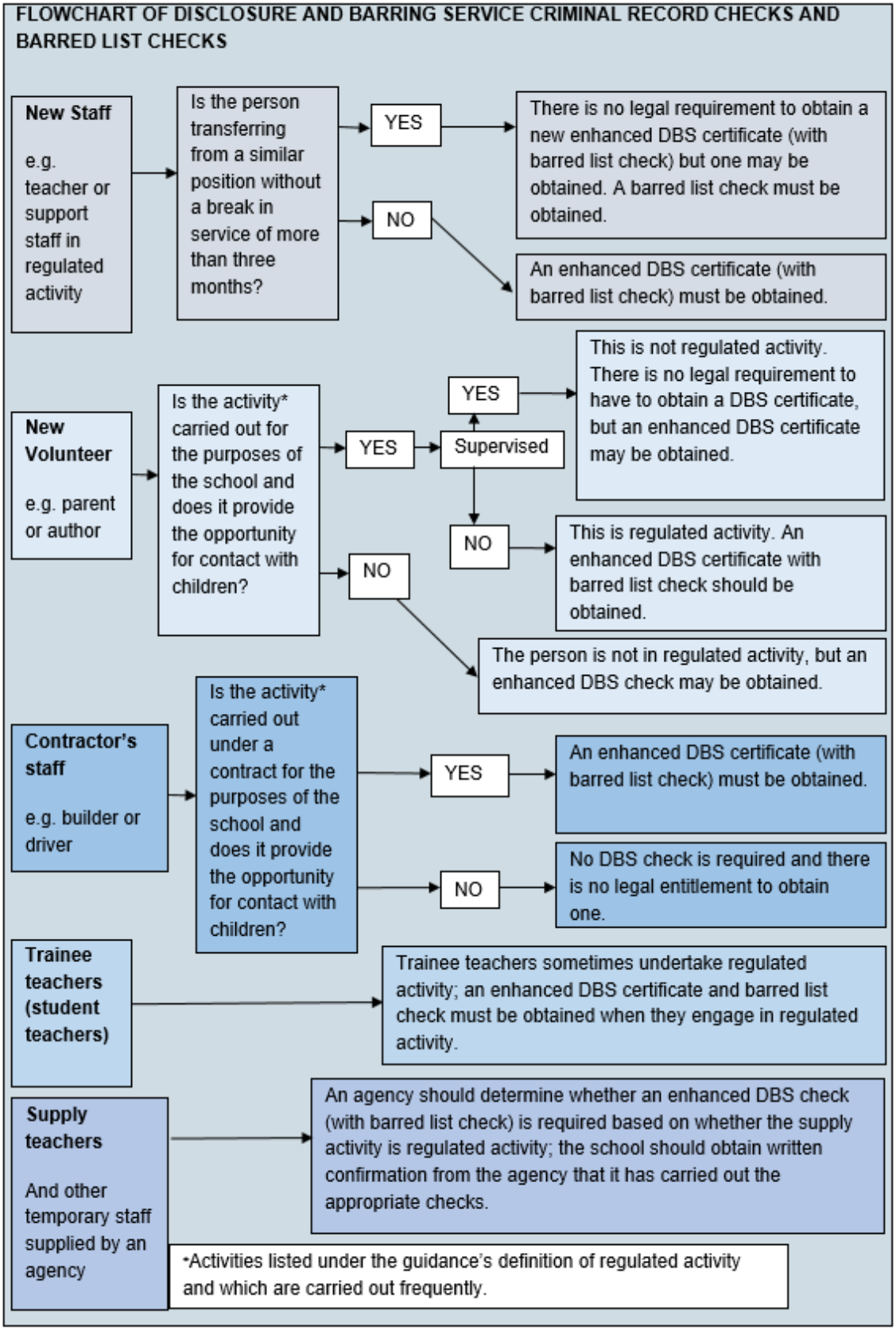
252. Where a school or college allows an individual to start work in regulated activity relating to children before the DBS certificate is available, it should ensure that the individual is appropriately supervised and that they carry out all other checks, including a separate children's barred list check,[78] see paragraphs 266 - 267.

253. Separate barred list checks must only be carried out in the following circumstances:

- for newly appointed staff who are engaging in regulated activity, pending the receipt of an Enhanced Certificate with Barred List information from the Disclosure and Barring Service (DBS) (and where all other relevant checks as per paragraph 235 have been carried out), or
- where an individual has worked in a post in a school or college that brought them into regular contact with children or young persons which ended not more than three months prior to that person's appointment to the organisation (and where all other relevant checks as per paragraph have been carried out).

[78] 16-19 Academies, Special Post-16 institutions and Independent Training Providers do not have access to standalone barred list check and as such should not allow someone to start work in regulated activity without an enhanced DBS certificate (with barred list information).

Figure 2


FLOWCHART OF DISCLOSURE AND BARRING SERVICE CRIMINAL RECORD CHECKS AND BARRED LIST CHECKS
New Staff
e.g. teacher or support staff in regulated activity
Is the person transferring from a similar position without a break in service of more than three months?
YES
There is no legal requirement to obtain a new enhanced DBS certificate (with barred list check) but one may be obtained. A barred list check must be obtained.
NO
An enhanced DBS certificate (with barred list check) must be obtained.
New Volunteer
e.g. parent or author
Is the activity* carried out for the purposes of the school and does it provide the opportunity for contact with children?
YES
Supervised
YES
This is not regulated activity. There is no legal requirement to have to obtain a DBS certificate, but an enhanced DBS certificate may be obtained.
NO
This is regulated activity. An enhanced DBS certificate with barred list check should be obtained.
NO
The person is not in regulated activity, but an enhanced DBS check may be obtained.
Contractor's staff
e.g. builder or driver
Is the activity* carried out under a contract for the purposes of the school and does it provide the opportunity for contact with children?
YES
An enhanced DBS certificate (with barred list check) must be obtained.
NO
No DBS check is required and there is no legal entitlement to obtain one.
Trainee teachers (student teachers)
Trainee teachers sometimes undertake regulated activity; an enhanced DBS certificate and barred list check must be obtained when they engage in regulated activity.
Supply teachers
And other temporary staff supplied by an agency
An agency should determine whether an enhanced DBS check (with barred list check) is required based on whether the supply activity is regulated activity; the school should obtain written confirmation from the agency that it has carried out the appropriate checks.
*Activities listed under the guidance's definition of regulated activity and which are carried out frequently.

DBS Update Service

254. Individuals can join the DBS Update Service[79] at the point that an application for a new DBS check is made. Subscription to the service enables future status checks to be carried out by employers to confirm that no new information has been added to the check since its issue.

255. As good practice, many schools and colleges require new staff to join the Update Service as part of their employment contract. The benefits of joining the Update Service are:

- portability of a DBS check across employers
- free online checks to identify whether there has been any change to the information recorded, since the initial certificate was issued and advice whether the individual should apply for a new DBS check, and,
- that individuals will be able to see a full list of those organisations that have carried out a status check on their account.

256. Before using the Update Service, schools and colleges **must**:

- obtain consent from the individual to carry out an online check to view the status of an existing standard or enhanced DBS check
- confirm the DBS certificate matches the individual's identity
- examine the original certificate to ensure that it is valid for employment with the children's workforce, and,
- ensure that the level of the check is appropriate to the job they are applying for, e.g. enhanced DBS check/enhanced DBS check including with barred list information.

257. Further information about the Update Service, including when updated information can be used, can be found on GOV.UK.

[79] DBS Update Service - GOV.UK (www.gov.uk) please note there is an annual fee for applicants using the update service.

Prohibitions, directions, sanctions and restrictions

Secretary of State teacher prohibition, and interim prohibition orders[80] [81]

258. Teacher prohibition and interim prohibition orders prevent a person from carrying out teaching work as defined in the Teachers' Disciplinary (England) Regulations 2012 in schools, sixth form colleges, 16-19 academies, relevant youth accommodation and children's homes in England. Further information about the duty to consider referring to the Teaching Regulation Agency (TRA) can be found at paragraph 354-355. Teacher prohibition orders are made by the Secretary of State following consideration by a professional conduct panel convened by the TRA. Pending such consideration, the Secretary of State may issue an interim prohibition order if it is considered to be in the public interest to do so. The TRA's role in making prohibition orders and the processes used to impose them are described in more detail in the publications "Teacher misconduct: disciplinary procedures for the teaching profession" and "Teacher misconduct: the prohibition of teachers: Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession".

259. A person who is prohibited **must not** be appointed to a role that involves teaching work (as defined in the Teachers' Disciplinary (England) Regulations 2012) (see footnote 71).

Historic General Teaching Council for England (GTCE) sanctions and restrictions

260. There are a number of individuals who are still subject to disciplinary sanctions, which were imposed by the GTCE (prior to its abolition in 2012). See

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[80] Prohibition orders are made by the Secretary of State under section 141B of the Education Act 2002. The Teachers' Disciplinary (England) Regulations 2012 apply to schools and sixth form colleges and any person that is subject to a prohibition order is prohibited from carrying out teaching work in those establishments. By virtue of their Conditions of Funding in respect of funding received from the Education and Skills Funding Agency, colleges may not employ or engage a person who is subject to a prohibition order to carry out teaching work.

[81] The School Staffing (England) Regulations 2009, the Non-Maintained Special Schools (England) Regulations 2015 and the Education (Independent School Standards) Regulations 2014 require governing bodies or proprietors (of schools and sixth form colleges) to check that a person to be appointed is not subject to an interim prohibition order. By virtue of their Conditions of Funding in respect of funding received from the Education and Skills Funding Agency, before employing a person to carry out teaching work in relation to children, colleges must take reasonable steps to establish whether that person is subject to an interim prohibition order made under section 141B of the Education Act 2002.

paragraph 266-267 for login details to the Check a teacher's record where GTCE checks can be made.

Secretary of State section 128 direction

261. A section 128 direction prohibits or restricts an unsuitable individual from participating in the management of an independent school, including academies and free schools. An individual who is subject to a section 128 direction is unable to:

- take up a management position in an independent school, academy, or in a free school as an employee
- be a trustee of an academy or free school trust; a governor or member of a proprietor body of an independent school, or
- be a governor on any governing body in an independent school, academy or free school that retains or has been delegated any management responsibilities.

262. There is no exhaustive list of roles that might be regarded as 'management' for the purpose of determining what constitutes management in an independent school. The Department's view is that roles involving, or very likely to involve, management of a school include (but are not limited to) headteachers, principals, deputy/assistant headteachers, governors and trustees. It is important to note that the individual's job title is not the determining factor and whether other individuals such as teachers with additional responsibilities could be considered to be 'taking part in management' depends on the facts of the case.[82]

263. The grounds on which a section 128 direction may be made by the Secretary of State are set out in The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014[83] made under section 128 of the Education and Skills Act 2008.

264. A section 128 direction will be disclosed when an enhanced DBS check with children's barred list information is requested, provided that 'child workforce independent schools' is specified on the application form as the position applied for. Where a person is not eligible for a children's barred list check but will be working in a management position in an independent school, a section 128 check should be carried out using GOV.UK.

[82] The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014.
[83] See the 2014 Regulations: https://www.legislation.gov.uk/uksi/2014/1977/regulation/1/made

265. A person subject to a section 128 direction is also disqualified from holding or continuing to hold office as a governor of a maintained school.[84]

How to check DfE, Check a teacher's record for prohibitions, directions, sanctions and restrictions

266. Schools and colleges[85] can use the DfE's Check a teacher's record to make prohibition, direction, restriction, and children's barred list checks. The service is free to use and is available via the DfE's web page. Users will require a DfE Sign-in account to log onto the service.

267. Further information about obtaining a DfE Sign-in account and using Check a teacher's record to carry out a range of 'teacher status checks'[86] including verification of qualified teacher status (QTS) and the completion of teacher induction or teacher probation can be found on GOV.UK.

Childcare disqualification

268. Childcare disqualification is an additional requirement to the general child safeguarding arrangements provided under the Disclosure and Barring Service (DBS) regime, which apply to all children.

269. The childcare disqualification arrangements apply to staff working with young children in childcare settings, including primary schools, nurseries and other registered settings, such as childcare provision on college sites.

270. The arrangements predominantly apply to individuals working with children aged 5 and under, including reception classes, but also apply to those working in wraparound care for children up to the age of 8, such as breakfast clubs and after school care.

271. For staff who work in childcare provision, or who are directly concerned with the management of such provision, employers need to ensure that

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[84] As barred list information is required to be requested only for those school governors who are engaging in regulated activity, when proposing to recruit a governor who will not work in regulated activity, schools and colleges should use the GOV.UK to check whether the person is barred as a result of being prohibited under s.128.

[85] Where employing teachers 16-19 Academies, Special Post-16 institutions and Independent Training Providers should contact teaching.status@education.gov.uk to check that the individual is not prohibited from teaching. They must also obtain an enhanced DBS with barred list information for those working in regulated activity.

[86] The Check a teacher's record system can also be used to check for the award of qualified teacher status (QTS) and the completion of teacher induction or prohibition.

appropriate checks are carried out to ensure that individuals are not disqualified under the Childcare Disqualification Regulations 2018.

272. Further information on the staff to whom these Regulations apply, the checks that should be carried out, and the recording of those checks can be found in statutory guidance Disqualification under the Childcare Act 2006.

Recording information

Single central record

273. Schools and colleges must [87] maintain a single central record of pre-appointment checks, referred to in the Regulations [88] as "the register" and more commonly known as "the single central record".

274. The single central record must cover the following people:

- **for schools, all** staff, including teacher trainees on salaried routes (see paragraph 300-302), agency and third-party supply staff, even if they work for one day, (see paragraphs 290-293)
- **for colleges**, details of staff, including agency and supply staff providing education to children under the age of 18, and,
- **for independent schools**, all members of the proprietor body. In the case of academies and free schools, this means the members and trustees of the academy trust.

275. The minimum information that **must** be recorded in respect of staff members (including teacher trainees on salaried routes) is set out below. For agency and third-party supply staff, schools and colleges **must** include whether written confirmation has been received that the employment business supplying the member of supply staff has carried out the relevant checks and obtained the

[87] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should maintain a single central record. Information they should record is set out at paragraphs 271. As with other schools and colleges they may record the information as set out at paragraphs 273.
[88] Regulations 12(7) and 24(7) and Schedule 2 to the School Staffing (England) Regulations 2009 and the School Staffing (England) (Amendment) Regulations 2013 (applied to pupil referral units through the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007);
Part 4 of the Schedule to the Education (Independent School Standards) Regulations 2014;
Regulations 20-25 and the Schedule to the Further Education (Providers of Education) (England) Regulations 2006; and Regulation 3 and paragraph 7 of Part 1 and paragraph 18 of Part 2 of the Schedule to the Non-Maintained Special Schools (England) Regulations 2015.

appropriate certificates, the date this confirmation was received and whether details of any enhanced DBS certificate have been provided in respect of the member of staff.[89]

276. The single central record **must** indicate whether the following checks have been carried out or certificates obtained, and the date on which each check was completed or certificate obtained:

- an identity check, (identification checking guidelines can be found on the GOV.UK website)
- a standalone children's barred list check [90]
- an enhanced DBS check (with children's barred list check) requested/certificate provided
- a prohibition from teaching check [91]
- further checks on people who have lived or worked outside the UK (see paragraphs 285-289)
- a check of professional qualifications, where required, and,
- a check to establish the person's right to work in the United Kingdom.

In addition:

- colleges [92] **must** record whether the person's position involves 'relevant activity', i.e. regularly caring for, training, supervising or being solely in charge of persons aged under 18, and
- independent schools (including academies and free schools) **must** record details of the section 128 checks undertaken for those in management positions.

277. The details of an individual should be removed from the single central record once they no longer work at the school or college.

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[89] Independent schools and non-maintained special schools should also include the date on which any certificate was obtained.
[90] 16-19 Academies, Special Post-16 institutions and Independent Training Providers cannot carry out a separate barred list check and as such, in relation to regulated activity, must always obtain an enhanced DBS with barred list check where required.
[91] There is no requirement for colleges to record this information, however, as part of the funding agreement colleges must have robust record keeping procedures in place.
[92] 16-19 Academies, Special Post-16 institutions and Independent Training Providers are not required to record whether the person's position involves 'relevant activity'. However, these providers should have robust record keeping procedures in place.

Non statutory information

278. Schools and colleges are free to record any other information they deem relevant. For example:

- whether relevant staff have been informed of their duty to disclose relevant information under the childcare disqualification arrangements
- checks made on volunteers
- checks made on governors
- dates on which safeguarding and safer recruitment training was undertaken, and
- the name of the person who carried out each check.

279. The single central record can be kept in paper or electronic form.

Multi-academy trusts (MATS)

280. MATs **must** maintain the single central record detailing checks carried out in each academy within the MAT. Whilst there is no requirement for the MAT to maintain an individual record for each academy, the information should be recorded in such a way that allows for details for each individual academy to be provided separately, and without delay, to those entitled to inspect that information, including by inspectors.

Retention of documents

281. Copies of documents used to verify the successful candidate's identity, right to work and required qualifications should be kept on their personnel file as per the advice at paragraph 237.

282. Copies of DBS certificates and records of criminal information disclosed by the candidate are covered by UK GDPR/DPA 2018 Article 10. To help schools and colleges comply with the requirements of the Data Protection Act 2018, when a school or college chooses to retain a copy, there should be a valid reason for doing so and it should not be kept for longer than six months. When the information is destroyed a school or college may keep a record of the fact that vetting was carried out, the result and the recruitment decision taken if they choose to.

283. Schools and colleges do not have to keep copies of DBS certificates, in order to fulfil the duty of maintaining the single central record. Further information on handling DBS information can be found on GOV.UK.

iii. Other checks that may be necessary for staff, volunteers and others, including the responsibilities on schools and colleges for children in other settings

284. This section sets out other legal requirements i.e. 'must' do or as appropriate 'should' do for individuals who have lived or worked outside the UK; agency and third-party staff; contractors; trainee teachers; volunteers; governors and proprietors. It also sets out responsibilities placed on schools and colleges in relation to other settings, including alternative provision, work experience and host families.

Individuals who have lived or worked outside the UK

285. Individuals who have lived or worked outside the UK **must** [93] undergo the same checks as all other staff in schools or colleges (set out in paragraph 235). This includes obtaining (via the applicant) an enhanced DBS certificate (including children's barred list information, for those who will be engaging in regulated activity) even if the individual has never been to the UK. In addition, schools and colleges **must** [94] make any further checks **they think appropriate** so that any relevant events that occurred outside the UK can be considered. Following the UK's exit from the EU, schools and colleges should apply the same approach for any individuals who have lived or worked outside the UK regardless of whether or not it was in an EEA country or the rest of the world.

These checks **could** include, where available:

- criminal records checks for overseas applicants - Home Office guidance can be found on GOV.UK; and for teaching positions
- obtaining a letter (via the applicant) from the professional regulating authority (this is often the Department/Ministry of Education but varies across the world) in the country (or countries) in which the applicant has worked confirming that they have not imposed any sanctions or restrictions, and or that they are aware of any reason why they may be unsuitable to teach. Applicants can find contact details of regulatory bodies in the EU/EEA and Switzerland on the Regulated Professions database. Where available, such evidence can be considered together with information obtained through other pre-appointment

[93] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should ensure individuals undergo the same checks.
[94] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should make any further checks

checks to help assess their suitability.

286. Where this information is not available schools and colleges should seek alternative methods of checking suitability and or undertake a risk assessment that supports informed decision making on whether to proceed with the appointment.

287. Although sanctions and restrictions imposed by another regulating authority do not prevent a person from taking up teaching positions in England, schools and colleges should consider the circumstances that led to the restriction or sanction being imposed when considering a candidate's suitability for employment. Further information can be found in DfE Guidance: Recruit teachers from overseas.

288. Not all countries provide criminal record information, and where they do, the nature and detail of the information provided varies from country to country. Schools and colleges should also be mindful that the criteria for disclosing offences in other countries often have a different threshold than those in the UK. The Home Office provides guidance on criminal records checks for overseas applicants which can be found on GOV.UK.

289. Some overseas qualified teachers can apply to the TRA for the award of qualified teacher status (QTS) in England. More information about this is available here. It is important to note that holding a teaching qualification (wherever it was obtained) does not provide suitable assurances for safeguarding purposes that an individual has not been found guilty of any wrongdoing or misconduct, and or is suitable to work with children.

Agency and third-party staff (supply staff)[95]

290. Schools and colleges **must** [96] obtain written notification from any agency, or third party organisation, that they have carried out the same checks as the school or college would otherwise perform on any individual who will be working at the school or college (or who will be providing education on the school or college's behalf, including through online delivery).[97] In respect of the enhanced DBS check,

[95] Further advice on safer recruitment for schools and colleges using recruitment and supply agencies can be found within the Better Hiring Institute's Education Supply Chains A better Hiring Toolkit' advice.
[96] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should obtain written notification regarding checks when they use agency or third-party staff.
[97] Colleges must comply with regulations 11 to 19 of The Further Education (Providers of Education) (England) Regulations 2006 in respect of agency workers; maintained schools must comply with regulations 18 and 30 of the School Staffing (England) Regulations 2009; non-maintained special schools must comply with paragraphs 5 and 16 of the Schedule to The Non-Maintained Special Schools (England) Regulations 2015; and independent schools (including academies and free schools) must comply with paragraph 19 of the Schedule to The Education (Independent School Standards) Regulation 2014.

schools and colleges **must** [98] ensure that written notification confirms the certificate has been obtained by either the employment business or another such business.

291. Where the agency or organisation has obtained an enhanced DBS certificate before the person is due to begin work at the school or college, which has disclosed any matter or information, or any information was provided to the employment business, the school or college must [99] obtain a copy of the certificate from the agency.

292. Where the position requires a children's barred list check, this must [100] be obtained by the agency or third party by obtaining an enhanced DBS certificate with children's barred list information, prior to appointing the individual.

293. The school or college should also check that the person presenting themselves for work is the same person on whom the checks have been made.

Contractors

294. Where schools and colleges use contractors to provide services, they should set out their safeguarding requirements in the contract between the organisation and the school or college.

295. Schools and colleges should ensure that any contractor, or any employee of the contractor, who is to work at the school or college, has been subject to the appropriate level of DBS check. Contractors engaging in regulated activity relating to children will require an enhanced DBS check (including children's barred list information).

296. For all other contractors who are not engaging in regulated activity relating to children, but whose work provides them with an opportunity for regular contact with children, an enhanced DBS check (not including children's barred list information) will be required.[101] In considering whether the contact is regular, it is irrelevant whether the contractor works on a single site or across several sites. In cases where the contractor does not have opportunity for regular contact with children,

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[98] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should ensure that written notification confirms the certificate has been obtained by either the employment business or another such business.

[99] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should obtain a copy of the certificate in such circumstances.

[100] Where using a third party 16-19 Academies, Special Post-16 institutions and Independent Training Providers should ensure a DBS with barred list information is obtained for those engaging in regulated activity.

[101] It will only be possible to obtain an enhanced DBS certificate for contractors in colleges which are exclusively or mainly for the provision of full-time education to children.

schools and colleges should decide on whether a basic DBS disclosure would be appropriate.

297. Under no circumstances should a contractor on whom no checks have been obtained be allowed to work unsupervised or engage in regulated activity relating to children. Schools and colleges are responsible for determining the appropriate level of supervision depending on the circumstances.

298. If an individual working at a school or college is self-employed, the school or college should consider obtaining the DBS check, as self-employed people are not able to make an application directly to the DBS on their own account.

299. Schools and colleges should always check the identity of contractors on arrival at the school or college.

Trainee/student teachers

300. Where applicants for initial teacher training are salaried by the school or college, the school or college must[102] ensure that all necessary checks are carried out. If these trainee teachers are engaging in regulated activity relating to children (which in most cases by the nature of the work, they will be), an enhanced DBS check (including children's barred list information) must [103] be obtained.

301. Where trainee teachers are fee-funded, it is the responsibility of the initial teacher training provider to carry out the necessary checks. Schools and colleges should obtain written confirmation from the provider that it has carried out all pre-appointment checks that the school or college would otherwise be required to perform, and that the trainee has been judged by the provider to be suitable to work with children.

302. There is no requirement for the school or college to record details of fee-funded trainees on the single central record. However, schools and colleges may wish to record this information under non statutory information, see paragraph 278.

Visitors

303. Schools and colleges have different types of visitors, those with a professional role i.e. educational psychologists, social workers etc. those connected with the building, grounds maintenance, children's relatives or other

[102] 16-19 Academies, Special Post-16 institutions and Independent Training Providers should ensure all necessary checks are carried out.
[103] 16-19 Academies, Special Post-16 institutions and Independent Training Providers must ensure an enhanced DBS check with barred list information is obtained as per their funding agreement.

visitors attending an activity in school such as a sports day. For visitors provided via a third party see paragraphs 290-293.

304. Schools and colleges should not request DBS checks or barred list checks, or ask to see existing DBS certificates, for visitors such as children's relatives or other visitors attending a sports day.

305. Headteachers and principals should use their professional judgement about the need to escort or supervise such visitors.

306. For visitors who are there in a professional capacity schools and colleges should check ID and be assured that the visitor has had the appropriate DBS check (or the visitor's employers have confirmed that their staff have appropriate checks. Schools and colleges should not ask to see the certificate in these circumstances).

307. Whilst external organisations can provide a varied and useful range of information, resources and speakers that can help schools and colleges enrich children's education, careful consideration should be given to the suitability of any external organisations.

308. School and college safeguarding policies should set out the arrangements for individuals coming onto their premises, which may include an assessment of the education value, the age appropriateness of what is going to be delivered and whether relevant checks will be required.

Volunteers

309. Under no circumstances should a volunteer on whom no checks have been obtained be left unsupervised or allowed to work in regulated activity.

310. Whilst volunteers play an important role and are often seen by children as being safe and trustworthy adults, the nature of voluntary roles varies, so schools and colleges should undertake a written risk assessment and use their professional judgement and experience when deciding what checks, if any, are required.

311. The risk assessment should consider:

- the nature of the work with children, especially if it will constitute regulated activity, including the level of supervision
- what the establishment knows about the volunteer, including formal or informal information offered by staff, parents and other volunteers
- whether the volunteer has other employment or undertakes voluntary activities where referees can advise on their suitability, and
- whether the role is eligible for a DBS check, and if it is, the level of the check, for volunteer roles that are not in regulated activity.

312. Details of the risk assessment should be recorded.[104]

When should a DBS with barred list be obtained for volunteers [105]

313. Schools or colleges should obtain an enhanced DBS check (which should include children's barred list information) for all volunteers who are new to working in regulated activity with children, i.e. where they are unsupervised and teach or look after children regularly or provide personal care on a one-off basis in schools and colleges. See Annex E for statutory supervision guidance. Employers are not legally permitted to request barred list information on a supervised volunteer, as they are not considered to be engaging in regulated activity.

Supervision of volunteers

314. It is for schools and colleges to determine whether a volunteer is considered to be supervised. Where an individual is supervised, to help determine the appropriate level of supervision, all schools and colleges[106] **must** have regard to the statutory guidance issued by the Secretary of State (replicated at Annex E).

315. For a person to be considered supervised, the supervision **must** be:

- by a person who is in regulated activity relating to children [107]
- regular and day to day, and
- reasonable in all the circumstances to ensure the protection of children.

Existing volunteers

316. Volunteers do not have to be re-checked if they have already had a DBS check (which should include children's barred list information if engaging in regulated activity). However, if the school or college has any concerns, they should consider obtaining a new DBS check at the level appropriate to the volunteering role.

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[104] Schools and colleges are free to determine where to store this information.
[105] The DBS does not charge for checks on volunteers. However, if schools or colleges use an external organisation to carry out the check, there may be an administration charge.
[106] This also applies to 16-19 Academies, Special Post-16 institutions and Independent Training Providers
[107] It should be noted that if the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.

Maintained school governors

317. Governors in maintained schools are required to have an enhanced DBS check.[108] It is the responsibility of the governing body to apply for the certificate for any governors who do not already have one.

318. Governance is not a regulated activity relating to children, so governors do not need a children's barred list check unless, in addition to their governance duties, they also engage in regulated activity.

319. Schools should also carry out a section 128 check for school governors, because a person prevented from participating in the management of an independent school by a section 128 direction, is also disqualified from being a governor of a maintained school. Using GOV.UK schools can check if a person they propose to recruit as a governor is barred as a result of being subject to a section 128 direction. There is no requirement for schools to record this information on the single central record, but they can if they chose to.

320. Associate members are appointed by the governing body to serve on one or more governing body committees. The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 which make enhanced DBS checks mandatory for maintained school governors do not apply to associate members, and so there is no requirement for them to be checked unless they also engage in regulated activity at their school.

Sixth form college governors

321. Governing bodies in sixth form colleges can request an enhanced DBS check without a children's barred list check.

322. An enhanced DBS check with children's barred list information should only be requested if the governor will be engaging in regulated activity relating to children.

[108] The School Governance (Constitution) (England) Regulations 2012 were amended by the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 to include this requirement.

Proprietors of independent schools, including academies and free schools and proprietors of alternative provision academies [109]

323. Before an individual becomes either the proprietor of an independent school or the chair of a body of people which is the proprietor of an independent school, the Secretary of State will:[110] [111]

- carry out an enhanced DBS check; and where such a check is made, obtain an enhanced DBS certificate (either including or not including children's barred list information as appropriate). [112]
- confirm the individual's identity, and
- if the individual lives or has lived outside of the UK, where applying for an enhanced check is insufficient, such other checks as the Secretary of State considers appropriate.

324. The Secretary of State also undertakes these checks in respect of the chair of governing bodies of non-maintained special schools.[113]

325. The requirement for an enhanced DBS check and certificate is disapplied for the chair of an academy trust if the academy is converting from a maintained school and the person has already been subject to a check carried out by the local authority.[114]

326. Where the proprietor is a body of people (including a governing body in an academy or free school), the chair must ensure that enhanced DBS checks are undertaken, for the other members of the body, and that where such a check has been undertaken, an enhanced DBS certificate is obtained, and the chair must ensure that identity checks are completed before, or as soon as practicable after, any individual takes up their position.

327. The chair must also ensure that other members are not subject to a section 128 direction that would prevent them from taking part in the management of an independent school (including academies and free schools).

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[109] The proprietor of an academy or free school or alternative provision academy or free school is the academy trust.
[110] Paragraph 20 of the Schedule to the Education (Independent Schools Standards) Regulation 2014.
[111] This will include an academy trust of any academy or free school, other than for 16-19 academies or free schools.
[112] Regulation 2(5) of the Education (Independent School Standards) Regulations 2014 sets out when such checks are considered relevant.
[113] Paragraphs 6 and 17 of the Schedule to The Non-Maintained Special Schools (England) Regulations 2015.
[114] Paragraph 20(7) of the Schedule to the Education (Independent School Standards) Regulations 2014.

328. Further checks, as the chair considers appropriate, should be undertaken where, by reason of the individual's living or having lived overseas, obtaining an enhanced DBS check is not sufficient to establish an individual's suitability to work in a school.

329. In the case of an academy trust, including those established to operate a free school, the trust must require enhanced DBS checks on all members of the academy trust, individual charity trustees, and the chair of the board of charity trustees.[115] Academy trusts, including those established to run a free school, have the same responsibilities as all independent schools in relation to requesting enhanced DBS checks for permanent and supply staff.[116]

330. Where an academy trust delegates responsibilities to any delegate or committee (including a local governing body), the trust must require an enhanced DBS check on all delegates and all members of such committees.[117] Academy trusts must also check that members are not disqualified from taking part in the management of the school as a result of a section 128 direction.

Alternative provision

331. Where a school places a pupil with an alternative provision provider, the school continues to be responsible for the safeguarding of that pupil, (further information provided in part 2). Schools should obtain written confirmation from the alternative provision provider that appropriate safeguarding checks have been carried out on individuals working at the establishment, i.e. those checks that the school would otherwise perform in respect of its own staff. This includes written confirmation that the alternative provider will inform the commissioning school of any arrangements that may put the child at risk (i.e. staff changes), so that the commissioning school can ensure itself that appropriate safeguarding checks have been carried out on new staff.

[115] As required in the Academy Trust Handbook which academy trusts must comply with as a condition of their funding agreement.
[116] The Education (Independent School Standards) Regulations 2014. The regulations do not apply to 16-19 free schools and academies.
[117] As required in the Academy Trust Handbook which academy trusts must comply with as a condition of their funding agreement.

Adults who supervise children on work experience

332. Schools and colleges organising work experience placements should ensure that the placement provider has policies and procedures in place to protect children from harm.[118]

333. Children's barred list checks via the DBS might be required on some people who supervise a child under the age of 16 on a work experience placement.[119] The school or college should consider the specific circumstances of the work experience. Consideration must be given in particular to the nature of the supervision and the frequency of the activity being supervised, to determine what, if any, checks are necessary.

334. These considerations would include whether the person providing the teaching/training/instruction/supervision to the child on work experience will be:

- unsupervised themselves, and
- providing the teaching/training/instruction frequently (more than three days in a 30-day period, or overnight).

335. If the person working with the child is unsupervised and the same person is in frequent contact with the child, the work is likely to be regulated activity relating to children. If so, the school or college could ask the employer providing the work experience to ensure that the person providing the instruction or training is not a barred person.

336. Schools and colleges are not able to request that an employer obtains an enhanced DBS check with children's barred list information for staff supervising children aged 16 to 17 on work experience.[120]

337. If the activity undertaken by the child on work experience takes place in a 'specified place[121], such as a school or sixth form college, and gives the opportunity for contact with children, this may itself be considered to be regulated activity relating to children. In these cases, and where the child doing the work experience is 16 years of age or over, the work experience provider e.g. school or sixth form college should consider whether a DBS enhanced check should be requested for

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[118] Guidance on work experience.
[119] Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, which came into force on 10 September 2012.
[120] The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 was amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012 so that employers may no longer request checks in these circumstances.
[121] See page 8 of DBS guidance: Regulated activity with children England which can be found at: Regulated activity with children in England and Wales - GOV.UK (www.gov.uk)

the child in question. DBS checks cannot be requested for children under the age of 16.[122]

Children staying with host families (homestay)

338. Schools and colleges quite often make arrangements for children receiving education at their institution to have learning experiences where, for short periods, the children may be provided with care and accommodation by a host family to whom they are not related. This might happen, for example, as part of a foreign exchange visit or sports tour, often described as 'homestay' arrangements (see Annex D for further details).

339. In some circumstances the arrangement where children stay with UK families could amount to "private fostering" under the Children Act 1989.

Private fostering – local authority notification when identified

340. Private fostering[123] occurs when a child under the age of 16 (under 18 for children with a disability) is provided with care and accommodation by a person who is not a parent, person with parental responsibility for them or a relative in their own home.

341. A child is not privately fostered if the person caring for and accommodating them has done so for less than 28 days and does not intend to do so for longer. Such arrangements may come to the attention of school and college staff through the normal course of their interaction, and promotion of learning activities, with children.

342. Where the arrangements come to the attention of the school or college (and the school or college is not involved in the arrangements), they should then notify the local authority to allow the local authority to check the arrangement is suitable and safe for the child. Schools and colleges who are involved (whether or not directly) in arranging for a child to be fostered privately must notify local authorities of the arrangement as soon as possible after the arrangement has been made. Notifications must contain the information specified in Schedule 1 of The Children (Private Arrangements for Fostering) Regulations 2005 and must be made in writing.

DBS Guidance leaflets

[122] Under the Police Act 1997, an individual must be 16 or over to be able to make an application for a DBS check.

[123] Part 9 of the Children Act 1989 (legislation.gov.uk).

343. Comprehensive guidance on private fostering can be found here: Private fostering: local authorities.

iv. How to ensure the ongoing safeguarding of children and the legal reporting duties on employers

344. This section explains the importance of safeguarding vigilance beyond the recruitment process and as part of the whole school or college approach to safeguarding.

345. Safer recruitment is not just about carrying out the right DBS checks. Similarly safeguarding should not be limited to recruitment procedures. Good safeguarding requires a continuing commitment from governing bodies, proprietors, and all staff to ensure the safety and welfare of children is embedded in all of the organisation's processes and procedures and consequentially enshrined in its ethos. See Parts one and two of this guidance for information about providing a coordinated whole school and college approach to safeguarding.

Ongoing vigilance for all staff

346. Governing bodies and proprietors should ensure they have processes in place for continuous vigilance, maintaining an environment that deters and prevents abuse and challenges inappropriate behaviour.

347. To support this, it is important that school and college leaders create the right culture and environment so that staff feel comfortable to discuss matters both within, and where it is appropriate, outside of the workplace (including online), which may have implications for the safeguarding of children. As set out in Part one, Part two and Part four of this guidance it is important that all staff understand the process and procedures to follow if they have a safeguarding concern about another staff member. This can assist employers to support staff, where there is a need, and help them manage children's safety and welfare, potentially providing them with information that will help them consider whether there are further measures or changes to procedures that need to be put in place to safeguard children in their care.

Existing staff

348. There are limited circumstances where schools and colleges will need to carry out new checks on existing staff. These are when:

- an individual working at the school or college moves from a post that was not regulated activity with children into work which is considered to be regulated

activity with children. In such circumstances, the relevant checks for that regulated activity **must**[124] be carried out

- there has been a break in service of 12 weeks or more, or
- there are concerns about an individual's suitability to work with children.

349. For colleges, an individual moving from a position that did not involve the provision of education to one that does, **must** be treated as if that individual were a new member of staff and all required pre-appointment checks **must**[125] be carried out (see paragraph 236).

Duty to refer to the Disclosure and Barring Service

350. When an allegation is made (see Part four), an investigation should be carried out to gather enough evidence to establish if it has foundation, and employers should ensure they have sufficient information to meet the referral duty criteria explained in the DBS referral guidance, which can be found on GOV.UK.

351. There is a legal requirement for schools and colleges [126] to make a referral to the DBS where they remove an individual from regulated activity (or would have removed an individual had they not left), and they believe the individual has:

- engaged in relevant conduct in relation to children and/or adults, and/or
- satisfied the harm test in relation to children and/or vulnerable adults, and/or
- been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence.

352. The DBS will consider whether to bar the person. Detailed guidance on when to refer to the DBS (including what is the harm test and relevant conduct), and what information must be provided, can be found on GOV.UK.

353. Referrals should be made as soon as possible when an individual is removed from regulated activity. This could include when an individual is suspended, redeployed to work that is not regulated activity, dismissed or when they have resigned. It is important that as much relevant information is provided to the DBS as possible, as it relies on the quality of information provided by the school or college when considering the referral.

[124] This also applies to 16-19 Academies, Special Post-16 institutions and Independent Training Providers.
[125] This also applies to 16-19 Academies, Special Post-16 institutions and Independent Training Providers.
[126] This also applies to 16-19 Academies, Special Post-16 institutions and Independent Training Providers.

Duty to consider referral to the Teaching Regulation Agency

354. Where a school, sixth form college or 16-19 academy teacher's employer, including an agency, dismisses or ceases to use the services of a teacher because of serious misconduct, or might have dismissed them or ceased to use their services had they not left first, they must consider whether to refer the case to the Secretary of State, as required by sections 141D and 141E of the Education Act 2002.

355. The Secretary of State may investigate the case, and if there is a case to answer, must then decide whether to make a prohibition order in respect of the person.[127] Details about how to make a referral to the TRA can be found on GOV.UK.

[127] Sections 141D and 141E of the Education Act 2002 do not apply to colleges (other than sixth form colleges).

Part four: Safeguarding concerns or allegations made about staff, including supply teachers, volunteers and contractors

356. Schools and colleges should have their own procedures for dealing with safeguarding concerns or allegations against those working in or on behalf of schools and colleges in a paid or unpaid capacity, i.e. members of staff, including supply teachers, volunteers and contractors.

357. This part of the guidance has two sections covering the two levels of concerns and allegations:

1. Concerns / allegations that **may** meet the harm threshold.
2. Concerns / allegations that **do not** meet the harm threshold – referred to for the purposes of this guidance as 'low-level concerns'.

358. These procedures should be consistent with local safeguarding procedures and practice guidance.

Section one: Concerns or allegations that may meet the harm threshold

359. This part of the guidance is about managing cases of concerns/allegations that might indicate a person would pose a risk of harm[128] if they continue to work in their present position, or in any capacity with children in a school or college. In this part (section one) of the guidance reference is made to '**allegation**' for ease. This part of the guidance should be followed where it is alleged that anyone working in the school or a college that provides education for persons under 18 years of age, including supply teachers, volunteers and contractors has:

- **behaved in a way that has harmed a child, or may have harmed a child and/or**
- **possibly committed a criminal offence against or related to a child, and/or**
- **behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children, and/or**

[128] The harm test is explained in the Disclosure and Barring service Guidance: Making barring referrals to the DBS and Section 31(9) of the Children Act 1989 as amended by the Adoption and Children Act 2002

- **behaved or may have behaved in a way that indicates they may not be suitable to work with children.**

360. The last bullet point above includes behaviour that may have happened outside of school or college, that might make an individual unsuitable to work with children, this is known as transferable risk.

361. Where appropriate, an assessment of transferable risk to children with whom the person works should be undertaken. If in doubt seek advice from the local authority designated officer (LADO).

362. It is important that policies and procedures make clear to whom allegations should be reported (as set out at paragraph 69-71) and that this should be done without delay. A "case manager" will lead any investigation. This will be either the headteacher or principal, or, where the headteacher is the subject of an allegation, the chair of governors or chair of the management committee and in an independent school it will be the proprietor.

The initial response to an allegation

363. Where the school or college identifies that a child has been harmed, that there may be an immediate risk of harm to a child or if the situation is an emergency, they should contact local authority children's social care and as appropriate the police immediately as per the processes explained in Part one of this guidance.

364. There are two aspects to consider when an allegation is made:

- **Looking after the welfare of the child** - the designated safeguarding lead (or a deputy) is responsible for ensuring that the child is not at risk and referring cases of suspected abuse to the local authority children's social care as described in Part one of this guidance.
- **Investigating and supporting the person subject to the allegation** - the case manager should discuss with the LADO, the nature, content and context of the allegation, and agree a course of action.

365. When dealing with allegations, schools and colleges should:

- apply common sense and judgement
- deal with allegations quickly, fairly and consistently, and
- provide effective protection for the child and support the person subject to the allegation.

366. Schools and colleges should ensure they understand the local authority arrangements for managing allegations, including the contact details and what

information the LADO will require when an allegation is made. Before contacting the LADO, schools and colleges should conduct basic enquiries in line with local procedures to establish the facts and to help them determine whether there is any foundation to the allegation, being careful not to jeopardise any future police investigation. For example whether:

- the individual was in the school or college at the time of the allegations
- the individual did or could have come into contact with the child
- there were any witnesses, and
- there is any CCTV footage

367. These are just a sample of example questions. Schools and colleges should be familiar with what initial information the LADO will require. This information can be found in local policy and procedural guidance provided by the LADO service.

368. When to inform the individual of the allegation should be considered carefully on a case-by-case basis, with guidance as required from the LADO, and if appropriate local authority children's social care and the police.

369. If there is cause to suspect a child is suffering, or is likely to suffer significant harm, a strategy discussion involving the police and/or local authority children's social care will be convened in accordance with the statutory guidance Working Together to Safeguard Children. If the allegation is about physical contact, for example restraint, the strategy discussion[129] or initial evaluation with the LADO should take into account that teachers and other school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour. Further information about the use of reasonable force can be found at paragraphs 163-165 in Part Two of this guidance and on GOV.UK.

370. Where the case manager is concerned about the welfare of other children in the community or the member of staff's family, they should discuss these concerns with the designated safeguarding lead (or a deputy) and make a risk assessment of the situation. It may be necessary for the designated safeguarding lead to make a referral to local authority children's social care.

371. Where it is clear that an investigation by the police or local authority children's social care is unnecessary, or the strategy discussion or initial

[129] The purpose of a strategy discussion and those likely to be involved is described in Working Together to Safeguard Children

assessment decides that is the case, the LADO should discuss the next steps with the case manager.

No further action

372. Where the initial discussion leads to no further action, the case manager and the LADO should:

- record the decision and justification for it, and
- agree on what information should be put in writing to the individual concerned and by whom.

Further enquiries

373. Where further enquiries are required to enable a decision about how to proceed, the LADO and case manager should discuss how and by whom the investigation will be undertaken. The LADO will provide advice and guidance to schools and colleges when considering allegations against adults working with children. The role of the LADO is not to investigate the allegation, but to ensure that an appropriate investigation is carried out, whether that is by the police, local authority children's social care, the school or college, or a combination of these. In straightforward cases, the investigation should normally be undertaken by a senior member of the school or college's staff.

374. Where there is a lack of appropriate resource within the school or college, or the nature or complexity of the allegation requires it, the allegation will require an independent investigator. Many local authorities provide for an independent investigation of allegations for schools that are maintained by the local authority, often as part of the HR/personnel services that schools and colleges can buy in from the authority. It is important that local authorities ensure that schools and colleges in that area have access to an affordable facility for independent investigation where that is appropriate. Colleges, academies and independent schools should also ensure they secure the services of a person who is independent of the school or college.

375. The case manager should monitor the progress of cases to ensure that they are dealt with as quickly as possible in a thorough and fair process. Wherever possible, the first review should take place no later than four weeks after the initial assessment.

376. Dates for subsequent reviews, ideally at fortnightly (and no longer than monthly) intervals, should be set at the review meeting if the investigation continues.

Supply teachers and all contracted staff

377. In some circumstances schools and colleges will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply because agencies will have their own policies and procedures; for example, supply teachers or contracted staff provided by an employment agency or business.

378. Whilst schools and colleges are not the employer of supply teachers, they should ensure allegations are dealt with properly. In no circumstances should a school or college decide to cease to use a supply teacher due to safeguarding concerns, without finding out the facts and liaising with the LADO to determine a suitable outcome. Governing bodies and proprietors should discuss with the supply agency or agencies where the supply teacher is working across a number of schools of colleges, whether it is appropriate to suspend the supply teacher, or redeploy them to another part of the school or college, whilst they carry out their investigation.

379. Agencies should be fully involved and co-operate with any enquiries from the LADO, police and/or local authority children's social care. The school or college will usually take the lead because agencies do not have direct access to children or other school or college staff, so they will not be able to collect the facts when an allegation is made, nor do they have all the relevant information required by the LADO as part of the referral process. Supply teachers, whilst not employed by the school or college, are under the supervision, direction and control of the governing body or proprietor when working in the school or college. They should be advised to contact their trade union representative if they have one, or a colleague for support. The allegations management meeting, which is often arranged by the LADO, should address issues such as information sharing, to ensure that any previous concerns or allegations known to the agency or agencies are considered by the school or college during the investigation.

380. When using a supply agency, schools and colleges should inform the agency of the process for managing allegations but also take account of the agency's policies and the duty placed on agencies to refer to the DBS as personnel suppliers. This should include inviting the agency's human resource manager or equivalent to meetings and keeping them up to date with information about its policies.

Organisations or Individuals using school premises

381. Schools and colleges may receive an allegation relating to an incident that happened when an individual or organisation was using their school premises for the purposes of running activities for children (for example community groups,

sports associations, or service providers that run extra-curricular activities). As with any safeguarding allegation, schools and colleges should follow their safeguarding policies and procedures, including informing the LADO.

Governors

382. If an allegation is made against a governor, schools and colleges should follow their own local procedures. Where an allegation is substantiated, they should follow the procedures to consider removing them from office.

Suspension

383. Suspension should not be an automatic response when an allegation is reported. All options to avoid suspension should be considered prior to taking that step. The case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or college, until the allegation is resolved. It should be considered only in cases where there is cause to suspect a child or other children at the school or college is/are at risk of harm, or the case is so serious that there might be grounds for dismissal. If in doubt, the case manager should seek views from their personnel adviser and the LADO, as well as the police and local authority children's social care where they have been involved.

384. Where a school or sixth form college is made aware that the Secretary of State has made an interim prohibition order, in respect of an individual who works at a school or sixth form college, they should take immediate action to ensure the individual does not carry out work in contravention of the order. This means that pending the findings of the Teaching Regulation Agency (TRA) investigation, the individual must not carry out teaching work. School and colleges should have clear policies on pay arrangements whilst the person is suspended or where there is an interim prohibition order in place.

385. In many cases, an inquiry can be resolved quickly and without the need for suspension. The employer will decide on whether the individual should continue to work at the school or college, based on consultation with the LADO who will provide relevant information received from the police or local authority children's social care on whether they have any objections to the member of staff continuing to work during the investigation of the case.

386. Based on advice from the school or college's HR provider and/or a risk analysis drawn up with the LADO, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school or college so that the individual does not have

direct contact with the child or children concerned

- providing an assistant to be present when the individual has contact with children
- redeploying to alternative work in the school or college so the individual does not have unsupervised access to children
- moving the child or children to classes where they will not come into contact with the member of staff, but this decision should only be made if it is in the best interests of the child or children concerned and takes account of their views. It should be made clear that this is not a punishment and parents have been consulted, or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or where available, work for the local authority or academy trust.

387. These alternatives allow time for an informed decision regarding the suspension, this will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unfounded, unsubstantiated, malicious, or false.

388. If immediate suspension is considered necessary, the case manager should record the rationale and justification for such a course of action. This should also include what alternatives to suspension have been considered and why they were rejected.

389. Where it has been deemed appropriate to suspend the person, written confirmation should be given within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

390. Local authority children's social care or the police may give their view to the LADO but they cannot require the case manager to suspend a member of staff or remove a volunteer, although the case manager should give appropriate weight to their views. The power to suspend is vested in the governing body or proprietor who are the employers. However, where a strategy discussion, or initial assessment, concludes that there should be enquiries by local authority children's social care, and/or an investigation by the police, the LADO should canvass police and local authority children's social care for views about whether the accused member of staff should be suspended from contact with children. Police involvement does not make it mandatory to suspend a member of staff; this

decision should be taken on a case-by-case basis having undertaken a risk assessment about whether the person poses a risk of harm to children.

Supporting those involved

Duty of care

391. The welfare of a child is paramount (how children should be protected and supported is set out throughout this guidance) and this will be the prime concern in terms of investigating an allegation against a person in a position of trust. However, when an allegation or safeguarding concern is being investigated it is likely to be a very stressful experience for the adult subject to the investigation, and potentially for their family members. It is important that an employer offers appropriate welfare support at such a time and recognises the sensitivity of the situation. Information is confidential and should not ordinarily be shared with other staff or with children or parents who are not directly involved in the investigation.

392. Employers have a duty of care to their employees. They should:

- manage and minimise the stress caused by the allegation
- inform the individual as soon as possible, explaining the likely course of action, guided by the LADO, and the police where necessary
- advise the individual to contact their trade union representative, or a colleague for support
- appoint a named representative to keep the person informed about the progress of the case
- provide access to counselling or medical advice where appropriate. For staff in schools maintained by the local authority this may include support via the local authority's occupational health arrangements, and
- not prevent social contact with work colleagues and friends, when staff are suspended, unless there is evidence to suggest this may prejudice the gathering of evidence.

393. Parents or carers of the child or children involved should be:

- formally told about the allegation as soon as possible.[130] The case manager should consult the LADO and where involved, local authority children's social care and/or the police on what information can be disclosed

[130] In deciding what information is disclosed, careful consideration should be given to the provisions of the Data Protection Act 2018, the law of confidence and, where relevant, the Human Rights Act 1998.

- kept informed about the progress of the case, only in relation to their child - no information can be shared regarding the staff member, and
- made aware of the requirement to maintain confidentiality and unwanted publicity about any allegations made against teachers in schools whilst investigations are in progress as set out in section 141F of the Education Act 2002.

Confidentiality and Information sharing

394. In an allegations management meeting or during the initial assessment of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim, see paragraphs 114-122 in Part two about information sharing.

395. Where the police are involved, wherever possible the school or college should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer's disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delaying the conclusion of their investigation or any court case.

396. Local authority children's social care should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

397. The school and college must make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2011 amended the Education Act 2002, to introduce reporting restrictions. These provisions made it an offence (except in the limited circumstance expressly permitted by the legislation), for any person to publish any material that may lead to the identification of a teacher in a school[131] who has been accused by, or on behalf of, a child from the same school (where that identification would identify the teacher as the subject of the allegation).

398. The reporting restrictions apply until:

- the point that the accused person is charged with a relevant offence, or
- the Secretary of State[132] or the General Teaching Council for Wales publishes

[131] Section 141F of the Education Act 2002 only applies to teachers in schools does not apply to colleges.
[132] Carried out by the Teaching Regulation Agency.

information about an investigation or decision in a disciplinary case arising from the allegation.

399. The reporting restrictions are disapplied if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a court lifts the reporting restrictions in response to a request to do so.

400. The legislation prevents the "publication" of material by any person that may lead to the identification of the teacher who is the subject of the allegation. "Publication" includes "any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public." This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public). In circumstances where schools need to make parents aware about an allegation, they should make parents and others aware that there are restrictions on publishing information.

401. In accordance with the Authorised Professional Practice published by the College of Policing in May 2017, the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police wish to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates' court to request that reporting restrictions be lifted.

402. The case manager should take advice from the LADO, the police and local authority children's social care to agree the following:

- who needs to know and exactly what information can be shared
- how to manage speculation, leaks and gossip
- what, if any, information can be reasonably given to the wider community to reduce speculation and
- how to manage press interest if, and when, it should arise.

Allegation outcomes

403. The definitions that should be used when schools and colleges determine the outcome of an allegation are set out below:

- **Substantiated**: there is sufficient evidence to prove the allegation

- **Malicious**: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive or cause harm to the person subject of the allegation
- **False**: there is sufficient evidence to disprove the allegation
- **Unsubstantiated**: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence, or
- **Unfounded**: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

404. Ultimately the options open to the school or college depend on the nature and circumstances of the allegations and the evidence and information available. This will range from taking no further action, to dismissal or a decision not to use the person's services in future.

Following a substantiated allegation

405. If the allegation is substantiated and:

- the person is dismissed; resigns, or otherwise ceases to provide his or her services, or
- the employer ceases to use the person's services.

406. In the case of a member of teaching staff at any school, sixth form college, or 16-19 academy, the case manager must consider whether to refer the matter to the TRA to consider whether the individual should be prohibited from teaching (paragraph 354-355 for further information).[133]

407. There is a legal requirement for employers to make a referral[134] to the DBS where they consider an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child (paragraph 350-353 for further information).

Following a criminal investigation or a prosecution

408. The police should inform the LADO and the employer immediately when:

- a criminal investigation and any subsequent trial are complete
- it is decided to close an investigation without charge, or

[133] Teacher Regulation Agency – guidance on Referrals to the TRA
[134] Disclosure and Barring Service – guidance on Referrals to the DBS.

- it is decided not to continue to prosecute after the person has been charged.

409. In those circumstances, during the joint assessment meeting the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or local authority children's social care should also inform that decision. The options will depend on the circumstances of the case and the consideration should take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

Unsubstantiated, unfounded, false or malicious allegations

410. If an allegation is determined to be unsubstantiated, unfounded, false or malicious, the LADO and the case manager should consider whether the child and/or the person who has made the allegation is in need of help or may have been abused by someone else and this was a cry for help. In such circumstances, a referral to local authority children's social care may be appropriate.

411. If an allegation is shown to be deliberately invented or malicious, the school or college, should consider whether any disciplinary action is appropriate against the individual who made it as per their own behaviour policy.

Returning to work

412. Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Guidance and advice are usually provided via HR or the LADO. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The case manager should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still attending the school or college.

Managing the situation and exit arrangements

Resignations and 'settlement agreements'

413. 'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action and both parties agree a form of words to be used in any future reference, should not be used, where there are allegations that indicate the

person is a risk or poses a risk of harm to children or deemed not suitable to work with children. Such an agreement will not prevent a thorough police and/or school or college investigation where that is appropriate.

414. Schools and colleges should not cease their investigations if the person leaves, resigns or ceases to provide their services. It is important that every effort is made to reach a conclusion in all cases of allegations with a bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate.

415. Wherever possible, the accused should be given full opportunity to answer the allegation and make representations about it. The process of recording the allegation and any supporting evidence and reaching a judgement about whether it can be substantiated or otherwise on the basis of all the information available, should continue even if the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record an outcome wherever possible. The person concerned should be notified of the conclusion of the allegations and sanctions that might be posed.

416. Other than where allegations are false, malicious, unsubstantiated, or unfounded, the outcome should be made clear when providing references to prospective employers. This is particularly important where the person moves into another position involving working with children.

417. It is not appropriate to reach a settlement/compromise agreement if the person subject to the allegation resigns or their services cease to be used. However, in limited circumstances schools and colleges sometimes use settlement agreements to end the employment relationship on agreed terms, but not where there is an allegation that the individual poses a risk to children.

418. Where a settlement/compromise agreement is used, schools and colleges should not let it prevent the employer from:

- fulfilling their legal duty to refer cases to the DBS where the referral criteria are met – see paragraph 350. Non-compliance of this duty is a criminal offence, or
- providing a reference to potential employers when requested, or
- considering whether to make a referral to the TRA where the criteria are met - see paragraph 354.

Record-keeping

419. Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records unless the individual gives their consent for retention of the information. However, for all other allegations, i.e. substantiated, unfounded and unsubstantiated it is important that the following information is kept on the file of the person accused:

- a clear and comprehensive summary of the allegation
- details of how the allegation was followed up and resolved
- a note of any action taken, decisions reached and the outcome i.e. substantiated, unfounded or unsubstantiated
- a copy provided to the person concerned, where agreed by local authority children's social care or the police, and
- a declaration on whether the information will be referred to in any future reference.

420. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

421. All other records should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

422. The Information Commissioner has published guidance on employment records in its, The Information Commissioner Employment Practices Code which provides some practical advice on record retention.

References

423. Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 226 for further information on references. Substantiated safeguarding allegations that meet the harm threshold should be included in references, provided that the information is factual and does not include opinions.

Learning lessons

424. Throughout the process in handling allegations and at conclusion of a case in which an allegation is substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school or college's procedures to help prevent similar events in the future. This should include issues arising from any decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The LADO and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

425. For all other cases, where the allegation concluded to be either, unfounded, false, malicious or unsubstantiated the case manager (and if they have been involved the LADO) should consider the facts and determine whether any lessons can be learned and if improvements can be made.

Non recent allegations

426. Where an adult makes an allegation to a school or college that they were abused as a child, the individual should be advised to report the allegation to the police. Non recent allegations made by a child, should be reported to the LADO in line with the local authority's procedures for dealing with non-recent allegations. The LADO will coordinate with local authority children social care and the police. Abuse can be reported no matter how long ago it happened.

Section two: Concerns or allegations that do not meet the harm threshold

427. Governing bodies and proprietors should have policies and processes to deal with **any** concerns or allegations which **do not** meet the harm threshold, referred to in this guidance as 'low-level' concerns. It is important that schools and colleges have appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children.

Low-level concerns

428. As part of their whole school or college approach to safeguarding, schools and colleges should ensure that they promote an open and transparent culture in which all concerns about all adults working in or on behalf of the school or college

(including supply teachers, volunteers and contractors) are dealt with promptly and appropriately.

429. Creating a culture in which all concerns about adults are shared responsibly and with the right person, recorded and dealt with appropriately, is critical. If implemented correctly, this should:

- enable schools and colleges to identify inappropriate, problematic or concerning behaviour early
- minimise the risk of abuse, and
- ensure that adults working in or on behalf of the school or college are clear about professional boundaries and act within these boundaries, and in accordance with the ethos and values of the institution.

What a low-level concern is

430. The term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' - that an adult working in or on behalf of the school or college may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and
- does not meet the harm threshold or is otherwise not serious enough to consider a referral to the LADO.

Examples of such behaviour could include, but are not limited to:

- being over friendly with children
- having favourites
- taking photographs of children on their mobile phone, contrary to school policy
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door, or
- humiliating children.

431. Such behaviour can exist on a wide spectrum, from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

432. Low-level concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent

or other adult within or outside of the organisation; or as a result of vetting checks undertaken.

433. It is crucial that all low-level concerns are shared responsibly with the right person and recorded and dealt with appropriately. Ensuring they are dealt with effectively should also protect those working in or on behalf of schools and colleges from becoming the subject of potential false low-level concerns or misunderstandings.

Staff code of conduct and safeguarding policies

434. As good practice governing bodies and proprietors should set out their low-level concerns policy within their staff code of conduct and safeguarding and child protection policies as set out in Part two of this guidance. They should make it clear what a low-level concern is and the importance of sharing low-level concerns, and an explanation of what the purpose of the policy is – i.e., to create and embed a culture of openness, trust and transparency in which the school or college's values and expected behaviour set out in the staff code of conduct are lived, monitored and reinforced constantly by all staff.

435. As set out in Part two of this guidance, the governing body or proprietor should ensure their staff code of conduct, behaviour policies and safeguarding policies and procedures are implemented effectively and ensure that appropriate action is taken in a timely manner to safeguard children and facilitate a whole school or college approach to dealing with any concerns.

436. Schools and colleges can achieve the purpose of their low-level concerns policy by:

- ensuring their staff are clear about what appropriate behaviour is, and are confident in distinguishing expected and appropriate behaviour from inappropriate, problematic or concerning behaviour, in themselves and others
- empowering staff to share any low-level safeguarding concerns (see below)
- addressing unprofessional behaviour and supporting the individual to correct it at an early stage
- handling and responding to such concerns sensitively and proportionately when they are raised, and
- helping identify any weakness in the school or colleges safeguarding system.

Sharing low-level concerns

437. Schools and colleges should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy

to understand and implement. Whether all low-level concerns are shared initially with the DSL (or a nominated person (such as a values champion)), or with the headteacher/principal is a matter for the school or college to decide. If the former, then the DSL should inform the headteacher/principal of all the low-level concerns and in a timely fashion according to the nature of each particular low-level concern. The headteacher/principal should be the ultimate decision maker in respect of all low-level concerns, although it is recognised that depending on the nature of some low-level concerns and/or the role of the DSL in some schools/colleges, the headteacher/principal may wish to consult with the DSL and take a more collaborative decision making approach.

438. Low-level concerns which are shared about supply staff and contractors should be notified to their employers, so that any potential patterns of inappropriate behaviour can be identified.

439. If schools and colleges are in any doubt as to whether the information which has been shared about a member of staff as a low-level concern in fact meets the harm threshold, they should consult with their LADO.

440. Schools and colleges should ensure they create an environment where staff are encouraged and feel confident to self-refer, where, for example, they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.

Recording low-level concerns

441. All low-level concerns should be recorded in writing. The record should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then that should be respected as far as reasonably possible.

442. Schools and colleges can decide where these records are kept, but they must be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

443. Records should be reviewed so that potential patterns of inappropriate, problematic or concerning behaviour can be identified. Where a pattern of such behaviour is identified, the school or college should decide on a course of action, either through its disciplinary procedures or where a pattern of behaviour moves from a low-level concern to meeting the harm threshold, in which case it should be referred to the LADO (as per Part four, Section one). Consideration should also be given to whether there are wider cultural issues within the school or college that

enabled the behaviour to occur and where appropriate policies could be revised, or extra training delivered to minimise the risk of it happening again.

444. It is for schools and colleges to decide how long they retain such information, but it is recommended that it is retained at least until the individual leaves their employment.

References

445. Part three of this guidance is clear that schools and colleges should only provide substantiated safeguarding concerns/allegations (including a group of low-level concerns about the same individual) that meet the harm threshold in references. Low-level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance. It follows that a low-level concern which relates exclusively to safeguarding (and not to misconduct or poor performance) should not be referred to in a reference.

Responding to low-level concerns

446. The school or college low-level concerns policy should set out the procedure for responding to reports of low-level concerns. If the concern has been raised via a third party, the headteacher/principal (or a nominated deputy) should collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously, and
- to the individual involved and any witnesses.

447. The information collected will help them to categorise the type of behaviour and determine what further action may need to be taken. This information needs to be recorded in writing along with the rationale for their decisions and action taken.

448. A good low-level concerns policy will simply be a reflection and extension of the school or college's wider staff behaviour policy/code of conduct.

449. More detailed guidance and case studies on low-level concerns can be found in: Developing and implementing a low-level concerns policy: a guide for organisations which work with children (farrer.co.uk).

Part five: Child-on-child sexual violence and sexual harassment

450. This part of the statutory guidance is about how schools and colleges **should respond to all signs, reports and concerns** of child-on-child sexual violence and sexual harassment, including those that have happened outside of the school or college premises, and/or online (what to look out for and indicators of abuse are set out in Part one of this guidance). As set out in Part one of this guidance, all staff working with children are advised to maintain an attitude of **'it could happen here'**, and this is especially important when considering child-on-child abuse.

What schools and colleges should be aware of

451. Sexual violence and sexual harassment can occur between two or more children of any age and sex, from primary through to secondary stage and into college. It can occur also through a group of children sexually assaulting or sexually harassing a single child or group of children. Sexual violence and sexual harassment exist on a continuum and may overlap; they can occur online and face-to-face (both physically and verbally) and are never acceptable. Schools and colleges should be aware of the importance of:

- making clear that there is a **zero-tolerance** approach to sexual violence and sexual harassment, that it is never acceptable, and it will not be tolerated. It should **never** be passed off as "banter", "just having a laugh", "a part of growing up" or "boys being boys". Failure to do so can lead to a culture of unacceptable behaviour, an unsafe environment and in worst case scenarios a culture that normalises abuse, leading to children accepting it as normal and not coming forward to report it
- recognising, acknowledging, and understanding the scale of harassment and abuse and that even if there are no reports it does not mean it is not happening, it may be the case that it is just not being reported
- challenging physical behaviour (potentially criminal in nature) such as grabbing bottoms, breasts and genitalia, pulling down trousers, flicking bras and lifting up skirts. Dismissing or tolerating such behaviours risks normalising them

452. Children who are victims of sexual violence and sexual harassment wherever it happens, may find the experience stressful and distressing. This will, in all likelihood, adversely affect their educational attainment and will be exacerbated if the alleged perpetrator(s) attends the same school or college.

453. Whilst any report of sexual violence or sexual harassment should be taken seriously, staff should be aware it is more likely girls will be the victims of sexual violence and sexual harassment and more likely it will be perpetrated by boys. Children with disabilities are also three times more likely to be abused than their peers[135]

454. Ultimately, it is essential that all victims are reassured that they are being taken seriously and that they will be supported and kept safe.

Sexual violence

455. It is important that schools and colleges are aware of sexual violence and the fact children can, and sometimes do, abuse other children in this way and that it **can happen both inside and outside of school/college.** When referring to sexual violence in this advice, we do so in the context of child-on-child sexual violence.

When referring to sexual violence we are referring to sexual offences under the Sexual Offences Act 2003[136] as described below:

Rape: A person (A) commits an offence of rape if: he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, B does not consent to the penetration and A does not reasonably believe that B consents.

Assault by penetration: A person (A) commits an offence if: s/he intentionally penetrates the vagina or anus of another person (B) with a part of her/his body or anything else, the penetration is sexual, B does not consent to the penetration and A does not reasonably believe that B consents.

Sexual assault: A person (A) commits an offence of sexual assault if: s/he intentionally touches another person (B), the touching is sexual, B does not consent to the touching and A does not reasonably believe that B consents. (NOTE - Schools and colleges should be aware that sexual assault covers a very wide range of behaviour so a single act of kissing someone without consent or touching someone's bottom/breasts/genitalia without consent, can still constitute sexual assault).

Causing someone to engage in sexual activity without consent: A person (A) commits an offence if: s/he intentionally causes another person (B) to engage in an activity, the activity is sexual, B does not consent to engaging in the activity, and A does not reasonably believe that B consents. (NOTE – this could include forcing

[135] Jones, L et al. (2012) Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies. The Lancet July 2012.
[136] Sexual Offences Act 2003 (Legislation.gov.uk).

someone to strip, touch themselves sexually, or to engage in sexual activity with a third party).

What consent is[137] Consent is about having the freedom and capacity to choose. Consent to sexual activity may be given to one sort of sexual activity but not another, e.g. to vaginal but not anal sex or penetration with conditions, such as wearing a condom. Consent can be withdrawn at any time during sexual activity and each time activity occurs. Someone consents to vaginal, anal or oral penetration only if s/he agrees by choice to that penetration and has the freedom and capacity to make that choice.[138]

- a child under the age of 13 can never consent to any sexual activity
- the age of consent is 16 [139]
- sexual intercourse without consent is rape

Further information about consent can be found here: Rape Crisis England & Wales - Sexual consent

Sexual harassment

456. When referring to sexual harassment we mean 'unwanted conduct of a sexual nature' that can occur online and offline and both inside and outside of school or college. When we reference sexual harassment, we do so in the context of child-on-child sexual harassment. Sexual harassment is likely to: violate a child's dignity, and/or make them feel intimidated, degraded or humiliated and/or create a hostile, offensive or sexualised environment.

457. Whilst not intended to be an exhaustive list, sexual harassment can include:

- sexual comments, such as telling sexual stories, making lewd comments, making sexual remarks about clothes and appearance and calling someone sexualised names
- sexual "jokes" or taunting

[137] It is important school and college staff (and especially designated safeguarding leads and their deputies) understand consent. This will be especially important if a child is reporting they have been raped or sexually assaulted in any way. Further information can be found at Rape Crisis

[138] PSHE Teaching about consent from the PSHE association provides advice and lesson plans to teach consent at Key stage 3 and 4.

[139] It is important to differentiate between consensual sexual activity between children of a similar age and that which involves any power imbalance, coercion or exploitation. Due to their additional training, the designated safeguarding lead (or a deputy) should be involved and generally speaking leading the school or college response. If in any doubt, they should seek expert advice.

- physical behaviour, such as deliberately brushing against someone, interfering with someone's clothes. Schools and colleges should be considering when any of this crosses a line into sexual violence – it is important to talk to and consider the experience of the victim
- displaying pictures, photos or drawings of a sexual nature
- upskirting (this is a criminal offence[140])
- online sexual harassment. This may be standalone, or part of a wider pattern of sexual harassment and/or sexual violence.[141] It may include:
    - consensual and non-consensual sharing of nude and semi-nude images and/or videos.[142] Taking and sharing nude photographs of those aged under 18 is a criminal offence. UKCIS Sharing nudes and semi-nudes: advice for education settings working with children and young people provides detailed advice for schools and colleges
    - sharing of unwanted explicit content
    - sexualised online bullying
    - unwanted sexual comments and messages, including, on social media
    - sexual exploitation; coercion and threats, and
    - coercing others into sharing images of themselves or performing acts they're not comfortable with online

458. It is important that schools and colleges consider sexual harassment in broad terms. Sexual harassment (as set out above) creates a culture that, if not challenged, can normalise inappropriate behaviours and provide an environment that may lead to sexual violence.

Harmful sexual behaviour

459. Children's sexual behaviour exists on a wide continuum, ranging from normal and developmentally expected to inappropriate, problematic, abusive and violent. Problematic, abusive and violent sexual behaviour is developmentally inappropriate and may cause developmental damage. A useful umbrella term is

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[140] The Voyeurism (Offences) Act 2019 which amends the Sexual Offences Act 2003 to make upskirting a specific offence of voyeurism. The Act came into force on 12 April 2019.
[141] Project deSHAME from Childnet provides useful research, advice and resources regarding online sexual harassment.
[142] Consensual image sharing, especially between older children of the same age, may require a different response. It might not be abusive – but children still need to know it is illegal- whilst non-consensual is illegal and abusive.

"harmful sexual behaviour" (HSB). The term has been widely adopted in child protection and is used in this advice. **HSB can occur online and/or face-to-face and can also occur simultaneously between the two.** HSB should be considered in a child protection context.

460. When considering HSB, both ages and the stages of development of the children are critical factors. Sexual behaviour between children can be considered harmful if one of the children is much older, particularly if there is more than two years' difference or if one of the children is pre-pubescent and the other is not. However, a younger child can abuse an older child, particularly if they have power over them, for example, if the older child is disabled or smaller in stature. Confidential specialist support and advice on HSB is available from the specialist sexual violence sector and sources are listed in Annex B.

461. It is effective safeguarding practice for the designated safeguarding lead (and their deputies) to have a good understanding of HSB. This could form part of their safeguarding training. This will aid in planning preventative education, implementing preventative measures, drafting and implementing an effective child protection policy and incorporating the approach to sexual violence and sexual harassment into the whole school or college approach to safeguarding.

462. HSB can, in some cases, progress on a continuum.[143] Addressing inappropriate behaviour can be an important intervention that helps prevent problematic, abusive and/or violent behaviour in the future. Children displaying HSB have often experienced their own abuse and trauma.[144] It is important that they are offered appropriate support.

Preventing abuse

463. Effective safeguarding practice is demonstrated when schools and colleges are clear, in advance, about what local processes are in place and what support can be accessed when sexual violence or sexual harassment has occurred. It is important to prepare for this in advance and review this information on a regular basis to ensure it is up to date. As such:

- if required, the designated safeguarding lead (or a deputy) should discuss the local response to sexual violence and sexual harassment with police and local authority children's social care colleagues in order to prepare the schools or

[143] HSB framework and audit | NSPCC Learning discusses the continuum harmful behaviour can progress on (Hackett 2019 continuum model).
[144] Hackett et al 2013 study of children and young people with harmful sexual behaviour suggests that two-thirds had experienced some kind of abuse or trauma.

college's policies (especially the child protection policy) and responses, and

- the designated safeguarding lead (and their deputies) should be confident as to what local specialist support is available to support all children involved (including victims and alleged perpetrators) in sexual violence and sexual harassment and be confident as to how to access this support when required. Further information on specialist support and interventions can be found in Annex B in the additional advice and support section under "sexual violence and sexual harassment".

Responding to reports of sexual violence and sexual harassment

464. Part two of this guidance is clear that systems should be in place (and they should be well promoted, easily understood and easily accessible) for children to confidently report abuse, knowing their concerns will be treated seriously.

465. Reports of sexual violence and sexual harassment are likely to be complex and require difficult professional decisions to be made, often quickly and under pressure. Pre-planning, effective training and effective policies will provide schools and colleges with the foundation for a calm, considered and appropriate response to any reports. Governing bodies and proprietors should ensure that the school or college contributes to multi-agency working in line with statutory guidance Working Together to Safeguard Children (and as summarised in Part two of this guidance).

466. This part of the guidance does not attempt to provide (nor would it be possible to provide) detailed guidance on what to do in any or every case. The guidance provides effective safeguarding practice and principles for schools and colleges to consider in their decision-making process.

467. Ultimately, any decisions are for the school or college to make on a case-by-case basis, with the designated safeguarding lead (or a deputy) taking a leading role and using their professional judgement, supported by other agencies, such as local authority children's social care and the police as required.

468. The guidance also provides case studies. These are not intended to offer a step-by-step guide, but to provide an indication of some of the various options that are available to respond to reports of sexual violence and sexual harassment.

Support for schools and colleges

469. Schools and colleges should not feel that they are alone in dealing with sexual violence and sexual harassment.

470. Local authority children's social care and the police will be important partners where a crime might have been committed. Referrals to the police will often be a natural progression of making a referral to local authority children's social care. The designated safeguarding lead (or a deputy) should lead the school or college response and should be aware of the local process for referrals to children's social care and making referrals to the police (also see the section 'Reporting to the police' on page 128 for further information). Schools and colleges may also find the following resources helpful:

- **National Crime Agency's** CEOP Safety Centre aims to keep children and young people safe from online sexual abuse. Online sexual abuse can be reported on their website and a report made to one of its Child Protection Advisors.
- **The NSPCC** provides a helpline for professionals at 0808 800 5000 and help@nspcc.org.uk. The helpline provides expert advice and support for school and college staff and will be especially useful for the designated safeguarding lead (and their deputies).
- Support from **specialist sexual violence sector organisations** such as Rape Crisis or The Survivors Trust.
- **The Anti-Bullying Alliance** has developed guidance for schools about Sexual and sexist bullying.

Online: Schools and colleges should recognise that sexual violence and sexual harassment occurring online (either in isolation or in connection with face-to-face incidents) can introduce a number of complex factors. Amongst other things, this can include widespread abuse or harm across a number of social media platforms that leads to repeat victimisation. Online concerns can be especially complicated and support is available from:

- **The UK Safer Internet Centre** provides an online safety helpline for professionals at 0344 381 4772 and helpline@saferinternet.org.uk. The helpline provides expert advice and support for school and college staff with regard to online safety issues.
- **Internet Watch Foundation**: If the incident/report involves sexual images or videos that have been made and circulated online, the victim can be supported to get the images removed by the Internet Watch Foundation (IWF).
- **Childline/IWF**: Report Remove is a free tool that allows children to report nude or sexual images and/or videos of themselves that they think might have been shared online.
- **UKCIS Sharing nudes and semi-nudes advice**: Advice for education settings working with children and young people on responding to reports of children

sharing non-consensual nude and semi-nude images or videos (also known as sexting and youth-produced sexual imagery). See footnote 8 for more information.

- National Crime Agency's CEOP Education Programme provides information for the children's workforce and parents and carers on protecting children and young people from online child sexual abuse.
- LGFL 'Undressed' provided schools advice about how to teach young children about being tricked into getting undressed online in a fun way without scaring them or explaining the motives of sex offenders.

Additional sources of support are listed at the end of Annex B.

The immediate response to a report

Responding to the report

471. It is important to understand that children may not find it easy to tell staff about their abuse verbally. Children can show signs or act in ways that they hope adults will notice and react to. In some cases, the victim may not make a direct report. For example, a friend may make a report, or a member of school or college staff may overhear a conversation that suggests a child has been harmed or a child's own behaviour might indicate that something is wrong. As per Part one of this guidance, if staff have any concerns about a child's welfare, they should act on them immediately rather than wait to be told.

472. The initial response by a school or college to a report from a child is incredibly important. How the school or college responds to a report can encourage or undermine the confidence of future victims of sexual violence and sexual harassment to report or come forward.

473. It is essential that all victims are reassured that they are being taken seriously, regardless of how long it has taken them to come forward, and that they will be supported and kept safe. Abuse that occurs online or outside of the school or college should not be downplayed and should be treated equally seriously. A victim should never be given the impression that they are creating a problem by reporting sexual violence or sexual harassment. Nor should a victim ever be made to feel ashamed for making a report. It is important to explain that the law is in place to protect children and young people rather than criminalise them, and this should be explained in such a way that avoids alarming or distressing them.

474. As per Part one of this guidance, all staff should be trained to manage a report. Local policies (and training) will dictate exactly how reports should be managed. However, effective safeguarding practice includes:

- if possible, managing reports with two members of staff present, (preferably one of

them being the designated safeguarding lead or a deputy)

- careful management and handling of reports that include an online element. Including being aware of searching screening and confiscation advice (for schools) and UKCIS Sharing nudes and semi-nudes: advice for education settings working with children and young people. **The key consideration is for staff not to view or forward illegal images of a child.** The highlighted advice provides more details on what to do when viewing an image is unavoidable. In some cases, it may be more appropriate to confiscate any devices to preserve any evidence and hand them to the police for inspection
- not promising confidentiality at this initial stage as it is very likely a concern will have to be shared further (for example, with the designated safeguarding lead (or a deputy) or local authority children's social care) to discuss next steps. Staff should only share the report with those people who are necessary in order to progress it. It is important that the victim understands what the next steps will be and who the report will be passed to
- recognising that a child is likely to disclose to someone they trust: this could be **anyone** on the school or college staff. It is important that the person to whom the child discloses recognises that the child has placed them in a position of trust. They should be supportive and respectful of the child
- recognising that an initial disclosure to a trusted adult may only be the first incident reported, rather than representative of a singular incident and that trauma can impact memory and so children may not be able to recall all details or timeline of abuse
- keeping in mind that certain children may face additional barriers to telling someone because of their vulnerability, disability, sex, ethnicity, and/or sexual orientation
- listening carefully to the child, reflecting back, using the child's language, being non-judgemental, being clear about boundaries and how the report will be progressed, not asking leading questions and only prompting the child where necessary with open questions – where, when, what, etc. It is important to note that whilst leading questions should be avoided, staff can ask children if they have been harmed and what the nature of that harm was
- considering the best way to make a record of the report. Best practice is to wait until the end of the report and immediately write up a thorough summary. This allows the staff member to devote their full attention to the child and to listen to what they are saying. It may be appropriate to make notes during the report (especially if a second member of staff is present). However, if making notes, staff should be conscious of the need to remain engaged with the child and not appear distracted by the note taking. Either way, **it is essential a written record is made**

- only recording the facts as the child presents them. The notes should not reflect the personal opinion of the note taker. Schools and colleges should be aware that notes of such reports could become part of a statutory assessment by local authority children's social care and/or part of a criminal investigation, and
- informing the designated safeguarding lead (or a deputy), as soon as practically possible, if the designated safeguarding lead (or a deputy) is not involved in the initial report.

Considering confidentiality and anonymity

Confidentiality

475. Staff taking a report should never promise confidentiality as it is very likely that it will be in the best interests of the victim to seek advice and guidance from others in order to provide support and engage appropriate agencies.

476. The school or college should only engage staff and agencies who are required to support the children involved and/or be involved in any investigation.

477. The victim may ask the school or college not to tell anyone about the sexual violence or sexual harassment. There are no easy or definitive answers when a victim makes this request. If the victim does not give consent to share information, staff may still lawfully share it, if there is another legal basis under the UK GDPR that applies. For example, the public task basis may apply, where the overall purpose is to perform a public interest task or exercise official authority, and the task or authority has a clear basis in law. Advice should be sought from the designated safeguarding lead (or a deputy), who should consider the following:

- parents or carers should normally be informed (unless this would put the victim at greater risk)
- the basic safeguarding principle is: if a child is at risk of harm, is in immediate danger, or has been harmed, a referral should be made to local authority children's social care, and
- rape, assault by penetration and sexual assaults are crimes. Where a report of rape, assault by penetration or sexual assault is made, this should be referred to the police. Whilst the age of criminal responsibility is ten, if the alleged perpetrator is under ten, the starting principle of referring to the police remains. The police will take a welfare, rather than a criminal justice approach, in these cases.

478. Ultimately, the designated safeguarding lead (or a deputy) will have to balance the victim's wishes against their duty to protect the victim and other children.

479. If the designated safeguarding lead (or a deputy) decide to go ahead and make a referral to local authority children's social care and/or a report to the police against the victim's wishes, this should be handled extremely carefully, the reasons should be explained to the victim and appropriate specialist support should be offered.

480. Additional information on confidentiality and information sharing is available at Safeguarding Practitioners Information Sharing Advice and NSPCC: Information sharing and confidentiality for practitioners.

Anonymity

481. Where an allegation of sexual violence or sexual harassment is progressing through the criminal justice system, schools and colleges should be aware of anonymity, witness support, and the criminal process in general so they can offer support and act appropriately.[145] Relevant information can be found in: CPS: Safeguarding Children as Victims and Witnesses.

482. As a matter of effective safeguarding practice, schools and colleges should do all they reasonably can to protect the anonymity of any children involved in any report of sexual violence or sexual harassment. Amongst other things, this will mean carefully considering, based on the nature of the report, which staff should know about the report and any support that will be put in place for the children involved.

483. Schools and colleges should also consider the potential impact of social media in facilitating the spreading of rumours and exposing victims' identities. The unique challenges regarding social media are discussed at paragraph 470 along with potential support. In addition, the principles described in Childnet's cyberbullying guidance could be helpful.

Risk assessment

484. When there has been a report of sexual violence, the designated safeguarding lead (or a deputy) should make an immediate risk and needs assessment. Where there has been a report of sexual harassment, the need for a risk assessment should be considered on a case-by-case basis. The risk and needs assessment for a report of sexual violence should consider:

[145]It is not the role of schools and colleges to provide legal advice or support to victims, alleged perpetrators or parents in respect of a criminal justice process. Rather, schools and colleges should be aware of their own position and responsibilities.

- the victim, especially their protection and support
- whether there may have been other victims
- the alleged perpetrator(s)
- all the other children, (and, if appropriate, adult students and staff) at the school or college, especially any actions that are appropriate to protect them from the alleged perpetrator(s), or from future harms, and
- The time and location of the incident, and any action required to make the location safer.

485. Risk assessments should be recorded (paper or electronic) and should be kept under review. At all times, the school or college should be actively considering the risks posed to all their pupils and students and put adequate measures in place to protect them and keep them safe.

486. The designated safeguarding lead (or a deputy) should ensure they are engaging with local authority children's social care and specialist services as required. Where there has been a report of sexual violence, it is likely that professional risk assessments by social workers and or sexual violence specialists will be required. The above school or college risk assessment is not intended to replace the detailed assessments of expert professionals. Any such professional assessments should be used to inform the school or college approach to supporting and protecting their pupils and students and updating their own risk assessment.

Action following a report of sexual violence and/or sexual harassment

What to consider

487. As set out above, sexual violence and sexual harassment can happen anywhere, and all staff working with children are advised to maintain an attitude of '**it could happen here'.** Schools and colleges should be aware of and respond appropriately to **all** reports and concerns about sexual violence and/or sexual harassment both online and offline, including those that have happened outside of the school/college. The designated safeguarding lead (or a deputy) is likely to have a complete safeguarding picture and be the most appropriate person to advise on the initial response by the school or college. Important considerations will include:

- the wishes of the victim in terms of how they want to proceed. This is especially important in the context of sexual violence and sexual harassment. Victims should be given as much control as is reasonably possible over decisions regarding how any investigation will be progressed and any support that they will be offered. This will however need to be balanced with the schools or college's duty and

responsibilities to protect other children

- the nature of the alleged incident(s), including whether a crime may have been committed and/or whether HSB has been displayed
- the ages of the children involved
- the developmental stages of the children involved
- any power imbalance between the children. For example, is/are the alleged perpetrator(s) significantly older, more mature, confident and well known social standing? Does the victim have a disability or learning difficulty?
- if the alleged incident is a one-off or a sustained pattern of abuse (sexual abuse can be accompanied by other forms of abuse and a sustained pattern may not just be of a sexual nature)
- that sexual violence and sexual harassment can take place within intimate personal relationships between children
- importance of understanding intra familial harms and any necessary support for siblings following incidents
- are there ongoing risks to the victim, other children, adult students or school or college staff, and
- other related issues and wider context, including any links to child sexual exploitation and child criminal exploitation.

488. As always when concerned about the welfare of a child, all staff should act in the best interests of the child. In all cases, schools and colleges should follow general safeguarding principles as set out throughout this guidance. **Immediate** consideration should be given as to how best to support and protect the victim and the alleged perpetrator(s) (and any other children involved/impacted).

Children sharing a classroom: Initial considerations when the report is made

Any report of sexual violence or sexual harassment is likely to be traumatic for the victim. It is essential that all victims are reassured that they are being taken seriously and that they will be supported and kept safe. A victim should never be given the impression that they are creating a problem by reporting sexual violence or sexual harassment. Nor should a victim ever be made to feel ashamed for making a report.

Reports of rape and assault by penetration are likely to be especially difficult for the victim, and close proximity to the alleged perpetrator(s) is likely to be especially distressing. Whilst the school or college establishes the facts of the case and starts the process of liaising with local authority children's social care and the police, the alleged perpetrator(s) **should** be removed from any classes they share with the victim. The school or college should also **carefully** consider how best to keep the victim and alleged perpetrator(s) a reasonable distance apart on school or college premises (including during any before or after school-based activities) and on transport to and from the school or college, where appropriate. These actions are in the best interests of all children involved and should not be perceived to be a judgement on the guilt of the alleged perpetrator(s).

For other reports of sexual violence and sexual harassment, the proximity of the victim and alleged perpetrator(s) and considerations regarding shared classes, sharing school or college premises and school or college transport, should be considered immediately.

In all cases, the initial report should be carefully evaluated, reflecting the considerations set out at paragraph 487-488. The wishes of the victim, the nature of the allegations and the protection of all children in the school or college will be especially important when considering any immediate actions.

Options to manage the report

489. It is important that schools and colleges consider every report on a case-by-case basis as per paragraph 487. When to inform the alleged perpetrator(s) will be a decision that should be carefully considered. Where a report is going to be made to local authority children's social care and/or the police, then, as a general rule, the designated safeguarding lead should speak to the local authority children's social care and the police and discuss next steps and how the alleged perpetrator(s) will be informed of the allegations. However, as per general safeguarding principles,

this does not and should not stop the school or college taking immediate action to safeguard its children, where required.

490. There are four likely scenarios for schools and colleges to consider when managing any reports of sexual violence and/or sexual harassment. The four scenarios are:

1. Manage internally

491. In some cases of sexual harassment, for example, one-off incidents, the school or college may take the view that the children concerned are not in need of early help or that referrals to statutory services are not required, and that it would be appropriate to handle the incident internally, perhaps through utilising their behaviour policy and by providing pastoral support.

492. Whatever the response, it should be underpinned by the principle that there is a zero-tolerance approach to sexual violence and sexual harassment, and it is never acceptable and will not be tolerated.

493. All concerns, discussions, decisions and reasons for decisions should be recorded (written or electronic).

Case study

A 12-year-old girl reported to the head of year that five boys in her friendship group were playing a game, which involved daring each other to use increasingly graphic sexually explicit language, describing what they would like to do to her. She was very upset but did not want to get anyone into trouble or everyone to know about it. She just wanted them to stop. She explained this to her head of year. The head of year explained to her that what she had experienced was extremely serious and reassured her that her reaction was completely understandable. He also explained that he would pass the report to the designated safeguarding lead to ensure records were updated. He explained he would be following the school's behaviour policy and would speak to the boys involved and their parents, making it clear that what they were doing was sexual bullying and harassment and taken extremely seriously. The girl's parents were contacted and given the opportunity to discuss the action the school planned to take.

Result: the boys were removed from the classroom and reprimanded with their parents present. It was made clear that the behaviour was unacceptable, and they received a punishment in line with the school's behaviour policy. They were also warned about the more severe consequences that would arise if the harassment continued.

2. Early help

494. In line with managing internally, the school or college may decide that the children involved do not require referral to statutory services but may benefit from early help. Early help is support for children of all ages that improves a family's resilience and outcomes or reduces the chance of a problem getting worse. Providing early help is more effective in promoting the welfare of children than reacting later. Early help can be particularly useful to address non-violent HSB and may prevent escalation of sexual violence. It is particularly important that the designated safeguarding lead (and their deputies) know what the local early help process is and how and where to access support.

495. More information on early help is set out in Part one of this guidance with full details of the early help process in Working Together to Safeguard Children.

496. Multi-agency early help will work best when placed alongside strong school or college policies, preventative education and engagement with parents and carers.

497. Schools and colleges, as relevant agencies, should be part of discussions with statutory safeguarding partners to agree the levels for the different types of assessment and services to be commissioned and delivered, as part of the local arrangements. Safeguarding partners should publish a local threshold document which includes the process for the local early help assessment and the type and level of early help services to be provided, and designated safeguarding leads (and their deputies) will need to familiarise themselves with this document.

498. Early help and the option to manage a report internally do not need to be mutually exclusive: a school could manage internally and seek early help for both the victim and alleged perpetrator(s).

499. Whatever the response, it should be under-pinned by the principle that there is zero-tolerance approach to sexual violence and sexual harassment and that both are never acceptable and will not be tolerated.

500. All concerns, discussions, decisions and reasons for decisions should be recorded (written or electronic).

3. Referrals to local authority children's social care

501. Where a child has been harmed, is at risk of harm, or is in immediate danger, schools and colleges should make a referral to local authority children's social care.

502. At the point of referral to local authority children's social care, schools and colleges will generally inform parents or carers, unless there are compelling

reasons not to (if informing a parent or carer is going to put the child at additional risk). Any such decision should be made with the support of local authority children's social care.

503. If a referral is made, local authority children's social care will then make enquiries to determine whether any of the children involved are in need of protection or other services.

504. Where statutory assessments are appropriate, the school or college (especially the designated safeguarding lead (or a deputy)) should be working alongside, and cooperating with, the relevant lead social worker. Collaborative working will help ensure the best possible package of coordinated support is implemented for the victim and, where appropriate, the alleged perpetrator(s) and any other children that require support.

505. Schools and colleges should not wait for the outcome (or even the start) of a local authority children's social care investigation before protecting the victim and other children in the school or college. It will be important for the designated safeguarding lead (or a deputy) to work closely with local authority children's social care (and other agencies as required) to ensure any actions the school or college takes do not jeopardise a statutory investigation. The risk assessment as per paragraph 483-485 will help inform any decision. Consideration of safeguarding the victim, alleged perpetrator(s), any other children directly involved in the safeguarding report, and all children at the school or college should be immediate.

506. In some cases, local authority children's social care will review the evidence and decide that a statutory intervention is not appropriate. The school or college (generally led by the designated safeguarding lead (or a deputy)) should be prepared to refer again if they believe the child remains in immediate danger or at risk of harm or if circumstances change. If a statutory assessment is not appropriate, the designated safeguarding lead (or a deputy) should consider other support mechanisms such as early help, specialist support and pastoral support.

507. Whatever the response, it should be under-pinned by the principle that there is a zero- tolerance approach to sexual violence and sexual harassment and that both are never acceptable and will not be tolerated.

508. All concerns, discussions, decisions and reasons for decisions should be recorded (written or electronic).

4. Reporting to the police

509. Any report to the police will generally be in parallel with a referral to local authority children's social care (as above).

510. It is important that the designated safeguarding lead (and their deputies) are clear about the local process for referrals and follow that process.

511. Where a report of rape, assault by penetration or sexual assault is made, the starting point is that this should be passed on to the police. Whilst the age of criminal responsibility is ten, if the alleged perpetrator(s) is under ten, the starting principle of reporting to the police remains. The police will take a welfare, rather than a criminal justice, approach. The following advice may help schools and colleges decide when to engage the Police and what to expect of them when they do: When to call the police.

512. Where a report has been made to the police, the school or college should consult the police and agree what information can be disclosed to staff and others, in particular, the alleged perpetrator(s) and their parents or carers. They should also discuss the best way to protect the victim and their anonymity.

513. At this stage, schools and colleges will generally inform parents or carers unless there are compelling reasons not to, for example, if informing a parent or carer is likely to put a child at additional risk. In circumstances where parents or carers have not been informed, it will be especially important that the school or college is supporting the child in any decision they take. This should be with the support of local authority children's social care and any appropriate specialist agencies.

514. All police forces in England have specialist units that investigate child abuse. The names and structures of these units are matters for local forces. It will be important that the designated safeguarding lead (and their deputies) are aware of their local arrangements.

515. In some cases, it may become clear very quickly that the police (for whatever reason) will not take further action. In such circumstances, it is important that the school or college continues to engage with specialist support for the victim and alleged perpetrator(s) as required.

516. Whilst protecting children and/or taking any disciplinary measures against the alleged perpetrator(s), it will be important for the designated safeguarding lead (or a deputy) to work closely with the police (and other agencies as required), to ensure any actions the school or college take do not jeopardise the police investigation.

517. If a school or college has questions about the investigation, they should ask the police. The police will help and support the school or college as much as they can (within the constraints of any legal restrictions).

518. Whatever the response, it should be underpinned by the principle that there is a zero-tolerance approach to sexual violence and sexual harassment and that both are never acceptable and will not be tolerated.

519. All concerns, discussions, decisions and reasons for decisions should be recorded (written or electronic).

Considering bail conditions

520. The police will consider what action to take to manage the assessed risk of harm. This could involve the use of police bail with conditions, prior to a suspect appearing in court, or court bail with or without conditions after the first appearance.

521. Alternatively, the person suspected of an offence could be 'released under investigation' (RUI). People released under RUI will not necessarily have conditions attached to their release from custody and it is possible for a person on bail also to have no conditions.

522. Whatever arrangements are in place, the school or college will need to consider what additional measures may be necessary to manage any assessed risk of harm that may arise within their institution.

523. Particular regard should be given to the additional stress and trauma that might be caused to a victim within the institution; the potential for the suspected person to intimidate the victim or a witness; the need to ensure that any risk management measures strike a balance between management of risk and the rights of an un-convicted person (e.g. rights to privacy, family life, etc).

524. Careful liaison with the police investigators should help to develop a balanced set of arrangements.

Managing any delays in the criminal process

525. There may be delays in any case that is being progressed through the criminal justice system. Schools and colleges should not wait for the outcome (or even the start) of a police investigation before protecting the victim, alleged perpetrator(s) and other children in the school or college. The risk assessment as per paragraph 484-486 will help inform any decision.

526. Considering any disciplinary action against the alleged perpetrator(s) whilst an investigation is ongoing is discussed below in the alleged perpetrator(s) section.

527. Whilst protecting children and/or taking any disciplinary measures against the alleged perpetrator(s), it will be important for the designated safeguarding lead (or a deputy) to work closely with the police (and other agencies as required), to

ensure any actions the school or college take do not jeopardise the police investigation.

528. If schools or colleges have questions about the investigation, they should ask the police. The police will help and support the school or college as much as they can (within the constraints of any legal restrictions).

The end of the criminal process

529. If a child is convicted or receives a caution for a sexual offence, the school or college should update its risk assessment, ensure relevant protections are in place for all the children at the school or college and, if it has not already, consider any suitable action in line with their behaviour policy. This process should include a review of the necessary actions to keep all parties safe and meet their needs. If the perpetrator(s) remains in the same school or college as the victim, the school or college should be very clear as to their expectations regarding the perpetrator(s) now they have been convicted or cautioned. This could include expectations regarding their behaviour and any restrictions the school or college thinks are reasonable and proportionate with regard to the lesson timetable of the perpetrator(s).

530. Any conviction (even with legal anonymity reporting restrictions) is potentially going to generate interest among other pupils or students in the school or college. It will be important that the school or college ensures both the victim and perpetrator(s) remain protected, especially from any bullying or harassment (including online).

531. Where cases are classified as “no further action” by the police or Crown Prosecution Service, or where there is a not guilty verdict, the school or college should continue to offer support to the victim and the alleged perpetrator(s) for as long as is necessary. A not guilty verdict or a decision not to progress with their case will likely be traumatic for the victim. The fact that an allegation cannot be substantiated or was withdrawn does not necessarily mean that it was unfounded. Schools and colleges should discuss any decisions with the victim in this light and continue to offer support. The alleged perpetrator(s) is/are also likely to require ongoing support for what will have likely been a difficult experience.

Case study

A 15-year-old girl disclosed to a pastoral lead that she had been sexually touched by a 15-year-old boy, on public transport on the way to school. The school made a referral to local authority children's social care on the same day, submitting a MARF (Multi Agency Referral Form) for both children. The MARF led to immediate police involvement. The school arranged for the boy to have an amended timetable so that he was not in any class with the girl. Specific teaching staff were briefed on the need to ensure the children were not together. The girl was given a trusted adult she could go to at any time. This staff member agreed she would meet with the girl every day and she supported her with break and lunchtime arrangements. The girl was able to suggest how she would feel safest at lunchtime.

At the end of the second day, another girl went to the designated safeguarding lead (DSL) and made a report about the same boy. She reported that he had sexually assaulted her in school three weeks before. The school submitted a MARF for the girl and a second MARF for the boy. The school knew the police were involved and that a MERLIN (a crime report involving a child) had been submitted, but they knew the police would not have the ongoing and detailed information held by the school about the boy. The school did not want either girl further distressed by possibly seeing the boy around school. The option choices and group sizes for the three children meant it was very difficult to educate separately. The school contacted another secondary school. The school links had been established as part of the In Year Fair Access Process (IYFAP) and made immediate arrangements for the boy to move to the other school so that his education was not disrupted. The boy remained at the new school for the duration of the investigation. The DSLs from both schools worked together with police and the children and ensured appropriate child protection information was shared so the receiving school was fully aware of the allegations. The boy received a caution, and the decision was made for him to remain at his new school where he engaged with a personalised RSHE plan. Parents were involved throughout. The children were at the centre of decision-making, often suggesting how they could be supported.

Unsubstantiated, unfounded, false or malicious reports

532. As set out in paragraph 66 of Part one of this guidance, all concerns, discussions and decisions made, and the reasons for those decisions, should be recorded in writing. Records should be reviewed so that potential patterns of concerning, problematic or inappropriate behaviour can be identified, and addressed.

533. If a report is determined to be unsubstantiated, unfounded, false or malicious, the designated safeguarding lead should consider whether the child and/or the person who has made the allegation is in need of help or may have been abused by someone else and this was a cry for help. In such circumstances, a referral to local authority children's social care may be appropriate.

534. If a report is shown to be deliberately invented or malicious, the school or college, should consider whether any disciplinary action is appropriate against the individual who made it as per their own behaviour policy.

Ongoing response

Safeguarding and supporting the victim

535. The following principles are based on effective safeguarding practice and should help shape any decisions regarding safeguarding and supporting the victim.

- The needs and wishes of the victim should be paramount (along with protecting the child) in any response. It is important they feel in as much control of the process as is reasonably possible. Wherever possible, the victim, if they wish, should be able to continue in their normal routine. Overall, the priority should be to make the victim's daily experience as normal as possible, so that the school or college is a safe space for them.
- Consider the age and the developmental stage of the victim, the nature of the allegation(s) and the potential risk of further abuse. Schools and colleges should be aware that, by the very nature of sexual violence and sexual harassment, a power imbalance is likely to have been created between the victim and alleged perpetrator(s).
- The victim should never be made to feel they are the problem for making a report or made to feel ashamed for making a report.
- Consider the proportionality of the response. Support should be tailored on a case-by-case basis. The support required regarding a one-off incident of sexualised name-calling is likely to be vastly different from that for a report of rape.
- Schools and colleges should be aware that sexual assault can result in a range of health needs, including physical, mental, and sexual health problems and unwanted pregnancy. Children and young people that have a health need arising from sexual assault or abuse can access specialist NHS support from a Sexual Assault Referral Centre (SARC). SARCs offer confidential and non-judgemental support to victims and survivors of sexual assault and abuse. They provide medical, practical, and emotional care and advice to all children and adults,

regardless of when the incident occurred.

- It will be important in all scenarios that decisions and actions are regularly reviewed and that relevant policies are updated to reflect lessons learnt. It is particularly important to look out for potential patterns of concerning, problematic or inappropriate behaviour. Where a pattern is identified, the school or college should decide on a course of action. Consideration should be given as to whether there are wider cultural issues within the school or college that enabled the inappropriate behaviour to occur and where appropriate extra teaching time and/or staff training could be delivered to minimise the risk of it happening again.

536. Support can include:

- Early help and local authority children's social care as set out in Part one of this guidance.
- Children and Young People's Independent Sexual Violence Advisors (ChISVAs) provide emotional and practical support for victims of sexual violence. They are based within the specialist sexual violence sector and will help the victim understand what their options are and how the criminal justice process works if they have reported or are considering reporting to the police. ChISVAs will work in partnership with schools and colleges to ensure the best possible outcomes for the victim.
- Police and social care agencies can signpost to ChISVA services (where available), or referrals can be made directly to the ChISVA service by the young person or school or college. Contact details for ChISVAs can be found at Rape Crisis and The Survivors Trust.
- Children and young people's mental health services (CYPMHS) is used as a term for all services that work with children who have difficulties with their emotional or behavioural wellbeing. Services vary depending on local authority. Most CYPMHS have their own website, which will have information about access, referrals and contact numbers.
- The specialist sexual violence sector can provide therapeutic support for children who have experienced sexual violence. Contact Rape Crisis (England & Wales) or The Survivors Trust for details of local specialist organisations. The Male Survivors Partnership can provide details of services which specialise in supporting men and boys.
- The NHS – Help after rape and sexual assault - NHS (www.nhs.uk) provides a range of advice, help and support including advice about the risk of pregnancy, sexually transmitted infections (STI), reporting to the police and forensics.
- Rape and sexual assault referral centres services can be found at: Find a rape and sexual assault referral centre . Sexual assault referral centres (SARCs) offer

medical, practical and emotional support. They have specially trained doctors, nurses and support workers. If children, young people, or their families are unsure which service to access, they should contact their GP or call the NHS on 111.

- Childline provides free and confidential advice for children and young people.
- Internet Watch Foundation works internationally to remove child sexual abuse online images and videos and offers a place for the public to report them anonymously.
- Childline / IWF: Remove a nude image shared online Report Remove is a free tool that allows children to report nude or sexual images and videos of themselves that they think might have been shared online, to see if they can be removed from the internet.

Case study

A 15-year-old boy and girl who go to the same school had sex at a party and, without them knowing, other people at the party filmed it. The video was then uploaded to a site and shared around their school and other schools in the area.

Following this, the girl was sexually harassed at school being called a ‘slag and a slut’ during lessons. Other boys in the school began propositioning her in school and trying to touch her aggressively and inappropriately. A teacher who saw the sexual harassment in his class talked to the girl about how she was feeling and suggested she spoke to the designated safeguarding lead (DSL). The DSL spoke to the girl and recorded the report, discussed her options about trying to get the video deleted from people’s devices and the website it was on, and how to talk to her parents about what happened. The teachers and parents did not view the video, and this was communicated to the girl and boy.

Whilst in this case the boy was not harassed in the same way as the girl, the school recognised he was also a victim and spoke to him about his feelings and what could be done to support him.

The teacher arranged a workshop as part of the RSHE curriculum for all Year 10s about respect, shame, consent, and their collective responsibility to challenge inappropriate sexual behaviour.

The parents of the girl and boy worked with the school and the police to get the content removed via the IWF and identify who recorded and distributed the video. Both the girl and boy were supported through the investigation with counselling.

Those responsible for harassing the girl and sharing the video received sanctions in line with the school behaviour policy.

537. Victims may not disclose the whole picture immediately. They may be more comfortable providing information on a piecemeal basis. It is essential that dialogue is kept open and encouraged. When it is clear that ongoing support will be required, schools and colleges should ask the victim if they would find it helpful to have a designated trusted adult (for example, their form tutor or designated safeguarding lead) to talk to about their needs. The choice of any such adult should be the victim’s (as far as is reasonably possible). Schools and colleges should respect and support this choice.

538. Children who have experienced sexual violence display a very wide range of responses to their experience, including in some cases clear signs of trauma,

physical and emotional responses, or no overt signs at all. Schools and colleges should remain alert to the possible challenges of detecting those signs and show sensitivity to the needs of the child (e.g. about attendance in lessons) irrespective of how overt the child's distress is.

539. While schools and colleges should avoid any action that would have the effect of isolating the victim, in particular from supportive peer groups, there may be times when the victim finds it difficult to maintain a full-time timetable and may express a wish to withdraw from lessons and activities. This should be because the victim wants to, not because it makes it easier to manage the situation. If required, schools and colleges should provide a physical space for victims to withdraw to.

540. It may be necessary for schools and colleges to maintain arrangements to protect and support the victim for a long time. Schools and colleges should be prepared for this and should work with local authority children's social care and other agencies as required.

541. It is therefore important that the designated safeguarding lead (or a deputy) knows how, when, and where to seek support.

542. It is important that the school or college do everything they reasonably can to protect the victim from bullying and harassment as a result of any report they have made.

543. Whilst they should be given all the necessary support to remain in their school or college, if the trauma results in the victim being unable to do this, alternative provision or a move to another school or college should be considered to enable them to continue to receive suitable education. This should only be at the request of the victim (and following discussion with their parents or carers).

544. It is important that if the victim does move to another educational institution (for any reason), that the new educational institution is made aware of any ongoing support needs. The designated safeguarding lead should take responsibility to ensure this happens (and should discuss with the victim and, where appropriate their parents or carers as to the most suitable way of doing this) as well as transferring the child protection file. Information sharing advice referenced at paragraphs 114-122 will help support this process.

Ongoing considerations: victim and alleged perpetrator(s) sharing classes

Pages 119 - 121 consider the immediate response to a report. Once the designated safeguarding lead (or a deputy) has decided what the next steps will be in terms of progressing the report, they should **carefully consider** again the question of the victim and alleged perpetrator(s) sharing classes and sharing space at school or college. This will inevitably involve complex and difficult professional decisions, including considering their duty to safeguard children and their duty to educate them.

It is important each report is considered on a case-by-case basis and risk assessments are updated as appropriate. As always when concerned about the welfare of a child, the best interests of the child should come first. In all cases, schools and colleges should follow general safeguarding principles as per this guidance.

Where there is a criminal investigation into a rape, assault by penetration or sexual assault, the alleged perpetrator(s) should be removed from any classes they share with the victim. The school or college should also consider how best to keep the victim and alleged perpetrator(s) a reasonable distance apart on school or college premises (including during before and after school-based activities) and on transport to and from school or college where appropriate. This is in the best interests of both children and should not be perceived to be a judgement on the guilt of the alleged perpetrator(s). As per paragraph 508, close liaison with the police is essential.

Where a criminal investigation into a rape or assault by penetration leads to a conviction or caution, the school or college should take suitable action, if they have not already done so. In all but the most exceptional of circumstances, the rape or assault is likely to constitute a serious breach of discipline and lead to the view that allowing the perpetrator(s) to remain in the same school or college would seriously harm the education or welfare of the victim (and potentially other pupils or students).

Where a criminal investigation into sexual assault leads to a conviction or caution, the school or college should, if it has not already, consider any suitable sanctions in light of their behaviour policy, including consideration of permanent exclusion.[146] Where the perpetrator(s) is going to remain at the school or college, the principle would be to continue keeping the victim and perpetrator(s) in separate classes and continue to consider the most appropriate way to manage potential contact on school and college premises and transport. The nature of the conviction or caution and wishes of the victim will be especially important in determining how to proceed in such cases.

In all cases, schools and colleges should record and be able to justify their decision-making.

Reports of sexual assault and sexual harassment will, in some cases, not lead to a report to the police (for a variety of reasons). In some cases, rape, assault by penetration, sexual assault or sexual harassment are reported to the police and the case is not progressed or are reported to the police and ultimately result in a not guilty verdict. None of this means the offence did not happen or that the victim lied. The process will have affected both victim and alleged perpetrator(s). Appropriate support should be provided to both as required and consideration given to sharing classes and potential contact as required on a case-by-case basis. In all cases, schools and colleges should record and be able to justify their decision-making.

All of the above should be considered with the needs and wishes of the victim at the heart of the process (supported by parents and carers as required). Any arrangements should be kept under review.

Safeguarding and supporting the alleged perpetrator(s) and children and young people who have displayed harmful sexual behaviour

545. The following principles are based on effective safeguarding practice and should help shape any decisions regarding safeguarding and supporting the alleged perpetrator(s):

- The school or college will have a difficult balancing act to consider. On one hand, they need to safeguard the victim (and the wider pupil/student body) and on the other hand provide the alleged perpetrator(s) with an education, safeguarding support as appropriate and implement any disciplinary sanctions. Taking disciplinary action and still providing appropriate support are not mutually exclusive actions. They can, and should, occur at the same time if necessary.
- Consider the age and the developmental stage of the alleged perpetrator(s), the nature of the allegations and frequency of allegations. Any child will likely experience stress as a result of being the subject of allegations and/or negative reactions by their peers to the allegations against them.
- Consider the proportionality of the response. Support (and sanctions) should be considered on a case-by-case basis. The alleged perpetrator(s) may potentially have unmet needs (in some cases these may be considerable) as well as potentially posing a risk of harm to other children. HSB in young children may be (and often is[147]) a symptom of either their own abuse or exposure to abusive

[146] Maintained schools, academies and pupil referral units should follow the statutory guidance here. Independent schools and colleges should consider excluding as per their own policies.
[147] Hackett et al 2013 study of children and young people with harmful sexual behaviour suggests that two-thirds had experienced some kind of abuse or trauma.

practices and or materials. More information on HSB can be found at paras 459-462. Advice should be taken, as appropriate, from local authority children's social care, specialist sexual violence services and the police.

- The Lucy Faithfull Foundation has developed a HSB toolkit, which amongst other things, provides support, advice and information on how to prevent it, links to organisations and helplines, resources about HSB by children, internet safety, sexual development and preventing child sexual abuse.
- The Lucy Faithfull Foundation in collaboration with the Home Office, has developed 'Shore Space', an online resource which works to prevent harmful sexual behaviour. Shore Space offers a confidential chat service supporting young people who are concerned about their own or someone else's sexual thoughts and behaviour.
- The NSPCC provides free and independent advice about HSB: NSPCC Learning: Protecting children from harmful sexual behaviour and NSPCC - Harmful sexual behaviour framework.
- Beyond Referrals | Contextual Safeguarding provides a school self-assessment toolkit and guidance for addressing HSB in schools.
- StopItNow – Preventing harmful sexual behaviour in children - Stop It Now provides a guide for parents, carers and professionals to help everyone do their part in keeping children safe, they also run a free confidential helpline.

546. It is important that the perpetrator(s) is/are also given the correct support to try to stop them re-offending and to address any underlying trauma that may be causing this behaviour. Addressing inappropriate behaviour can be an important intervention that helps prevent problematic, abusive and/or violent behaviour in the future. Advice on behaviour in schools is clear that teachers can sanction pupils whose conduct falls below the standard which could be reasonably expected of them. If the perpetrator(s) is to be excluded the decision must be lawful, reasonable and fair. Further information about exclusions can be found in statutory guidance for schools: Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England.

547. School can be a significant protective factor for children who have displayed HSB, and continued access to school, with a comprehensive safeguarding management plan in place, is an important factor to consider before final decisions are made. It is important that if an alleged perpetrator does move to another educational institution (for any reason), that the new educational institution is made aware of any ongoing support needs and where appropriate, potential risks to other children and staff. The designated safeguarding lead should take responsibility to

ensure this happens as well as transferring the child protection file. Information sharing advice referenced at paragraphs 114-122 will help support this process.

Sanctions and the alleged perpetrator(s)

Schools

548. With regard to the alleged perpetrator(s), advice on behaviour in schools is clear that teachers can sanction pupils whose conduct falls below the standard which could be reasonably expected of them. Statutory guidance for maintained schools, academies and PRUs on exclusions can be found here. Disciplinary action can be taken whilst other investigations by the police and/or local authority children's social care are ongoing. The fact that another body is investigating or has investigated an incident does not in itself prevent a school from coming to its own conclusion, on the balance of probabilities, about what happened, and imposing a penalty accordingly. This is a matter for the school and should be carefully considered on a case-by-case basis. The designated safeguarding lead (or a deputy) should take a leading role. The school should consider if, by taking any action, it would prejudice an investigation and/or any subsequent prosecution. Careful liaison with the police and/or local authority children's social care should help the school make a determination. It will also be important to consider whether there are circumstances that make it unreasonable or irrational for the school to reach its own view about what happened while an independent investigation is considering the same facts.

Colleges

549. Whilst colleges are not under the same legal obligations as schools with regard to behaviour, the principles set out in paragraph 550 will still be relevant and should be applied to their decision-making process.

Discipline and support

550. Taking disciplinary action and still providing appropriate support are not mutually exclusive actions. They can, and should, occur at the same time if necessary. The school or college should be very clear as to what its approach is. On the one hand there is preventative or forward-looking action to safeguard the victim and/or the perpetrator(s), especially where there are concerns that a perpetrator themselves may have been a victim of abuse; and, on the other, there is disciplinary action to punish a perpetrator for their past conduct. The school or college should be very clear as to which category any action they are taking falls or whether it is really both and should ensure that the action complies with the law relating to each relevant category.

Working with parents and carers

551. The school or college will, in most instances, engage with both the victim's and the parents or carers of the alleged perpetrator(s) when there has been a report of sexual violence (this might not be necessary or proportionate in the case of sexual harassment and should be considered on a case-by-case basis). The exception to this rule is if there is a reason to believe informing a parent or carer will put a child at additional risk. Schools and colleges should carefully consider what information they provide to the respective parents or carers about the other child involved and when they do so. In some cases, local authority children's social care and/or the police will have a very clear view and it will be important for the school or college to work with relevant agencies to ensure a consistent approach is taken to information sharing.

552. It is good practice for the school or college to meet the victim's parents or carers with the victim present to discuss what arrangements are being put in place to safeguard the victim and understand their wishes in terms of support they may need and how the report will be progressed.

553. It is also good practice for the school or college to meet the parents or carers of the alleged perpetrator(s) to discuss any arrangements that are being put into place that impact an alleged perpetrator(s), such as, for example, moving them out of classes with the victim and what this means for their education. The reason behind any decisions should be explained. Support for the alleged perpetrator(s) should be discussed.

554. The designated safeguarding lead (or a deputy) would generally attend any such meetings. Consideration to the attendance of other agencies should be considered on a case-by-case basis.

555. Clear behaviour policies and child protection policies, especially policies that set out the principles of how reports of sexual violence will be managed and how victims and alleged perpetrators are likely to be supported, that parents and carers have access to, will, in some cases, help manage what are inevitably very difficult conversations.

556. Parents and carers may well struggle to cope with a report that their child has been the victim of a sexual assault or is alleged to have sexually assaulted another child. Details of organisations that support parents are provided in Annex B. Schools and colleges should consider signposting parents and carers to this support.

Safeguarding other children

557. Consideration should be given to supporting children (and adult students) who have witnessed sexual violence, especially rape and assault by penetration. Witnessing such an event is likely to be traumatic and support may be required.

558. Following any report of sexual violence or sexual harassment, it is likely that some children will take “sides”. The school or college should be doing all they can to ensure both the victim and alleged perpetrator(s), and any witnesses, are not being bullied or harassed.

559. Social media is very likely to play a central role in the fall out from any incident or alleged incident. There is the potential for contact between victim and alleged perpetrator(s) and a very high likelihood that friends from either side could harass the victim or alleged perpetrator(s) online and/or become victims of harassment themselves. Specialist online safety support is discussed at paragraph 469.

560. School transport is a potentially vulnerable place for a victim or alleged perpetrator(s) following any incident or alleged incident. The school or college, as part of its risk assessment, should consider any additional potential support needs to keep all of their children safe.

561. A whole school or college approach to safeguarding, a culture that makes clear that there is a zero-tolerance approach to sexual violence and sexual harassment and that both are never acceptable, and it will not be tolerated, and a strong preventative education programme will help create an environment in which all children at the school or college are supportive and respectful of their peers when reports of sexual violence or sexual harassment are made.

562. It is important that schools and colleges keep their policies, processes, and curriculum under constant review to protect all their children. Reports of sexual violence and sexual harassment (especially where there is evidence of patterns of behaviour) may point to environmental and or systemic problems that could and should be addressed by updating relevant policies, processes, or relevant parts of the curriculum. Alongside this, patterns identified in schools may also be reflective of the wider issues within a local area and it is good practice to share emerging trends with safeguarding partners.

Annex A: Safeguarding information for school and college staff

The following is a condensed version of Part one of Keeping children safe in education. It can be provided (instead of Part one) to those staff who do not directly work with children, if the governing body or proprietor think it will provide a better basis for those staff to promote the welfare of and safeguard children.

The role of school and college staff

1. Safeguarding and promoting the welfare of children is **everyone's** responsibility. **Everyone** who comes into contact with children has an important role to play.

2. School and college staff are particularly important as they are in a position to identify concerns early, provide help for children, promote children's welfare and prevent concerns from escalating. It is important all staff (including those who do not work directly with children) recognise the important role they play in protecting children.

What school and college staff need to know

3. For the purposes of safeguarding, a child is anyone under the age of 18. Safeguarding and promoting the welfare of children is defined for the purposes of this guidance as:

- providing help and support to meet the needs of children as soon as problems emerge
- protecting children from maltreatment, whether that is within or outside the home, including online
- preventing impairment of children's mental and physical health or development
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care, and
- taking action to enable all children to have the best outcomes

All staff should:

- Be aware of the systems in their school or college which support safeguarding, and these should be explained to them as part of staff induction. As a minimum this Annex and the child protection policy should be shared with staff at induction.

- Receive appropriate safeguarding and child protection training (including online safety which, amongst other things, includes an understanding of the expectations, applicable roles and responsibilities in relation to filtering and monitoring) which is regularly updated. In addition, all staff should receive safeguarding and child protection updates (including online safety) (for example, via emails, e-bulletins and staff meetings), as required, and at least annually, to provide them with the skills and knowledge to safeguard children effectively.
- Know the identity of the designated safeguarding lead (and any deputies) and how to contact them.
- Know what to do if a child tells them they are being abused, neglected or exploited. This includes understanding they should never promise a child that they will not tell anyone else about a report of abuse, as this is unlikely to be in the best interests of the child.
- Should be able to reassure all victims that they are being taken seriously and that they will be supported and kept safe. A victim should never be given the impression that they are creating a problem by reporting abuse, sexual violence or sexual harassment, nor should a victim ever be made to feel ashamed for making a report.
- Should be aware that technology is a significant component in many safeguarding and wellbeing issues. Children are at risk of abuse and other risks online as well as face to face. In many cases abuse and other risks will take place concurrently both online and offline. Children can also abuse other children online, this can take the form of abusive, harassing, and misogynistic/misandrist messages, the non-consensual sharing of indecent images, especially around chat groups, and the sharing of abusive images and pornography, to those who do not want to receive such content.

What school and college staff should look out for

Abuse, neglect and exploitation

4. Knowing what to look for is vital to the early identification of abuse, neglect and exploitation. All staff should be aware of indicators of abuse, neglect and exploitation, so that they are able to identify cases of children who may be in need of help or protection. Abuse can take place wholly online, or technology may be used to facilitate offline abuse.

5. If staff are unsure, they should always speak to the designated safeguarding lead (or a deputy).

Forms of abuse and neglect

6. **Abuse**: a form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm or by failing to act to prevent harm. Children may be abused by other children or adults, in a family or in an institutional or community setting by those known to them or, more rarely, by others.

7. **Physical abuse**: a form of abuse that may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child.

8. **Emotional abuse**: the persistent emotional maltreatment of a child such as to cause severe and adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. Some level of emotional abuse is involved in all types of maltreatment of a child, although it may occur alone.

9. **Sexual abuse**: involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse. Sexual abuse can take place online, and technology can be used to facilitate offline abuse. Sexual abuse is not solely perpetrated by adult males. Females can also be abusers as can other children. The sexual abuse of children by other children is a specific safeguarding issue (also known as child-on-child abuse) in education and **all** staff should be aware of it and their school or colleges policy and procedures for dealing with it.

10. **Neglect**: the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may involve a parent or carer failing to provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate caregivers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

11. **All** staff should be aware that child sexual and child criminal exploitation are forms of child abuse.

Safeguarding issues

12. **All** staff should have an awareness of safeguarding issues that can put children

at risk of harm. Behaviours linked to issues such as drug taking and/or alcohol misuse, unexplainable and/or persistent absences from education, serious violence (including that linked to county lines), radicalisation and consensual and non-consensual sharing of nude and semi-nude images and/or videos[148] (also known as youth produced sexual imagery) put children in danger.

Child-on-child abuse

13. **All** staff should be aware that children can abuse other children at any age (often referred to as child-on-child abuse). And that it can happen both inside and outside of school or college and online. It is important that all staff recognise the indicators and signs of abuse and know how to identify it and respond to reports.

14. **All** staff should be clear as to the school or college's policy and procedures with regards to child-on-child abuse. Child-on-child abuse is most likely to include, but may not be limited to:

- bullying (including cyberbullying, prejudice-based and discriminatory bullying)
- abuse in intimate personal relationships between children (sometimes known as 'teenage relationship abuse')
- physical abuse which can include hitting, kicking, shaking, biting, hair pulling, or otherwise causing physical harm
- sexual violence, such as rape, assault by penetration and sexual assault
- sexual harassment, such as sexual comments, remarks, jokes and online sexual harassment

What school and college staff should do if they have concerns about a child

15. Staff working with children should maintain an attitude of '**it could happen here**' where safeguarding is concerned. When concerned about the welfare of a child, staff should always act in the **best interests** of the child.

16. Staff should not assume a colleague, or another professional will take action and share information that might be critical in keeping children safe.

17. If staff have **any concerns** about a child's welfare, they should act on them immediately. They should follow their school or college's child protection policy and speak to the designated safeguarding lead (or a deputy). In the absence of the

[148] Consensual image sharing, especially between older children of the same age, may require a different response. It might not be abusive – but children still need to know it is illegal- whilst non-consensual is illegal and abusive. UKCIS provides detailed advice about sharing of nudes and semi-nude images and videos.

designated safeguarding lead (or a deputy) staff should speak to a member of the school or college's senior leadership team.

18. The designated safeguarding lead (or a deputy) will generally lead on next steps, including who else, if anyone, in the school or college should be informed and whether to pass a concern to local authority children's social care and/or the police. In some instances, staff may be expected to support the local authority children social care assessment process. If this is the case, the designated safeguarding lead (or a deputy) will support them.

Why all of this is important

19. It is important for children to receive the right help at the right time to address safeguarding risks and prevent issues escalating and to promote children's welfare. Research and serious case reviews have repeatedly shown the dangers of failing to take effective and immediate action. Examples of poor practice includes failing to act on and refer the early signs of abuse and neglect.

What school and college staff should do if they have a safeguarding concern or an allegation about another staff member who may pose a risk of harm to children

20. If staff have a safeguarding concern or an allegation is made about another member of staff (including supply staff, contractors, volunteers, and visitors) harming or posing a risk of harm to children, they should speak to the headteacher or principal (unless it relates to the headteacher or principal, in which case they should speak to the chair of governors, chair of the management committee, or the proprietor of an independent school).

What school or college staff should do if they have concerns about safeguarding practices within the school or college

21. All staff and volunteers should feel able to raise concerns about poor or unsafe practice and potential failures in the school or college's safeguarding regime and know that such concerns will be taken seriously by the senior leadership team.

22. Appropriate whistleblowing procedures should be in place for concerns to be raised with the school or college's senior leadership team.

23. Where staff feel unable to raise an issue with the employer or feel that their genuine safeguarding concerns are not being addressed NSPCC whistleblowing advice line is available. Staff can call 0800 0280285 – 08:00 to 20:00, Monday to Friday and 09:00 to 18:00 at weekends. The email address is: help@nspcc.org.uk. Alternatively, staff can write to: National Society for the Prevention of Cruelty to Children (NSPCC), Weston House, 42 Curtain Road, London EC2A 3NH.

Annex B: Further information

Annex B contains important additional information about specific forms of abuse and safeguarding issues. School and college leaders and those staff who work directly with children should read this Annex.

As per Part one of this guidance, if staff have any concerns about a child's welfare, they should act on them immediately. They should follow their own organisation's child protection policy and speak to the designated safeguarding lead (or a deputy).

Where a child is suffering, or is likely to suffer from harm, it is important that a referral to local authority children's social care (and if appropriate the police) is made immediately.

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Child abduction and community safety incidents

Child abduction is the unauthorised removal or retention of a minor from a parent or anyone with legal responsibility for the child. Child abduction can be committed by parents or other family members; by people known but not related to the victim (such as neighbours, friends and acquaintances); and by strangers.

Other community safety incidents in the vicinity of a school can raise concerns amongst children and parents, for example, people loitering nearby or unknown adults engaging children in conversation.

As children get older and are granted more independence (for example, as they start walking to school on their own) it is important they are given practical advice on how to keep themselves safe. Many schools provide outdoor-safety lessons run by teachers or by local police staff.

It is important that lessons focus on building children's confidence and abilities rather than simply warning them about all strangers. Further information is available at: www.actionagainstabduction.org and www.clevernevergoes.org.

Child criminal exploitation (CCE) and child sexual exploitation (CSE)

We know that different forms of harm often overlap, and that perpetrators may subject children and young people to multiple forms of abuse, such as criminal exploitation (including county lines) and sexual exploitation.

In some cases, the exploitation or abuse will be in exchange for something the victim needs or wants (for example, money, gifts or affection), and/or will be to the financial benefit or other advantage, such as increased status, of the perpetrator or facilitator.

Children can be exploited by adult males or females, as individuals or groups. They may also be exploited by other children, who themselves may be experiencing exploitation – where this is the case, it is important that the child perpetrator is also recognised as a victim.

Whilst the age of the child may be a contributing factor for an imbalance of power, there are a range of other factors that could make a child more vulnerable to exploitation, including, sexual identity, cognitive ability, learning difficulties, communication ability, physical strength, status, and access to economic or other resources.

Some of the following can be indicators of both child criminal and sexual exploitation where children:

- appear with unexplained gifts, money or new possessions

- associate with other children involved in exploitation
- suffer from changes in emotional well-being
- misuse alcohol and other drugs
- go missing for periods of time or regularly come home late, and
- regularly miss school or education or do not take part in education.

Children who have been exploited will need additional support to help keep them in education.

Child Sexual Exploitation (CSE) can be a one-off occurrence or a series of incidents over time and range from opportunistic to complex organised abuse. It can involve force and/or enticement-based methods of compliance and may, or may not, be accompanied by violence or threats of violence.

Some additional specific indicators that may be present in CSE are children who:

- have older boyfriends or girlfriends; and
- suffer from sexually transmitted infections, display sexual behaviours beyond expected sexual development or become pregnant.

Further information on signs of a child's involvement in sexual exploitation is available in Home Office guidance: Child sexual exploitation: guide for practitioners

County lines

County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs using dedicated mobile phone lines or other form of "deal line". This activity can happen locally as well as across the UK - no specified distance of travel is required. Children and vulnerable adults are exploited to move, store and sell drugs and money. Offenders will often use coercion, intimidation, violence (including sexual violence) and weapons to ensure compliance of victims.

Children can be targeted and recruited into county lines in a number of locations including any type of schools (including special schools), further and higher educational institutions, pupil referral units, children's homes and care homes.

Children are also increasingly being targeted and recruited online using social media. Children can easily become trapped by this type of exploitation as county lines gangs can manufacture drug debts which need to be worked off or threaten serious violence and kidnap towards victims (and their families) if they attempt to leave the county lines network.

A number of the indicators for CCE and CSE as detailed above may be applicable to where children are involved in county lines. Some additional specific indicators that may be present where a child is criminally exploited through involvement in county lines are children who:

- go missing (from school or home) and are subsequently found in areas away from their home
- have been the victim, perpetrator or alleged perpetrator of serious violence (e.g. knife crime)
- are involved in receiving requests for drugs via a phone line, moving drugs, handing over and collecting money for drugs
- are exposed to techniques such as 'plugging', where drugs are concealed internally to avoid detection
- are found in accommodation that they have no connection with, often called a 'trap house or cuckooing' or hotel room where there is drug activity
- owe a 'debt bond' to their exploiters
- have their bank accounts used to facilitate drug dealing.

Further information on the signs of a child's involvement in county lines is available in guidance published by the Home Office and The Children's Society County Lines Toolkit For Professionals .

Children and the court system

Children are sometimes required to give evidence in criminal courts, either for crimes committed against them or for crimes they have witnessed. There are two age appropriate guides to support children 5-11-year olds and 12-17 year olds.

The guides explain each step of the process, support and special measures that are available. There are diagrams illustrating the courtroom structure and the use of video links is explained.

Making child arrangements via the family courts following separation can be stressful and entrench conflict in families. This can be stressful for children. The Ministry of Justice has launched an online child arrangements information tool with clear and concise information on the dispute resolution service. This may be useful for some parents and carers.

Children who are absent from education

All staff should be aware that children being absent from school or college, particularly repeatedly and/or for prolonged periods, and children missing education can act as a vital warning sign of a range of safeguarding possibilities. This may include abuse and neglect such as sexual abuse or exploitation and can also be a sign of child criminal exploitation including involvement in county lines. It may indicate mental health problems, risk of substance abuse, risk of travelling to conflict zones, risk of female genital mutilation, so-called 'honour'-based abuse or risk of forced marriage. Early intervention is essential to identify the existence of any underlying safeguarding risk and to help prevent the risks of a child going missing in future. It is important that staff are aware of their school or college's unauthorised absence procedures and children missing education procedures.

Children with family members in prison

Approximately 200,000 children in England and Wales have a parent sent to prison each year. These children are at risk of poor outcomes including poverty, stigma, isolation and poor mental health. The National Information Centre on Children of Offenders, NICCO provides information designed to support professionals working with offenders and their children, to help mitigate negative consequences for those children.

Cybercrime

Cybercrime is criminal activity committed using computers and/or the internet. It is broadly categorised as either 'cyber-enabled' (crimes that can happen off-line but are enabled at scale and at speed on-line) or 'cyber dependent' (crimes that can be committed only by using a computer). Cyber-dependent crimes include:

- unauthorised access to computers (illegal 'hacking'), for example accessing a school's computer network to look for test paper answers or change grades awarded
- 'Denial of Service' (Dos or DDoS) attacks or 'booting'. These are attempts to make a computer, network or website unavailable by overwhelming it with internet traffic from multiple sources, and,
- making, supplying or obtaining malware (malicious software) such as viruses, spyware, ransomware, botnets and Remote Access Trojans with the intent to commit further offence, including those above.

Children with particular skills and interest in computing and technology may inadvertently or deliberately stray into cyber-dependent crime.

If there are concerns about a child in this area, the designated safeguarding lead (or a deputy), should consider referring into the **Cyber Choices** programme. This is a

nationwide police programme supported by the Home Office and led by the National Crime Agency, working with regional and local policing. It aims to intervene where young people are at risk of committing, or being drawn into, low-level cyber-dependent offences and divert them to a more positive use of their skills and interests.

Note that **Cyber Choices** does not currently cover 'cyber-enabled' crime such as fraud, purchasing of illegal drugs on-line and child sexual abuse and exploitation, nor other areas of concern such as on-line bullying or general on-line safety.

Additional advice can be found at: Cyber Choices, 'NPCC- When to call the Police' and National Cyber Security Centre - NCSC.GOV.UK.

Domestic abuse

The Domestic Abuse Act 2021 received Royal Assent on 29 April 2021. The Act introduced the first ever statutory definition of domestic abuse and recognises the impact of domestic abuse on children, as victims in their own right, if they see, hear or experience the effects of abuse. The statutory definition of domestic abuse, based on the previous cross-government definition, ensures that different types of relationships are captured, including ex-partners and family members. The definition captures a range of different abusive behaviours, including physical, emotional and economic abuse and coercive and controlling behaviour. Under the statutory definition, both the person who is carrying out the behaviour and the person to whom the behaviour is directed towards must be aged 16 or over and they must be "personally connected" (as defined in section 2 of the 2021 Act).

Types of domestic abuse include intimate partner violence, abuse by family members, teenage relationship abuse and child to parent abuse. Anyone can be a victim of domestic abuse, regardless of sexual identity, age, ethnicity, socio-economic status, sexuality or background and domestic abuse can take place inside or outside of the home. The government has issued statutory guidance to provide further information for those working with domestic abuse victims and perpetrators, including the impact on children.

All children can witness and be adversely affected by domestic abuse in the context of their home life where domestic abuse occurs between family members. Experiencing domestic abuse can have a serious, long lasting emotional and psychological impact on children. In some cases, a child may blame themselves for the abuse or may have had to leave the family home as a result.

Young people can also experience domestic abuse within their own intimate relationships. This form of child-on-child abuse is sometimes referred to as 'teenage relationship abuse'. Depending on the age of the young people, this may not be

recognised in law under the statutory definition of 'domestic abuse' (if one or both parties are under 16). However, as with any child under 18, where there are concerns about safety or welfare, child safeguarding procedures should be followed and both young victims and young perpetrators should be offered support.

Operation Encompass

Operation Encompass operates in all police forces across England. It helps police and schools work together to provide emotional and practical help to children. This ensures that the school has up to date relevant information about the child's circumstances and can enable immediate support to be put in place, according to the child's needs. Operation Encompass does not replace statutory safeguarding procedures. Where appropriate, the police and/or schools should make a referral to local authority children's social care if they are concerned about a child's welfare. More information about the scheme and how schools can become involved is available on the Operation Encompass website.

Operation Encompass provides an advice and helpline service for all staff members from educational settings who may be concerned about children who have experienced domestic abuse. The helpline is available 8:00 to 13:00, Monday to Friday on 0204 513 9990 (charged at local rate).

National Domestic Abuse Helpline

Refuge runs the National Domestic Abuse Helpline, which can be called free of charge and in confidence, 24 hours a day on 0808 2000 247. Its website provides guidance and support for potential victims, as well as those who are worried about friends and loved ones. It also has a form through which a safe time from the team for a call can be booked.

Additional advice on identifying children who are affected by domestic abuse and how they can be helped is available at:

- NSPCC- UK domestic-abuse Signs Symptoms Effects
- Refuge what is domestic violence/effects of domestic violence on children
- Safe Young Lives: Young people and domestic abuse | Safelives
- Domestic abuse: specialist sources of support (includes information for adult victims, young people facing abuse in their own relationships and parents experiencing child to parent violence/abuse)
- Home : Operation Encompass (includes information for schools on the impact of domestic abuse on children)

Homelessness

Being homeless or being at risk of becoming homeless presents a real risk to a child's welfare. The designated safeguarding lead (and any deputies) should be aware of contact details and referral routes into the Local Housing Authority so they can raise/progress concerns at the earliest opportunity. Indicators that a family may be at risk of homelessness include household debt, rent arrears, domestic abuse and anti-social behaviour, as well as the family being asked to leave a property. Whilst referrals and/or discussion with the Local Housing Authority should be progressed as appropriate, and in accordance with local procedures, this does not, and should not, replace a referral into local authority children's social care where a child has been harmed or is at risk of harm.

The Homelessness Reduction Act 2017 places a new legal duty on English councils so that everyone who is homeless or at risk of homelessness will have access to meaningful help including an assessment of their needs and circumstances, the development of a personalised housing plan, and work to help them retain their accommodation or find a new place to live. The following factsheets usefully summarise the new duties: Homeless Reduction Act Factsheets. The new duties shift the focus to early intervention and encourages those at risk to seek support as soon as possible, before they are facing a homelessness crisis.

In most cases school and college staff will be considering homelessness in the context of children who live with their families, and intervention will be on that basis. However, it should also be recognised in some cases 16- and 17-year-olds could be living independently from their parents or guardians, for example through their exclusion from the family home, and will require a different level of intervention and support. Local authority children's social care will be the lead agency for these children and the designated safeguarding lead (or a deputy) should ensure appropriate referrals are made based on the child's circumstances. The Department for Levelling Up, Housing and Communities have published joint statutory guidance on the provision of accommodation for 16- and 17-year-olds who may be homeless and/or require accommodation: here.

Mental health

Where children have suffered abuse and neglect, or other potentially traumatic adverse childhood experiences, this can have a lasting impact throughout childhood, adolescence and into adulthood. It is key that staff are aware of how these children's experiences, can impact on their mental health, behaviour, attendance and progress at school.

More information can be found in the Mental health and behaviour in schools guidance, colleges may also wish to follow this guidance as best practice. Public Health England.[149] has produced a range of resources to support secondary school teachers to promote positive health, wellbeing and resilience among children. See Better Health Every Mind Matters for links to all materials and lesson plans.

Modern slavery and the National Referral Mechanism

Modern slavery encompasses human trafficking and slavery, servitude and forced or compulsory labour. Exploitation can take many forms, including sexual exploitation, forced labour, slavery, servitude, forced criminality and the removal of organs.

Further information on the signs that someone may be a victim of modern slavery, the support available to victims and how to refer them to the NRM is available in Statutory Guidance. Modern slavery: how to identify and support victims - GOV.UK

Preventing radicalisation

Children may be susceptible to radicalisation into terrorism. Similar to protecting children from other forms of harms and abuse, protecting children from this risk should be a part of a schools or colleges safeguarding approach.

Extremism is the vocal or active opposition to our fundamental British values, including democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs

Radicalisation[150] is the process of a person legitimising support for, or use of, terrorist violence.

Terrorism[151] is an action that endangers or causes serious violence to a person/people; causes serious damage to property; or seriously interferes or disrupts an electronic system. The use or threat must be designed to influence the government or to intimidate the public and is made for the purpose of advancing a political, religious or ideological cause.

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[149]Public Health England: has now been replaced by the UK Health Security Agency and the Office for Health Improvement and Disparities (OHID), which is part of the Department of Health and Social Care, and by the UK Health Security Agency. However, the branding remains unchanged.
[150] As defined in the Government's Prevent Duty Guidance for England and Wales.
[151] As defined in the Terrorism Act 2000 (TACT 2000)
http://www.legislation.gov.uk/ukpga/2000/11/contents

Although there is no single way of identifying whether a child is likely to be susceptible to radicalisation into terrorism, there are factors that may indicate concern.

It is possible to protect people from extremist ideology and intervene to prevent those at risk of radicalisation being drawn to terrorism. As with other safeguarding risks, staff should be alert to changes in children's behaviour, which could indicate that they may be in need of help or protection. Staff should use their judgement in identifying children who might be at risk of radicalisation and act proportionately which may include the designated safeguarding lead (or a deputy) making a Prevent referral.

The Prevent duty

All schools and colleges are subject to a duty under section 26 of the Counter- Terrorism and Security Act 2015, in the exercise of their functions, to have "due regard[152] to the need to prevent people from becoming terrorists or supporting terrorism".[153] This duty is known as the Prevent duty.

The Prevent duty should be seen as part of schools' and colleges' wider safeguarding obligations. Designated safeguarding leads (and deputies) and other senior leaders in education settings should familiarise themselves with the revised Prevent duty guidance: for England and Wales, especially paragraphs 141-210, which are specifically concerned with education (and also covers childcare). The guidance is set out in terms of three general themes: leadership and partnership, capabilities and reducing permissive environments.

The school or college's designated safeguarding lead (and any deputies) should be aware of local procedures for making a Prevent referral.

Channel

Channel is a voluntary, confidential support programme which focuses on providing support at an early stage to people who are identified as being susceptible to being drawn into terrorism. Prevent referrals are assessed and may be passed to a multi-agency Channel panel, which will discuss the individual referred to determine whether they are at risk of being drawn into terrorism and consider the appropriate support required. A representative from the school or college may be asked to attend the Channel panel to help with this assessment. An individual will be required to provide their consent before any support delivered through the programme is provided.

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[152] Counter-Terrorism and Security Act 2015 (legislation.gov.uk)

[153] "Terrorism" for these purposes has the same meaning as for the Terrorism Act 2000 (section 1(1) to (4) of that Act).

The designated safeguarding lead (or a deputy) should consider if it would be appropriate to share any information with the new school or college in advance of a child leaving. For example, information that would allow the new school or college to continue supporting victims of abuse or those who are currently receiving support through the 'Channel' programme and have that support in place for when the child arrives.

Statutory guidance on Channel is available at: Channel guidance and Channel training from the Home Office.

Additional support

The Department has published further advice for those working in education settings with safeguarding responsibilities on the Prevent duty. The advice is intended to complement the Prevent guidance and signposts to other sources of advice and support.

The Home Office has developed three e-learning modules:

- Prevent awareness e-learning offers an introduction to the Prevent duty.
- Prevent referrals e-learning supports staff to make Prevent referrals that are **robust, informed** and with **good intention**.
- Channel awareness e-learning is aimed at staff who may be asked to contribute to or sit on a multi-agency Channel panel.

Educate Against Hate, is a government website designed to support school and college teachers and leaders to help them safeguard their students from radicalisation and extremism. The platform provides free information and resources to help staff identify and address the risks, as well as build resilience to radicalisation.

For advice specific to further education, the Education and Training Foundation (ETF) hosts the Prevent for FE and Training. This hosts a range of free, sector specific resources to support further education settings to comply with the Prevent duty. This includes the Prevent Awareness e-learning, which offers an introduction to the duty, and the Prevent Referral e-learning, which is designed to support staff to make robust, informed and proportionate referrals.

The Safeguarding and Prevent - The Education and Training Foundation (et-foundation.co.uk) provides online training modules for practitioners, leaders and managers, to support staff and governors/Board members in outlining their roles and responsibilities under the duty.

London Grid for Learning has also produced useful resources on Prevent (Online Safety Resource Centre - London Grid for Learning (lgfl.net).

Sexual violence and sexual harassment between children in schools and colleges

Sexual violence and sexual harassment can occur between two children of any age and sex from primary to secondary stage and into colleges. It can also occur online. It can also occur through a group of children sexually assaulting or sexually harassing a single child or group of children.

Children who are victims of sexual violence and sexual harassment will likely find the experience stressful and distressing. This will, in all likelihood, adversely affect their educational attainment and will be exacerbated if the alleged perpetrator(s) attends the same school or college. Sexual violence and sexual harassment exist on a continuum and may overlap, they can occur online and face to face (both physically and verbally) and are never acceptable.

It is essential that **all** victims are reassured that they are being taken seriously and that they will be supported and kept safe. A victim should never be given the impression that they are creating a problem by reporting sexual violence or sexual harassment. Nor should a victim ever be made to feel ashamed for making a report. Detailed advice is available in Part five of this guidance.

Serious violence

There are a number of indicators, which may signal children are at risk from, or are involved with, serious violent crime. These may include:

- increased absence from school
- a change in friendships or relationships with older individuals or groups
- a significant decline in performance
- signs of self-harm or a significant change in wellbeing, or signs of assault or unexplained injuries
- unexplained gifts or new possessions could also indicate that children have been approached by, or are involved with, individuals associated with criminal networks or gangs and may be at risk of criminal exploitation.

The likelihood of involvement in serious violence may be increased by factors such as:

- being male
- having been frequently absent or permanently excluded from school
- having experienced child maltreatment and having been involved in offending, such as theft or robbery.

A fuller list of risk factors can be found in the Home Office's Serious Violence Strategy.

Professionals should also be aware that violence can often peak in the hours just before or just after school, when pupils are travelling to and from school. These times can be particularly risky for young people involved in serious violence.

Advice for schools and colleges is provided in the Home Office's Criminal exploitation of children and vulnerable adults: county lines guidance. The Youth Endowment Fund (YEF) Toolkit sets out the evidence for what works in preventing young people from becoming involved in violence.

Home Office funded Violence Reduction Units (VRU) operate in the 20 police force areas across England and Wales that have the highest volumes of serious violence, as measured by hospital admissions for injury with a sharp object. A list of these locations can be found here. As the strategic co-ordinators for local violence prevention, each VRU is mandated to include at least one local education representative within their Core Membership group, which is responsible for setting the direction for VRU activity. Schools and educational partners within these areas are encouraged to reach out to their local VRU, either directly or via their education Core Member, to better ingrain partnership working to tackle serious violence across local areas and ensure a joined up approach to young people across the risk spectrum.

Police, Crime, Sentencing and Courts Act 2022 introduced a new duty on a range of specified authorities, such as the police, local government, youth offending teams, health and probation services, to work collaboratively, share data and information, and put in place plans to prevent and reduce serious violence within their local communities. Educational authorities and prisons/youth custody authorities will be under a separate duty to co-operate with core duty holders when asked, and there will be a requirement for the partnership to consult with all such institutions in their area.

The Duty is not intended to replace or duplicate existing safeguarding duties. Local partners may choose to meet the requirements of the Duty through existing multi-agency structures, such as multi-agency safeguarding arrangements, providing the correct set of partners are involved.

So-called 'honour'-based abuse (including female genital mutilation and forced marriage)

So-called 'honour'-based abuse (HBA) encompasses incidents or crimes which have been committed to protect or defend the honour of the family and/or the community, including female genital mutilation (FGM), forced marriage, and practices such as breast ironing. Abuse committed in the context of preserving 'honour' often involves a wider network of family or community pressure and can include multiple perpetrators. It is important to be aware of this dynamic and additional risk factors when deciding what form of safeguarding action to take. All forms of HBA are abuse (regardless of the

motivation) and should be handled and escalated as such. Professionals in all agencies, and individuals and groups in relevant communities, need to be alert to the possibility of a child being at risk of HBA, or already having suffered HBA.

Actions

If staff have a concern regarding a child who might be at risk of HBA or who has suffered from HBA, they should speak to the designated safeguarding lead (or a deputy). As appropriate, the designated safeguarding lead (or a deputy) will activate local safeguarding procedures, using existing national and local protocols for multi-agency liaison with the police and local authority children's social care. Where FGM has taken place, since 31 October 2015 there has been a mandatory reporting duty placed on **teachers**[154] that requires a different approach (see below).

FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs. It is illegal in the UK and a form of child abuse with long-lasting harmful consequences.

FGM mandatory reporting duty for teachers

Section 5B of the Female Genital Mutilation Act 2003 (as inserted by section 74 of the Serious Crime Act 2015) places a statutory duty upon **teachers**, along with regulated health and social care professionals in England and Wales, to report to the police where they discover (either through disclosure by the victim or visual evidence) that FGM appears to have been carried out on a girl under 18. Those failing to report such cases may face disciplinary sanctions. It will be rare for teachers to see visual evidence, and they should **not** be examining pupils or students, but the same definition of what is meant by "to discover that an act of FGM appears to have been carried out" is used for all professionals to whom this mandatory reporting duty applies. Information on when and how to make a report can be found at: Mandatory reporting of female genital mutilation procedural information.

Teachers **must** personally report to the police cases where they discover that an act of FGM appears to have been carried out.[155] Unless the teacher has good reason not to, they should still consider and discuss any such case with the school or college's designated safeguarding lead (or a deputy) and involve local authority children's social care as appropriate. The duty does not apply in relation to at risk or suspected cases (i.e.

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[154] Under Section 5B(11)(a) of the Female Genital Mutilation Act 2003, "teacher" means, in relation to England, a person within section 141A(1) of the Education Act 2002 (persons employed or engaged to carry out teaching work at schools and other institutions in England).
[155] Section 5B(6) of the Female Genital Mutilation Act 2003 states teachers need not report a case to the police if they have reason to believe that another teacher has already reported the case.

where the teacher does not discover that an act of FGM appears to have been carried out, either through disclosure by the victim or visual evidence) or in cases where the woman is 18 or over. In these cases, teachers should follow local safeguarding procedures. The following is a useful summary of the FGM mandatory reporting duty: FGM Fact Sheet.

Further information can be found in the Multi-agency statutory guidance on female genital mutilation and the FGM resource pack particularly section 13.

Forced marriage

Forcing a person into a marriage is a crime in England and Wales. A forced marriage is one entered into without the full and free consent of one or both parties and where violence, threats or any other form of coercion is used to cause a person to enter into a marriage. Threats can be physical or emotional and psychological. A lack of full and free consent can be where a person does not consent or where they cannot consent (if they have learning disabilities, for example). Nevertheless, some perpetrators use perceived cultural practices to coerce a person into marriage. Schools and colleges can play an important role in safeguarding children from forced marriage.

The Forced Marriage Unit (FMU) has created: Multi-agency practice guidelines: handling cases of forced marriage (chapter 8 provides guidance on the role of schools and colleges) and, Multi-agency statutory guidance for dealing with forced marriage, which can both be found at The right to choose: government guidance on forced marriage - GOV.UK (www.gov.uk) School and college staff can contact the Forced Marriage Unit if they need advice or information: Contact: 020 7008 0151 or email fmu@fcdo.gov.uk.

In addition, since February 2023 it has also been a crime to carry out any conduct whose purpose is to cause a child to marry before their eighteenth birthday, even if violence, threats or another form of coercion are not used. As with the existing forced marriage law, this applies to non-binding, unofficial 'marriages' as well as legal marriages.

Additional advice and support

There is a wealth of information available to support schools and colleges. The following list is not exhaustive but should provide a useful starting point:

Abuse

Centre of Expertise on Child Sexual Abuse has introduced new resources to help education professionals identify and respond to concerns of child sexual abuse and abusive behaviours.

What to do if you're worried a child is being abused – DfE advice

Domestic abuse: Various Information/Guidance – Home Office advice

Faith based abuse: National Action Plan – DfE advice

Forced marriage resource pack

Disrespect NoBody campaign – GOV.UK – Home Office website

Tackling Child Sexual Abuse Strategy – Home Office policy paper

Together we can stop child sexual abuse – HM Government campaign

Bullying

Preventing bullying including cyberbullying – DfE advice

Children missing from education, home or care

Children missing education – DfE statutory guidance

Children who run away or go missing from home or care – DfE statutory guidance

Missing Children and Adults strategy – Home Office strategy

Children with family members in prison

National Information Centre on Children of Offenders – Barnardo's in partnership with HM Prison and Probation Service

Child exploitation

Safeguarding children who may have been trafficked – DfE and Home Office guidance

Care of unaccompanied migrant children and child victims of modern slavery – DfE statutory guidance

Modern slavery: how to identify and support victims – HO statutory guidance

Child exploitation disruption toolkit – HO statutory guidance

Preventing Child Sexual Exploitation – The Children's Society and Home Office

County Lines Toolkit For Professionals – The Children's Society in partnership with Victim Support and National Police Chiefs' Council

Multi-agency practice principles for responding to child exploitation and extra-familial harm – Non-statutory guidance for local areas, developed by the Tackling Child Exploitation (TCE) Support Programme, funded by the Department for Education and supported by the Home Office, the Department for Health and Social Care and the Ministry of Justice

Confidentiality

Gillick competency Fraser guidelines – Guidelines to help with balancing children's rights along with safeguarding responsibilities.

Drugs

From harm to hope: A 10-year drugs plan to cut crime and save lives – Home Office strategy

Honest information about drugs – Talk to Frank website

Drug and Alcohol education – teacher guidance & evidence review – PSHE Association

(So-called) 'honour'-based abuse, including FGM and forced marriage

Female genital mutilation: information and resources – Home Office guidance

Female genital mutilation: multi agency statutory guidance – DfE, Department for Health, and Home Office

Forced marriage – Forced Marriage Unit (FMU) resources

Forced marriage – Government multi-agency practice guidelines and multi-agency statutory guidance

FGM resource pack – HM Government guidance

Health and well-being

Rise Above: Free PSHE resources on health, wellbeing and resilience – Public Health England

Supporting pupils at schools with medical conditions – DfE statutory guidance

Mental health and behaviour in schools – DfE advice

Overview - Fabricated or induced illness – NHS advice

Homelessness

Homelessness code of guidance for local authorities – Department for Levelling Up, Housing and Communities guidance

Information sharing

Government information sharing advice – Guidance on information sharing for people who provide safeguarding services to children, young people, parents and carers.

Information Commissioner's Office: Data sharing information hub – Information to help schools and colleges comply with UK data protection legislation including UK GDPR.

Online safety advice

Childnet – Provides guidance for schools on cyberbullying

Educateagainsthate – Provides practical advice and support on protecting children from extremism and radicalisation

London Grid for Learning – Provides advice on all aspects of a school or college's online safety arrangements

NSPCC E-safety for schools – Provides advice, templates, and tools on all aspects of a school or college's online safety arrangements

Safer recruitment consortium – 'Guidance for safe working practice', which may help ensure staff behaviour policies are robust and effective

Searching screening and confiscation – Departmental advice for schools on searching children and confiscating items such as mobile phones

South West Grid for Learning – Provides advice on all aspects of a school or college's online safety arrangements

Use of social media for online radicalisation – A briefing note for schools on how social media is used to encourage travel to Syria and Iraq

Online Safety Audit Tool – From UK Council for Internet Safety to help mentors of trainee teachers and newly qualified teachers induct mentees and provide ongoing support, development and monitoring

Online safety guidance if you own or manage an online platform – DCMS advice

A business guide for protecting children on your online platform – DCMS advice

UK Safer Internet Centre – Provides tips, advice, guides and other resources to help keep children safe online

Online safety relating to remote education, virtual lessons and live streaming

Guidance Get help with remote education – Resources and support for teachers and

school leaders on educating pupils and students

Departmental guidance on safeguarding and remote education – Including planning remote education strategies and teaching remotely

London Grid for Learning – Guidance, including platform-specific advice

National Cyber Security Centre – Guidance on choosing, configuring and deploying video conferencing

UK Safer Internet Centre – Guidance on safe remote learning

Online safety – support for children

Childline – For free and confidential advice

UK Safer Internet Centre – To report and remove harmful online content

CEOP Safety Centre – to report online child sexual abuse

Online safety- parental support

Childnet – Offers a toolkit to support parents and carers of children of any age to start discussions about their online life, and to find out where to get more help and support

Commonsensemedia – Provides independent reviews, age ratings, & other information about all types of media for children and their parents

Government advice – About protecting children from specific online harms such as child sexual abuse, sexting, and cyberbullying

Internet Matters – Provides age-specific online safety checklists, guides on how to set parental controls, and practical tips to help children get the most out of their digital world

How Can I Help My Child? – Marie Collins Foundation – Sexual abuse online

London Grid for Learning – Provides support for parents and carers to keep their children safe online, including tips to keep primary aged children safe online

Stopitnow resource from The Lucy Faithfull Foundation – Can be used by parents and carers who are concerned about someone's behaviour, including children who may be displaying concerning sexual behaviour (not just about online)

CEOP Education – Provides information, guidance and resources for support for parents and carers, helping them to protect their child(ren) from online sexual abuse

Parentzone – Provides help for parents and carers on how to keep their children safe online

Talking to your child about online sexual harassment: A guide for parents – This is the Children's Commissioner's parental guide on talking to their children about online sexual harassment

Private fostering

Private fostering: local authorities – DfE statutory guidance

Radicalisation

Prevent duty guidance – Home Office guidance

Prevent duty: additional advice for schools and childcare providers – DfE advice

Educate Against Hate website – DfE and Home Office guidance

Prevent for FE and Training – Education and Training Foundation (ETF)

Extremism and Radicalisation Safeguarding Resources – Resources by London Grid for Learning

Managing risk of radicalisation in your education setting – DfE advice

Serious violence

Serious violence strategy – Home Office strategy

Factors linked to serious violence and how these factors can be used to identify individuals for intervention – Home Office

Youth Endowment Fund – Home Office

Gangs and youth violence: for schools and colleges – Home Office advice

Tackling and girls strategy – Home Office strategy

Violence against women and girls: national statement of expectations for victims – Home Office guidance

Sexual violence and sexual harassment

Specialist organisations

Barnardo's – UK charity caring for and supporting some of the most vulnerable children and young people through their range of services.

Lucy Faithfull Foundation – UK-wide child protection charity dedicated to preventing child sexual abuse. They work with families affected by sexual abuse and also run the confidential Stop it Now! Helpline.

Marie Collins Foundation – Charity that, amongst other things, works directly with children, young people, and families to enable their recovery following sexual abuse.

NSPCC – Children's charity specialising in child protection with statutory powers enabling them to take action and safeguard children at risk of abuse.

Rape Crisis – National charity and the umbrella body for their network of independent

member Rape Crisis Centres.

UK Safer Internet Centre – Provides to children, young people, parents, carers and schools about staying safe online.

Harmful sexual behaviour

Rape Crisis (England & Wales) or The Survivors Trust – For information, advice, and details of local specialist sexual violence organisations.

NICE guidance – Contains information on, amongst other things: developing interventions; working with families and carers; and multi-agency working.

HSB toolkit – The Lucy Faithfull Foundation – designed for parents, carers, family members and professionals, to help everyone play their part in keeping children safe. It has links to useful information, resources, and support as well as practical tips to prevent harmful sexual behaviour and provide safe environments for families.

The Lucy Faithfull Foundation also run shorespace.org.uk which provides a safe and anonymous place for young people to get help and support to prevent harmful sexual behaviours.

NSPCC Learning: Protecting children from harmful sexual behaviour and NSPCC - Harmful sexual behaviour framework – Free and independent advice about HSB.

Contextual Safeguarding Network – Beyond Referrals (Schools) – Provides a school self-assessment toolkit and guidance for addressing HSB in schools.

Preventing harmful sexual behaviour in children - Stop It Now – Provides a guide for parents, carers and professionals to help everyone do their part in keeping children safe, they also run a free confidential helpline.

Support for victims

Anti-Bullying Alliance – Detailed information for anyone being bullied, along with advice for parents and schools. Signposts to various helplines and websites for further support.

Rape Crisis – Provides and signposts to a range of services to support people who have experienced rape, child abuse or any kind of sexual violence.

The Survivors Trust – UK-wide national umbrella agency with resources and support dedicated to survivors of rape, sexual violence and child sex abuse.

Victim Support – Supporting children and young people who have been affected by crime. Also provides support to parents and professionals who work with children and young people – regardless of whether a crime has been reported or how long ago it was.

Childline – Provides free and confidential advice for children and young people.

Toolkits

NSPCC – Online Self-assessment tool to ensure organisations are doing everything they can to safeguard children.

NSPCC – Resources which help adults respond to children disclosing abuse.

NSPCC also provide free and independent advice about HSB: NSPCC - Harmful sexual behaviour framework

Safeguarding Unit, Farrer and Co. and Carlene Firmin, MBE, University of Bedfordshire – Peer-on-Peer Abuse toolkit provides practical guidance for schools on how to prevent, identify early and respond appropriately to peer-on-peer abuse.

Contextual Safeguarding Network – Self-assessment toolkit for schools to assess their own response to HSB and levers for addressing HSB in schools.

Childnet - STAR SEND Toolkit – Equips, enables and empowers educators with the knowledge to support young people with special educational needs and disabilities (SEND).

Childnet - Just a joke? – Provides lesson plans, activities, a quiz and teaching guide designed to explore problematic online sexual behaviour with 9-12 year olds.

Childnet - Step Up, Speak Up – A practical campaign toolkit that addresses the issue of online sexual harassment amongst young people aged 13-17 years old.

NSPCC - Harmful sexual behaviour framework – An evidence-informed framework for children and young people displaying HSB.

Farrer & Co: Addressing child on child abuse: a resource for schools and colleges – This resource provides practical guidance for schools and colleges on how to prevent, identify early and respond appropriately to child-on-child abuse.

Sharing nudes and semi-nudes

London Grid for Learning-collection of advice – Various information and resources dealing with the sharing of nudes and semi-nudes.

UKCIS Sharing nudes and semi-nudes: advice for education settings working with children and young people – Advice for schools and colleges on responding to incidents of non-consensual sharing of nudes and semi-nudes.

Support for parents/carers

National Crime Agency's CEOP Education Programme – Provides information for parents and carers to help protect their child from online child sexual abuse, including #AskTheAwkward - help to talk with your children about online relationships – Guidance on how to talk to their children about online relationships

Annex C: Role of the designated safeguarding lead

Governing bodies and proprietors should ensure an appropriate **senior member** of staff, from the school or college **leadership team**, is appointed to the role of designated safeguarding lead. The designated safeguarding lead should take **lead responsibility** for safeguarding and child protection (including online safety and understanding the filtering and monitoring systems and processes in place). This should be explicit in the role holder's job description.

The designated safeguarding lead should have the appropriate status and authority within the school or college to carry out the duties of the post. The role of the designated safeguarding lead carries a significant level of responsibility, and they should be given the additional time, funding, training, resources and support they need to carry out the role effectively. Their additional responsibilities include providing advice and support to other staff on child welfare, safeguarding and child protection matters, taking part in strategy discussions and inter-agency meetings, and/or supporting other staff to do so, and contributing to the assessment of children.

Deputy designated safeguarding leads

It is a matter for individual schools and colleges as to whether they choose to have one or more deputy designated safeguarding leads. Any deputies should be trained to the same standard as the designated safeguarding lead and the role should be explicit in their job description. Whilst the activities of the designated safeguarding lead can be delegated to appropriately trained deputies, the ultimate lead responsibility for child protection, as set out above, remains with the designated safeguarding lead, this lead responsibility should not be delegated.

Availability

During term time the designated safeguarding lead (or a deputy) should always be available (during school or college hours) for staff in the school or college to discuss any safeguarding concerns. Whilst generally speaking the designated safeguarding lead (or a deputy) would be expected to be available in person, it is a matter for individual schools and colleges, working with the designated safeguarding lead, to define what "available" means and whether in exceptional circumstances availability via phone and or Skype or other such media is acceptable. It is a matter for individual schools and colleges and the designated safeguarding lead to arrange adequate and appropriate cover arrangements for any out of hours/out of term activities.

Manage referrals

The designated safeguarding lead is expected to refer cases:

- of suspected abuse and neglect to the local authority children's social care as required and support staff who make referrals to local authority children's social care
- to the Channel programme where there is a radicalisation concern as required and support staff who make referrals to the Channel programme
- where a person is dismissed or left due to risk/harm to a child to the Disclosure and Barring Service as required, and
- where a crime may have been committed to the Police as required. NPCC - When to call the police should help understand when to consider calling the police and what to expect when working with the police

Working with others

The designated safeguarding lead is expected to:

- act as a source of support, advice and expertise for all staff
- act as a point of contact with the safeguarding partners
- liaise with the headteacher or principal to inform him or her of issues- especially ongoing enquiries under section 47 of the Children Act 1989 and police investigations. This should include being aware of the requirement for children to have an Appropriate Adult. Further information can be found in the Statutory guidance - PACE Code C 2019.
- as required, liaise with the "case manager" (as per Part four) and the local authority designated officer(s) (LADO) for child protection concerns in cases which concern a staff member
- liaise with staff (especially teachers, pastoral support staff, school nurses, IT technicians, senior mental health leads and special educational needs co-ordinators (SENCOs), or the named person with oversight for SEND in a college and senior mental health leads) on matters of safety and safeguarding and welfare (including online and digital safety) and when deciding whether to make a referral by liaising with relevant agencies so that children's needs are considered holistically
- liaise with the senior mental health lead and, where available, the mental health support team, where safeguarding concerns are linked to mental health

- promote supportive engagement with parents and/or carers in safeguarding and promoting the welfare of children, including where families may be facing challenging circumstances
- work with the headteacher and relevant strategic leads, taking lead responsibility for promoting educational outcomes by knowing the welfare, safeguarding and child protection issues that children in need are experiencing, or have experienced, and identifying the impact that these issues might be having on children's attendance, engagement and achievement at school or college.[156] This includes:
    - ensuring that the school or college knows who its cohort of children who have or have had a social worker are, understanding their academic progress and attainment, and maintaining a culture of high aspirations for this cohort, and
    - supporting teaching staff to provide additional academic support or reasonable adjustments to help children who have or have had a social worker reach their potential, recognising that even when statutory social care intervention has ended, there is still a lasting impact on children's educational outcomes

Information sharing and managing the child protection file

The designated safeguarding lead is responsible for ensuring that child protection files are kept up to date.

Information should be kept confidential and stored securely. It is good practice to keep concerns and referrals in a separate child protection file for each child.

Records should include:

- a clear and comprehensive summary of the concern
- details of how the concern was followed up and resolved
- a note of any action taken, decisions reached and the outcome

[156] We recognise that in some settings there may be a different strategic lead for promoting the educational outcomes of children who have or have had a social worker, particularly in larger schools or colleges. Where this is the case, it is important that the DSL works closely with the lead to provide strategic oversight for the outcomes of these children and young people.

They should ensure the file is only accessed by those who need to see it and where the file or content within is shared, this happens in line with information sharing advice set out in Parts one and two of this guidance.

Where children leave the school or college (including in year transfers) the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, and within 5 days for an in-year transfer or within the first 5 days of the start of a new term. This should be transferred separately from the main pupil file, ensuring secure transit, and confirmation of receipt should be obtained. Receiving schools and colleges should ensure key staff such as designated safeguarding leads and special educational needs co-ordinators (SENCOs) or the named person with oversight for SEND in colleges, are aware as required.

Lack of information about their circumstances can impact on the child's safety, welfare and educational outcomes. In addition to the child protection file, the designated safeguarding lead should also consider if it would be appropriate to share any additional information with the new school or college in advance of a child leaving to help them put in place the right support to safeguard this child and to help the child thrive in the school or college. For example, information that would allow the new school or college to continue supporting children who have had a social worker and been victims of abuse and have that support in place for when the child arrives.

Raising awareness

The designated safeguarding lead should:

- ensure each member of staff has access to, and understands, the school or college's child protection policy and procedures, especially new and part-time staff
- ensure the school or college's child protection policy is reviewed annually (as a minimum) and the procedures and implementation are updated and reviewed regularly, and work with governing bodies or proprietors regarding this
- ensure the child protection policy is available publicly and parents know that referrals about suspected abuse or neglect may be made and the role of the school or college in this
- link with the safeguarding partner arrangements to make sure staff are aware of any training opportunities and the latest local policies on local safeguarding arrangements
- help promote educational outcomes by sharing information about welfare, safeguarding and child protection issues that children who have or have had a social worker are experiencing with teachers and school and college leadership staff

Training, knowledge and skills

The designated safeguarding lead (and any deputies) should undergo training to provide them with the knowledge and skills required to carry out the role. This training should be updated at least every two years. The designated safeguarding lead (and any deputies) should also undertake Prevent awareness training. Training should provide designated safeguarding leads with a good understanding of their own role, how to identify, understand and respond to specific needs that can increase the vulnerability of children, as well as specific harms that can put children at risk, and the processes, procedures and responsibilities of other agencies, particularly local authority children's social care, so they:

- understand the assessment process for providing early help and statutory intervention, including local criteria for action and local authority children's social care referral arrangements[157]
- have a working knowledge of how local authorities conduct a child protection case conference and a child protection review conference and be able to attend and contribute to these effectively when required to do so
- understand the importance of the role the designated safeguarding lead has in providing information and support to local authority children social care in order to safeguard and promote the welfare of children
- understand the lasting impact that adversity and trauma can have, including on children's behaviour, mental health and wellbeing, and what is needed in responding to this in promoting educational outcomes
- are alert to the specific needs of children in need, those with special educational needs and disabilities (SEND), those with relevant health conditions and young carers[158]
- understand the importance of information sharing, both within the school and college, and with the safeguarding partners, other agencies, organisations and practitioners
- understand and support the school or college with regards to the requirements of the Prevent duty and are able to provide advice and support to staff on protecting children from the risk of radicalisation

[157] Full details in Chapter one of Working Together to Safeguard Children.
[158] Section 17(10) Children Act 1989: those unlikely to achieve a reasonable standard of health and development without local authority services, those whose health and development is likely to be significantly impaired without the provision of such services, or disabled children.

- are able to understand the unique risks associated with online safety and be confident that they have the relevant knowledge and up to date capability required to keep children safe whilst they are online at school or college
- can recognise the additional risks that children with special educational needs and disabilities (SEND) face online, for example, from bullying, grooming and radicalisation and are confident they have the capability to support children with SEND to stay safe online
- obtain access to resources and attend any relevant or refresher training courses,
- encourage a culture of listening to children and taking account of their wishes and feelings, among all staff, and in any measures the school or college may put in place to protect them.

In addition to the formal training set out above, their knowledge and skills should be refreshed (this might be via e-bulletins, meeting other designated safeguarding leads, or simply taking time to read and digest safeguarding developments) at regular intervals, as required, and at least annually, to allow them to understand and keep up with any developments relevant to their role.

Providing support to staff

Training should support the designated safeguarding lead in developing expertise, so they can support and advise staff and help them feel confident on welfare, safeguarding and child protection matters. This includes specifically to:

- ensure that staff are supported during the referrals processes, and
- support staff to consider how safeguarding, welfare and educational outcomes are linked, including to inform the provision of academic and pastoral support.

Understanding the views of children

It is important that all children feel heard and understood. Therefore, designated safeguarding leads (and deputies) should be supported in developing knowledge and skills to:

- encourage a culture of listening to children and taking account of their wishes and feelings, among all staff, and in any measures the school or college may put in place to protect them, and,
- understand the difficulties that children may have in approaching staff about their circumstances and consider how to build trusted relationships which facilitate communication.

Holding and sharing information

The critical importance of recording, holding, using and sharing information effectively is set out in Parts one, two and five of this document, and therefore the designated safeguarding lead should be equipped to:

- understand the importance of information sharing, both within the school and college, and with other schools and colleges on transfer including in-year and between primary and secondary education, and with the safeguarding partners, other agencies, organisations and practitioners
- understand relevant data protection legislation and regulations, especially the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR), and
- be able to keep detailed, accurate, secure written records of all concerns, discussions and decisions made including the rationale for those decisions. This should include instances where referrals were or were not made to another agency such as LA children's social care or the Prevent program etc.

Annex D: Host families - homestay during exchange visits

Schools and colleges often make arrangements for children to take part in exchange visits, either to other parts of the UK or abroad. Exchanges can benefit learning across a range of subjects. In particular, foreign visits can enrich the languages curriculum and provide exciting opportunities for pupils to develop their confidence and expertise in the use of other languages.

Schools and colleges have a duty to safeguard and promote children's welfare, as defined at paragraph 4. This extends to considering their safety and how best to minimise risk of harm to those children during any exchange visit the school or college arranges, and when organising the care and accommodation for a child with a host family (known as homestays) as part of the exchange.

School/college arranged homestay – suitability of adults in UK host families

When arranging a homestay, schools should consider the suitability of the adults in the respective families who will be responsible for the visiting child during the stay.

In circumstances where a school or college arrange for a visiting child to be provided with care and accommodation in the UK (including where they engage a company to make those arrangements) in the home of a family to which the child is not related[159] the responsible adults will be engaging in regulated activity for the period of the stay.[160] In such cases and where the school or college has the power to terminate such a homestay the school or college would be the regulated activity provider.[161]

A regulated activity provider commits a criminal offence if it knows or has reason to believe that an individual is barred by the Disclosure and Barring Service (DBS) from engaging in regulated activity but allows that individual to carry out any form of regulated activity.[162]

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[159] This includes where a person has parental responsibility for the visiting child.
[160] Paragraph 1(5) of Schedule 4 and Section 53 of the Safeguarding Vulnerable Groups Act 2006.Where an adult is providing homestay in circumstances other than as described in this section, the school or college should seek advice from the DBS about whether the individual will be in regulated activity.
[161] Section 53(3) and (4) of the Safeguarding Vulnerable Groups Act 2006.
[162] Section 9 of the Safeguarding Vulnerable Groups Act 2006.

Where the child's parent(s) or a student themselves arranges their own homestay, this would be a private arrangement[163] therefore, the school or college would not be the regulated activity provider.

When a school or college arrange a homestay, it should consider what intelligence/information will best inform its assessment of the suitability of the adults in those families responsible for the visiting child during the stay. It will be for the school or college to use their professional judgement to decide what factors it considers to be relevant. However, to help inform that assessment, schools and colleges should[164] obtain a DBS enhanced certificate with children's barred list information. This check will not only establish whether the adults are barred from engaging in regulated activity relating to children, but where criminal record information is disclosed, it will also allow the school or college to consider, alongside all other intelligence that it has obtained, whether the adults would be suitable hosts for a child.

DBS enhanced certificates with children's barred list information for volunteer roles[165] can be obtained free of charge.[166] In respect of an adult who provides UK homestay and receives no remuneration in respect of the stay or where schools reimburse families only for expenses incurred, to enable a DBS application to be considered as a volunteer role the "Position Applied For" field will need to make clear that the position is unpaid.

In addition to those engaging in regulated activity, schools and colleges are free to decide whether they consider it necessary to obtain a DBS enhanced certificate in respect of anyone aged 16 or over in the household where the child will be staying.

Homestay – suitability of adults in host families abroad

It is not possible for schools and colleges to obtain criminality information from the DBS about adults who provide homestays abroad. Schools and colleges should liaise with partner schools abroad, to establish a shared understanding of, and agreement to the arrangements in place for the visit. They should use their professional judgement to satisfy themselves that the arrangements are appropriate and sufficient to effectively

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[163] Where it is a private arrangement, the school or college are not entitled to obtain a standard or enhanced DBS check.
[164] See page 3 for interpretation of 'should' used throughout the document.
[165] Volunteer is defined as "Any person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party and not a close relative."
[166] Some checking bodies will charge an admin fee to process a DBS certificate/barred list request. As these fees will vary, schools should assess what services are being offered and consider what is known about the performance and reputation of the organisation.

safeguard every child who will take part in the exchange. Parents should be aware of the agreed arrangement. Schools and colleges are also free to decide whether they consider it necessary to contact the relevant foreign embassy or High Commission of the country in question to discuss what checks may be possible in respect of those providing homestay outside of the UK.

During the visit

Pupils should understand who to contact during a homestay should an emergency occur, or a situation arise which makes them feel uncomfortable.

Additional action for extended homestays

Where a period of UK homestay lasts 28 days or more, for a child aged under 16 years of age (under 18 years of age if the child has disabilities), this may amount to private fostering under the Children Act 1989.[167] In these cases, the school or college should notify the local authority of the arrangements. Private fostering legislation places a duty on local authorities to satisfy themselves that the welfare of a child who is being, or proposed to be, privately fostered in their area is being or will be satisfactorily safeguarded and promoted. By notifying the local authority, the school and college will be assisting the local authority in discharging its duty. See paragraphs 340-343 for additional information about private fostering and local authority notifications.

[167] Private fostering occurs when a child under the age of 16 (under 18, if disabled) is provided with care and accommodation by a person who is not a parent, person with parental responsibility for them or a relative in their own home. A child is not privately fostered if the person caring for and accommodating them has done so for less than 28 days and does not intend to do so for longer.

Annex E: Statutory guidance - Regulated activity (children) - Supervision of activity with children which is regulated activity when unsupervised

This statutory guidance on the supervision of activity with children, which is regulated activity when unsupervised, is also published separately on GOV.UK.

This document fulfils the duty in legislation that the Secretary of State **must** publish statutory guidance on supervision of activity by workers with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland. It covers settings including but not limited to schools, childcare establishments, colleges, youth groups and sports clubs.

For too long child protection policy has been developed in haste and in response to individual tragedies, with the well intentioned though misguided belief that every risk could be mitigated, and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.

We start with a presumption of trust and confidence in those who work with children, and the good sense and judgement of their managers. This guidance applies when an organisation decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- there **must** be supervision by a person who is in regulated activity [iii]
- the supervision **must** be regular and day to day; and
- the supervision **must** be "reasonable in all the circumstances to ensure the protection of children".

The organisation **must** have regard to this guidance. This gives local managers the flexibility to determine what is reasonable for their circumstances. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows.

Supervision by a person in regulated activity/regular and day to day: supervisors **must** be in regulated activity themselves [iv]. The duty that supervision **must** take place "on a regular basis" means that supervision **must not**, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It **must** take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

Reasonable in the circumstances: within the statutory duty, the level of supervision may

differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision a person will require:

- ages of the children, including whether their ages differ widely
- number of children that the individual is working with
- whether or not other workers are helping to look after the children
- the nature of the individual's work (or, in a specified place[168] such as a school, the individual's opportunity for contact with children)
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity), and
- how many workers would be supervised by each supervising worker.

An organisation is not entitled to request a barred list check on a worker who, because they are supervised, is not in regulated activity.

Examples

Volunteer, in a specified place

Mr Jones, a new volunteer, helps children with reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where Mr Jones is supervised by a paid classroom assistant, who is in that room most of the time. The teacher and classroom assistant are in regulated activity. The headteacher decides supervision is such that Mr Jones is not in regulated activity.

Volunteer, not in a specified place

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The head coach is in regulated activity. The club's managers decide whether the coach's supervision is such that Mr Wood is not in regulated activity.

[168] See page 8 of DBS guidance: Regulated activity with children England which can be found at: DBS guidance leaflets

Employee, not in a specified place

Mrs Shah starts as a paid activity assistant at a youth club. She helps to instruct a group of children and is supervised by the youth club leader who is in regulated activity. The youth club's managers decide whether the leader's supervision is such that Mrs Shah is not in regulated activity.

In each example, the organisation uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in regulated activity:

- consider whether the worker is doing work that, if unsupervised, would be regulated activity. (Note: If the worker is not engaging in regulated activity, the remaining steps are unnecessary. If the worker is engaging in regulated activity the remaining steps should be followed)
- consider whether the worker will be supervised by a person in regulated activity, and whether the supervision will be regular and day to day, bearing in mind paragraph 4 of this guidance
- consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in paragraph 4 of this guidance above; and if it is a specified place such as a school, and
- consider whether the supervised worker is a volunteer.

[i.] Safeguarding Vulnerable Groups Act 2006, amended by Protection of Freedoms Act 2012: Schedule 4, paragraph 5A: guidance must be "for the purpose of assisting" organisations "in deciding whether supervision is of such a kind that" the supervisee is not in regulated activity.
[ii.] Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Schedule 2, paragraph 5A, is as above on guidance on "supervision" for Northern Ireland.
If the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.
[iii.] The Protection of Freedoms Act 2012 includes provisions for a statutory duty on an organisation arranging regulated activity (under the 2006 Act or 2007 Order, both as amended) to check that a person entering regulated activity is not barred from regulated activity and a standalone barring check. These are yet to be commenced.
[iv]. A volunteer is: in England and Wales, a person who performs an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives. In Northern Ireland, a volunteer is: a person engaged, or to be engaged, in an activity for a non-profit organisation or person which involves spending time unpaid (except for travel and other approved out-of-pocket expenses) doing something which amounts to a benefit to some third party other than, or in addition to, a close relative.

Annex F: Table of changes from KCSIE September 2024 version

This table explains where we have made changes and our rationale for doing so. We will publish KCSIE (final version) 2025 on 1 September 2025, by which time we expect it to include links to revised guidance on Relationships, Sex, and Health Education and revised guidance on gender questioning children.

KCSIE has been revised regularly for many years, and we intend that it will continue to be revised and improved on a regular basis. Whilst there are only technical changes to KCSIE 2025, future iterations will reflect the progress into legislation of the Children's Wellbeing and Schools Bill, the emerging further learnings from the work of the recent Casey Audit and subsequent inquiries, the Violence Against Women and Girls strategy and the interactions between these advances.

This Government is clear that there are and will continue to be further learnings about how we can better protect children in the future as we come to understand more clearly what has gone wrong in the past and schools and colleges will continue to need to play an incredibly important role in this.

Summary	**About the guidance (no changes made)**
Part one	**Safeguarding information for all staff (no changes made)**
Part two	**The management of safeguarding**
Page 36	Para 129 We have added a note to say that revised guidance on Relationships, Sex, and Health Education was published July 2025 for introduction September 2026
Page 38	Para 135 Updated to clarify misinformation, disinformation and conspiracy theories are safeguarding harms. Para 136 Removed hyphen from antisemitism
Page 40	Para 143 – Link added to the plan technology for your school service, which schools can use to assess themselves against the filtering and monitoring standards and receive personalised recommendations on how to meet them.
Page 41	Para 143 - Link added to DfE guidance on the use of generative AI in education (2025) at end of filtering and monitoring (FM) section to support schools and colleges.

	Para 144 – wording amended in the cybersecurity standards for schools and colleges advice to clarify that it was developed to help schools improve their cyber resilience.
Page 47	Paras 168-170 information added to clarify that it was developed to help schools improve its cyber resilience.
Page 49	Para 177 – updated to clarify 'working together to safeguard attendance' 'is now 'statutory' guidance.
Pages 50 & 51	Paras 184-187- updated to remove references to funding grant support for SMHLs training as this programme has ended
Page 52	Para 190 split into paras 189 and 190 for cosmetic reasons only (to retain paragraph numbering)
Page 54	Para 199 has been amended to clarify that the role of the virtual head has been extended to include responsibility for promoting the educational achievement of children in kinship care.
Page 56	Para 205 removal of 'spectrum' and 'disorder' to align with the SEND code of practice. Updated note: We expect to publish the revised guidance on gender questioning children soon. Once published we will signpost to this guidance in KCSIE 2025.
Part three	**Safer recruitment**
Page 73-74	Para 260 reference to TRA's Employer Access Service removed and replaced with new link to GOV.UK page.
Page 75	Para 266 references to TRA's Employer Access Service removed and replaced with new link to GOV.UK page.
Page 85	Para 319 reference to Employer Secure Access removed and replaced with link to GOV.UK for S128 checks.
Part four	**Safeguarding concerns or allegations made about staff, including supply teachers, volunteers and contractors**
Page 106	Para 422 amended to correct the title of the Information Commissioner's employment practice guidance.
Part five	**Child-on-child sexual violence and sexual harassment**
Page 140	Para 545 – Link added to the Lucy Faithfull Foundation's 'Shore Space'. which offers a confidential chat service supporting young people concerned about their own or someone else's sexual thoughts and behaviours.

Annexes A, B, C, D and E	
Annex B – page 157	We have updated the definition of extremism on page 157 to reflect the definition used within the Prevent guidance
Annex B – Page 163	Link added to the CSA Centre's Supporting practice in tackling child sexual abuse.
Annex B – Page 164	Link added to the Preventing Child Sexual Exploitation | The Children's Society.
Annex B – Page 167 & 170	Updated links to National Crime Agency and CEOP following rebranding (Thinkuknow has been retired and replaced with CEOP Education)

Department for Education

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Court of Appeal

*Kane *v* New Forest District Council

[2001] EWCA Civ 878

2001 June 5; 13 Simon Brown, May and Dyson LJJ

Negligence — Duty of care to whom? — Planning authority — Planning authority requiring developer to construct footpath before commencing development works — Footpath ending on inside of bend in road with impaired visibility to road users — Planning authority allowing footpath to be opened to public despite impaired visibility to road users — Claimant struck by car when emerging from footpath — Whether planning authority protected by immunity for anything done in exercise of planning functions — Whether planning authority liable for creating danger on highway

The defendants granted planning permission for a development which required the developer to construct a footpath before commencing development works. The footpath, ending on the inside of a bend in a road with impaired visibility to oncoming drivers, was intended to provide a link across the road to a footpath on the other side. Before the proposed measures by the highway authority to improve visibility along the road where the footpath joined it could be completed the footpath was opened to the public. The claimant was struck by a car when he emerged from the footpath and crossed the road to the opposite side. The claimant brought a claim in negligence against the planning authority alleging that they had permitted the footpath to be created by the developer and to be used by the public before any adequate measures had been taken to improve visibility along the road. The district judge dismissed the claim under CPR r 24.2 on the ground that the claimant had no real prospect of succeeding. The claimant's appeal therefrom was dismissed by the judge.

On appeal by the claimant—

Held, allowing the appeal, that the defendants were not protected by a blanket immunity from liability for exercising a planning function if they permitted or required the construction of a foreseeably dangerous footpath, or if they failed when granting planning permission, or requiring the work, to impose a condition forbidding the opening of the footpath to the public until the danger had been removed; and that, in the circumstances, the claimant had not only a realistic prospect of establishing a claim in negligence against the defendants but a positively powerful case (post, paras 23–24, 28–32, 34–35).

Stovin v Wise [1996] AC 923, HL(E) distinguished.

Decision of Judge Thompson QC sitting as a judge of the Queen's Bench Division reversed.

The following judgments are referred to in the judgments:

Barrett v Enfield London Borough Council [2001] 2 AC 550; [1999] 3 WLR 79; [1999] 3 All ER 193, HL(E)

Dunlop v Woollahra Municipal Council [2001] 2 AC 550; [1982] AC 158; [1981] 2 WLR 693; [1981] 1 All ER 1202, PC

Lam v Brennan [1997] PIQR P488, CA

Osman v United Kingdom (1998) 29 EHRR 245

Stovin v Wise [1996] AC 923; [1996] 3 WLR 388; [1996] 3 All ER 801, HL(E)

Strable v Dartford Borough Council [1984] JPL 329, CA

Swain v Hillman [2001] 1 All ER 91, CA

X (Minors) v Bedfordshire County Council [1995] 2 AC 633; [1995] 3 WLR 152; [1995] 3 All ER 353, HL(E)

A The following additional cases were cited in argument:

Bybrook Barn Garden Centre Ltd v Kent County Council [2001] LGR 239, CA
Caparo Industries plc v Dickman [1990] 2 AC 605; [1990] 2 WLR 358; [1990] 1 All ER 568, HL(E)
TP and KM v United Kingdom (2001) 34 EHRR 42
Z v United Kingdom [2001] 2 FCR 246

B **INTERLOCUTORY APPEAL** from Judge Thompson QC sitting as a judge of the Queen's Bench Division

The claimant, Sean Patrick Kane, brought proceedings for negligence against the defendants, New Forest District Council. On 7 December 1999 District Judge Cooper dismissed the claim on the ground that it had no real prospect of succeeding. On 3 April 2000 the judge dismissed the claimant's appeal therefrom.

C By notice of appeal dated 29 December 2000 the claimant appealed on the ground, inter alia, that the judge, in concluding that the claimant had no real prospect of succeeding in the claim, attached insufficient weight to the evidence which showed that the point where the crossing emerged on to the highway was dangerous and that it was a breach of statutory duty for the defendants, as the planning authority, to allow a footpath there.

D The facts are stated in the judgment of Simon Brown LJ.

Anthony Coleman for the claimant.
John M Snell for the defendants.

Cur adv vult

E 13 June. The following judgments were handed down.

SIMON BROWN LJ

1 On 1 March 1995 the claimant suffered grievous injuries when struck by a motor car whilst out walking in the New Forest. He had emerged from a footpath and was crossing the road opposite. The motor car came from his right and, says the claimant, the driver had no chance to avoid him: the

F footpath ended on the inside of a bend in the road and the trees and vegetation growing alongside the road reduced the oncoming driver's visibility to no more than some 10 to 15 metres. The claimant rather puts his blame for the accident upon the defendants, the authority responsible for the creation of this footpath and its emergence at a foreseeably dangerous point in the road.

G 2 Initially the claimant brought his claim also against the Hampshire County Council ("the HCC"), the highway authority responsible for the roadway. Following discovery, however, he accepts that the HCC had consistently warned the defendants about the danger of this footpath and he no longer attributes blame to them.

3 On 7 December 1999 the claimant's claim was dismissed by District Judge Cooper under CPR r 24.2, the rule which allows summary judgment

H to be given against a claimant if the court considers that the "claimant has no real prospect of succeeding on the claim". The claimants' appeal against that order was dismissed by Judge Thompson QC on 3 April 2000. Both the district judge and Judge Thompson held the claim to be unsustainable in the light of existing authority, most particularly the House of Lords decision in

Stovin v Wise [1996] AC 923 and the Court of Appeal decision in *Lam v Brennan* [1997] PIQR P488.

4 Now before us is the claimant's second tier appeal brought by permission of Mantell LJ. The question it raises is whether the circumstances of this case give rise to a common law duty of care on the part of the defendants—or, more strictly, whether the claimant has "a 'realistic' as opposed to a 'fanciful' prospect of success" in establishing a breach of such a duty: see *Swain v Hillman* [2001] 1 All ER 91, 92.

5 With that brief introduction let me turn next to flesh out the facts although I need do so only comparatively briefly. These, of course, must at this stage be assumed in the claimant's favour. That said, there is really very little dispute about them: the circumstances in which this footpath came to be constructed and opened appear reasonably clearly from the disclosed documents.

6 The story begins in 1984 when the defendants as the local planning authority were considering an application by Wilcon Homes Ltd ("Wilcon") for planning permission for the construction of a substantial residential estate on land to the north of Main Road at Marchwood in Hampshire. It is unnecessary to describe the topography in any detail. Suffice it to say that the proposal included a footpath on the north side of Main Road running essentially in a north–south direction just to the west of a stream—a footpath intended, as the defendants wrote to the HCC on 2 March 1984, "to achieve a link across the road to a footpath [on the south side of Main Road] alongside the stream".

7 In their reply dated 29 March 1984 the HCC described this access on to Main Road as "totally unsuitable because of the lack of sightlines".

8 In June 1985 a section 52 agreement was entered into between Wilcon and the defendants providing amongst other things for Wilcon to construct the footpath, and in October 1985 planning permission for the erection of 129 dwellings and associated garages and works was duly granted to Wilcon.

9 To the west of the footpath at its southern end and bordering the north side of Main Road lay a property called The White Cottage and on 23 July 1987 a tripartite section 52 agreement was entered into between the defendants, the HCC and the owner of The White Cottage by which the latter agreed that upon the defendants' written direction, to be given within ten years, he would dedicate free of charge to the HCC as highway authority a strip of land up to $3\frac{1}{2}$ metres wide fronting Main Road specifically for the improvement of the relevant sightline to the footpath exit.

10 On 25 April 1990 a supplemental section 52 agreement was entered into between Wilcon and the defendants whereby Wilcon covenanted to construct the footpath before commencing their development works.

11 On 22 January 1993 the defendants sent a memorandum to the HCC under the heading "Proposed Line of Sight Improvement, Main Road, Marchwood", enclosing a copy of the tripartite section 52 agreement with the owner of The White Cottage, stating: "Wilcon Homes will shortly be constructing the footpath . . . You may therefore consider this brings a new urgency to the proposed line of sight improvements."

12 The HCC's area surveyor replied to that memorandum on 15 March 1993 stating: "I am presently drawing up a proposed programme of works for 1993/94 and I hope to include this scheme in that programme."

A 13 On 13 July 1993, following a site visit, the defendants wrote to Wilcon Homes stating:

> "It was generally agreed that the junction of the footpath with Main Road was a safety problem due to inadequate sight lines . . . The district council agreed to contact the Hampshire County Council to see if they were willing to cut back vegetation on highway land for the same reason
B [i e to improve sight lines]."

14 On 8 September 1993 the defendants wrote to the HCC's area surveyor:

> "You may be aware that the construction of [the] footpath . . . is nearing completion. Concern has been expressed locally that the footpath
C emerges at a point where it is dangerous to cross Main Road. I am aware that an agreement was reached in 1987 with the owners of The White Cottage to dedicate a strip of land to the highway authority in order to improve sight lines . . . the sight line has not been improved and I wonder if any progress is likely to be made in the near future . . . In view of the current hazardous situation I would be grateful if you would give
D consideration to how matters may be improved, for instance by the improvement of sight lines or the erection of pedestrian/vehicle warning signs."

15 The area surveyor replied on 17 September 1993: "We have a minor highway improvements scheme for this section of road scheduled for 1993/94."

E 16 He wrote again on 23 June 1994 stating:

> "Negotiations have recently taken place with Mr Bray, the present owner of White Cottage, over the provision of the brick wall [also the subject of the section 52 agreement]. Subject to your approval and to that of Mr Bray to the brick-type, arrangements will be put in hand forthwith to take the land into the highway. I anticipate that this will take us about
F five or six weeks."

17 Alas, the envisaged five- or six-week period was long exceeded and in the event it appears that nothing was done to improve the sight line until after the claimant's accident on 1 March 1995. Meantime, in October 1994 the footpath had been opened to the public.

18 One of the claimant's main pleaded particulars of negligence against
G the defendants is that they "caused or permitted the footpath to be created by Wilcon and/or used by the public before any or any adequate measures had been taken to improve visibility along [Main] Road to the west of point E [where the footpath joined Main Road]".

19 Mr Coleman's skeleton argument on this appeal puts "the claimant's case in a nutshell" thus:

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> "By insisting on the construction and by permitting the opening of the footpath emerging on to Main Road at point E before the necessary road and/or sight line improvements had been carried out [the defendants] positively created a hazard on the highway which caused or materially contributed to the claimant's accident."

20 Mr Snell argues that the claimant's case on analysis falls into two parts, each of which is blocked by binding authority. The first part of the claimant's case, submits Mr Snell, depends upon the contention that it was negligent of the defendants to have required the construction of this footpath as a condition of planning permission (a requirement crystallised in Wilcon's covenants under the two section 52 agreements). Yet, runs Mr Snell's argument, no such contention is available against the defendants: local planning authorities enjoy blanket immunity in law in respect of anything done in the exercise of their planning functions. This is a wide submission indeed. In support of it, Mr Snell relies principally upon this court's judgment in the *Lam* case, a decision which itself had regard to the Privy Council's judgment in *Dunlop v Woollahra Municipal Council* [1982] AC 158 and this court's decision in *Strable v Dartford Borough Council* [1984] JPL 329. The court in the *Lam* case [1997] PIQR P488, 502–503 said:

> "In our view it is quite plain that the regime of the Town and Country Planning Acts is, in the words of Lord Browne-Wilkinson in *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, 731–732: 'a regulatory system . . . for the benefit of the public at large . . . [involving] . . . general administrative functions imposed on public bodies and involving the exercise of administrative discretion.' Such a system is one in respect of which reported decisions reveal no example of a private right of action for breach of statutory duty ever having been recognised by the court . . . given the discretionary nature of the power conferred to grant or refuse planning permission under section 29 of the 1971 Act, it seems to us clear that the policy of the Act conferring that power is not such as to create a duty of care at common law which would make the public authority liable to pay compensation for foreseeable loss caused by the exercise or non-exercise of that power. As Collins J put it: 'The local authority's duty under the Planning Acts is to control and regulate development in the interests of the inhabitants of the area. It is of course inevitable, particularly where there are major developments, that some people are going to be adversely affected . . . There may even be nuisances created in some situations. Of course the local authority has to consider the effect on the environment and the adverse effect, if any upon neighbouring occupiers. Those are all proper planning considerations. [However] . . . It seems to me that it would be wholly detrimental to the proper process of considering planning applications if the local authority, in addition had to have regard to the private law interests of any persons who might be affected by the grant of permission, and to ask itself in each case whether it had properly had regard to the individual rights of those concerned. If it were potentially liable to actions in negligence in those circumstances, it seems to me that the carrying out of its important functions in the public interest would be likely to be adversely affected.' "

21 The *Lam* case, I may note, was a case where the plaintiffs' complaint against the local planning authority was of the grant of a planning permission in the implementation of which the grantee had carried out injurious spraying processes which constituted a nuisance. The grantee was impecunious so there was no chance of recovering damages against him. Unsurprisingly to my mind the court declined to hold the local planning authority responsible in law for the nuisance: on no view was it a necessary

A consequence of the grant of planning permission. As the Court of Appeal observed, at p 500: "the granting of a planning permission is not a licence or consent to the commission of a nuisance in the course of any activity upon premises coming within the scope of the planning permission granted."

22 *Dunlop v Woollahra Municipal Council* [1982] AC 158 and *Strable v Dartford Borough Council* [1984] JPL 329 were very different cases and
B really are authority for no more than that local planning authorities are not liable in damages for financial loss resulting from their negligent dealing with planning applications.

23 It seems to me far from clear on these authorities that a local planning authority would be immune from liability if they permitted (still less if they required) the construction of a foreseeably dangerous footpath or (which is perhaps the better way of putting the present case) if they failed
C when granting the planning permission (or requiring the work) to impose a condition forbidding the opening of the footpath to the public until the sightlines had been cleared. How could the imposition of such a condition be contrary to anyone's interest? How could it have been "wholly detrimental to the proper process of considering planning applications" (to use Collins J's words approved by the Court of Appeal in the *Lam* case
D [1997] PIQR P488) for the defendants to have had regard to the "private law interests" of those who would use this prospectively dangerous footpath? Why would the planning process be "adversely affected" by making the defendants potentially liable to an action in negligence for failing to take this elementary precaution?

24 All that said, it is to my mind unnecessary here to hold the defendants negligent for not having imposed such a condition back in 1990
E when the construction of this footpath was stipulated. Rather I would regard what Mr Snell called the second part of the claimant's case as essentially freestanding, ie as independent of any finding of anterior negligence. This second part is the claimant's fairly obvious contention that in mid-1994, instead of merely relying on the HCC's letter of 23 June 1994 anticipating that it would take some five or six weeks to include The White
F Cottage frontage within the highway and thereby improve the sight lines, the defendants should have ensured that the footpath was not opened until that work had been completed. Whether or not they had any particular contractual right or statutory power to prohibit the footpath's opening until it could safely be used seems to me frankly immaterial: there is no reason to doubt that Wilcon would have co-operated readily with any request to keep it closed.

G 25 It is at this stage of the argument that Mr Snell deploys his second main authority, the House of Lords decision in *Stovin v Wise* [1996] AC 923.

26 By the summer of 1994, Mr Snell submits, there was certainly no statutory duty upon the defendants to prevent the opening of the footpath until the sightlines were improved; at most there was a statutory power. The House of Lords in *Stovin v Wise* held by a 3:2 majority that the minimum
H preconditions for basing a duty of care on a statutory power were, first, that it would have been irrational not to have exercised power so that there was in effect a public duty to act, and secondly, that there were exceptional grounds for holding that the policy of the statute required compensation to be paid to persons who suffered loss because the power was not exercised. Here, he argues, it was not irrational of the defendants not to have required

or requested Wilcon to keep the footpath closed until the sightlines were improved and nor are there exceptional grounds for holding the defendants liable for their failure to do so. Rather, he submits, the blame for this accident could as well be put upon the HCC for not having accelerated the improvement works and/or Wilcon for opening the footpath with a foreseeably dangerous exit point on to Main Road.

27 I would reject this argument. It is plain that *Stovin v Wise* proceeded upon the basis "that the complaint against the council was not about anything which it had done to make the highway dangerous but about its omission to make it safer" (per Lord Hoffmann, at p 943, in the leading speech for the majority)—or (as Lord Nicholls of Birkenhead put it, at p 929, in the leading speech for the minority):

> "The starting point is that the council did not create the source of danger. This is not a case of a highway authority carrying out road works carelessly and thereby creating a hazard. In the present case the council cannot be liable unless it was under a duty requiring it to act. If the plaintiff is to succeed the council must have owed him a duty to exercise its powers regarding a danger known to it but not created by it."

28 Here, by contrast, the starting point must surely be that the defendants *did* create the source of danger. They it was who required this footpath to be constructed. I cannot accept that in these circumstances they were entitled to wash their hands of that danger and simply leave it to others to cure it by improving the sightlines. It is one thing to say that at the time when the defendants required the construction of this footpath they had every reason to suppose that the improvements along The White Cottage frontage would ultimately allow it to be safely opened and used: quite another to say that they were later entitled to stand idly by whilst, as they must have known, the footpath lay open to the public in a recognisably dangerous state.

29 In short, the claimant seems to me to have not merely a "realistic" prospect of establishing a claim in negligence against the defendants here but a positively powerful case. Whether or not they in turn can look to contribution from the HCC and or/or Wilcon is for present purposes immaterial.

30 I add only this. Amongst various statutory powers drawn to our attention as having perhaps been available to eliminate the danger in this case is section 154(1) of the Highways Act 1980. This enables a competent authority (defined so as apparently to include the defendants in the present case) to serve a notice on the owner or occupier of land requiring him to lop or cut any "hedge, tree or shrub" which "obstructs or interferes with the view of drivers of vehicles". As we indicated during the course of argument, however, it seemed to us altogether simpler and more realistic to put the claimant's case on the straightforward basis that the defendants here could and plainly should have required the opening of this footpath to be delayed until after the sightlines had been improved.

31 I would allow this appeal.

MAY LJ

32 I agree that this appeal should be allowed for the reasons given by Simon Brown LJ, whose account of the facts I gratefully adopt.

A 33 It is, to my mind, evident from the facts which Simon Brown LJ has related that the defendants required, by the two section 52 agreements, the construction of what was to become a public footpath whose exit onto Main Road would, if nothing were done to improve matters, be dangerous. They thereby assumed a responsibility to those, including the claimant, who might wish to use the footpath to see that it was not open until the danger was removed. That is, in my view, an entirely orthodox application of common B law principles of negligence. There is nothing in *Stovin v Wise* [1996] AC 923 which suggests a different conclusion. In *Stovin v Wise,* the county council had not created the hazard. In the present case the defendants had created the hazard. Nor on the facts of this case are the defendants immune from a claim in negligence because they were exercising a statutory function under planning legislation. It may be, depending on the facts, that the C ordinary exercise of a statutory power to grant or refuse planning permission would not create a duty of care at common law carrying with it a liability to pay compensation to those affected by this: see *Lam v Brennan* [1997] PIQR P488. But I reject Mr Snell's submission that a planning authority has blanket immunity from claims for negligence whatever the facts. That is simply not consonant with recent developments of the law both in this jurisdiction and in Strasbourg: see for example *Barrett v Enfield* D *London Borough Council* [2001] 2 AC 550 and *Osman v United Kingdom* (1998) 29 EHRR 245.

34 There is no question but that the defendants were aware of the danger. Although preliminary steps were taken to enable the danger to be removed, the relevant works were not carried out when the footpath was opened. The defendants had the effective power to require Wilcon not to E open the footpath until it was safe to do so. It is, in my view, at best an unpersuasive quibble to suggest, as Mr Snell does, that the defendants were powerless to do this. I am sure that in the real world a suitable letter to Wilcon telling them to bar use of the footpath until its exit onto the road was safe would have achieved that result. Wilcon had no interest whatever other than to satisfy the defendants' request in relation to this footpath, which, after all, the defendants had required in the first place by means of the F section 52 agreement. This seems to me to be a solid basis in law for the claimant's case that his accident was caused by the defendants' breach of the duty of care which, in my judgment, they assumed.

DYSON LJ

35 I agree with both judgments.

G *Appeal allowed with costs.*

Solicitors: Moore & Blatch, Southampton; Beachcroft Wansbroughs, Winchester.

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Kent County Council v. Secretary of State for the Environment and Another

QUEEN'S BENCH DIVISION

SIR DOUGLAS FRANK, Q.C. (sitting as a deputy judge)

July 6, 7, 9 and 29, 1976

Town and Country Planning—Planning permission—Application referred to Secretary of State—Application for permission for construction of oil refinery, provision of road and rail terminal, construction of pipeline and construction of access road—Decision of Secretary of State to grant permission for construction of refinery, etc., but to refuse permission for construction of access road—Condition imposed restricting use of existing road network—View of Secretary of State for Energy that additional oil refinery capacity desirable taken into account—Whether permission lawful—Whether determining authority entitled to grant permission for part only of development sought—Whether necessary for application to be amended—Whether consent of applicant necessary before amendment—Whether local planning authority must be party to amendment—Whether failure of Secretary of State to state that application amended entitled local planning authority to have permission quashed ex debito justitiae—Whether "or" in section 29 (1) *of Act of* 1971 *to be construed disjunctively or conjunctively—Whether taking into account of view of Secretary of State for Energy breach of rules of natural justice—Whether condition restricting use of existing road network invalid as being unworkable or as taking away substance of permission—Town and Country Planning Act* 1971 (*c.* 78), *s.* 29 (1)[1]*—Town and Country Planning (Inquiries Procedure) Rules* 1974 (*S.I.* 1974 *No.* 419), *rr.* 8 (5), 12 (2) (*b*).[2]

In 1971, the second respondents applied to the applicants, the local planning authority, for planning permission to construct an oil refinery.

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[1] Town and Country Planning Act 1971, s. 29: " (1) Subject to the provisions of sections 26 to 28 of this Act, and to the following provisions of this Act, where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and—(*a*) subject to sections 41, 42, 70 and 77 to 80 of this Act, may grant planning permission, either unconditionally or subject to such conditions as they think fit; or (*b*) may refuse planning permission. . . ."

[2] Town and Country Planning (Inquiries Procedure) Rules 1974, r. 8: ". . . (5) Nothing in either of the last two foregoing paragraphs shall require a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy and the appointed person shall disallow any such question."

R. 12: ". . . (2) Where the Secretary of State—(*a*) differs from the appointed person on a finding of fact, or (*b*) after the close of the inquiry takes into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy) which was not raised at the inquiry, and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he shall not come to a decision which is at variance with any such recommendation without first notifying the applicant, the local planning authority and any section 29 party who appeared at the inquiry of his disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has taken into consideration any new evidence or any new issue of fact, not being a matter of government policy) of asking within 21 days for the reopening of the inquiry. . . ."

The first respondent, the Secretary of State for the Environment, called in the application under section 22 of the Town and Country Planning Act 1962. An inquiry was held, and the inspector recommended on environmental grounds and because of the inadequacy of the surrounding road network to take the traffic involved that the application be refused. The Secretary of State, however, decided that it was in the national interest that the additional refinery capacity should be made available. He recognised that the road system was inadequate and said that he had it in mind to refuse permission for the construction of the access road as proposed and to grant outline permission for the refinery, a jetty, rail terminal facilities and the pipelines between the refinery and the terminal subject to a condition, *inter alia*, that, save as should be agreed from time to time with the local planning authority or, in default of agreement, determined by himself, no deliveries of oil or oil products or by-products should be made to or from the refinery or terminal except by sea, pipeline or rail transport. He said that, since a permission as indicated would result in development significantly different from that for which permission had been sought, he should afford all parties concerned an opportunity to make further representations to him. Further representations were made, particularly by the local planning authority. The second respondents informed the Secretary of State that the condition eliminating the use of the road was acceptable to them. On December 6, 1974, in the House of Commons, the Secretary of State for Energy made a statement indicating that if projects under consideration, including the one in question, went ahead refinery capacity in the 1980s would be sufficient. The inquiry was reopened in April 1975, and on December 31, 1975, the Secretary of State for the Environment granted permission on the lines which he had previously indicated subject to certain further conditions. The local planning authority applied under section 245 of the Town and Country Planning Act 1971 for an order that the Secretary of State's decision be quashed, contending (1) that the Secretary of State had erred in law and acted *ultra vires* in granting permission for part only of the development the subject of the application for permission, (2) that he had acted in breach of the rules of natural justice in taking into account the views of the Secretary of State for Energy, which they had had no opportunity of testing, (3) that the condition imposed by the Secretary of State was invalid because it was unworkable and because it took away a substantial part of the benefit of the planning permission.

Held, dismissing the application, (1) that, on the true construction of section 29 of the Act of 1971 in the context of Part III of that Act, in particular section 23, the determining authority could grant permission for as much of the development for which permission had been applied for as they thought should be permitted; and that where, as in the present case, an application consisted of a number of separate and divisible elements (*viz.*, the construction of the refinery, the provision of road and rail terminals, the construction of a pipeline and the construction of an access road) it was lawful for them to be dealt with separately, whether the decision of the Secretary of State was to be regarded as a decision on an amended application or as a part-refusal.

Per curiam. (i) The word " or " in section 29 of the Act of 1971 can be construed conjunctively having regard to its context, *i.e.* Part III of the Act, including section 38.

Mersey Docks and Harbour Board v. *Henderson Brothers* (1888) 13 App. Cas. 595, H.L.(E.), applied.

(ii) There is no reason why the local planning authority had to be a party to any formal amendment of the second respondents' application for planning permission consequent on the granting of permission for part only of the development proposed.

Quaere, whether such formal amendment was necessary, and whether an

applicant's consent has to be obtained before permission for part only of development is granted.

(2) That the statement of the Secretary of State for Energy in the House of Commons had been a statement of policy which had not in fact dealt with the question of the siting of the necessary refineries apart from the need for them; that under rule 8 (5) of the Town and Country Planning (Inquiries Procedure) Rules 1974 his policy could not have been questioned at the inquiry; that under rule 12 (2) (*b*) of the Rules of 1974 the Secretary of State for the Environment could have taken that statement of policy into account even if it had not been raised at the inquiry; that apart from the rules the Secretary of State for the Environment had been entitled to take the views of the Secretary of State for Energy into account even without giving the parties an opportunity to comment on them; that no rule of natural justice could have required the Secretary of State for Energy to give evidence at the inquiry; and that in any event the parties had been able to comment at the inquiry, and had commented, on the statement of the Secretary of State for Energy and the local planning authority had themselves stated in evidence that there would be a regional deficit and that had been part of the evidence relied on by the Secretary of State for the Environment in his decision.

Miller v. *Minister of Health* [1946] K.B. 626; 44 L.G.R. 370; *Re City of Plymouth (City Centre) Declaration Order* i.e. 1946, *Robinson* v. *Minister of Town and Country Planning* [1947] K.B. 702; [1947] 1 All E.R. 851; 45 L.G.R. 497, C.A.; *Summers* v. *Minister of Health* [1947] 1 All E.R. 184; 45 L.G.R. 105; *B. Johnson & Co. (Builders) Ltd.* v. *Minister of Health* [1947] 2 All E.R. 395; 45 L.G.R. 617, C.A.; and *Darlassis* v. *Minister of Education* (1954) 4 P. & C.R. 281; 52 L.G.R. 304 applied.

(3) That the fact that there might be practical difficulties in enforcing the condition concerning deliveries by road, for example, in distinguishing the second respondents' traffic from other traffic, did not go to the validity of the condition; that it must always be a question of fact and degree whether a particular condition was such as to take away the substance of the permission; but that in the present case the substance of the permission was the construction of the refinery, to which all else was ancillary, and the second respondents' acceptance of the condition imposed was evidence that it was not such as to make the refinery unworkable; and that, accordingly, the condition was not invalid.

(4) That the refusal of permission for the construction of the road had not been prejudicial to the local planning authority but had come about in order to meet one of their major objections; and that, accordingly, they were not entitled to have the Secretary of State's decision quashed *ex debito justitiae* by reason of any failure of the Secretary of State to state formally that the application was amended to exclude the construction of the road.

Miller and Others v. *Weymouth and Melcombe Regis Corporation and Another* (1974) 27 P. & C.R. 468 applied.

MOTION.

The facts are stated by Sir Douglas Frank, Q.C.

Raymond Sears, Q.C. and *David Lamming* for the applicants, the Kent County Council.

David Widdicombe, Q.C., Harry Woolf and *Lord Colville* for the first respondent, the Secretary of State for the Environment.

Graham Eyre, Q.C. and *Malcolm Spence* for the second respondents, Burmah-Total Refineries Trust Ltd.

Cur. adv. vult.

July 29. **Sir Douglas Frank, Q.C.** This is an application under section 245 of the Town and Country Planning Act 1971 for an order that a planning permission for an oil refinery granted by the first respondent to the second respondents be quashed. On September 23, 1971, the second respondents made two applications for planning permission, one for development described as " oil refinery and jetty with ancillary activities " and the other as " road/rail terminal facilities and ancillary pipelines and roadways." The purpose of the application was to obtain planning permission for a proposed new oil refinery at Cliffe Marshes alongside the Thames in Kent.

It was explained that two applications were made as two separate sites were affected; but the local planning authority was asked to treat the two application forms as constituting one application. On November 29, 1971, the first respondent gave notice that he had decided to exercise his powers under section 22 of the Town and Country Planning Act 1962 and to call in the application for decision by himself. On May 2, 1972, a local inquiry was held by one of the first respondent's inspectors, Mr. H. M. A. Stedham, A.R.I.C.S., F.R.T.P.I., assisted by two assessors. It was completed on May 5, 1972. Mr. Stedham reported at length to the first respondent in September 1972.

Having concluded that there were major objections to the development because of the effect which it would have on the coastal area and because of the inadequacy of the road network to take the traffic involved, he recommended that the application be refused. However, the first respondent decided that it was in the national interest that additional refinery capacity should be made available to meet the expected requirements in south-east England and for that reason was unable to accept his inspector's recommendation. Nevertheless, he recognised that the road system was inadequate and said that he had it in mind to refuse permission for the construction of the access road as proposed in the application and to grant outline planning permission for the oil refinery, the jetty, the rail terminal facilities and the pipelines between the refinery and terminal subject to a condition, *inter alia*, that, save as should be agreed from time to time with the local planning authority (or, in default of agreement, as should be determined by the Secretary of State), no deliveries of oil or oil products or by-products should be made to or from the oil refinery or terminal except by sea, pipeline or rail transport. He also stated that

> since a planning permission along the lines indicated above would result in development significantly different from that for which planning permission was originally sought, the Secretary of State thinks that he should afford all the parties concerned an opportunity to make further representations to him on the matter.

Further representations were made particularly by the applicants, and accordingly on December 10, 1974, the first respondent gave notice that he intended to reopen the inquiry, but limited to hearing

representations relating to his proposed intention to grant permission in the way he had stated and to material considerations which had arisen or come to light since the original inquiry.

The reopened inquiry was held by Mr. Stedham from April 8 to 16, 1975, and he reported in the following month. In his report he said that in his opinion there had been sufficient changes since March 1974, certainly since 1972, to require a fresh assessment as to whether the public interest in securing extra refining capacity in the region was still sufficiently strong to outweigh the siting of a proposed refinery on the Cliffe Marshes, especially with the prospect of either restricted distribution arrangements for a lengthy period or the imposition of tanker traffic on an unsuitable road network. He felt unable to make a recommendation.

On December 31, 1975, the first respondent granted planning permission on the lines previously stated subject to a number of other conditions of which only one will have to be mentioned. The applicants challenge the first respondent's decision on a number of grounds and it will be convenient for me to deal with them under four separate headings.

(1) *Permission for part only of the development.* The contention is that the first respondent erred in law and was acting *ultra vires* in purporting to grant planning permission for part only of the development the subject of the application. Mr. Sears, for the applicants, submitted that the first respondent was in the same position with a called-in application as a local planning authority in dealing with an application, and that his powers were not greater than those set out in section 29 (1) of the Act of 1971. Thus he might grant permission either conditionally or subject to conditions, or might refuse permission, but not both. It was clear from the language of the section that the grant or refusal could relate only to the development proposed in the application and not to a different development, for that, Mr. Sears said, was the scheme of the Act. He asked how it would be possible to appeal under section 36 or section 37 where an application had been granted in part and refused in part, or how sections 41 and 45 could apply to a part-only permission. He contrasted the provisions of section 183 and claimed that had it been intended that part-only permission could be granted under section 29 then words similar to those in section 183 would have been used. He emphasised that the reason why the Secretary of State had reopened the inquiry was that he had said that a planning permission along the lines indicated would result in a development significantly different from that for which planning permission had originally been sought. He referred to *R.* v. *Federal Steam Navigation Co. Ltd.*[3] for authority for the proposition that the word " or " in section 29 should be used disjunctively—that is to say, that planning permission could not be granted and refused on the same application.

[3] [1974] 1 W.L.R. 505; [1974] 2 All E.R. 97, H.L.(E.).

Mr. Widdicombe conceded that the first respondent had no greater power than the local planning authority in dealing with an application but submitted (1) that where an application contained a number of separate and divisible elements it was lawful for them to be separately dealt with, (2), alternatively, that if the elements were not divisible there was power to modify the application provided that (a) the scope of the development was not enlarged; (b) the essential nature of the development was not altered; and (c) any persons affected were given a chance to make representations. He did not think that the agreement of the applicant for permission to the modification was necessary, but that question did not arise in this case as the second respondents had agreed to the modification. As to his first submission, Mr. Widdicombe said that the fact that there was only one application form was not conclusive, for there could be several developments in one application. Here there were four elements expressed in the application and by the Secretary of State, namely, (1) the construction of the refinery, (2) the provision of road and rail terminals, (3) the construction of a pipeline, and (4) the construction of an access road. Each part involved separate land, and a separate and distinct use of any one part could have been carried out without the carrying out of the others save that the construction of the refinery was a development to which all the other elements were ancillary. He denied that any problems could arise under the sections mentioned by Mr.Sears for in each case the provision concerned would apply to the part of the development granted or the part refused as the case might be. He said that a permission related not to the application but to the development applied for because by section 23 planning permission was required for the development.

Mr. Eyre, for the second respondents, adopted Mr. Widdicombe's arguments and conceded that the first respondent had no jurisdiction to grant planning permission for development to which the application did not relate, nor for development which was different in nature. He had power to grant permission for any development included in the application. He argued that section 38 of the Act of 1971 clearly envisaged that the first respondent had power to grant permission in respect of part of the land to which the application related. As to the meaning of the word " or," he contended that it was not to be construed in the sense of mutual exclusivity and that it was not an inviolate disjunctive where the clear intention of the statute was otherwise: *Mersey Docks and Harbour Board* v. *Henderson Brothers.*[4] Dealing with other objections raised by Mr. Sears, he said that the applicants' consent to the amendment was not required as on the application being called in they ceased to have any jurisdiction but merely a right to be heard. He said that the form of a decision could not affect the subject-matter of the grant.

In my judgment the correct approach to this matter is to ascertain

[4] (1888) 13 App. Cas. 595, 603, H.L.(E.).

the powers under section 29 of the Act by reference to the purposes of Part III, in which it appears. It seems to me that everything in Part III flows from and is consequential on the provision in section 23 that planning permission is required for the carrying out of any development of land; hence, when the matters come before the determining authority, in this case the first respondent, what that authority has to do is to decide whether, having regard to the provisions of the development plan and to any other material considerations—that is, planning considerations—permission ought to be granted, and, if so, what, if any, conditions should be imposed. It further seems to me that, as a matter of common sense, the determining authority can grant as much of the development applied for as they think should be permitted. It may be that the applicant's consent should first be obtained, but no question as to that arises in the instant case, as on April 2, 1974, the second respondents told the first respondent that " We confirm the condition proposed by paragraph 5 of your letter is acceptable to our clients." That was the condition eliminating the use of the road. Indeed, as Mr. Sears admitted, it is common practice for applications to be dealt with in this way—for example, where permission for 50 houses is applied for and the local planning authority grants permission for 40. Mr. Sears found that unobjectionable but said that a formal amendment to the application was required and that where the application had been called in, the consent of the local planning authority must have been given.

On the facts of this case the first respondent and the second respondents by their conduct agreed to an amendment. I see no reason why the local planning authority had to be a party to that amendment. Accordingly, I agree with Mr. Widdicombe that where an application consists of a number of separate and divisible elements it is lawful for them to be separately dealt with, as was done in this case. It seems to me to matter not in this case whether the decision of the first respondent was on an amended application or whether it was a part refusal, save that in the latter case it is necessary to construe the word " or " conjunctively. I think, however, that that may be done having regard to the context of the part of the Act in which the word appears. In *Mersey Docks and Harbour Board* v. *Henderson Brothers*[5] Lord Halsbury L.C. said[6]:

> . . . I know of no authority for such a proceeding unless the context makes the necessary meaning of " or " " and," as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence, unless some other part of the same statute or the clear intention of it requires that to be done, . . .

In my judgment, Part III of the Act of 1961 does require " or "

[5] 13 App.Cas. 595.
[6] *Ibid.*, 603.

to be read as " and," and, apart from the general purpose of Part III, section 38 impliedly recognises that as the correct construction.

There is one further way of looking at the first respondent's decision. Not only did he expressly refuse permission for the construction of the access road but he also imposed a condition which had the same effect in that in the absence of the agreement of the local planning authority deliveries were to be made only by sea pipeline or rail transport. Thus, if the refusal was *ultra vires* then it is arguable that that part of the decision should be disregarded.

Of course, in truth what the first respondent decided was to grant planning permission for the terminal proposed subject to a condition which would restrict the way in which the development was carried out. There would be nothing unusual in that, but whether this particular condition was *ultra vires* I will consider when I come to the last ground of appeal set out in the notice of motion.

(2) *Natural justice.* It is said under this head that the first respondent erred in finding as he did that the proposed oil refinery at Cliffe was needed to meet demand in the south-east of England and that " there is evidence of a deficit in refining capacity " in the south-east. The error alleged is that he had regard to the views of the Secretary of State for Energy when there was no evidence given by that Secretary of State as to the need for the refinery and that the applicants had had no opportunity of testing the assertion of that Secretary of State that the proposed refinery was needed to meet demand in the south-east or the factual basis of the statement made by him and relied on by the first respondent. This allegation arises from paragraph 15 of the decision letter which sets out the first respondent's conclusions in these terms:

> So far as the south-east region is concerned, there is evidence (as indicated in paragraph 13 above) of a deficit in refining capacity and the Secretary of State concludes that this deficit will be increased by the extent to which any North Sea oil refined in the region is exported. Given that it will take a number of years to build the proposed refinery, the Secretary of State does not agree with the argument that reliance for oil supplies can or should be placed on other projects, the implementation of which is not guaranteed. He sees no reason to doubt that additional capacity should be provided in the region, and he also considers that the need to provide for exports strengthens the case for such additional refining capacity. In all the circumstances he has concluded that a need for the refinery proposed in the present application has been established.

The evidence indicated in paragraph 13 was expressed in these words:

> At the reopened inquiry forecasts were submitted by the county council that, assuming no new capacity is created, the regional deficit would be about five m.t.y.; whereas national capacity would be in surplus. Documentary evidence was submitted on

> behalf of your clients that the regional deficit could be in the order of 10 or 12 m.t.y. In his statement of December 6, 1974 (referred to in paragraph 8 above), the Secretary of State for Energy has expressed the view that the proposed refinery at Cliffe is needed to meet the demand in the south-east.

In his statement of December 6, 1974, to the House of Commons, the Secretary of State for Energy had said:

> If projects now under consideration go ahead, including those at Canvey Island and Cliffe, which are needed to meet demand in the south-east, I expect our refinery capacity in the early 1980s to approach 150 million tons a year. This should be enough overall to meet our own needs and provide for some exports.

Mr. Sears, while conceding that the first respondent was entitled to have regard to his own policy and that of any other Government department, said that the applicants were entitled to be provided with the information on which the Secretary of State for Energy's judgment was made and were entitled to cross-examine to test the credibility of that information. He further complained that the decision in this case was made not by the first respondent but by the Secretary of State for Energy, and he referred to *H. Lavender & Son Ltd.* v. *Minister of Housing and Local Government.*[7] Dealing first with that last point, the *ratio decidendi* in the *Lavender* case was that the respondent had delegated the making of his decision to the Minister of Agriculture and had not properly or at all exercised his duty of discretion. In the instant case, although the first respondent had regard to the view expressed by another minister there is no evidence whatsoever that the decision was other than his own. Accordingly, I do not find this complaint well founded, and, indeed, it was abandoned by Mr. Sears.

I think that the short answer to the applicants' first point is that the Secretary of State for Energy's statement in the House of Commons that two more refineries were required in the south-east to meet the expected demand was a statement of policy. He did not say that it was his policy that those refineries should be at Canvey Island and Cliffe but merely said that if those projects went ahead they would meet that particular need. He was thus confining himself to a policy peculiar to his own department leaving the decision as to the siting with the appropriate authority. If that is right I think that it is clear from the Town and Country Planning (Inquiries Procedure) Rules 1974 that, far from the Secretary of State being required to justify that policy in any way, it was a matter which could not have been questioned at the inquiry (see rule 8(5)) in that the first respondent could have taken it into account even if it had not been raised at the inquiry (see rule 12 (2) (*b*)). Apart from the Rules, there is ample authority for the proposition that the first respondent was entitled to take into account the views of another Government department even without giving the parties an opportunity to comment on them

[7] [1970] 1 W.L.R. 1231; [1970] 3 All E.R. 871; 68 L.G.R. 408.

(see, for example, *Miller* v. *Minister of Health*[8]; *Re City of Plymouth (City Centre) Declaratory Order* 1946, *Robinson* v. *Minister of Town and Country Planning*[9]; *Summers* v. *Minister of Health*[10]; *B. Johnson & Co. (Builders) Ltd.* v. *Minister of Health*[11]; *Darlassis* v. *Minister of Education.*[12]

However, it happens that in this case the statement in the House of Commons was made before the 1975 inquiry so that the parties were able to, and did, comment on it at the inquiry. Moreover, the applicants themselves stated that there would be a regional deficit, and that was part of the evidence relied on by the first respondent for his decision. I would add that in any event there is no rule of natural justice which could have required the Secretary of State for Energy to give evidence at the inquiry.

It follows that the applicants' contention under this heading fails.

(3) *Invalidity of condition.* The applicants say that condition 5 (that is, the condition which requires that the delivery shall be made only by sea, pipeline or rail transport) is invalid first because it is unworkable and secondly because it takes away a substantial part of the benefit of the planning permission. Mr. Sears said, however, that this was not the most important part of his case. In my judgment, there are short answers to these two points. First, if the second respondents carried out deliveries by road (say, as stated in the condition) then they would be liable to enforcement procedure under the Act. The fact that there might be practical difficulties as alleged in an affidavit, namely, in distinguishing the second respondents' traffic from other traffic, does not go to the validity of the condition. As to the second point, a conditional permission is almost invariably less beneficial than an unconditional permission. It must always be a question of fact and degree whether a particular condition is such as to take away the substance of the permission, in which event that condition may be invalid. In this case, however, the development sought is the construction of an oil refinery and all else is ancillary to that purpose. Of course, if the condition had been such as to render the oil refinery unworkable that would be a different case, but the second respondents' acceptance of the condition is evidence that it is certainly not this case.

There is one final matter with which I must deal. Mr. Widdicombe submitted that if I concluded that the decision of the first respondent was right in principle and wrong in form then I had a discretion which I should exercise in his favour. He pointed out that under section 245 (4) (*b*) the court, if satisfied that the order or action in question is not within the powers of the Act may quash the order or action. In *Miller*

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[8] [1946] K.B. 626; 44 L.G.R. 370.
[9] [1947] K.B. 702; [1947] 1 All E.R. 851; 45 L.G.R. 497, C.A.
[10] [1947] 1 All E.R. 184; 45 L.G.R. 105.
[11] [1947] 2 All E.R. 395; 45 L.G.R. 617, C.A.
[12] (1954) 4 P. & C.R. 281; 52 L.G.R. 304.

and Others v. *Weymouth and Melcombe Regis Corporation and Another*[13] Kerr J. said[14]:

> In my judgment Mr. Slynn is correct in his submission that both as a matter of history and on the basis of such authority as there is the word " may " is here used in its ordinary permissive sense though it would no doubt only be rarely and in very unusual cases that a court would not exercise its discretion to quash a ministerial order or action which was not within the relevant statutory powers, and it would never do so if a refusal to exercise the discretion to quash would or might be unjust in the circumstances.

Thus, if I am wrong in my view that the first respondents' decision is within the powers of the Act, the question is then whether the applicants would be entitled to have the order quashed *ex debitio justitiae*. The most that can be said against the first respondent is that he failed to state formally that the application was amended to exclude the construction of the road. The parties at the second inquiry were well aware that permission for construction of the road was to be refused. That refusal or amendment, far from being prejudicial to the applicants, came about in order to meet one of their major objections. It cannot, therefore, be said that they are entitled to the order which they seek *ex debito justitiae*. Accordingly, even if I had found that the first respondent had no power to refuse the application in part or that in truth he dealt with it as an amended application, then I would decline to exercise my jurisdiction to grant the order sought by the applicants. In all the circumstances, I accordingly dismiss this application.

Application dismissed with costs.

Solicitors—Sharpe, Pritchard & Co. for W. G. Hopkin, Solicitor, Kent County Council, Maidstone; Treasury Solicitor; Denton, Hall & Burgin.

[*Reported by Michael Gardner, Barrister.*]

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[13] (1974) 27 P. & C.R. 468.
[14] *Ibid.*, 478–479.

James Stanley Prest and Michael Ian Bowstead Straker (Trustees of the Felin Isaf Trust and Miskin Village Trust) and Sir Brandon Meredith RHYS Williams and Brinley Edmunds v The Secretary of State for Wales v The Welsh Water Authority



Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
1 January 1983

In the Supreme Court of Judicature

Court of Appeal

On Appeal from the High Court of Justice

Queen’s Bench Division

1983 WL 215478

The Master of the Rolls (Lord Denning) Lord Justice Watkins Lord Justice Fox

Friday, 24th September, 1982

Representation

LORD HOOSON Q.C. and MR. J. HOWELL (instructed by Messrs. Roche Hardcastle) appeared on behalf of the Appellants.
MR. SIMON BROWN (instructed by The Treasury Solicitor) appeared on behalf of the Secretary of State.
MR. M. T. PILL Q.C. and KISS A. J. BOOTH (instructed by the Area Solicitor, Welsh Water Authority) appeared on behalf of the Welsh Water Authority.

JUDGMENT

THE MASTER OF THE ROLLS:

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Sir Brandon Rhys Williams is a doughty fighter. He is under attack in his own homeland. It is in the Vale of Glamorgan. You pass by it if you go by the main line from Cardiff to Bridgend. Also if you go by car along the new M4 motorway near the Miskin interchange. He and his forebears have been in those parts for over 300 years. They have a considerable estate there which they let out to tenant farmers. Yet now they are under threat. The Welsh Water Authority are about to seize 30 or so acres of their land. It is agricultural land on a site next the railway line. The Welsh Water Authority have made a compulsory purchase order on it: and it has been confirmed by the Minister. It is now under appeal to this court.

The reason for this imminent seizure is to make a new sewage works for the neighbouring towns and villages. It is urgent. The existing sewage works are grossly over-loaded. It is anticipated – and hoped – that the district may be developed for industrial use. So that more facilities are needed for the disposal of sewage.

Sir Brandon and his children's trustees all recognise the need for a *new* sewage works and the urgency of it. They are just as keen as the Welsh Water Authority. But they do not agree to the site seized •0 or about to be seized by that Authority. They offer an alternative site: or rather one of two alternative sites. Each of them is about 30 or 40 acres. Each of them is close by in the same area. One is 60 yards away from the railway line. The other is 160 yards away. Each is very convenient for the new sewage works.

The contest in the case is this: Which of the sites should be used for the new sewage works? Should it be the site proposed by the Authority? or one of the two alternative sites offered by Sir Brandon?

In November and December 1977 there was a long public inquiry as to the comparative merits of the sites. It took twelve days. The long and short of it is that there is nothing to choose *between* the sites – save as to cost. Everything was considered at the inquiry. Such as the means of access, the *interference* with agriculture, the effect on the amenities, the impact of floodtag, and so forth. In no material respect was any one site to be preferred to the others – save as to cost.

Now the cost was the rub. At the inquiry there was much evidence as to the cost of constructing the plant for treating the sewage. The total cost, as at 1976 prices, would be £7,616,900 on the site proposed by the Authority. But as to the alternative sites, *Nos. 1* and 2, offered by Sir Brandon

> "the construction of similar treatment works would cost some £230,000 more on Site 1, and some £320,000 more on Site 2."

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Those were of course, only estimates at that time. Like all estimates they are often falsified in execution. They are certainly out of date by this time. Even so, the saving of £230,000 or even £300,000 would seem to be marginal in relation to a figure of nearly £8,000,000.

Yet that saving seems to have *been* the determining factor with the Inspector. *He made his report* on 20th April 1978. It *covered* sixty-four closely-typed pages. He said in it:

> "The cost of development is not normally a factor which enters into the determination of a planning application. But in my opinion this case is peculiar … the applications (by Sir Brandon for sites Nos. 1 and 2) should be refused on the grounds that they represent unnecessary and wasteful expenditure of public funds."

In recent letters the Welsh Water Authority have made it clear that the determining factor has been one of cost. On 23rd April 1982 they said that the proposals of Sir Brandon "impose an unacceptable cost-penalty on its proposed sewage disposal scheme" : and on 14th May 1982 that the alternative site "has been considered and rejected because of the additional cost involved" .

The offer by Sir Brandon

Now I come to the crucial point in the appeal. Both at the inquiry and ever since, Sir Brandon and his children's trustees have offered to convey either of the alternative sites offered by them at "existing use value" . That is, at its value as agricultural land. But if the Welsh Water Authority insist on the site proposed by the Authority itself, then Sir Brandon and his children's trustees will require the Authority to pay its full compensation allowed by law. That is its value, not as agricultural land, but as land with a potential for development for industrial purposes. This will be much higher than the agricultural value. It would far more than outweigh the saving of £230,000 to £300,000 on construction costs.

The point that was omitted

Here is the strangething. The Inspector did not take any account of that offer. He recorded it among his findings in paragraph 264(9), but he did not take it into account in assessing the cost of the whole project. He only took into account the cost of constructing the sewage treatment works. He did not take into account the cost of acquiring the land itself. That is a most significant omission. Both sides agree that it was omitted. Neither side adduced any evidence before the Inspector about it. So *he did* not take it into account.

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The letter of 20th October 1978

Whilst the Inspector's report was with the Minister – and before he gave his decision – the trustees and Sir Brandon wrote a letter of 20th October 1978. They asked for the inquiry to be re-opened. They pointed out that the site proposed by the Authority had much potential for industrial purposes: so the cost of acquiring it would be much greater than that of the site offered by Sir Brandon which was being offered at agricultural value. This was clear enough in the somewhat clumsy language of the letter:

> "This obvious potential of the CPO site (the site proposed by the Authority) for industrial purposes if the sewage works were not required to be built on it introduces material questions of relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the Compulsory Purchase Order is confirmed. This matter was not considered at all during the inquiry."

The planning applications

Whilst all these things were going on, the trustees and Sir Brandon were making planning applications for the development of much of their land in the area for industrial purposes. These were called in by the Minister so that he could determine them himself. They had not been determined at the date of the decision letter in November 1978. A local inquiry was held into them by a different Inspector. He recommended that the applications should be allowed. But, on 7th August, 1980, the Minister turned them down at that stage. He said:

> "While not disputing the Inspector's view that there is a need for industrial land in the general area, the Secretary of State notes that other industrial sites are available and he is not convinced that the industrial need would justify a major intrusion into this attractive part of the Vale of Glamorgan."

Nevertheless, the trustees and Sir Brandon made another application. It was called in by the Minister again for his determination. Another Inspector, Miss Ellis, held another local inquiry. It is believed that she reported in favour of industrial development. In a letter of 12th March 1982 the Minister indicated his willingness to permit industrial development, subject to certain conditions.

It is quite clear, therefore, that by this time it is very probable that (if it were not acquired

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compulsorily) the site proposed by the Authority would be developed for industrial purposes and would command a very high price. The cost of the whole project would be far greater than it would be if the Authority accepted the alternative site offered by Sir Brandon.

These findings give rise to several points of law.

The use of compulsory powers

The first is fundamental. To what extent is the Secretary of State entitled to *use* compulsory powers to acquire the land of a private individual? It is clear that no Minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, there. fore, where the scales are evenly balanced — for or against compulsory acquisition w the decision — by whomsoever it is made — should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid, see *Attorney-General v. De Keyser's Royal Hotel Ltd. (1920) A.C. 508* . If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen. This principle was well applied by Mr. Justice Forbes in Brown v. Secretary of State for the Environment (1978) P. & C.R. 285 , where there were alternative sites available to the local authority, including one owned by them. He said (at page 291):

> "It seems to me that there is a very long and respectable tradition for the view that an authority that *seeks* to dispossess a citizen of his land must do so by showing that it is necessary … If, in fact, the acquiring authority is itself in possession of other suitable land other land that is wholly suitable for that purpose – then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose."

The facts to be considered

The second point is this: When a case reaches the courts, is it to be decided on the facts as they appeared to the Minister at the date of his decision? or, can the courts look at subsequent facts? In this very case the Inspector took the view that, at the time of his inquiry, it was a matter for "speculation" whether or not there would be an industrial use of the site proposed by the Authority. But, by the time that the case reached the courts, or at any rate reached this court, it was no longer speculative. It was highly probable that the landowner would get permission for development for industrial purposes. If these had been proceedings in a court of law, this

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subsequent evidence would have been regarded as so material that it would have been admitted in the Court of Appeal, *see* Murphy v. Stone-Wallwork (1969) 1 W.L.R. 1025 ; *Mulholland v. Mitchell (1971) A.C. 666* . So here it seems to me that, when the decision of the Minister was under challenge in the courts, it was not final. It was sub judice. So far as I am aware, the acquiring authority does not act on it until the court proceedings are finally disposed of. Rarely indeed would fresh facts be admitted to counteract the decision: but I think that in a proper case they should be. Take this very case. The Welsh Water Authority are not bound to take up the compulsory purchase order. If they exercise it, the price will not *be assessed* at the date of the order. It will *be assessed* at the time when they actually take the land, see *West Midland Baptist (Trust) Association (Inc) v. Birmingham Corporation (1970) A.C. 874* . That would be much higher than at the date of the Inspector's inquiry. If the Authority can wait till after the Court of Appeal order – to see what prices are, it is only fair that the landowner should be able to have his case – against compulsory purchase – also determined at that date.

Test it this way: Take a case where the Minister has confirmed the compulsory purchase order. But after the confirmation the acquiring authority alters its proposals radically, or abandons them, or decides to use the land far a different purpose from that which it originally intended. In that case the cm. pulsory purchase order would no longer be available to it. The court would restrain the acquiring authority from going on with the purchase. That *is* shown by Grice & anr. v. Dudley Corporation (1958) 1 Ch. 329 , where Mr. Justice Upjohn said (at page 344);

> "… what are the corporation doing? They seem to me to be endeavouring to acquire the plaintiffs' property for some purpose other than that for which they were authorised to exercise compulsory powers by the compulsory purchase order … they are going entirely outside the order and, if that be so, then they must be restrained from doing so."

If that can be done by the court – after the order has been confirmed – surely it can be done where there is an application to the court to set aside the order under the statutory powers available. I am aware that this would need fresh evidence over and above that which was before the Inspector and the Minister. But there is power to receive it. Not usually. Only rarely. As I said in *Ashbridge Investments Ltd. v. Minister of Housing & Local Government (1965) 1 W.L.R. 1320* at page 1327:

> "Fresh evidence should not be admitted save in exceptional circumstances."

Those exceptional circumstances need not be closely defined. I would suggest that fresh evidence can and should be admitted on similar grounds to that in the courts of law – in those cases where it has arisen since and would in all probability have an important influence on the

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result.

The matters to be taken into account

The third principle asks this question: What matters is the Secretary of State to take into account? Is he limited to those canvassed before the Inspector? or should he go beyond them and consider other matters, if they are relevant?

This was one of the principal points made by the Minister and by the Water Authority. They said that the trustees and Sir Brandon never raised the point about the cost of acquisition of the land, nor did they give any evidence upon it. So they should be shut out from canvassing it now.

To my mind this is a mistake. It treats a public inquiry – and the Minister's decision – as if it were a lis inter partes . That it certainly is not. It is a public inquiry at which the acquiring authority and the objectors are present and put forward their cases – but there is an unseen party who is vitally interested and is not represented. It is the public at large. It is the duty of the Minister to have regard to the public interest. For instance, in order to acquire the land the acquiring authority has to use the taxpayers' money or the ratepayers' money. The Minister ought to see that they are not made to pay too much for the land – especially where there is an alternative site which can be acquired at a much less price. So also with the planning and development of this land. It is the public at large who are concerned. If planning considerations point to the alternative site rather than to the site proposed by the Authority, the Minister should take them into account, cf. *Hanks & ors. v. Minister of Housing & Local Government (1963) 1 Q.B. 999* . The principle was implicit in the decision of the House of Lords in *Board of Education v. Rice (1911) A.C. 179* . It was expressed by Lord Greene, M.R., in a single sentence in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 K.B. 223* at page 229:

> "He must call his own attention to the matters which he is bound to consider."

This was put a little more fully by Lord Diplock in *Education Secretary v. Tameside (1977) A.C. 1014* at page 1065:

> "Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

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The power of the court

The fourth principle is the power of the court to intervene. Often we are referred to the classic judgment of Lord *Greene*, M.R., in the Wednesbury case (1948) 1 K.B. 223, but I ventured to restate it in my own words in *Ashbridge Investments v. Minister of Housing (1965) 1 W.L.R. 1320* at page 1326, which has been repeatedly applied. This was in relation to the very statutory words applicable here:

> "Seeing that that decision is entrusted to the Minister, we have to consider the power of the court to interfere with his decision. It is given in Schedule 4, para. 2 (of the Housing Act 1957). The court can only interfere on the ground that the Minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section it seems to me that the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law."

I went on to say that in some cases fresh evidence might be admitted:

> "We have to apply this to the *modern* procedure whereby the inspector makes his report and the Minister gives his letter of decision, and they are made available to the parties. It seems to me that the court should look at the material which the Inspector and the Minister had before them, just as it looks at the material before an inferior court, and see whether on that material the Minister has gone wrong in law … Fresh evidence should not be admitted save in exceptional circumstances."

Conclusion

It remains to apply these principles.

In the first place, we have fresh evidence which shows that the present proposals of the acquiring authority are radically different from those which were considered by the Inspector at the inquiry. The main differences are these:

(i) Modern methods of treating sewage have reduced the whole scale of the project so that the area required for the actual works has been halved in size.

(ii) It is very probable that planning permission be given for the development of the order land for industrial purposes (that is the CPO site): so that it would command a very

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considerable "hope" value far in excess of agricultural land, cf. *Camrose (Viscount) & anr. v. Basingstoke Corporation (1966) 1 W.L.R. 1100* .
(iii) The trustees and Sir Brandon have made it clear that they will make the alternative site available at existing use value, that is, its agricultural value.

In view of the fresh evidence it would be quite unreasonable for the acquiring authority to proceed with the compulsory purchase order. Yet on 18th May 1981, they gave notice to treat and have only held their hand pending these proceedings.

In the second place, even if the fresh evidence be disregarded, when the Minister wrote the decision letter confirming the compulsory purchase order, he failed to take into account the cost of acquiring the site proposed by the Authority (the CPO site) as against the cost of acquiring the alternative site offered by Sir Brandon. This was a most relevant consideration. It would probably have made a crucial difference because, even at that date in 1978, there was a potential of development for industrial use which would have given a considerable "hope" value to the order land (the CPO site). The Minister ought to have had regard to this point – in the public interest ≤ even though it was not canvassed by the parties at the inquiry. In any event he ought to have considered it – after receiving the letter of 20th October 1978 – and asked for evidence of values before coming to his decisions. If he had considered its the only reasonable conclusion would be that the compulsory purchase order would not have been confirmed.

I would, therefore, allow the appeal and set aside the compulsory purchase order. Everyone must regret the long delay in making the new sewage works. But I think that the responsibility must rest primarily with the Welsh Water Authority. All could have *been* avoided if they had not insisted on their own site, but had accepted the offer made by Sir Brandon and his children's trustees long ago. If they had done so, the sewage works could have been completed by this time – at much less cost than they will be now. It is, I understand, still open to them to accept the offer. They should do so and get on with the work at once. I would allow the appeal accordingly.

LORD JUSTICE WATKINS:

The attempted acquisition of land by compulsory purchase is when strongly resisted by the owners of it, likely to give rise to a protracted and sometimes bitter contest fought in the forum of public inquiry and thereafter in the courts. Seldom, however, can there have been such a long drawn out struggle to preserve for himself and his family a part of their land at Miskin in the heart of Glamorgan as that waged by Sir Brandon Rhys Williams and the Trustees of the family Trusts.

Sir Brandon's family have lived in Miskin Manor for a century. They have been associated with the lands thereabouts for three centuries or more. He has set ideas of his own as to how his land should be developed in the interests of good and profitable estate management. He has not for

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many years been averse to selling some part of his land, at agricultural value, initially to the Local Authority and later on to the Welsh Water Authority when this was created in 1944 so that a sewage disposal plant could be constructed upon it and a suitable access road provided to that.

But he insists upon making available for this purpose a site which in extent and in every other way is, in his estimation, suitable for this purpose and he will not, in any circumstance, treat with the Welsh Water Authority in respect of another part of his land, which is their considered choice for the construction of a plant which is to be provided for the benefit of the inhabitants of Miskin, Llantrisant and other villages nearby.

But the construction of this is, after a decade of strife concerning its location, still not imminent. Indeed, local inhabitants could be excused for thinking that it never will be, seeing that the Welsh Water Authority is, it could be said, inexcusably obdurate in pursuing its objective and Sir Brandon is at least equally determined and resourceful in thwarting them.

There have been from time to time substantial changes in the schemes or proposals put before the Secretary of State for Wales by both sides. The Welsh Water Authority has made fundamental changes in its conception of the kind of plant designed to be constructed, which has meant, among other things, that the amount of land sought to be acquired has diminished in size and Sir Brandon has changed the location of the alternative site he is willing voluntarily to sell at agricultural value to accommodate the plant.

A sensible and reasonably expeditious resolution to this dispute has also been affected by other factors outside the control of both the Welsh Water Authority and Sir Brandon. Notable among these has been the planning and construction of the M4 motorway, which passes through the Miskin Estate, and various proposals, some of which have been the subject of planning applications, for industrial development of this part of Glamorgan which lies immediately to the south of the Rhondda Valley, wherein coal mining has been for years a declining industry – just as in other valleys in Glamorgan and Gwent has the manufacture of steel. These two heavy industries were the economic bedrock of South Wales.

For many years now, since the end of the second world war especially, the local industrial scene has gradually moved from the valleys to the agricultural coastal plain where lie the ports and through which run the railway line and now the motorway. New industries hitherto alien to this part of Wales have been placed near or not very far away from these essential facilities for transporting people and material.

Some of the land around Llantrisant has already been used for this purpose. During the last 15 years a much more extensive industrial development there has been envisaged by planners, including Professor Buchanan, in a specially commissioned report. These proposals have included, among other things, the creation of a new town. Today the approach to development there is much less grandiose, but the determination to bring some new industry to the area

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appears to be in some quarters as firm as ever.

Accordingly, it can with justification, so it is argued, be said that the area has a potential for industrial use. The Welsh Land Authority, which is answerable to the Secretary of State, has been and seemingly remains very conscious of this. Various provisions of the Community Land Act 1975 remain available to this Authority. Armed with these it seeks to acquire land for industrial use near Llantrisant, including a part of the Miskin Estate. It has not yet succeeded in obtaining the requisite consents with which to implement its proposals for land acquisition, but there is no sign that its resolve to acquire a reserve of land in this neighbourhood is weakening.

Furthermore, the Local and County Authorities, which themselves have under. gone convulsive changes in recent times, have advanced proposals for development so as to bring in new industry.

So the long endured pressures imposed upon the Secretary of State for Wales and his predecessors to grant planning permissions and approve the purchase of land by compulsory acquisition have been many and various.

It would not be in the least surprising, therefore, if the Secretary of State and those who advise him, in a mood of desperation if not exasperation, resolved to put an end to the battle over the siting of the sewage plant by as he has done, giving the Welsh Water Authority the powers of land acquisition it seeks accompanied by planning permission to construct the plant which he stipulated was to begin by 30th November 1983.

In the decisive decision letter of 14th November 1978, after describing out. standing applications for planning permission for industrial use by Sir Brandon and the Welsh Land Authority, it was stated:

> "Whilst it would not be for the Secretary of State to prejudge the issue regarding the siting of industry south east of the Miskin Interchange, he is satisfied on the evidence that the construction of a sewage disposal works on the site proposed by the Authority or on either of the two sites advanced by Sir Brandon Rhys Williams would not jeopardise the development of an industrial estate in the area. Accordingly, he considers he would not be justified in with.≥ holding his decisions in relation to the sewage disposal works".

It was contended on behalf of the appellants that in this passage the Secretary of State revealed that he had reached a decision in advance of detailed appraisals of the planning applications which, if successful, would inevitably have seriously affected the cost of compulsory acquisition of the Welsh Water Authority site. The decision to confirm the order was swayed against Sir Brandon solely by the costs factor, a full and proper appreciation of which could not be gained

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without regard to the user present or prospective of adjoining parts of his lands.

As subsequent events have shown, so it is argued, this cost factor viewed in that way will involve the Welsh Water Authority in a sum for the acquisition of the site which is the subject of the compulsory purchase order, which will not be based on agricultural value but upon a valuation which takes account of at least the hope of planning permission being granted for use for industrial purposes of the site and of adjoining lands as a composite whole or for adjoining lands excluding the site. In this context, it is of interest to learn of the Secretary of State's recent indication that he is quite likely to regard favourably a recommendation made by an inspector in 1981 that conditional planning permission be granted to Sir Brandon and the trustees upon their applications therefor for the use for industrial purposes of a very considerable area of land which includes the compulsory purchase order site.

In her report following the enquiry into the applications, the inspector somewhat significantly concluded, upon the need for land for industrial use, that, if it was necessary urgently to attract large prestige firms with exacting require.+ ments which can serve the Rhondda, then Miskin was the only site she was shown which meets the criteria of accessibility, availability and attractiveness.

In March 1982 the Secretary of State informed Sir Brandon and the Trustees that the existence of an acceptable agreement with the local planning authority under the provisions of section 52 of the Town and Country Planning Act 1971 – apparently such an agreement is in being – would be an important factor in his con.. sideration of the applications. And he enquired whether, in view of the areas of land covered by the agreement, account could be taken of any possible requirements which might arise for alternative sites for a sewage disposal works.

What is one to make of all that, save, it seems inevitable, that a large part of the Miskin lands, the CPO site included, will soon be the subject of plan. ning permission for industrial *use.* And the cost of acquisition of the CPO site, if the order is to remain confirmed, will not be based on agricultural land value but upon the much higher value attributed to land used for industrial purposes.

This is obviously in the public interest a very important consideration, especially when it is borne *in* mind that, in the present case, land can still be acquired by the Welsh Water Authority without the use of compulsory powers at agricultural value which is, so it is submitted by Lord Hooson, as suitable as the compulsory purchase order site for the construction of a sewage plant.

Looking at the whole situation as it appears now, that is, I think, a valid and powerful argument. Despite attempts made on behalf of the Secretary of State and the Welsh Water Authority to demonstrate that his decision to confirm the compulsory purchase order was not exclusively founded on the difference between the cost of construction of the CPO site and the alternative site, I am persuaded, for reasons which I shall later explain and which arise out of the contents

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of the several reports and decision letters which are summarised in the decision letter of 14th November 1978, that this was the sole factor which caused the Secretary of State to prefer the CPO site.

Accordingly, seeing nothing has happened to change the character of either of the two sites during the last three-and-a-half years, if it were permissible to regard the situation as it appears now for the purpose of fairly disposing of the appeal, I would unhesitatingly allow the appeal. The cost factor is altogether different now. Land values are a powerful, if not overwhelming, ingredient of it, whereas it *was* absent from the Secretary of State's consideration in the autumn of 1978.

But is it lawful and otherwise proper to look at the Secretary of State's decision taking account of subsequent events so as with hindsight, to adjudge it right or wrong? It is very tempting to do so, especially when what is at stake is the right of a man to retain his land or to dispose of it when and how and to whom he chooses. There are instances in recent times when this court has, notably in claims for personal injury, looked at an event or events subsequent to judgment in order to decide whether a plaintiff or a defendant has been justly treated, but I regard them as an exception to the general rule, which is that a decision appealed against can only be regarded within the circumstances from which it was derived. Generally to conduct the appellate process otherwise would *be* to introduce into it an undesirable combination of re-hearing and fresh evidence which would put at peril the imperative need for judgments or orders or decisions to be final unless they are wrong in law or because, for example, the principles explained in the well-known Wednesbury case have not been followed.

I did not understand Lord Hooson to invite us to resolve this appeal other-wise than in the conventional way. This I propose to do, firmly believing it to be wrong to proceed differently. The most he asks of us with regard to the post decision history is to pay regard to it as an unfolding of events, the main effect of which the Secretary of State could reasonably have anticipated as likely to occur sometime soon in the future when he made his decision in November 1978. In other words, it demonstrates what it was the Secretary of State might have anticipated if he had given thought to it, namely that there was hope value in the CPO site and adjoining lands which inevitably would markedly affect the cost of acquisition under the CPO and, therefore, the cost factor which he acted upon.

So regarded, reception of evidence of that kind is, I think, unobjectionable but otherwise it must be ignored. Even when acted upon in that context it may prove to be of little or no value. This is especially so in long drawn out planning disputes during which time all manner of conditions and needs may change so as radically to alter a pre-existing situation.

In the present appeal I do not find the subsequent events helpful, having regard to the vast bulk of the past history, every detail of which must have been known to the Welsh office and, therefore, to the Secretary of State if he had wished to acquaint himself of it. His role in making

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planning decisions and confirming or otherwise compulsory purchase orders is, if not inquisitorial, which Mr. Simon Brown submits that it is not, surely investigatory, especially when he is given notice of a relevant matter which might affect his decision by a person likely to be affected by it. He must acquaint himself,from the formidable amount of assistance available to him in his department and from public inquiry, with all the information which is indispensable to the making of a just and equitable decision in the making of which he *is* entrusted with a broad discretionary power. The proper use of a discretionary power is in peril if less than the information essential for its exercise is available to him. If proper use involves him *in* "routing around" – *see* *Rhodes v. Minister of Housing and Local Government (1963) 1 W.L.R. 208* at 213 – relied upon by Mr. Pill – he must either cause that to be done or resolve the issue in favour of the land owner.

So long as all those persons who are going to be affected by his decision are aware of the information he expects to take account of, so that they are given full opportunity to make representations to him about it at public inquiry or through correspondence either before or after public inquiry, he is not restricted in his sources of gathering relevant information. A public inquiry is the best known, most used and most useful means at his disposal to ensure that he is fully equipped to decide the matter in hand.

There are times, however, when a vital point, as it *seems* to him later has either been insufficiently ventilated or not touched upon at all at an inquiry. In either of these circumstances, if he is going to allow the point to affect him, he must cause enquiries to be made into it even to the extent of re-opening the public inquiry. Lord Greene M.R. in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1948) 1 K.B. 223* at page 229 said:

> "He must call his own attention to the matters which he is bound to consider."

What he may not do is to proceed to exercise his discretion and allow it to be swayed by a factor which is inadequately presented to him. It matters not, so it seems to me, that he could reasonably have expected an objector or a supporter of his ultimate decision to have fully exposed for him that factor in all its facets at public inquiry or in some other way. He conducts a process of administrative decision which is quite unlike that conducted by courts and some, if not all, tribunals. Nevertheless, it is a process which is governed by disciplines vital to the public interest.

In *Secretary of State for Education and Science v. Tameside Metropolitan Borough Council (1977) A.C. 1014* at page 1065 Lord Diplock said:

> "Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant

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> information to enable him to answer it correctly?"

It could be said that the Secretary of State did ask himself the right question, although Lord Hooson submits to the contrary in the circumstances, namely whether the financial implications alone could allow him to confirm the compulsory purchase order. But whether, as on any view he should have done, he acquainted himself with all the relevant information or, I would add, all the relevant considerations indispensable to correctly *answer* the question, has not to my mind been established by anything we have read or heard in this court.

In this regard he cannot, contrary to a submission made to us, in my opinion, invoke, nor can anyone else who seeks to support his decision here invoke, the doctrine of estoppel against an appellant who challenges that decision, no matter that that person could have a thought of doing so, ventilated at public inquiry what may turn out to be a crucial facet of the factor upon which the decision is hinged. To allow a legal principle or doctrine of that kind to intrude into an administrative process such as this would, in my opinion, be both inappropriate and unjust. Moreover, in the circumstances under review here, even if the issue of estoppel was validly to be raised, it should not, in my opinion, be determined in favour of either the Secretary of State or the *Welsh* Water Authority. It is clear, I think, that he gave his consent to the compulsory acquisition of Sir Brandon's land solely because of the financial implications arising out of the use of that land. If, as in my view he did, he considered those implications, leaving out of account a fact vital to a proper appraisal of them, Sir Brandon cannot possibly be estopped from inviting this court to examine the effect of that omission.

The inspector whose conclusions and recommendations he accepted made it abundantly plain, as I read his report, that he was in favour of recommending the CPO site upon a financial implication only having, so it would seem, recognised that, upon all other relevant considerations, there was nothing of consequence to cause him to prefer the CPO site to Sir Brandon's alternative. In other words, there was nothing to choose between them. In order to substantiate this appreciation of his views, it is necessary, I regret in the interests of brevity, to record in detail the contents of the following paragraphs of his report:

> "(xix) Sir Brandon is right again to insist that costs are not the whole story, and that other factors are also important and need to be placed in the balance. The question which therefore arises is whether those other factors, either individually or collectively, weigh so heavily against the CPO site that the considerable additional expenditure likely to prove necessary at Sites 1 or 2 should be accepted in the wider public interest. Having carefully considered the origins of the dispute, the FFB Report, and the evidence of the inquiries relating to all those matters, I am convinced that they do not. I therefore propose to make a favourable recommendation in respect of a modified CPO site.

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"(xx) As to Sir Brandon's applications, nothing in the evidence concerning appearance, agriculture, flooding, the Nant Coslech or possible future industry suggests to me that planning permissions for Sites 1 and 2 need be withheld. The evidence concerning the Ancient Monument and the Site of Special Scientific Interest shows that Sites 1 and 2 have 'negative' advantages (in the sense that damage elsewhere would be avoided or reduced), although in my view these are marginal and are far outweighed by the prospect of heavy operational traffic being thrown on to the local road network.

"(xxi) The cost of development is not normally a factor which enters into the determination of a planning application. But in my opinion this case is peculiar, in the *sense* that the sole object of Sir Brandon submitting his applications has been to force thorough and proper consideration of the alternative sites. There is no question of Sir Brandon ever implementing a permission(s) for the con.struction of a sewage treatment works, and there can be no doubt that the WNWDA (i.e. the public) would foot the bill.

"(xxii) The machinery of physical planning control does not, and should not, operate in a financial vacuum, divorced from the harsh realities of everyday economics. Rather, I believe that wisely used it should seek to channel public investment into the right places at the right time. Thus, having concluded that the development of Sites 1 and 2 is likely to incur substantial and unnecessary penalties in the shape of scarce public resources, it would be wholly illogical for me to recommend that permission be granted in respect of those sites, unless it had been demonstrated that they possess other overriding advantages compared with the Authority's preferred scheme. I am convinced that they possess no such advantages, and conclude that the applications should be refused on the grounds that they represent unnecessary and wasteful expenditure of public funds."

If the inspector had thought there were other grounds including, for example, agricultural, environmental, access and highway considerations, he would have undoubtedly, in my view, expressly so stated. Thus, although these considerations are mentioned in paragraph (v) of the decision letter, it cannot be supposed, having regard to the inspector's detailed assessment of them, that they influenced the Secretary of State into confirming the CPO.

Paragraph (v) reads as follows: "Apart from the specific issues referred to in paragraphs 11(i) – (iv) above the Secretary of State has also carefully con.. sidered and accepts his inspector's general conclusions in relation to the agricultural, environmental, access and highway implications. He also accepts the inspector's assessment of the financial implications, contained in the conclusions to the report of the second re-opened inquiry, concerning the Water Authority's proposed redevelopment and the cost comparisons with the sites advanced by Sir Brandon Rhys Williams" .

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In the following paragraph – (vi) – the Secretary of State said he had also considered written representations submitted to him by Sir Brandon. These were contained in his solicitor's letter of 20th October 1978 wherein this paragraph appears:

> "This obvious potential of the CPO site for industrial purposes if the sewage works were not required to be built on it introduces material questions of relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the Compulsory Purchase Order is confirmed. This matter was not considered at all during the enquiry".

Regardless of the main purpose of the letter this paragraph clearly alerted, or should have done I think, the Secretary of State to the likelihood that a decision based upon financial implications without consideration of relative land costs would be ill founded and, therefore, unjust to Sir Brandon. The raising of the matter of land costs is nowhere, as I understand the decision letter, answered by it directly or, by implication, within it. The assumption must be, therefore, that the Secretary of State, in refusing to re-open the inquiry or to delay his decision, regarded the financial implication from the standpoint of construction costs and no other.

It was submitted to us that the foregoing paragraph of the solicitor's letter could not possibly have indicated to the Secretary of State that Sir Brandon was suggesting that hope value inter alia was being referred to by the words "material questions of relative land costs" . As already indicated, I do not agree. The Secretary of State has the benefit of advice from senior civil servants well versed in such matters as compulsory purchase and planning. I am not persuaded that they,knowing, of course, that there were material unresolved planning applications before them, did not appreciate that it was being suggested that hope value should be taken account of.

In any event, I do not think it required this paragraph to introduce this financial factor into the mind of the Secretary of State. He was so concerned about the financial implications as to found his decision upon them. That being so, how could he neglect to consider something so fundamental as the cost of the acquisition of land upon which the sewage plant was to be constructed? If this kind of decision were being taken in the commercial world I venture to think that the cost of land would have been very high on the agenda. If the Secretary of State did have it on his agenda – he has failed to prove that – he may have come to the same decision as that which is being challenged, but there is no evidence whatsoever that he gave it so much as a passing thought.

Paragraph (vii) of the decision letter is noteworthy in this connection. He therein contended that all submissions made to him after the close of the enquiries was sufficiently covered by evidence already before him. The plain fact undoubtedly is that no evidence of comparative land

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costs was before him. This I take to be a clear indication of his neglect to take account of them.

Does the Secretary of State's failure to enquire into and to consider the full implications of the cost of land acquisition invalidate his decision, bearing in mind the planning and all other relevant considerations? Lord Hooson submits his failure to do so is fatal to the decision – cost of land acquisition was overwhelmingly the main factor to be considered if financial considerations governed the decision. He goes further, and asserts that it was wrong in principle in the exclusive context of finance to prefer the CPO site unless there were overwhelming reasons for this, e.g., a gross disparity in costs which the difference involved in the construction of the plant could not properly be said to amount to.

For the Secretary of State and the Welsh Water Authority it is submitted that he was not called upon to enquire into the cost of the acquisition of land, and that it was reasonable for him and therefore a proper exercise of his discretion to determine the matter as he did.

Mr. Simon Brown conceded, however, that,if there was a glaring lacuna in the evidence and the considerations required to properly found a decision which is capable of being clarified without delaying the decision, the Secretary of State may be "Wednesbury" unreasonable if he does not make enquiries. In other words, he must be shown to have acted perversely.

In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority ands if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.

I have come to the conclusion that his decision should not be upheld. A vital consideration was not enquired into, in my view. It was, therefore, left out of account in the exercise of the Secretary of State's discretion. The hope value of parts of the Miskin lands should not have been disregarded as it was, especially seeing that there was evidence of its possible existence. An enquiry into it would not, it seems to me, have delayed the decision by much time, if any. To fail to make that enquiry was a glaring omission going to a fundamental consideration.

For these reasons I, too, would allow this appeal.

LORD JUSTICE FOX:

I approach this case on the basis that the propriety of the Secretary of State's decision must be

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determined by reference to the facts as they existed at the date when he gave the decision. No argument to the contrary was addressed to us. Indeed, Lord Hooson, as I understood him, accepted that basis as correct. That concession was, in my view, rightly made. I see no ground upon which the propriety of the Secretary of State's decision in November 1978 can be determined by reference to an event occurring over three years later (i.e., the Secretary of State's letter of 12th March 1982 indicating that he was prepared to permit industrial development subject to conditions).

The principal matter raised by the appeal is what attitude the Secretary of State should have taken to the question of comparative acquisition costs. The matter was not considered at all at the public inquiry where the investigation of comparative costs was directed to the costs of construction. The Inspector records, however, in paragraph 263(a) of his Report: "All these lands are in the ownership of Sir Brandon or his children's Trustees. Gwern-y-Gedrych is no longer being actively farmed and such land as the Authority might require is "on offer" at existing use value." Gwern-y-Gedrych is the alternative site offered by Sir Brandon. Are the appellants now estopped from raising the point? At the date when the Secretary of State gave his decision there had already been three public inquiries. The opponents of the Order were not lacking in professional advice or, I think, in determination in their resistance to the confirmation of the Order. They had every opportunity and incentive to raise the matter. In my view, how. ever, there is no question of estoppel here. The Secretary of State's duty was to review the position in the light of all relevant considerations. He had a duty to direct his mind to the material questions and to take reasonable steps to inform himself. If the Secretary of State fails to discharge that duty I do not think that the landowner is precluded from complaining merely because he failed to see the point at an earlier stage. The Inquiry is not litigation, it is merely an aid to the ascertainment of the material facts and issues. It may well be that, in determining whether the Secretary of State has directed his mind to the right questions and has taken reasonable steps to inform himself, the court should have regard to what was, at the time the Secretary of State made his decision, common ground or unquestioned between the parties. Thus, where if at the Inquiry (a) the question of cost was in issue, (b) Gwern-y-Gedrych was on offer at existing use value, (c) it was then speculative whether the possibility of industrial development would materially increase land values and (d) the cm,. plainants put forward no case that the land values were materially increased by that possibility, it might be said that the Secretary of State could reasonably refer, without further inquiry, that the mere possibility of industrial development being permitted consequent upon the planning applications had no material effect upon land values. But, if that proposition is correct (and, as I mention later, I feel doubt as to what the impact of the applications on value might be), it is not, in fact, the situation which faced the Secretary of State when he made his decision. By that time he had received the letter from Sir Brandon's solicitors dated 20th October 1978. There are a number of passages in that letter to which I should refer. Thus, the letter in its opening paragraph states:

> "We understand that the report of the Inspector following the public inquiry which closed in December 1977 has been submitted to you and the purpose of this letter is to request that

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> this inquiry be re-opened before a decision is taken to enable certain matters which arose since the inquiry closed or were not placed before the inquiry to be fully and openly investigated". The matters thus referred to are set out in ten numbered paragraphs.
>
> In paragraph 1, after a reference to the applications for planning permission for industrial development, it is stated: "Your decision on the CPO should not, therefore, we submit with respect, be made until these two applications have been considered."

Paragraph 4 is in the following terms: "This obvious potential of the CPO site for industrial purposes if the sewage works were not required to be built on it introduced material questions of the relative land costs into the choice of sewage works sites. These issues cannot be resolved until the nature of the industrial development of the area has been decided but are likely to be a material factor which ought to be taken into consideration before the Compulsory Purchase Order is confirmed. This matter was not considered at all during the inquiry."

Finally, in paragraph 10, the letter states: "Our client considers that for these and other reasons the conclusions of the Secretary of State following the public hearing into the applications to develop the red and the green land should be available before the crucially relevant question of the choice of site for the sewage works can be determined. … It would, we submit be contrary to natural justice to announce a precipitate decision in favour of the CPO site before the industrial site hearings have taken their proper course and decisions have been taken."

There is no doubt that the main object of this letter was to ask that the Secretary of State re-open the inquiry or defer a decision upon the Compulsory Purchase Order until the planning applications had been determined. The Secretary of State considered that request and he rejected it. He was perfectly entitled to do so.

Whilst I think that the main object of the letter was as I have indicated, the provisions of paragraph 4 are, I think, of wider effect and are important. The paragraph asserts that the potential of the CPO site for industrial purposes introduced material questions of comparative land costs which had not previously been considered. It is true that the paragraph also states that "these issues cannot be resolved until the nature of the industrial development of the area has been decided" , but it also states that those issues "are likely to be a material factor which ought to be taken into consideration before the Compulsory Purchase Order is confirmed" . In my view, paragraph 4 must be read as bringing to the attention of the Secretary of State the contention that the possibility of industrial use now introduced material factors of comparative land costs which should be taken into consideration before the Order was confirmed. That condition replaced the attitude adopted by Sir Brandon at the Inquiry.

The Secretary of State, in confirming the Order, accepted, in general, the conclusions and

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recommendations of the Inspector. In paragraph 11(v), the Secretary of State says:

> "Apart from the specific issues referred to in paragraphs 11 (i)–(iv) above the Secretary of State has also carefully considered and accepts his Inspector's general conclusions in relation to the agricultural, environmental, access and highway implications. He also accepts the Inspector's assessment of the financial implications contained in the conclusions to the Report of the second reopened Inquiry concerning the Water Authority's proposed development and the cost comparison with the sites advanced by Sir Brandon Rhys Williams."

The Inspector had reported (see paragraph (xviii) of the Decision Letter:

> "(xviii) Mr. Shiell's assessment of the engineering *evidence* accompanies this report and is wholly accepted by me. It is to be expected that however hard promoters of different schemes may attempt to take a disinterested view they will tend s perhaps subconsciously, to maximise the difficulties of the rival site and minimise the problems of the one they favour. The truth often lies somewhere between. The manner in which Mr. Shiell has picked a scrupulous path through the various elements of the alternative schemes strikes me as being fair, rational and comprehensive. The result of that impartial *analysis* suggests that, compared with the CPO site, the construction of similar treatment works would cost some £230,000 more on Site 1, and some £320,000 more on Site 2.
>
> "(xix) Sir Brandon is right again to insist that costs are not the whole story, and that other factors are also important and need to be placed in the balance. The question which therefore arises is whether those other factors, either individually or collectively, weigh so heavily against the CPO site that the considerable additional expenditure likely to prove necessary at Sites 1 or 2 should be accepted in the wider public interest. Having carefully considered the origins of the dispute, the FFB Report, and the evidence of the inquiries relating to all those matters, I am convinced that they do not. I therefore propose to make a favourable recommendation in respect of a modified CPO site."

It appears, therefore, that the Inspector regarded construction cost as the determining factor and that the Secretary of State accepted that. But, if the increased cost of construction on the alternative site was a determining factor on the figures available to the Inspector, that was a circumstance which could be altered if in fact the cost of acquisition of the alternative site was much lower by reason of the beneficial offer made by Sir Brandon to sell the alternative site at existing use value coupled with the possibility of a large increase in value of the Compulsory Purchase Order site consequent upon the likelihood of industrial development.

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So the position is this. The Secretary of State decided in favour of the Compulsory Purchase Order on the basis of the increased construction costs if the alternative site were used. The letter of 20th October 1978, however, asserted that a new factor was introduced into the equation, namely comparative acquisition costs. The Secretary of State was bound to consider that. In paragraph 11(viii) of the Decision letter he states:

> "All representations received after the close of the Inquiries have been carefully considered. It has been concluded, however, that there is nothing contained therein which is not sufficiently covered by evidence already before the Secretary of State."

That statement does not *answer* the present problem. We have no reason to suppose that the Secretary of State ever had any evidence of comparative land costs in front of him. He does not appear to have received any at the Inquiries and there is nothing to suggest that he obtained any from any other source. I do not think it is sufficient to say that nobody suggested at the Inquiry that the difference in value was significant and that the making of the planning application in 1978 left the position as to industrial user as speculative as it was before the planning applications were made. So far as the Inquiry is concerned, the portance of the letter of 20th October 1978 is that it raised a new contention which, as the letter itself stated, was not considered at all during the Inquiry. That being so, I do not think that the fact that no point was taken at the Inquiry can be a reliable guide to the question of value at the time of the Inquiry. If it was not, then the fact that the planning position remained uncertain still does not give a reliable guide to value. I am not, in any event, satisfied on any evidence before us whether the making of the applications might not have affected value. Dealers in land might be influenced by applications made by major local landowners and the Land Authority for Wales.

I can only conclude that, in a case where the Secretary of State decided to confirm the Compulsory Purchase Order primarily on considerations of cost, and where shortly before his decision he was asked to take account of land acquisition costs, he confirmed the Order without material as to what the latter costs were. Accordingly, I do not think that he can have given the proper degree of consideration to the overall question of cost. The onus of establishing that a Compulsory Purchase Order has been properly made must be on the acquiring authority. The question of cost was a material issue. One of the elements in the total cost was land acquisition cost. I am not satisfied that the Secretary of State had adequate material to judge the latter cost when he made his decision. I would allow the appeal.

THE MASTER OF THE ROLLS:

The judgment is the appeal is allowed; the order is quashed accordingly.

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MR. HOWELL: May I respectfully invite your Lordships to allow the respondents their costs here and below and that the costs of Mr. Prest and Mr. Straker be taxed on a trustee basis?

THE MASTER OF THE ROLLS: You are asking for the costs against both the Welsh Water Authority and the Secretary of State?

MR. HOWELL: My Lord, yes.

LORD JUSTICE FOX:

Should they get their costs on a trustee basis? No doubt they can get any costs they do not recover out of the fund, but I think, so far as any other costs are concerned, it is just ordinary litigation.

THE MASTER OF THE ROLLS:

It is just ordinary litigation; it should not be anything special. When a case is ordinary litigation they get ordinary costs, do they not?

LORD JUSTICE FOX:

They can only indemnify themselves out of the fund

MR. HOWELL: It is certainly not a case about administration of the trust.

LORD JUSTICE FOX: As trustees, if they engage in proper activities to preserve the trust property, any expenses in respect of that can be recovered from the trust fund.

MR. HOWELL: My Lord, certainly.

THE MASTER OF THE ROLLS:

Let us hope you will get all your costs without bothering the fund about it. If they are properly taxed it seems to me that all the expenditure which you have incurred, if it is proper and reasonable – therefore, you ought to get your costs from the other side. Mr. Brown, is there any question about that?

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MR. BROWN: My Lord, none at all, provided, of course, the court does not make any special order as to costs to reflect the status as trustees of certain of the applicants. I gather the court is not minded to make such special order, so as to that I say nothing.

THE MASTER OF THE ROLLS: Have you anything to say about that, Miss Booth?

MISS BOOTH: My Lord, no. We chose to be separately represented on the last occasion and I cannot resist that application.

MR. BROWN: My Lord, I am instructed to make application to your Lordships to grant leave to appeal to the House of Lords.

THE MASTER OF THE ROLLS: More and more delay: it is about time these sewage works were constructed.

MR. BROWN: My Lord, certainly. It is obviously an important decision in many respects and, indeed, no doubt the Secretary of State for Wales and other depart. ments of the Crown wish to consider certain matters. I am particularly concerned with some aspects of the judgments of this court which are of a wider and more general application than merely to the instant appeal. My Lords, the two particular matters are the nature and extent of the Secretary of State's investigatory function – I use, I hope, the language of my Lord, Lord Justice Watkins – and, secondly, the correct approach to the question whether or not to confirm a compulsory purchase order, to what extent the balance must fall down decisively in favour of acquisition. There is the other question as to fresh evidence but, as I understand the judgments of this court, your Lordship is in a minority on that and perhaps, even in your Lordship's judgment, it is an obiter dictum expression of view. That is the application I am instructed to make.

THE MASTER OF THE ROLLS: What do you say about it, Mr. Howell?

MR. HOWELL: My Lord, obviously the question of the duty of the Secretary of State to make investigations is a point of general application. All that I would say is that all three of your Lordships' judgments

THE MASTER OF THE ROLLS: What seems to me at the moment is the urgency of the work being got on with. If this case goes to the House of Lords, goodness knows how long it will take. Nothing will be done and there it is.

MR. HOWELL: My Lord, it certainly will not be in the public interest that the construction of the sewage works be further delayed.

THE MASTER OF THE ROLLS: We refuse leave. So the appeal will be allowed with costs here and below.

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I can only conclude that, in a case where the Secretary of State decided to confirm the Compulsory Purchase Order primarily on considerations of cost, and where shortly before his decision he was asked to take account of land acquisition costs, he confirmed the Order without material as to what the latter costs were. Accordingly, I do not think that he can have given the proper degree of consideration to the overall question of cost. The onus of establishing that a Compulsory Purchase Order has been properly made must be on the acquiring authority. The question of cost was a material issue. One of the elements in the total cost was land acquisition cost. I am not satisfied that the Secretary of State had adequate material to judge the latter cost when he made his decision. I would allow the appeal.

Order: Appeal allowed with costs here and below. Leave to appeal to the House of Lords refused.

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determination by the commissioners that any area greater than one acre would be proper in this case, although I understand that the Crown is prepared to concede that the gardens, which do exceed the one acre, do qualify for relief—a house which is sited well over an acre's worth of land away from the main residence and separated from it by a paddock which is not part of the ground so allowed could nevertheless be deemed to be part of it. It seems to me that that really is a totally absurd conclusion. That reinforces my judgment but is not in any way a foundation for it.

Appeal allowed.
Case remitted to commissioners.
By agreement Crown to pay taxpayer's costs.

Solicitors: Solicitor of Inland Revenue; Coole & Haddock with Cotchings, Horsham.

[Reported by HARRIET DUTTON, Barrister-at-Law]

[COURT OF APPEAL]

*CHILTON v. TELFORD DEVELOPMENT CORPORATION

1986 Dec. 8 Purchas, Neill and Balcombe L.JJ.

Compulsory Purchase—Compensation—Relevant date—Notice of entry served in respect of area subject to compulsory purchase order—Acquiring authority taking possession of land in individual parcels—Whether date of first entry proper date for assessment of compensation—New Towns Act 1965 (c. 59), Sch. 6, para. 4(1)(2)

The acquiring authority made a compulsory purchase order under section 7 of the New Towns Act 1965 in respect of 67·87 acres of agricultural land which was owned and occupied by the claimant. On 3 May 1978 the authority served on the claimant a statutory notice of entry relating to the whole of the land. However, the authority actually acquired the land by taking physical possession of it in individual parcels on eight separate dates from 5 June 1978 to 4 October 1980, and during that period the claimant remained in occupation of the unacquired parts. On the authority's notice of reference, the Lands Tribunal held on a preliminary point that for the purposes of calculating the amount of compensation for disturbance and interest on the purchase price payable to the claimant, under the provisions of paragraph 4(2) of Schedule 6 to the New Towns Act 1965,[1] there were eight valuation dates, namely, each of the dates on which the authority entered into possession of the parcels of land.

On the claimant's appeal:—

Held, allowing the appeal, that the Compulsory Purchase Act 1965 and the New Towns Act 1965 were statutes which

[1] New Towns Act 1965, Sch. 6, para. 4(1)(2): see post, p. 876C–D, E–G.

deprived the citizen of property rights by the compulsory acquisition of land and therefore the provisions dealing with the calculation of compensation and interest were intended by Parliament to protect the owner or occupier who was being dispossessed, and were to be construed in favour of the owner or occupier; that where a statutory notice to enter was served by an acquiring authority on an owner or occupier, the first entry on to any part of the land described in the notice constituted entry on the land under the powers conferred by paragraph 4(2) of Schedule 6 to the New Towns Act 1965; and that, accordingly, the claimant was entitled to compensation calculated by reference to the date on which the acquiring authority took possession of the first parcel of land (post, pp. 878E–G, 879B–D, F, 880C–E).

Per Neill L.J. An acquiring authority may, if so minded, serve a series of notices of entry and can enter on to the land described in each of such notices in accordance with a programme which suits its requirements (post, p. 880B–C).

No cases are referred to in the judgments.

The following cases were cited in argument:

West Midland Baptist (Trust) Association Inc. v. Birmingham Corporation [1970] A.C. 874; [1969] 3 W.L.R. 389; [1969] 3 All E.R. 172, H.L.(E.)

Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission [1928] A.C. 492, P.C.

Washington Development Corporation v. Bamblings (Washington) Ltd. (1984) 83 L.G.R. 561, C.A.

APPEAL by case stated from the Lands Tribunal.

By a decision given on 1 April 1985, the member of the Lands Tribunal, Mr. V. G. Wellings Q.C., determined a preliminary point on a notice of reference dated 3 January 1983 by the acquiring authority, Telford Development Corporation, and held that on the agreed facts there were eight valuation dates, namely the specific dates on which the authority entered into possession of the several parts of the land, for the purposes of calculating compensation for disturbance and interest on the purchase price payable to the claimant, Mr. A. R. H. Chilton, in respect of the compulsory purchase of 67.87 acres or thereabouts of land known as Trench Lodge Farm, Trench, Telford, Shropshire.

On the claimant's application pursuant to section 3(4) of the Lands Tribunal Act 1949 the Lands Tribunal stated and signed a case for the decision of the Court of Appeal. The agreed facts included, inter alia, that the claimant was the freehold owner of the land and had at all material times farmed the land as owner-occupier. On 10 July 1973 the acquiring authority made the Telford Development Corporation (Hadley Park No. 1) Compulsory Purchase Order 1973 under section 7 of the New Towns Act 1965. The order was confirmed by the Secretary of State for the Environment on 10 March 1978 and related to the 67·87 acres and other land not belonging to the claimant. On 3 May 1978 the authority served on the claimant a notice to treat and a notice of entry relating to the whole of the 67.87 acres.

The acquiring authority went into physical occupation of individual parcels of the 67·87 acres in the manner set out in paragraph 6 of the agreed facts, namely: 4·62 acres on 5 June 1978; 0·07 acres on 1 July 1978; 3·10 acres on 18 July 1978; 12·24 acres on 4 September 1978; 4·9

acres on 6 December 1978; 3·95 acres on 1 January 1980; 1·60 acres on 1 July 1980 and 35·501 acres on 4 October 1980. A

After 5 June 1978 the claimant remained in occupation of each parcel, other than the 4·62 acres, until such time as the acquiring authority entered into physical occupation of it. The agreed value of the freehold interest in the 67·87 acres was £220,000 exclusive of disturbance, interest, professional fees, farm loss or home loss payments. The sum of £220,000 had been paid to the claimant save for the sum of £22,000 which was paid into court. The cost of preparing the claim and surveyor's fees in respect of it was agreed to be £2,027·50, which sum had also been paid. B

The questions upon which the decision of the Court of Appeal were sought were: (1) whether the Lands Tribunal was correct in law in determining as the acquiring authority contended, that for the purposes of calculating compensation for disturbance and interest on the purchase price, the authority should be treated as having taken possession of each individual parcel of land on the date on which the authority took actual physical possession of it. (2) Whether the Lands Tribunal erred in law in not adopting the claimant's contention, that for the purposes of calculating compensation for disturbance and interest on the purchase price, the acquiring authority should be treated as having taken possession of the whole 67·87 acres on 5 June 1978, being the date of the first entry on to that land following the notice of entry dated 3 May 1978 relating to the whole property, the subject of the notice to treat of 3 May 1978. (3) Whether the Lands Tribunal was correct in law to find on the agreed evidence that there was no reason to infer that the authority either purported to or did grant a licence to the claimant to remain in possession of part of the land. C D E

Anthony Anderson Q.C. and *Robert Fookes* for the claimant.
Robert Carnwath Q.C. and *Alice Robinson* for the acquiring authority.

PURCHAS L.J. This is a case stated by the Lands Tribunal at the request of Mr. A. R. H. Chilton, the claimant, under section 3(4) of the Lands Tribunal Act 1949. The single member of the tribunal had been asked to determine a preliminary point of law, and he did so on 1 April 1985. F

The point arises out of the compulsory purchase and compensation provisions contained in the New Towns Act 1965 and the Compulsory Purchase Act 1965. Although the former Act has been repealed by the New Towns Act 1981, we are told by counsel that the corresponding provisions in the later Act are the same in most relevant particulars, and that the point is one of some interest generally, beyond the interests of the parties particularly involved in this reference. G

The point raises a consideration of the relevant date, or dates, of entry and taking possession of land by the acquiring authority for the purpose of compensation. The acquiring authority involved is the Telford Development Corporation. The question posed was summarised in the decision of the single member in these words: H

> "Possession of the land acquired was taken by the acquiring authority in several parcels and the preliminary issue is concerned with the question whether there is a single date, namely, the date on which possession of the first parcel was taken, or several dates

A namely, the individual dates on which possession of the several parcels was taken, which is or are material for the purposes of valuation."

The parties had agreed the facts so far as they were relevant; they are as follows: The land of which the claimant at all material times was owner-occupier, and which he farmed, consisted of 67·87 acres or B thereabouts of agricultural land at Trench Lodge Farm, Trench, Telford, Shropshire:

"On 10 July 1973 the acquiring authority made the Telford Development Corporation (Hadley Park No. 1) Compulsory Purchase Order 1973 under section 7 of the New Towns Act 1965. The order was confirmed by the Secretary of State for the C Environment on 10 March 1978. The order related to the 67.87 acres and other land . . ."

required by the developing corporation for their activities under the New Towns Act 1965.

A notice to treat in accordance with the statutory provisions was served upon the claimant, and dated, 3 May 1978; it related to the D whole of the 67.87 acres. On the same date the acquiring authority served on the claimant one notice of entry relating to the whole of the 67·87 acres.

As the history evolved, the acquiring authority went into physical occupation of individual parcels of the whole area over a period of 28 months. The first date of entry, 5 June 1978, involved 4·62 acres; E thereafter there were three more areas involved and entries made, until 6 December 1978, which I mention specifically because in respect of that area, 4·9 acres, the acquiring authority purported to serve a "revised notice." No point has been taken on this, and for the purposes of this appeal it can be ignored. It is common ground that the "revised notice" was of no formal effect.

The remaining acts of taking possession and entering occurred, as to F 3·95 acres, on 1 January 1980; as to 1·60 acres on 1 January 1980, and then an area which is over half the whole of the area involved, 35·501 acres, on 4 October 1980. After 5 June 1978 in fact the claimant remained in occupation of the parcels not previously entered, until such time as the acquiring authority in fact entered into physical occupation. Saving only the area of 4·9 acres entered on 6 December 1978, there is G no evidence or information as to any further sort of notice, but it must be assumed that there was some kind of communication between the parties. That is how things progressed.

The dispute, as is clear from the question posed, relates to the effective date of entry and taking possession for the purposes of compensation. But the particular statutory provisions which must be considered relate mainly to inhibit or restrict the exercise of the powers H to acquire compulsorily by way of granting some limited protection to the owner or occupiers involved.

In very short summary, and by way of introduction, the statutory procedure involves two main steps: first of all, the obtaining of the compulsory purchase powers; there are provisions in that process whereby the landowner or occupier can oppose the confirming of the order; and secondly, those powers having been confirmed, how they are to be exercised. They are exercised subject to these restrictions: first of

all, there must be a notice to treat served under section 5 of the Compulsory Purchase Act 1965; then, that having been done, there are further restrictions on the acquiring authority preventing that authority from entering upon the land without giving at least 14 days' notice.

It is now convenient to turn to the statutory provisions with which we are concerned. I start by reading section 12(1) of the New Towns Act 1965:

> "Part I of the Compulsory Purchase Act 1965 shall apply in relation to the acquisition of land under this Act subject to any necessary adaptations and to the provisions of Part I of Schedule 6 to this Act."

Section 11(1) of the Compulsory Purchase Act 1965 is replaced by paragraph 4 of Schedule 6 to the New Towns Act 1965, the relevant provisions of which are:

> "(1) If the acquiring authority have, in respect of any of the land, served notice to treat on every owner of that land, they may at any time thereafter serve a notice—(*a*) on every occupier of any of that land, and (*b*) on every person (other than such an occupier) . . . describing the land to which the notice relates and stating their intention to enter on and take possession thereof at the expiration of such period (not being less than 14 days) as may be specified in the notice."

I pause to emphasise the words "describing the land to which the notice relates;" that is the notice of intention to enter. The period is one of not less than 14 days, and therefore envisages periods of greater notice if appropriate. Paragraph 4(2) of Schedule 6 reads:

> "At the expiration of the period specified in such a notice (or, where two or more such notices are required, and the periods specified in the several notices do not expire at the same time, of the last of those periods to expire), or at any time thereafter, the acquiring authority may enter on and take possession of the land to which the notice or notices relate without previous consent or compliance with section 11 of the Compulsory Purchase Act 1965, but subject to payment of the like compensation for the land of which possession is taken, and interest on the compensation agreed or awarded, as they would have been required to pay if those provisions had been complied with."

Paragraph 4(2) of the Schedule refers first of all to the cases where there may be more than one occupier or owner in respect of whom notices of intention to enter must be served, but gives power "at any time thereafter . . . [to] enter on and take possession of the land to which the notice or notices relate without previous consent" and then "or compliance with section 11 of the Compulsory Purchase Act 1965, but subject to" the provisions that interest will run from the date of entry and taking possession.

The member of the Lands Tribunal considered the arguments of counsel which, generally speaking, were in line with the arguments they have put before us. Mr. Anderson argued to the effect that the notice of entry of 3 May related to the whole of the land and for that reason, when the acquiring authority on 5 June 1978 first took possession of a part of the land, it must be treated as having done so in the name of the

whole; he developed his argument along those lines, saying also that any other interpretation of the statute would lead to doubt, confusion and hardship, and in particular relating to identifying not only the area involved if part of the land in respect of which the notice of entry was served was in fact entered, and the unfairness that would be involved, as could be said in this case, by a long delay as to a substantial part of the land under threat. I do pause to comment, however, that counsel have been scrupulous to point out that it is not alleged that there has been either unfairness or difficulty in this case; the matter comes before us essentially as one of construction of the statute and, as Mr. Carnwath submitted, merely construction of the statute on the accepted and established facts of what indeed happened in this case.

Mr. Carnwath submitted before the single member that there was no basis in law for the proposition that the original entry into possession of part of the land was to be treated as entry in the name of the whole. There was no factual basis on the agreed statement of facts for inferring the grant of a licence by the authority in respect of the parts which, after 5 June, continued in the occupation of the claimant. I pause to emphasise that in fact the claimant did remain farming the land which had not been occupied by the acquiring authority. Upon one of the two alternative assessments of compensation which had been agreed between the parties, credit is given for what is described, probably inaccurately, as mesne profits to relate to the benefit received by the claimant by his continued occupation of the land, if the contentions of Mr. Anderson are right, namely that the claimant is entitled to compensation, and interest thereon, to run from 5 June 1978 in respect of the whole of the land involved in the notice of entry.

The single member accepted Mr. Carnwath's argument, and said:

> "In my judgment, on the agreed facts there is no reason to infer that when the authority took possession of part of the land on 5 June 1978 they did so in the name of the whole. Equally, notwithstanding the use of the expression 'mesne profits' (an expression more appropriate to a tenancy than to a licence) there is no reason to infer that the authority purported to grant a licence to the claimant to remain in possession of the remainder of the land. In my opinion, in the present case, there are eight valuation dates, namely, the specific dates on which the authority entered into possession of the several parts of the land as set out in agreed facts [paragraph 6]. I answer the preliminary issue accordingly."

The questions stated for this court are threefold:

> "1. Whether I was correct in law in determining as the [authority] contended that for the purposes of calculating compensation for disturbance and interest on the purchase price, the acquiring authority should be treated as having taken possession of each individual parcel of land on the date on which the acquiring authority took actual physical possession of the same . . .
>
> "2. Whether I erred in law in not adopting the [claimant's] contention that for the purposes of calculating compensation for disturbance and interest on the purchase price, the acquiring authority should be treated as having taken possession of the whole 67·87 acres on 5 June 1978, being the date of the first entry onto that land following the notice of entry dated 3 May, 1978 relating to the whole property the subject of the notice to treat of 3 May 1978.

"3. Whether I was correct in law to find on the agreed evidence no reason to infer that the authority either purported to or did grant a licence to the [claimant] to remain in possession of part of the land."

The statutory provisions which I have already set out do not give a simple definitive answer to the two contending interpretations. It is perfectly right to say that nowhere in Schedule 6, does one find anything other than the expression "intention to enter on and take possession of the land." Paragraph 4(1) does refer to "intention to enter on and take possession" of the land, and paragraph 4(2) refers to "the land of which possession is taken" shall carry interest at the rate. So the statute refers to taking possession (paragraph 4(2) of Schedule 6) or "intention to enter on and take possession thereof" (paragraph 4(1) of Schedule 6). In addition to that there is no provision providing a period during which a notice of intention to enter should lapse. Subject to reasonable exercise of power, which has not been argued before us, if the acquiring authority took no step in relation to any part of the land, albeit that they had served a notice of intention to enter, then the provisions of paragraph 4(2) of Schedule 6 remain as a threat to the enjoyment of the land, which can be determined at any time without notice.

It must of course be remembered that before the stage of serving a notice of intention to enter and take possession, the acquiring authority has already been obliged to serve a notice to treat, which must incorporate the whole of the land, subject to the notice of intention to enter; but of course it may, and very frequently does, extend to other lands in respect of which a notice of intention to enter will not have been served. But this does afford a remedy to the owner of the land who can, in the absence of agreement as to compensation, refer to the Lands Tribunal, but his remedies are not immediately or easily available.

So one is left here with a provision which has on its face an open-ended power granted to the acquiring authority to act or not to act. It may at least be questioned whether that was entirely the intention of Parliament in enacting what are essentially provisions for the protection of an owner or occupier who is subjected to the necessary, but nevertheless draconian, powers of the acquiring authority to dispossess him of his title and occupation of his land.

For my part, in approaching the construction of these statutory provisions I have two concepts in mind: first, to give to this part of the legislation, if it is open to do so, a purposive construction, bearing in mind the general considerations and need for these provisions. Secondly, to bear in mind that it is a statute which is depriving the citizen of his rights in property and his title, and the right to enjoy occupation of his lands, or perhaps somebody else's lands.

So, looking at section 12 of the New Towns Act 1965, and Schedule 6, I pose the question: What is the purpose of requiring the acquiring authority to give notice of not less than 14 days of an intention to enter on and take possession of the land? What it cannot cover, in my judgment, is a contingent intention, not formally adopted, and not in fact carrying with it the intention to act upon it within a reasonable time. Otherwise, the statute provides that the acquiring authority does not have to serve a notice of intention to enter in respect of the whole of the land, subject to the notice to treat, or of the compulsory purchase order itself as relates to the particular owner or occupier; and that they

may serve, as and when necessary—which I would construe as meaning as and when they form the intention necessary to bring into effect the provisions of paragraph 4(1) of Schedule 6—the intention to enter on and take physical possession thereof.

I am conscious of the argument to the contrary, that there is also no express reference in this statute to give effect to the concept that entry upon part of the land, subject to the notice of intention to enter, should be deemed to constitute entry of the whole, and it would not have been beyond the wit of man to have put that in the drafting of the statute. But, choosing between the two alternative approaches to this legislation, and I hope fairly recognising the lacuna which exists for practical purposes in the day-to-day carrying out of these exercises, I adopt the construction which is favourable to the owner and occupier of the land, because these sections, although incidentally dealing with calculation of compensation and interest, were primarily enacted for the protection of such a person.

I would therefore construe the statute in that light, and that would bring me to the conclusion that the answers to the questions posed by the single member for our consideration are that with regard to the first question the answer must be "No"; the answer to the second question must be "Yes," and that leaves the answer to the third question still to be considered. For my purposes the substance of this reference is dealt with by answering the first two questions. Whatever the status may be, whether as licensee or some other formally acquired status as between the parties involved, will depend from case to case, from attitude to attitude adopted by the parties concerned—that is, the landowner or occupier and the acquiring authority—and I do not consider that any formal general answer to question 3 will further the matter in any useful way at all. If I had to choose on the facts of this case, I would have thought that Mr. Chilton was present there as a bare licensee with few or no rights, bearing in mind that under the statute he is not entitled to receive any notice of change of intention or of the termination of his licence; nor is he entitled to any description of the land which the acquiring authority will choose to possess and enter on no notice. That is a further argument for supporting the conclusion I have reached on the interpretation of the statute namely, as I emphasised when reading paragraph 4 of Schedule 6, it does specifically require the acquiring authority to describe the land which it intends to enter and of which it intends to take possession. By adopting the construction for which Mr. Carnwath in his admirable submissions contends, it would merely defeat the object of that precaution which has been put in the Schedule for the protection of the landowner and occupier.

I would therefore answer question 1 and 2 in the way that I have described, and I would not given any formal answer to question 3.

NEILL L.J. I agree. I add a few words of my own only because we are differing from the construction given to the statutory provisions by the member of the Lands Tribunal.

It was argued on behalf of the acquiring authority that for the purpose of paragraph 4(2) of Schedule 6 to the New Towns Act 1965, they entered on and took possession of the parcels of land set out in paragraph 6 of the agreed facts on the several dates therein set out. It was further argued that for the purpose of calculating the interest to be

paid on the compensation for the land, these several dates constituted the time of entry on the individual parcels.

However, it seems to me, with respect, that these arguments do not pay due regard to the provisions of paragraph 4 of Schedule 6. It is clear from this paragraph, (a) that a notice of entry may relate to part only of the land comprised in the relevant notice to treat; (b) that any notice of entry must describe the land to which it relates; (c) that the notice of entry must state the intention of the acquiring authority to enter on and take possession of the described land at the expiration of a specified period; and (d) that at the expiration of the period specified in the notice or at any time thereafter, the acquiring authority may enter on and take possession of that land.

It follows, therefore, that an acquiring authority may, if so minded, serve a series of notices of entry and can enter on to the land described in each of such notices in accordance with a programme which suits its requirements. But where, as here, a single notice of entry is given, it seems to me that, save perhaps where the de minimis rule applies, a subsequent entry on to the land, or any part of the land, is an entry made in accordance with the permissive power given in paragraph 4(2) of Schedule 6, and is an entry on the land described in the notice to enter. The first entry on to the described land constitutes the entry on to the described land foreshadowed by the statutory notice; the date of that entry is the time of entry for the purpose of the interest provisions contained in paragraph 4(2).

For these reasons, as well as for those given by Purchas L.J., I too would answer the questions in the manner in which Purchas L.J. has proposed.

BALCOMBE L.J. I agree, for the reasons which have been given by Purchas and Neill L.JJ., that this appeal should be allowed, and I do not wish to add anything further.

Appeal allowed with costs.
Leave to appeal refused.

Solicitors: Treasures & Rivers Wyatt, Gloucester; J. C. H. Bowdler & Sons, Shrewsbury.

S. H.

R. v. SECRETARY OF STATE FOR THE ENVIRONMENT, Ex p. LEICESTER CITY COUNCIL

QUEEN'S BENCH DIVISION (McCullough J.): January 29, 1987

Town and country planning—Compulsory purchase—Council made order to purchase land for development—Council undertook not to enforce order if owners agreed to make financial contributions to building of sewers and road—Secretary of State refused to confirm order—Meaning of section 112(1)(a) Town and Country Planning Act 1971—Whether section required compulsory acquisition to be required—Whether section required only that land be required for development—Whether improper purpose to confirm order as means of persuading owners to contribute financially to development

Leicester City Council made a compulsory purchase order for land comprising 19 plots of privately owned land. Development of the land would require the construction of new sewers and a road. The council gave a global undertaking that they would not enforce the compulsory purchase order in respect of the separate plots provided that the owners withdrew their objections to the order and made an appropriate contribution, to be determined by the city engineer, towards the cost of providing the sewers and the road. The Secretary of State refused to confirm the order on the grounds that (i) as the council had indicated that they would not compulsorily acquire the land if the objectors agreed to make financial contributions the lands were not required to be compulsorily acquired by the council for the purpose of redevelopment and (ii) the power to confirm the order would be used for an improper purpose namely as a means of persuading the owners of the land to make financial contributions. The council applied for judicial review of the decision of the Secretary of State.

Held, dismissing the application, on a true construction of section 112(1)(*a*) of the Town and Country Planning Act 1971, the section required that the land must be required and required the need for its acquisition by the local authority in order to secure its development. Consequently, the Secretary of State had not erred in law when he refused to confirm a compulsory purchase order on the grounds that where the local authority would not compulsorily acquire the land if the owners entered into an agreement with the authority to make financial contributions towards the construction of roads and sewers the land was not required to be compulsorily acquired by the local authority. Nor had the Secretary of State erred in his conclusion that if he confirmed the order in those circumstances, he would be exercising his powers under section 112(1)(*a*) of the 1971 Act for an improper purpose, namely as a means of persuading the owners of the land covered by the order to make financial contributions to the development of the land.

Case cited:

Company Developments (Property) v. *Secretary of State for the Environment and Salisbury District Council* [1978] J.P.L. 107.

Legislation construed:

Town and Country Planning Act (c.78), s.112(1)(*a*). The provisions of this section are set out at page 367, *post*.

Application for judicial review by Leicester City Council of a decision of the Secretary of State for the Environment contained in a letter dated May 24, 1985 whereby he refused to exercise his powers under section

112(1)(*a*) of the Town and Country Planning Act 1971 to confirm the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983. The facts are set out in the judgment of McCullough J.

N. Thomas for the applicant.
D. Pannick for the respondent.

McCULLOUGH J. This is an application for judicial review of a decision by the Secretary of State for the Environment on May 24, 1985 not to confirm the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983 pursuant to section 112(1) of the Town and Country Planning Act 1971 (as amended).

The land covered by the order comprised about three and a half acres made up of 19 privately owned plots about two miles east of the centre of Leicester. In addition to a cleared area the plots are variously used as coal yards, car breakers' yards, a car park, storage and garages and a number appear to be derelict and overgrown. The land is served by unmade, unadopted roads. It is bounded on the north and west by residential development and on the east and south by industrial development. It lies in the northern position of an area allocated for industrial use on the adopted local plan.

The Secretary of State refused to confirm a previous compulsory purchase order relating to 9 of the 19 plots in July 1981.

The nearest foul and surface water sewers to the land are at the junction of Tithe Street, Dorrien Road and Robinson Road, some 35 metres from the southern edge of the land. There is no spare capacity in the surface water sewerage system and development of the order land would require the construction of a new outfall sewer, about 140 metres long, to a place called Bushby Brook at a cost of about £25,000. Foul drainage of the order land could be satisfactorily achieved by construction of a linked sewer to the foul sewer at the Tithe Street, Smith Dorrien Road and Robinson Road junction at a cost of about £5,000. The provision of an estate road on the land 7.5 metres wide with two footways, each 1.75 metres wide, would cost about £45,000.

Those facts are taken from the findings of fact by the inspector who held a public inquiry on December 11, 1984 and made his report to the Secretary of State on December 24, 1984. The inspector also found that the city council had given a global undertaking that they would not enforce the compulsory purchase order in respect of the separate ownerships provided the owners withdrew their objections to the order and made an appropriate contribution, to be determined by the city engineer, towards what were called "the infrastructure costs," in other words, the cost of providing these sewers and this road. This undertaking was only given on the basis that the order was confirmed in its entirety. This is to be found in paragraph 44(xi) of the inspector's report.

The inspector's conclusions were as follows:

> 45. The order land is an unattractive area which is ripe for redevelopment and is allocated for industrial use on the adopted local plan. It can only be satisfactorily developed in a comprehensive manner and the lack of movement towards its proper development in the three and a half years since the decision on the last order,

which involved less than a quarter of the current area, demonstrates that it is unlikely to be developed in the absence of proper road access and drainage over the whole area. This latter provision is unlikely to be achieved without there being a single co-ordinating force.

46. The council's compromise undertaking would enable the comprehensive provision of road and drainage and, at the same time, allow those owners who wished to develop their land themselves to do so. This solution seems acceptable to the majority of the objectors. I would hope that the council would carry out their undertaking to Mr. S. Collin and would endeavour to assist Messrs. Durston & Son Ltd. by, for example, allowing them a car park to meet the present degree of usage. (Mr. S. Collin is the lessee of plot 15 and George Durston & Son Ltd. are the owners and occupiers of plot 10.)

The report continues:

47. I recommend that the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983 be confirmed.

The Secretary of State, however, reached the opposite conclusion. His decision letter is dated May 24, 1985 and paragraphs 6 to 10 read as follows:

6. The Council's case and the argument and views put forward by the objectors and their representatives have been carefully considered.

7. The Inspector accepted that the order land should be redeveloped or improved for light industrial use and that it could only be redeveloped by a "single co-ordinating force."

8. However, the Secretary of State has had regard to the Council's evidence at the Inquiry that the Council would not compulsorily acquire the objectors' land if they entered into agreement with the Council to make financial contributions towards the construction of roads and sewers (see paragraphs 23, 25–27, 31 and 44(xi)). The Secretary of State is not, therefore, satisfied that the order lands are required to be compulsorily acquired by the Council for the purposes of redevelopment and improvement.

9. Moreover, the Secretary of State takes the view that if he were to confirm this order in these circumstances, he would be exercising his powers under section 112(1)(*a*) of the Town and Country Planning Act 1971 for an improper purpose namely as a means to persuade the owners of the order land to make financial contributions.

10. Accordingly, he has decided not to confirm this order. This letter constitutes his decision to that effect.

On behalf of the city council Mr. Thomas has mounted two attacks upon this decision, one on paragraph 8 and the other on paragraph 9. He accepts that for his present application to succeed both attacks must prevail.

The last sentence of paragraph 8 contains the phrase "to be compulsorily acquired by the council." Mr. Thomas submits that the

inclusion of those words indicates that the Secretary of State has put into section 112(1)(*a*) of the Town and Country Planning Act 1971 a requirement which is not there.

That provision (in its amended form applicable at the material time) reads:

> A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily (a) any land which is in their area which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment and improvement.

In my opinion the Secretary of State has not in paragraph 8 added a requirement which is not found in the section itself. If one looks at the word "required" in section 112(1)(*a*) and asks by whom the land is to be required, the answer can only be "the local authority," in this case the city council. If one asks how the requirement is to be met, the answer can only be "by compulsory acquisition." Thus, all that the Secretary of State has done is to spell out what section 112(1)(*a*) itself states. He has added no further requirement.

Although he did not phrase his submission in the way which I am about to, Mr. Thomas invited me to treat the word "required" as indicating no more than that development, redevelopment or improvement was required. He submitted that there was no need for a compulsory purchase order to be required, let alone that compulsory acquisition was required. In my opinion such a construction is inconsistent with the plain words of the section. It could not stand with the phrase "and is required in order to." In my judgment the section requires that the land must be required, and requires the need for its acquisition by the local authority in order to secure its development. So much for the second sentence of paragraph 8 of the decision letter.

There is nothing wrong with the first sentence of paragraph 8 as a statement of fact. It is wholly accurate. It is founded on the paragraphs in the inspector's report to which the Secretary of State refers. I have already read paragraph 44(xi) of the inspector's report and I will now read paragraph 23:

> In order to effect the implementation of redevelopment of the order land the council have given the undertaking that they will not enforce the compulsory purchase order in respect of the separate ownerships provided the owners would withdraw their objection to the order and make an appropriate contribution, as shall be determined by the city engineer, towards the infrastructure costs. This undertaking is limited to confirmation of the order in its entirety in order to have a basis for the infrastructure contributions.

Paragraphs 25 to 27 and 31 (which it is not necessary to read) show that the owners of all the plots save numbers 1, 6, 7, 8, 9 and 10 (all of which are at the southern edge and south-west corner of the order land) and plot 16 (which lies on its own at the north of the order land) would accept the undertaking. Thus the Secretary of State knew when he was making his decision that in all probability the plots at the heart of the order land extending, as the plan reveals, to significantly over half its

total area would not be acquired by the city council. They would remain in individual ownership and occupation, the local authority being content that they should be individually developed, provided that the undertakings were accepted, which would involve the owners being prepared to make the desired financial contribution.

It seems to me, as it must have seemed to the Secretary of State, that it could not be said that the city council required the acquisition of the majority of the order land. The undertaking was offered to the owner of every one of the 19 sites. By the city council's own case, far from requiring the acquisition of plots, it did not even want to acquire them provided the owners made the desired financial contribution towards the cost of improving the roads and sewers.

In his submissions Mr. Thomas cited a passage from the judgment of Sir Douglas Frank, Q.C. sitting as a Deputy Judge of the High Court in *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council.*[1] There Sir Douglas Frank remarked that the word "required" in the context of compulsory purchase did not mean "essential." It meant no more than that the acquiring authority thought the acquisition desirable. In my judgment the observation is not a point in the present context. As Mr. Pannick said, it goes to the question of how badly the local authority want the land. In the present case they did not want the land at all provided they got the money.

I accept Mr. Pannick's submission that in reaching the conclusion expressed in the second sentence of paragraph 8 the Secretary of State reached a conclusion which on the material before him he could properly reach. Although I have no need to do so in order to decide the case, I would go further and say, as Mr. Pannick submitted, that had the Secretary of State reached the opposite conclusion he would have made an unlawful decision.

No one has impugned or sought to impugn the motives of the city council in deciding to proceed in the way they did. This was a site which had caused a good deal of trouble, one way and another, to those living in and about it and to the city council for a number of years. The city council had directed its mind to the best way in which to alleviate the difficulties.

I am going to read part of the affidavit of Mr. Donald Smith, the city's deputy city planning officer, quoting from paragraphs 6 and 7:

> The applicant felt that there was an impasse as there had been no improvement and no development by the individual owners and moreover that it was unlikely that there would be any improvement as they would not or could not carry out any works until the necessary services, such as roads, sewers and so on, had been constructed. This of course had to be paid for. A number of the individual owners were unwilling to make such payments. The only apparent alternative available was for the applicant to acquire all the Order Land in order to enable development to be effected and for the necessary infrastructure to be established.
>
> 7. The applicant's intention was not to acquire compulsorily land for the sake of it but simply to improve, by development, the Order

[1] [1978] J.P.L. 107 at p.109.

> Land. Therefore at public and local inquiries into the purchase orders the applicant was prepared to give undertakings to those individual owners of plots on the Order Land that the applicant would not compulsorily acquire the individual parcels of land so long as they entered into agreement with the applicant to make financial contributions towards the construction of roads and sewers. This undertaking was given as otherwise the applicant would be acquiring from individual owners land within the Order Land which would then be resold to those owners to carry out the necessary development although the resale price of course would have to take into account the costs of installing the roads and sewers and other services. The applicant realised that only some of the owners would be prepared to carry out the development and to make contributions and the order needed to be confirmed if the proposed plan was to proceed.

On the city council's behalf Mr. Thomas submits that what it was doing in offering the undertaking was making a sensible short cut of the process which would otherwise have taken place, *i.e.* the city council acquiring the land compulsorily, paying compensation on the basis that the sites were served by roads and sewers which were inadequate, the roads and sewers then being improved at the expense of the city council (and its ratepayers) and the city council then being likely to sell the individual sites back to their old owners who, if willing to buy, would have had to pay rather more on account of the improvements which had taken place.

One can see the attraction of offering this undertaking and, if it was accepted and if the necessary financial contributions were forthcoming, leaving the sites in the existing ownerships throughout. It is interesting to ask what decision the Secretary of State would have been likely to reach had the undertakings not been offered. Interesting though it be, this was not the factual position which he had to consider. However, I would say that it seems possible that he would, even then, have taken the view that it was not desirable to make any compulsory purchase order, having regard to the fact that the roads and sewers could have been provided by the use of the Private Street Works Code currently to be found, I believe, in Part XI of the Highways Act 1980, or by the acquisition of a mere strip of land from each frontage.

It seems to me that the decision which the Secretary of State reached and set out in paragraph 8 is unassailable.

Mr. Thomas went on to submit that the Secretary of State was in error in what he said in paragraph 9, in that he was wrong to believe that if he were to confirm the Order he would be acting improperly because it would be used as a means of persuading the owners of the land to make financial contributions. In answer Mr. Pannick submitted that the Secretary of State must be taken to have used the word "improper" as indicating that if he were to reach a contrary conclusion he would be using his powers under section 112(1)(*a*) of the Act for a purpose not intended by Parliament. He cited authorities in support of the proposition that the Secretary of State in such circumstances would not be at liberty to use the powers under that section for an ulterior object, however desirable.

I do not think the Secretary of State's approach can be faulted. I share his opinion of the law that on the material presented to him he could properly take the view that the city council's purpose in proceeding in this way was to encourage owners to make financial contributions towards a cost which would otherwise have to be borne by the ratepayers. That being the purpose of the compulsory purchase order, it seems to me that the Secretary of State was right to take the view that to confirm it would be a wrongful exercise of his powers.

In my judgment the attack on paragraph 9 also fails and accordingly the application for judicial review must be dismissed.

Application for judicial review dismissed.

Solicitors—Field Fisher and Martineau, London WC1, Agents for A. P. Price-Jones, Leicester City Council; Treasury Solicitor.

SHARKEY AND ANOTHER v. SECRETARY OF STATE FOR THE ENVIRONMENT AND SOUTH BUCKINGHAMSHIRE DISTRICT COUNCIL

QUEEN'S BENCH DIVISION (Roch J.): May 11, 1990

Town and country planning—Compulsory purchase order—Town and Country Planning Act 1971, s.112(1)(b)*—Land required for planning purpose—Meaning of "required"—Whether local authority must exhaust all other powers before exercising their compulsory purchase powers—Whether confirmation of order in respect of some parts of land vitiated by decision of Secretary of State to defer decision whether to confirm order in respect of other parts*

Swallow Street enters the village of Love Green, Ivor, Buckinghamshire, from the north. It was bounded by agricultural land on both sides until about 1981. At about that time, the land immediately adjoining the west of Swallow Street was sold. It was divided into plots. The plots were occupied by gipsies who wished to settle. However, Swallow Street was within the green belt and, the South Buckinghamshire District Council, as the local planning authority, served enforcement notices in relation to all the plots of land. In respect of one of the plots, the council ultimately obtained an injunction to prevent it being used by gipsies. In 1985, the council sought authorisation under section 112(1)(*b*) of the Town and Country Planning Act 1971 to compulsorily purchase the land comprising the plots in order to secure proper planning in the area. Appeals against the enforcement notices and the council's application to confirm the purchase order were both heard at a public inquiry in 1987. The inspector recommended that the order be not confirmed. He did not consider that the council had satisfactorily shown that the only practicable means of achieving proper planning of the area was by the order, save with the possible exception of the plot to which the injunction applied: at that stage, the order was premature. However, the Secretary of State confirmed the order in respect of some of the plots, but deferred his decision in respect of those where the time for compliance with the relevant enforcement notices had yet to expire. He concluded that successful restoration of the land via the enforcement notices was unlikely in respect of the former plots since the evidence was that the owners would not, or could not afford to, restore the land even if the notices were upheld. An application was made to quash the compulsory purchase order.

Held, dismissing the application, that the word "required" in section 112(1)(*b*) of the 1971 Act means that the land is needed for the accomplishment of one of the activities or purposes set out in the section. It is not enough that compulsory acquisition is desirable. However, it does not have to be shown that the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved. In this case, the Secretary of State correctly identified the purpose which it was necessary to achieve in the interest of proper planning, namely to remove inappropriate and unacceptable development and to ensure that the land should not be left in a derelict or neglected state. He was then entitled to reach the conclusion, on the balance of probabilities, that the restoration of the land was unlikely unless the order was confirmed and therefore that the compulsory purchase of the land was required in the sense of it being need for the accomplishment of that purpose.

The Secretary of State was entitled to confirm the compulsory purchase order in

some cases and to defer it in others. Had he refused to confirm the order in respect of those plots in respect of which it was deferred his decision might have been overturned on the ground of irrationality.

Legislation construed:
Town and Country Planning Act 1971 (c. 78), section 112(1)(*b*). This provision is set out at pages 132–133, *post.*

Cases cited:
(1) *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council* [1978] J.P.L. 107.
(2) *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* (1988) 55 P. & C.R. 364.

Application by L. Sharkey and C. Fitzgerald under section 23(1) of the Acquisition of Land Act 1981 to quash the "South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985" in respect of certain plots of land at Swallow Street, Ivor, Buckinghamshire. The Secretary of State for the Environment confirmed part of the order and deferred a decision on the remainder in a letter dated February 24, 1989. The grounds of the application were that such confirmation was *ultra vires* section 112(1) of the Town and Country Planning Act 1971. In particular, that:

(1) The land was not "required" for proper planning; and
(2) It was illogical and absurd to confirm the order in respect of only four plots of land which were not contiguous.

H. Sales for the applicants.
M. Kent for the first respondent.
G. Stephenson for the second respondent.

ROCH J. Originally there were two applications for judicial review in this matter. The first application in which the applicants were a Mr. Carey, a Mr. Stubbings and a Mr. Fitzgerald has been withdrawn with no order as to costs on terms of an undertaking given by counsel for the local planning authority, Mr. Stephenson, to counsel for the applicants, Mr. Sales.

The second application relates to the decision of the Secretary of State in the letter dated February 24, 1989, to confirm the South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985 in respect of plots 1, 5, 6 and 7A at Swallow Street, Ivor, Buckinghamshire.

Swallow Street, Ivor, Buckinghamshire runs approximately on a north/south line. It enters the village of Love Green from the north. Immediately to the north of Love Green, Swallow Street was bounded on both sides by agricultural land and the evidence indicates that in and before 1981 the land to the west of that part of Swallow Street was used for grazing.

In 1981 or 1982, the land to the west of Swallow Street and immediately adjoining it was sold. In time it was divided into seven plots. Those seven plots are shown on Plan No. 5 exhibited at a public inquiry which Mr. Stephenson placed before me with the consent of the other counsel in this case. The plots are numbered 1 to 7 when proceeding in a northerly direction. At some stage plot 7 was divided into two parts and those parts were referred to as plots 7A and 7B. Some of the plots had names, for example, plot 1 was known as the "Cherry Orchard Site." Plot 2 was known as "Springfield Rose Site." Plot 3 was known as "Little Apple" and also as

"Site 1." Plot 4 was known as "Mill Place" and also as "Site 2." Plot 5 was known as "The Silver Birch" and also as "Site 3" and plot 6 was known as "Swallows Nest" and also "Site 4." Plot 7A is also referred to as "Site 5A" and plot 7B as "Site 5B."

Unless it becomes necessary to refer to a parcel of land by other than its plot number, I shall refer to each parcel of land by its plot number.

Those plots were occupied by travellers or gipsies. Often the occupant was the person who had purchased the plot. Entrances were made on to Swallow Street in most cases, although in some cases it was said that existing entrances were used. Hardstanding was put down for caravans and for vehicles, walls were built and gardens cultivated. In addition some septic tanks were constructed.

It seems that the travellers who bought and occupied those plots were travellers who wished to settle, to send their children to school, and to avoid having to move their children from one school to another. In short that the occupants were responsible and orderly people.

However, Swallow Street is within the Metropolitan Green Belt and there was and is a presumption against such development which is only to be displaced in certain exceptional cases. The second respondent, as the local planning authority, were against this unpermitted development and took steps to terminate this unauthorised use of this land.

Enforcement notices were prepared and served under section 87 of the Town and Country Planning Act 1971. In respect of some of the plots there was more than one enforcement notice.

The history in relation to plot 1 was this: that in 1984 four enforcement notices were served. In August 1985 the second respondent used its powers under section 91 of the Town and Country Planning Act 1971 to enter plot 1 and execute the work set out in four enforcement notices. Consequently, by October 8, 1985, plot 1 was unoccupied and the hardstanding, fences and vehicular access which had existed on plot 1 had been removed.

In May 1986 a High Court injunction was obtained to prevent plot 1 being used by a traveller. In August 1986 a second such injunction was obtained by the second respondent. In February 1987 further action under section 91 of the Act was taken. In April 1987 a writ was served on the then occupant of plot 1. Nevertheless by September 1987, at the time that a public inquiry was held by a planning inspector, Mr. Brock, plot 1 was being used by a traveller who had a caravan on the plot sited on hardstanding.

The inspector's report indicates that four enforcement notices were served in respect of plot 2, the first on May 15, 1985, and the remaining three on September 3, 1985. Three enforcement notices were served in respect of plot 6, two on September 5, 1985, and the third on September 20, 1985. Five enforcement notices were served in respect of plot 4, four on September 5, 1985, and the fifth on March 7, 1986. One enforcement notice was served in respect of plot 7 on August 8, 1987.

On October 8, 1985, the second respondent promulgated a compulsory purchase order under section 112(1) (*b*) of the Town and Country Planning Act 1971 seeking authorisation to purchase compulsorily the land described in the schedule which was all eight plots, that is to say, plots 1 to 6, 7A and 7B which were described in the schedule simply as plot 7: "For the purpose which it is necessary to achieve in the interests of the proper planning in the area in which the land is."

Appeals were brought against the enforcement notices by the owners of

four of the plots, namely, plots 2, 5, 6 and 7 and the second respondent applied for confirmation of the compulsory purchase order. Those two matters were taken together at a public inquiry held by Mr. Brock between September 15 and 17, 1987. The inspector's recommendations with regard to the enforcement notices are no longer material. With respect to the compulsory purchase order, the inspector said: "I recommend that the South Bucks District Council (Ivor No. 1) Compulsory Purchase order 1985 be not confirmed." The inspector's findings on which that recommendation was based were these: that there was a compelling need to keep the order land free from inappropriate development; that the land development which had taken place on the order land was inappropriate and unacceptable; that the location of the order land was such that it should not be left in a derelict or neglected state but should be put to a suitable use: that that aim was one which it was necessary to achieve in the interests of the proper planning of the area.

However, the inspector did not consider that the second respondent had shown satisfactorily that the only practicable means of achieving the necessary purpose was by compulsory purchase, save with the possible exception of plot 1; that with regard to plots 3 to 6 there was no evidence of prosecutions or attempted prosecutions for non-compliance with the enforcement notices; that with regard to plots 7A and 7B action in respect of a breach of a stop notice was apparently still being pursued and the period of compliance with the enforcement notice had not expired; that there was insufficient evidence to substantiate the second respondent's claim that the general level of fines imposed for non-compliance with enforcement notices were so low as to vitiate the value of prosecution; that as to the enforcement notices which had been appealed, it might be that the appellants would now decide to comply with the requirements of those notices within the time allowed (the inspector having increased the time allowed with regard to those notices); that the second respondent had given evidence that it would seek to use its powers under section 91 of the Act if those notices were not obeyed; that it had not been shown by the history of plot 1 that further action by the second respondent under section 91 of the Act would fail to have the desired effect in the future; that even if the past history of plot 1 was a good reason for a compulsory purchase order in respect of that plot, the purpose of which it is necessary to achieve would be unlikely to be realised by the acquisition of an individual plot in isolation. The council had at the inquiry put forward a scheme for restoration and landscaping of the seven plots and the inspector found that that scheme could not be implemented by the compulsory purchase only of plot 1.

The inspector concluded that whereas it might eventually be shown that in order to achieve the necessary purpose on planning grounds, no practicable alternative existed to the compulsory purchase of the land, the making of the order at that stage was, at the least, premature.

The Secretary of State's decision on the compulsory purchase order was to confirm the order in relation to plots 1, 5, 6 and 7A and to defer his decision on the order in respect of plots 2, 3, 4 and 7B until the period for compliance with the relevant enforcement notices relating to those plots had elapsed. Accordingly the Secretary of State exercised his power under section 132(2) of the Town and Country Planning Act 1971 to confirm the compulsory purchase order in so far as it related to plots 1, 5, 6 and 7A,

subject to certain modifications, and to postpone his consideration of the order in relation to plots 2, 3, 4 and 7B until September 28, 1989.

I was told during the hearing that no further consideration had been given to the order in so far as it relates to plots 2, 3, 4 and 7B. The reasoning of the Secretary of State was this: that he agreed with the inspector that the development which had taken place on the order land was inappropriate and unacceptable; that the implementation of the second respondent's proposed landscaping scheme was consistent with green belt policy, but was not the only purpose to which the land could appropriately be put; that the land should not be left in a derelict or neglected state. The Secretary of State went on to say that he did not accept in its entirety the inspector's conclusion that the second respondent had not demonstrated satisfactorily that the only practicable means of achieving the aim of putting the order land to a suitable rural use was by compulsory acquisition. The Secretary of State had concluded that successful restoration of the land as a consequence of upholding the enforcement notices was unlikely as respects plots 1, 5, 6 and 7A since the evidence of the owners of those plots was to the effect that they would not, or, in one case, could not afford to restore the land even if the notices were upheld. Accordingly the Secretary of State had decided to confirm the order in relation to those plots. On the other hand, because the evidence given by the owners of plots 3 and 4 suggested that the land would be restored if the enforcement notices were upheld, the Secretary of State concluded that it would be appropriate to defer his decision in relation to those plots until the period for compliance with the relevant enforcement notices had elapsed.

He reached the same decision in respect of plots 2 and 7B where the owners either expressed no view or were undecided about restoration.

The applicants say that they are aggrieved by the compulsory purchase order and make application to this court, questioning the validity of the order, under section 23(1) of the Acquisition of Land Act 1981. The ground on which the validity of the compulsory purchase order is questioned is that the authorisation of a compulsory purchase order is not empowered to be granted under section 112(1) of the Town and Country Planning Act 1971. The powers of this court on such an application are set out in section 24 of the 1981 Act. Section 24(2) provides that if on the application this court is satisfied that the authorisation granted by the compulsory purchase order is not empowered to be granted under the 1981 Act or any such enactment as is mentioned in section 1(1) of the 1981 Act, the court may quash the compulsory purchase order either generally or in so far as it affects any property of the applicant.

Two submissions are made on behalf of the applicants to make good their claim that the decision of the Secretary of State to affirm the compulsory purchase order should be quashed. The first is that the land and the compulsory purchase order were not required by the local planning authority for the purpose which it was necessary to achieve in the interests of the proper planning of the area in which Swallow Street is situated. The second that the purpose which it was necessary to achieve contemplated by the local planning authority was not merely the removal of those matters in respect of which the enforcement notices were served, but also the return of the land, that is to say the whole of the strip comprising the eight plots, to a use appropriate to the metropolitan green belt and the area, so that the land should not be left in a derelict or neglected state. The purpose con-

templated by the local planning authority could only be achieved by confirmation of the compulsory purchase order in respect of all eight plots, because the purpose went beyond the simple removal of caravans, hardstanding, walls, septic tanks and so forth. That this was so is clearly demonstrated by the local planning authority's restoration and landscaping scheme prepared, authorised and budgeted for prior to the holding of the public inquiry. Against that purpose, submits Mr. Sales, it was illogical and absurd for the Secretary of State to confirm the compulsory purchase order only in respect of four of the eight plots and in respect of four plots which were not contiguous.

The respondents answered those submissions in these ways. First "required" does not mean that the land or the compulsory purchase order are essential, nor need the use of compulsory purchase powers be a last resort. "Required" means no more than the compulsory acquisition of the land is needed for the necessary planning purpose. It is for the Secretary of State, having identified the necessary planning purpose, to make a judgment whether the land and the compulsory purchase order are required to achieve that purpose. It is not for this court to make that judgment. In the present case there was clear evidence in respect of plot 1 that the local planning authority's other powers had not been and would not be effective to achieve the necessary planning purpose. There was evidence in respect of plots 5, 6 and 7A on which the Secretary of State was entitled to conclude that the compulsory purchase of those plots by the local planning authority was required in order that the necessary planning purpose be achieved.

Section 132(2) of the Town and Country Planning Act 1971 enables the Secretary of State, where a compulsory purchase order authorising the acquisition of land under section 112 of the Act is submitted to him, to confirm the order so far as it relates to part of the land comprised in the order, if he is satisfied that the order ought to be confirmed so far as it relates to such part of the land and to give directions postponing consideration of the order so far as it relates to any other land specified in the directions until such time as the Secretary of State specifies. It is submitted on behalf of the respondents that the Secretary of State in the present case has done no more than to exercise that power given to him by section 132(2) of the 1971 Act. Consequently, unless it can be shown that the decision to confirm part of the order in so far as it relates to plots 1, 5, 6 and 7A but to postpone consideration of the order so far as it relates to plots 2, 3, 4 and 7B was unreasonable in the *Wednesday* sense these applications must fail. It is pointed out, on behalf of the respondents, that this is not a case where the Secretary of State has confirmed the compulsory purchase order in part and refused to authorise the acquisition of the other parts of the land set out in the schedule to the order. In respect of those latter parts he has merely postponed consideration to see whether the owners of those plots will comply with the enforcement notices. Consequently there is nothing illogical, perverse or absurd about the decision reached by the Secretary of State and it was a decision which is consistent with the findings of fact made by his inspector. The mere fact that the Secretary of State has reached a conclusion different from that reached by his inspector, and that the court may consider that the inspector's conclusion is to be preferred to that of the Secretary of State, is not sufficient to enable these applications to succeed.

Mr. Sales' reply on behalf of the applicants is that the power given by

section 112 of the Town and Country Planning Act 1971 is one which should be used as a last resort; that this was accepted by the Secretary of State in paragraph 6 of his decision letter where the Secretary of State says that he does not accept in its entirety the inspector's conclusion that the council has not satisfactorily shown that the only practical means of achieving the aim of putting the order land to a suitable rural use is by compulsory acquisition. The principle was also accepted by Mr. Bradford, the planning officer of the second respondent, at the public inquiry when he gave evidence to this effect:

> If an owner consistently refuses to observe his obligations under the planning legislation, and normal legal measures designed to make him do so prove ineffective, the final essential step is the making of a compulsory purchase order.

In the next paragraph of the inspector's report, paragraph 154, Mr. Bradford is recorded as saying:

> Were the order (that is to say the compulsory purchase order) not to be confirmed but the enforcement notice is upheld, the council would seek to use its powers under section 91 of the 1971 Act in the event of non-compliance with the requirement of the notice.

Consequently, says Mr. Sales, the local planning authority were conceding that they were not using their power under section 112 as a last resort and that if the compulsory purchase order was not confirmed, they would use their powers under section 91 from which it must follow that the local planning authority were not of the view that the use of such powers would be a complete waste of time.

Mr. Sales further submits that the sentence in paragraph 6 of the Secretary of State's letter is unsatisfactory in that it is not clear to what extent the Secretary of State did or did not accept the inspector's conclusion that the council had not shown that the only practical means of achieving the aim of putting the land to suitable rural use was by compulsory acquisition. Because successful restoration of the land as a consequence of upholding the enforcement notices was unlikely in respect of plots 1, 5, 6 and 7A it did not mean that the local planning authority could resort straight away to their compulsory acquisition powers under section 112. They should first await the outcome of the enforcement notice, then use their powers under section 91 of their power to obtain an injunction in the High Court or both before resorting to section 112. The power to deprive a person of his or her land should only be used where both the land and its compulsory acquisition were necessary, otherwise the use of this confiscatory power would be arbitrary.

Mr. Stephenson on behalf of the second respondent submitted that the expense and difficulty of the compulsory purchase procedures were an adequate safeguard against the arbitrary use of the power given to local planning authorities by section 112, when taken together with the need to obtain the Secretary of State's authorisation and consequently the terms of the section should not be construed in the narrow way suggested on behalf of the applicants.

Section 112(1) of the Town and Country Planning Act 1971, in so far as it is material, provides:

A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily

(a) any land which is in their area and which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment, and improvement;

(b) any land which is in their area and which is required for a purpose which it is necessary to achieve in the interest of the proper planning of an area in which the land is situated.

In the present case the respondents rely upon subsection (1)(*b*).

I was referred to two authorities. The first was the case of *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council*, a decision of Sir Douglas Frank, Q.C. sitting as a deputy judge of the Queen's Bench. That was a case where the compulsory purchase order had been made under section 112(1)(*a*). During the course of his judgment, Sir Douglas Frank accepted the submission that the word "required" in a compulsory purchase situation does not mean "essential." It meant that the acquiring authority and the Secretary of State considered that it was desirable to acquire the land to secure the development of the area as a whole. The second decision was that of McCullough J. in *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* where McCullough J. held that the Secretary of State had been right to refuse to authorise a compulsory purchase order made by the Leicester City Council under section 112(1)(*a*) of the 1971 Act on the ground that the local authority had not shown that it required the land and the compulsory purchase order in order to secure the carrying out of the development contemplated. McCullough J. referred to the dictum of Sir Douglas Frank in the earlier case but said that that observation was not in point in the case that he, McCullough J., had to decide.

Nevertheless, it emerges from the earlier passages in the judgment of McCullough J. that he considered that the word "required" meant more than simply the acquisition of the land being in the view of the local planning authority and the Secretary of State desirable and that what had to be demonstrated was a need on the part of the local authority both for the land and the power to acquire it compulsorily.

Although both those cases involve consideration of section 112(1)(*a*), in my judgment the word "required" must have the same meaning in section 112(1)(*a*) and in section 112(1)(*b*). Because of the nature of the power given to local authorities by section 112, namely, to deprive the owner of his land against the owner's will, I prefer and adopt the stricter meaning of the word "required" suggested by the judgment of McCullough J. In my judgment the word means that the compulsory acquisition of the land is called for; it is a thing needed for the accomplishment of one of the activities or purposes set out in the section. However, I accept the dictum of Sir Douglas Frank, Q.C. to this extent that neither the local authority nor the Secretary of State have to go so far as to show the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can

conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved.

In this case the Secretary of State in paragraph 5 of the letter of his decision correctly, in my view, identified the purpose which it was necessary to achieve in the interest of proper planning of the area in which the land was situated, namely, to remove the development which had taken place and which was inappropriate and unacceptable and to ensure that the land should not be left in a derelict or neglected state. The Secretary of State then went on to consider whether acquisition of the land by compulsory powers was required in the sense of being needed for the accomplishment of the purpose because he has concluded, on the balance of probabilities, that successful restoration of the land was unlikely in respect of plots 1, 5, 6 and 7A, unless the order was confirmed in relation to those plots. In my judgment there was evidence on which the Secretary of State was entitled to reach that conclusion. If the Secretary of State had asked himself the question, is the compulsory acquistion of this land desirable for the accomplishment of the purpose, I would have held that he had applied the wrong test.

Had the Secretary of State gone on to refuse to confirm the compulsory purchase order with regard to the other four plots, then in my opinion there may have been some prospect of his decision being overturned on the grounds of irrationality. However, that is not the decision reached by the Secretary of State and I assume, in his favour, that he will confirm the compulsory purchase order in respect of those plots if, despite the removal of caravans and so forth from those plots, those plots are not restored to some use suitable for the area but are left in a state where they become or are likely to become derelict and neglected.

I may confess in this case that had the decision been mine, I would have reached the same conclusion as that reached by the inspector, namely, that the making of the compulsory purchase order at that stage was premature. However, it is a well established principle of administrative law that such judgments are for the local authority and the Secretary of State and not for this court.

Consequently the conclusion that I have reached is that I must dismiss these applications for judicial review.

Application dismissed. Applicants to pay first respondent's costs.

Solicitors—Lance Kent & Co., Chesham, Bucks; Treasury Solicitor; Solicitor to the South Buckinghamshire District Council.

SHARKEY AND ANOTHER v. SECRETARY OF STATE FOR THE ENVIRONMENT AND SOUTH BUCKINGHAMSHIRE DISTRICT COUNCIL

COURT OF APPEAL (Parker, McCowan and Scott L.JJ.): October 14, 1991

Compulsory purchase order—Land required for a planning purpose—Meaning of "required"—Whether local authority should exhaust other planning enforcement powers before using compulsory purchase powers—Town and Country Planning Act, 1971, s.112(1)(b)

Gipsies brought mobile homes onto eight plots in the metropolitan green belt, where there was a presumption against development, without obtaining planning permission. They intended to settle permanently there. The local authority proceeded against the gipsies, initially by way of enforcement notices and then by obtaining injunctions, but finally, finding that these procedures were cumbersome, expensive and ineffective, made a compulsory purchase order seeking to purchase all eight plots on the ground that the land was "required" to achieve proper planning of the area within the Town and Country Planning Act 1971, s.112(1)(*b*).

After holding a public inquiry into the compulsory purchase order, the inspector, while accepting that the development was inappropriate and unacceptable in the green belt, recommended that the order should not be confirmed, on the grounds that the council had not satisfactorily shown that this was the only reasonable means of achieving proper planning of the area and that the order was premature. This was not accepted by the Secretary of State, who confirmed the order in respect of four plots on the ground that, on the evidence, successful restoration of the land without the compulsory purchase order would be unlikely in these cases, but deferred his decision in respect of the other four plots where time for compliance with the enforcement notices had not yet expired.

Certain gipsies appealed against the decision of Roch J.,[1] who had dismissed their application to quash the compulsory purchase order. They contended that the land was not "required" by the local authority within section 112(1)(*b*), since there were various ways in which the clearance of the land could be achieved without compulsory purchase.

Held, dismissing the appeal, that in order to show that land was "required" for a purpose which it was necessary to achieve in the interests of proper planning within the Town and Country Planning Act 1971, s.112(1)(*b*), a local authority did not have to show that compulsory purchase of the land was indispensable to the achieving of that purpose, but that it was necessary in the circumstances of the case. It was not enough, however, that such compulsory purchase might be desirable. The Secretary of State was entitled to find that the council was unlikely to achieve successful restoration of the land without compulsory purchase in respect of four plots and to defer a decision in respect of the four further plots where there was a possibility that this might be achieved.

Cases cited:

(1) *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council* [1978] J.P.L. 107.

(2) *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* (1988) 55 P. & C.R. 364.

[1] *See* (1991) 62 P. & C.R. 126.

(3) *Runnymede Borough Council* v. *Ball* [1986] 1 W.L.R. 353; [1986] 1 All E.R. 629; 53 P. & C.R. 117, C.A.

Legislation construed:
Town and Country Planning Act 1971 (c. 78), s.112(1)(*b*) (see now Planning Act 1990, s.226(1)). The provision is set out at page 335, *post*.

Appeal by L. Sharkey and C. Fitzgerald from a decision of Roch J. on May 11, 1990 (*see* 62 P. & C.R. 126) in which he dismissed their application to quash a compulsory purchase order made by the South Buckinghamshire District Council on October 8, 1985, relating to certain plots of land at Swallow Street, Iver, Buckinghamshire, in the metropolitan green belt, upon which they had installed mobile homes without planning permission. The appellants contended that the district council only required clearance of the land, which could be achieved by prosecution, by the council entering upon the land and clearing it, by injunction or by providing a suitable alternative site. Compulsory purchase was not "required."

Harry Sales for the appellants (applicants).
W. Robert Griffiths for the first respondent.
R. J. Rundell for the second respondent.

PARKER L.J. I will ask McCowan L.J. to give the first judgment.

McCOWAN L.J. This is an appeal from a decision of Roch J. given on the May 11, 1990, dismissing an application by the appellants that the South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985 be quashed. The first respondent is the Secretary of State for the Environment and the second respondent is the South Bucks District Council.

The order in question, as made by the South Bucks District Council on October 8, 1985, related to plots 1 to 6, 7A and 7B Swallow Street, Iver. The order as confirmed by the Secretary of State related only to plots 1, 5, 6 and 7A. Postponement of consideration of the order in so far as it related to plots 2, 3, 4 and 7B was directed by the Secretary of State.

Between September 15 and 17, 1987, an inspector held a public inquiry into the compulsory purchase order and also into various enforcement notices with which neither the hearing before Roch J. nor the appeal have been concerned. The reason for that, as we understand it, is that before the case started in front of Roch J. it was agreed between the parties that the appellants would not pursue their appeals against the enforcement on the basis that the council for their part would not take action in respect of them before some date in 1991. Those enforcement notices are therefore effective.

That inspector described the site covered by the order thus:

> The order land is on the west side of Swallow Street and in a generally open area between the north-western and south-western extremities of the built-up areas of Iver and Iver Heath respectively. It is approximately 0.28 (0.69 acres) in area and divided into 7 plots, numbered 1 to 7 consecutively from south to north (Plan A). At the time of the inquiry Plot 7 had been sub-divided into 2, the southern part referred to as Plot 7A and the northern as Plot 7B (Plan Q).

The inspector went on to make findings of fact about, among other things, the state of occupation of the various plots. He said:

> 5. Plot 1, Cherry Orchard, contains a mobile home and hardstanding and garden areas, and is residentially occupied by Mr. Sharkey and family.
> 6. Plot 2, Springfield Rose, contains a mobile home and hardstanding area, and is residentially occupied by Mr. And Mrs. Carey.
> 7. Plot 3, Little Apple, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. M. Smith and family.
> 8. Plot 4, Mill Place, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. J. Smith and family.
> 9. Plot 5, Silver Birch, contains a mobile home and hardstanding area, and is residentially occupied by Mr. Fitzgerald and family.
> 10. Plot 6, Swallows Nest, contains a mobile home and patio, garden and hardstanding areas, and is residentially occupied by Mr. Stubbings and family.
> 11. Plot 7A, Summerset Place, contains a touring caravan and hardstanding area, and is residentially occupied by Mr. Brown and family.
> 12. Plot 7B, Meadowside, contains a touring caravan and hardstanding and garden areas, and is residentially occupied by Mr. Price and family.

Plots 1 and 5, it is to be noticed, are occupied by the two appellants. The learned judge summarised the situation in this way[2]:

> Those plots were occupied by travellers or gypsies. Often the occupant was the person who had purchased the plot. Entrances were made on to Swallow Street in most cases, although in some cases it was said that existing entrances were used. Hardstanding was put down for caravans and for vehicles, walls were built and gardens cultivated. In addition some septic tanks were constructed.
>
> It seems that the travellers who bought and occupied those plots were travellers who wished to settle, to send their children to school, and to avoid having to move their children from one school to another. In short that the occupants were responsible and orderly people.
>
> However, Swallow Street is within the Metropolitan Green Belt and there was and is a presumption against such development which is only to be displaced in certain exceptional cases. The second respondent, as the local planning authority, were against this unpermitted development and took steps to terminate this unauthorized use of this land.
>
> Enforcement notices were prepared and served under section 87 of the Town and Country Planning Act 1971. In respect of some of the plots there was more than one enforcement notice.
>
> The history in relation to plot 1 was this: that in 1984 four enforcement notices were served. In August 1985 the second respondent used its powers under section 91 of the Town and Country Planning Act 1971 to enter plot 1 and execute the work set out in the four enforce-

[2] (1991) 62 P. & C.R. 126 at p. 128.

ment notices. Consequently, by October 8, 1985 plot 1 was unoccupied and the hardstanding, fences and vehicular access which had existed on plot 1 had been removed.

In May 1986 a High Court injunction was obtained to prevent plot 1 being used by a traveller. In August of 1986 a second such injunction was obtained by the second respondent. In February 1987 further action under section 91 of the Act was taken. In April 1987 a writ was served on the then occupant of plot 1. Nevertheless by September 1987, at the time that a public inquiry was held by a planning inspector, Mr. Brock, plot 1 was being used by a traveller who had a caravan on the plot sited on hardstanding.

The inspector's report indicates that four enforcement notices were served in respect of plot 2, the first on May 15, 1985 and the remaining three on September 3, 1985. Three enforcement notices were served in respect of plot 6, two on September 5, 1985 and the third on September 20, 1985. Five enforcement notices were served in respect of plot 4, four on September 5, 1985 and the fifth on March 7, 1986. One enforcement notice was served in respect of plot 7 on August 8, 1987.

On October 8, 1985 the second respondent promulgated a compulsory purchase order under section 112(1)(b) of the Town and Country Planning Act 1971 seeking authorization to purchase compulsorily the land described in the schedule which was all eight plots, that is to say, plots 1 to 6 7A and 7B which were described in the schedule simply as plot 7; "For the purpose which it is necessary to achieve in the interests of the proper planning in the area in which the land is."

It is convenient at this point to read section 112 of the Town and Country Planning Act 1971. In so far as it is material it provides as follows:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily
   (a) any land which is in their area and which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment and improvement;
   (b) any land which is in their area and which is required for a purpose which it is necessary to achieve in the interest of the proper planning of and area in which the land is situated.

As the judge said, the council relied in this case on subsection 1(*b*). The council's case under that subsection before the inspector was summarised by him as follows:

> 167. The need for a compulsory purchase order is due to deliberate flouting of planning control by the occupiers of the land or their predecessors. Normal legal procedures have been shown to be cumbersome, expensive and ineffective. Enforcement procedure has been satisfactory up to a point, but thereafter has been ineffective; prosecutions depend on identification, which is difficult when occupiers come and go, the level of fines imposed is low and injunctions obtained apply only to the persons named. On the Cherry Orchard site [I interpolate that is a reference to plot 1] section 91 action has been found ineffective; twice the land has been cleared, and twice reinstated. A stop

notice on Plot 7 has been ineffective. No grounds exist for expecting that the land would revert to an appropriate Green Belt use even if section 91 powers were again to be used. All except one of the present occupiers have said that they would not reinstate their land to the condition in which it formerly was. Public money would be wasted by the use of section 91 powers, and the aim of protecting the Green Belt would be rendered futile.

168. The only effective means of protection is by compulsory purchase. As a housing action area is purchased for the benefit of the community as a whole, so would the purchase of this Green Belt land be of benefit to the community. In the light of that consideration the order should be confirmed. Even if it is thought that it should not be confirmed in respect of Plots 2 to 6 on the grounds that all other avenues have not yet been fully explored, it should be confirmed in respect of Plots 1, 7A and 7B.

The inspector's conclusion on this issue was:

189. . . . I find the development which has taken place on the land to be inappropriate and unacceptable. In my opinion the location is such that the land should not be left in a derelict or neglected state, but should be put to a suitable rural use. That aim seems to me to be one which it is necessary to achieve in the interests of the proper planning of the area.

190. However, I do not consider that, with the possible exception of Plot 1, the Council have satisfactorily shown that the only practicable means of achieving the aim is by compulsory purchase. With regard to Plots 3 to 6, there is no evidence of prosecutions or attempted prosecutions for non-compliance with those enforcement notices which are not the subject of appeal and should by now have been complied with. Regarding Plots 7A and 7B, action in respect of a breach of the stop notice is apparently still being pursued, and I note that the period for compliance with the enforcement notice issued on September 11, 1987 is not due to and until November 16, 1987. I find insufficient evidence to substantiate a claim that the general level of fines imposed for non-compliance with enforcement notices is so low as to vitiate the value of prosecution.

191. As to the notices currently under appeal, it might be that the appellants would now decide to accept what I believe to be the inevitability of the situation, and would choose to comply with the requirements within the time allowed. The evidence is that, in the event of non-compliance with the notices if upheld, and of the order not being confirmed, the Council would seek to use its powers under section 91 of the 1971 Act. This course of action would no doubt be open to the Council to pursue if it wished, and it does not seem to me necessarily to follow that, because Plot 1 has been reoccupied after such action in the past, further action would fail to have the desired effect in the future.

192. Even if past experience provided a good reason for the compulsory purchase of Plot 1, the purpose which it is necessary to achieve would be unlikely to be realised by the acquisition of an individual plot in isolation. The Council's restoration and landscaping scheme could not be implemented by the use only of Plot 1. With regard to that

> scheme, it seems to me that an appropriate rural use would equally lie in the return of the land to grazing land, whether as a parcel on its own or in conjunction with adjoining land. It could be that the present owners of the land, notwithstanding the evidence given at the inquiry, would be finally convinced that they should dispose of their land, and would offer it for sale to an owner of adjoining or adjacent land for use by him for an appropriate purpose.

I interrupt the reading at this point to make the comment that nothing has happened since to justify the inspector's optimism. He continued:

> 193. I conclude that, whereas it may eventually be found that, in order to achieve the necessary purpose on planning grounds, no practicable alternative exists to compulsory purchase of the land, the making of the order at this stage is, at the least, premature.

He went on to recommend that the compulsory purchase order be not confirmed.

In turn the Secretary of State had this to say on the issue in his decision letter of the February 24, 1989:

> The Secretary of State agrees that the interests of the proper planning of an area within the Metropolitan Green Belt are served by the removal of development which is detrimental to the visual amenities of that area.
>
> 5. In considering the Inspector's conclusions in the light of the council's statement of reasons, the Secretary of State agrees that the development which has taken place on the order land is inappropriate and unacceptable in this generally open area which is within the Metropolitan Green Belt and the Colne Valley Park. He shares the Inspector's opinion that the implementation of the council's proposed landscaping scheme (which was prepared only after the order had been submitted for confirmation) whilst consistent with Green Belt policy, is not the only purpose to which the land could appropriately be put. He agrees that the land should not be left in a derelict or neglected state.
>
> 6. On the basis of the evidence presented at the inquiry, the Secretary of State does not accept in its entirety the Inspector's conclusion that the council have not satisfactorily shown that the only practicable means of achieving the aim of putting the order land to a suitable rural use is by compulsory acquisition. The Secretary of State has had particular regard to the evidence presented by the council as to the result of enforcement action in respect of various sites in the district, including sites which are also the subject of this order. He has concluded, on the balance of probabilities, that successful restoration of the land as a consequence of the upholding of the enforcement notices is unlikely as respects plots 1, 5, 6 and 7A since the evidence of the owners of those plots is to the effect that they would not, or in one case could not afford to restore the land, even if the notices were upheld. Accordingly he has decided to confirm the order in relation to those plots.
>
> 7. The evidence given by the owners of plots 3 and 4 suggests that the land would be restored if the enforcement notices were upheld. In relation to plots 2 and 7B the owners either expressed no view or were undecided about restoration. The Secretary of State considers that it

> would be appropriate in relation to these plots to defer his decision on the order until the period for compliance with the relevant enforcement notices has elapsed. He will then form a view as to the necessity for confirmation of the order in respect of those plots.

I need not read paragraph 8, which deals with certain modifications. In paragraph 9 he went on to say:

> 9. Accordingly, in exercise of the power conferred on him by section 132(2) of the Town and Country Planning Act 1971, he hereby confirms the South Bucks District Council (Iver No. 1) Compulsory Purchase Order 1985 insofar as it relates to plots 1, 5, 6 and 7A subject to the modifications shown thereon in red ink. He hereby directs that consideration of the order insofar as it relates to plots 2, 3, 4 and 7B be postponed until September 28, 1989.

In challenging this decision in the courts the appellants put forward two grounds in their notice. First, it is said that:

> the first respondent treated the likelihood of the applicants carrying out works of restoration in accordance with enforcement notices as the determining factor and in so doing ignored the powers of the Second Respondent to carry out works of restoration under section 91 of the Town and Country Planning Act 1971.

Secondly, that:

> the first respondent considered it unnecessary to confirm the compulsory purchase order in respect of plots owned by other than the applicants and thereby and by his express conclusions concluded that the avowed purpose of the order in the form of the second respondent's proposed landscaping scheme did not justify confirmation of the compulsory purchase order.

The provisions of section 91(1) of the Town and Country Planning Act 1971 there referred to read as follows:

> If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps which by virtue of section 87(7)(a) of the Act are required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter the land and take those steps, and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

It is to be observed, however, that, in practical terms, to do this it would be necessary first to get occupiers off the site.

The appellants submitted before Roch J. that compulsory purchase of the land was not required for the purpose in question, because that purpose could be achieved by other means, notably under section 91. Roch J. was referred to two authorities on the word "required" in this context, as have we. Both cases involve consideration of section 112(1)(*a*) but, as the judge said, and it has not been disputed, the word "required" must have the same meaning in (*b*) as in (*a*).

In *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council* Sir Douglas Frank held that

the word "required" in this context does not mean "essential," but only that the acquiring authority and the Secretary of State consider it desirable to acquire the land to secure the carrying out of the activity in question.

In *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* McCullough J. considered that the word "required" meant more than mere desirability. Roch J., in this case, dealt with that argument as follows.[3]

> Because of the nature of the power given to local authorities by section 112, namely, to deprive the owner of his land against that owner's will, I prefer and adopt the stricter meaning of the word "required" suggested by the judgment of McCullough J. In my judgment the word means that the compulsory acquisition of the land is called for; it is a thing needed for the accomplishment of one of the activities or purposes set out in the section. However, I accept the dictum of Sir Douglas Frank QC to this extent that neither the local authority nor the Secretary of State have to go so far as to show the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved.
>
> In this case the Secretary of State in paragraph 5 of the letter of his decision correctly, in my view, identified the purpose which it was necessary to achieve in the interest of proper planning of the area in which the land was situated, namely, to remove the development which had taken place and which was inappropriate and unacceptable and to ensure that the land should not be left in a derelict or neglected state. The Secretary of State then went on to consider whether acquisition of the land by compulsory powers was required in the sense of being needed for the accomplishment of the purpose because he has concluded, on the balance of probabilities, that successful restoration of the land was unlikely in respect of plots 1, 5, 6 and 7A, unless the order was confirmed in relation to those plots. In my judgment there was evidence on which the Secretary of State was entitled to reach that conclusion. If the Secretary of State had asked himself the question, is the compulsory acquisition of this land desirable for the accomplishment of the purpose, I would have held that he had applied the wrong test.
>
> Had the Secretary of State gone on to refuse to confirm the compulsory purchase order with regard to the other four plots, then in my opinion there may have been some prospect of his decision being overturned on the grounds of irrationality. However, that is not the decision reached by the Secretary of State and I assume, in his favour, that he will confirm the compulsory purchase order in respect of those plots if, despite the removal of caravans and so forth from those plots, those plots are not restored to some use suitable for the area but are

[3] (1991) 62 P. & C.R. 126 at pp. 133–134.

left in a state where they become or are likely to become derelict and neglected.

I may confess in this case that had the decision been mine, I would have reached the same conclusion as that reached by the inspector, namely, that the making of the compulsory purchase order at that stage was premature. However, it is a well established principle of administrative law that such judgments are for the local authority and the Secretary of State and not for this court.

Consequently the conclusion that I have reached is that I must dismiss these applications for judicial review.

I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word "desirable" satisfactory, because it could be mistaken for "convenient," which clearly, in my judgment, is not sufficient. I believe the word "required" here means "necessary in the circumstances of the case."

Before this court the appellants put their case in this way. It is said by Mr. Sales that the seven grounds of appeal in the notice of appeal all relate to different aspects of the same point, which is that the land, the subject of a compulsory purchase, is not required by the second respondent. Compulsory purchase by, for example, local authorities can be authorised when they require land for the carrying out of their function, such as by-ways, housing, parks, etc. In all cases it is the land itself which is required for the purpose for which there is statutory authority to acquire compulsorily. In the case of section 112(1)(*b*) of the 1971 Act, this, he points out, is an express requirement. But, he says, in this case there is no requirement whatever of the second respondents for the land itself. Their requirement is only the clearance of the land and that could be achieved without compulsory purchase of the land itself by any of the following methods or a combination of them: (1) prosecutions under section 179 of the 1990 Act for non-compliance with enforcement notices; (2) execution of work by the local planning authority plus entry on to the land for that purpose, pursuant to section 178 of the 1990 Act, coupled with a right to recover from the owner expenses reasonably incurred in so doing; (3) injunction proceedings pursuant to section 222 of the Local Government Act 1972; (4) the provision of an acceptable alternative site for the appellants.

I am bound to say, however, that the planning history of the site, notably that of plot 1, gives one little faith in the efficacy of these remedies in dealing with these occupiers. It is indeed important, in my judgment, not to lose sight of two sections of the evidence which was before the Secretary of State. The first of these was the history of the unsuccessful attempt by the council using other methods to get these plots cleared, which history was recounted by Roch J. in a passage which I have quoted from his judgment.

The second section concerned the intentions of the occupants themselves. These the inspector summarised on the evidence they gave as follows. He recounted that Mr. Sharkey, one of the appellants, who occupies plot 1, said in evidence that "they could not afford to restore it to green field land." Mr. Carey's evidence in respect of plot 2 was that he would not be prepared to move to any council owned site. Mr. M. Smith said in respect of plot 3 that he would be prepared, with the council's help, to

reinstate it. Mr. J. Smith from plot 4 said that he would reinstate it to green meadow. Mr. Fitzgerald, the other of the appellants, said of plot 5 that he could not reimburse the council for any costs of reinstatement. Mr. Stubbings from plot 6 said that he would not restore it to its former condition. Mrs. Brown from plot 7A said that they would not themselves clear it. Mr. Price from plot 7B on the other hand, said that he did not know if he would reinstate it.

In the light of all that evidence the Secretary of State was, in my judgment, entitled to arrive at the conclusion that the council were not likely to achieve successful restoration of the land including plots 1, 5, 6 and 7A without compulsory purchase but that in respect of the remaining plots it was still possible that they might.

I agree with Roch J. that, had the Secretary of State refused to confirm a compulsory purchase order with regard to those remaining four plots, some force might have been given to an argument that he had acted irrationally, but, as it is, the plain implication of his decision is that if these plots are not restored to a use suitable for their area he will confirm the compulsory purchase order in respect of them.

As I indicated, a subsidiary argument was advanced by the appellants that by deferring a decision in respect of those plots the Secretary of State has put it out of the council's power to carry out their landscaping scheme. I am satisfied however that this scheme was only put forward at the inquiry as a possible scheme should the order be confirmed in respect of all eight plots. The scheme is not essential to the planning purpose, which is to restore the land to rural use. That purpose can be achieved in respect of a single plot by removal of a caravan, hardstanding, etc., and reversion to grass or shrubs and trees.

For all these reasons I agree with Roch J.'s decision and would dismiss the appeal.

SCOTT L.J. I agree with the judgment that McCowan L.J. has given and would add only one point.

Both before us and before Roch J. Mr. Sales submitted that the power of compulsory purchase given by section 112 of the 1971 Act was a power which should be used only as "a last resort," as he put it. That may be so as between the various statutory powers available to the local authority under the Town and Country Planning Acts. If, however, the choice is between an exercise of the power of compulsory purchase and the alternative route by means of which a local authority may seek to enforce the planning law, namely High Court proceedings for a civil injunction, then I do not agree.

There are statements in a number of cases at levels all the way up to the House of Lords to the effect that the use of civil proceedings for injunctions in order to enforce the public law should be confined to exceptional cases (see, *e.g. Runnymede Council* v. *Ball* and the cases there cited). A civil injunction involves the substitution of an unlimited power of imprisonment, available in contempt of court proceedings against persons who disobey the injunction, for the limited penalties for disobedience of the law prescribed by Parliament. I do not doubt that in many cases local authorities are entirely justified in taking High Court proceedings for injunctions so as to obtain the additional sanction of committal for contempt in order to enforce obedience to the statutory offences in question. But to say that a compulsory purchase power is only to be used as a matter of last

resort after a civil injunction has been shown to be ineffective is a proposition I find entirely unacceptable. Which of the two, compulsory purchase or High Court proceedings, is to be preferred may depend upon the facts of a particular case. Which ought to be the last resort may be a matter of debate in a number of cases. But in the circumstances with which the council was faced in the instant case, I do not regard an application for a High Court injunction, with the possibility of contempt proceedings following, as something which had to be tried before the compulsory purchase procedure could be invoked. I agree that this appeal should be dismissed.

PARKER L.J. I agree. Both the inspector and the Secretary of State came to the clear conclusion that this land was necessary to be acquired in the interests of proper planning and that, unless that purpose could be achieved by other means, a compulsory purchase order was justified. The inspector had a somewhat rosier view of the situation than the Secretary of State and apparently took the view that the purpose might be achieved without a compulsory purchase order. The Secretary of State considered that it could not be achieved in respect of certain of the plots, but that it might conceivably be achieved in respect of others and therefore deferred his decision with respect to those others.

In my view the Secretary of State not only came to the right conclusion but no other conclusion was really open to him. I would also dismiss this appeal.

Appeal dismissed with costs.
Application for leave to appeal to the House of Lords refused.

Solicitors—Lance Kent & Co. Chesham, Buckinghamshire; the Treasury Solicitor; the Solicitor to the South Buckinghamshire District Council.

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

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

(Sullivan J.): July 31, 2000[1]

[2001] Env. L.R. 22

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

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

[1] Paragraph numbers in this judgment are as assigned by the court.

H3 The developers substantially revised the application for the business park, amendments were made to the spine road application, and both were then renewed, together with an application regarding estate roads and ancillary services. A new environmental statement covering the project as described in the three applications was presented to R, which then granted permission. A new application for judicial review was then made by the applicant ("M"), submitting: that a sufficient description of the development had not been provided in the revised applications in accordance with the Regulations, the scale or size of the development being provided, but design being a reserved matter; that outline planning permission could not be granted for a project which required environmental assessment; and that the development did not accord with the development plan with regard to creation of public open space and/or recreational areas.

H4 M argued that to comply with the requirements of paragraph 2(a) of Schedule 3 the development proposed had to be described in such detail that nothing was omitted which could be capable of having a significant effect on the environment if comprehensively assessed, and that since it was impossible to say that the ultimate treatment of any of the reserved matters in an outline application was incapable of having a significant effect on the environment, the outline application procedure was inconsistent with the requirements of environmental assessment. Directive 85/337 was not aimed at permitting decisions to be taken "in principle" on relevant projects, but only after a comprehensive assessment of them.

H5 **Held**, in refusing the application:

H6 The proper starting point was the Regulations themselves, rather than the Directive, since it was not suggested that they did not fully and accurately transpose the Directive into domestic law, although the Regulations should be construed, so far as possible, to accord with the objectives of the Directive. The objective of the Directive was that the likely significant environmental effects of such projects should be comprehensively assessed before development consent was granted, and not to frustrate the carrying out of important projects.

H7 It was for the decision maker to determine whether a sufficient description had been provided in an environmental statement, not the courts. The requirement in Article 5(2) to provide "information on the site, design and size of the project" was intended to be sufficiently flexible to accommodate the particular characteristics of the different types of project listed in Annexes I and II. It could be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed. If a particular kind of project was, by its very nature, not fixed at the outset, but was expected to evolve over a number of years

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

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

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

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

Legislation considered:

H10 E.U. Treaty, Art. 174 (ex 130r).

Town and Country Planning (Assessment of Environmental Effects) Regulations (S.I. 1988 No. 1199), reg. 21, Sched. 3, paras 2(a), 3(a).

Town and Country Planning Act 1990, ss.54A, 70

Legislation referred to:

H11 Town and Country Planning (Scotland) Act 1972, s.18A.

Directive 85/337, Arts. 2(2), 3, 5(2), Annex I, II.

Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988, No. 1199), Regs 2(1), 4(2), Schedules 1–3.

Town and Country Planning Act 1990, s.70(2).

Directive 97/11, 1st and 11th Recitals.

Regional Development Agencies Act 1998.

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No. 293).

Cases considered:

H12 *City of Edinburgh Council v. Secretary of State for Scotland* [1997] 1 W.L.R. 1447.

R. v. Rochdale MBC, ex p. Tew [2000] Env. L.R. 1; [1999] 3 P.L.R. 74

Berkeley v. Secretary of State for the Environment [2000] 3 W.L.R. 420; [2001] Env. L.R.

World Wide Fund (WWF) v. Autonome Provinz Bozen (Case C–435/97) [2000] 1 C.M.L.R. 149; [2000] Env. L.R. D14.

Cases referred to:

H13 *Kraaijfeld v. Gedeputeerde Staten van Zuid-Holland* (Case C–72/95) [1997] Env. L.R. 265; [1999] 3 C.M.L.R. 1.

R. v. Bromley London Borough, ex p. Barker [2001] Env. L.R. 1.

R. v. London Borough of Hammersmith and Fulham, ex p. CPRE London Branch [2000] Env. L.R. 549.

R. v. North Yorkshire C.C., ex p. Brown [2000] 1 A.C. 397; [1999] Env. L.R. 623.

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

Policy considered:

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

Policy referred to:

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

H16 *Mr J. Howell* Q.C. and *Ms K. Markus* appeared on behalf of the applicant.

Mr T. Straker Q.C. and *Mr P. Kolvin* appeared on behalf of the first respondent.

Mr B. Ash Q.C. and *Mr P. Greatorex* appeared on behalf of the second respondent.

SULLIVAN J.:

Introduction

1 This is round 2 of the battle for Kingsway Park. Round 1 concluded with my judgment on May 7, 1999 reported as *R. v. Rochdale MBC, ex p. Tew* [1999] 3 P.L.R. 74. (*"Tew"*) The applicant in the present proceedings was among the "others" in that title.

2 The background to the matter is set out in some detail in *Tew* and repetition in this judgment is unnecessary. For convenience, I will use the same definitions or abbreviations as were adopted in *Tew*. If no other source is cited, page references in parenthesis are to *Tew*.

3 In summary, two applications for planning permission were made by Wilson Bowden Properties Limited (Wilson Bowden) and English Partnerships on February 23, 1998. These were a bare outline application for a business park and a full application for a spine road to serve the park. The Council considered that the proposal required an environmental assessment under the assessment regulations. A detailed environmental statement was prepared by ERM. Having considered that environmental statement and a lengthy report by Mr Beckwith, the Council's Director of the Environment, the Council granted the two planning permissions on August 6, 1998.

4 The applicant and others challenged the validity of the planning permissions on five grounds set out on pages 79E to 80A. I upheld the challenge of grounds 2 and 3 and quashed both planning permissions. The Council did not appeal against this decision.

5 The applicants for planning permission made extensive revisions of the form to the business park application, minor amendments to the form of

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

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

The *Tew* decision

7 I have mentioned that the business park application as submitted an in 1998 was a "bare" outline, reserving all detailed matters for subsequent approval. It was accompanied by an illustrative masterplan and an indicative schedule of land uses. ERM's environmental assessment and the resulting environmental statement were based on the illustrative masterplan and indicative schedule.

8 Although condition 1.3 in the business park planning permission required the development to be carried out in accordance with the mitigation measures set out in the environmental statement, unless otherwise provided for by any other condition in the planning permission, the Council did not approve the illustrative masterplan. It was, effectively, rejected by condition 1.11 and the applicants for planning permission were required by condition 1.7 to submit a new "Framework Document ... showing the overall design and layout of the proposed business park".

9 he indicative schedule of uses was not incorporated into the planning permission and the hectarage of B8 uses was substantially altered by condition 1.10 which would in turn have had a knock on effect for the amount of other uses in the schedule: see pages 98G to 99C.

10 Against that background, Mr Howell had submitted under ground 2 of his challenge that the application for planning permission did not contain "a description of the development proposed, comprising information about the site and design and size or scale of the development", as required by paragraph 2(a) of Schedule 3 to the assessment regulations.

11 In response to that submission I concluded:

> "In summary, while the council took into consideration 'environmental information' about the effects of carrying out a business park develop-

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

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

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

13 At page 96C to D I said this:

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

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

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

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

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

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

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

> "The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park): ...
> (c) the creation of new, and extension of existing, public open space and informal recreation areas, including the extension and improvement of Stanney Brook Park."

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

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

The amended/new applications

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

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

20 The attachment describes the proposed development as:

"Outline application together with certain Reserved Matters for a proposed Business Park including buildings on Plots C to X inclusive as identified on the masterplan for:
General and light industrial uses in classes B1 and B2.
- Offices in use Class B1.
- Distribution and storage use in Class B8.
- Research and development facilities in use Class B1.

Uses ancillary to the Business Park uses including:
- Retail in use Classes A1, A2 and A3.
- Leisure in use Classes D2 and *sui generis*.
- Housing in use Class C1.
- Hotels in use Class C3.

Other commercial and local service uses."

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

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

22 Other notes refer to the environmental statement, to traffic impact assessments and to the full applications for the spine road and estate roads and other infrastructure.

23 The Schedule of Development lists each of the plots, dividing them into those plots where approval is sought for siting and means of access and those plots where those matters are reserved for detailed approval. A summary of the total hectarage and floorspace is given, which is then broken down by reference to use class.

24 Using plot T (which is proposed to contain the largest building in the business park) as an example: the schedule sets out the hectarage, 19.46; the use, B8; the floorspace, 80,412 square metres; the unit size, in the case of plot T 80,412 since there is proposed to be only one very large building on this plot; the height of the building, 25 metres; and the car parking numbers, 804. Assessments are also provided of traffic flows and employment generation.

25 More than one plan is described as a "Masterplan" in the application, but the plans build up to "The Masterplan", which is identified in and annexed to the development framework. It shows, within the framework provided by the spine and estate roads, the buildings proposed on each

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

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

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

28 Condition 1.7:

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

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

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

30 Condition 1.8:

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

buildings within that plot as set out in the 'Schedule of Development ... submitted with and forming part of the application."

31 Conditions 1.9 and 1.10 modified this by reducing the maximum eaves height of certain buildings in the interests of the amenity of residents in adjacent dwellings.

1.11:

"The development shall be carried out in accordance with the mitigation measures set out in the Environmental Statement submitted with the application unless provided for in any other condition attached to this permission."

1.12:

"The development shall be carried out in accordance with the principles and proposals contained in the Development Framework document submitted as part of the application unless provided for in any other condition attached to this permission."

1.13:

"The phasing of works within the site shall be carried out in accordance with the details set out in the Section entitled 'Phasing' in the Development Framework document, subject to the detailed requirements of other conditions in this permission."

32 In respect of the Stanney Brook Corridor, condition 1.15 said:

"The area of the Stanney Brook Corridor (as defined on (a) drawing and described in the Development Framework Document) shall remain undeveloped apart from the construction of surface water attenuation areas and footpaths/cycleways."

33 The reason given was:

"To ensure that an area of undeveloped open space is retained in the interests of amenity."

34 Conditions 1.16 to 1.18 effectively divided the corridor into three parts and required the different parts of the corridor to be enhanced and landscaped in accordance with the principles shown on three application drawings and in accordance with detailed treatment to be approved in writing by the local planning authority, concurrently with the construction of buildings on certain of the plots. The reasons given were:

"In order to ensure the maintenance of areas of nature conservation interest and to create areas of wildlife habitat in a phased order prior to the loss of existing habitat within the application site."

35 Under the subheading "Policy Setting" Mr Beckwith set out the terms of policy EC/6 in the UDP in full. He added that other policies in the UDP

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

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

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

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

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

The legislative and policy framework

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

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

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

> "48. Where EIA is required for a planning application made in outline, the requirement of the Regulations must be fully met at the outline stage since reserved matters cannot be subject to EIA. When any planning application is made in outline, the local planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects of the proposal to enable them to determine whether or not planning permission should be granted in principle. In cases where the Regulations require more information on the environmental effects for the Environmental Statement than has been provided in an outline application, for instance, on visual effects of a development in a National Park, authorities should request further information under regulation 19. This may also constitute a request under article 3(2) of the GDPO.
>
> ...
>
> 82. Whilst every E.S. should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'main' or 'significant' environmental effects to which a development is likely to give rise. In many cases, only a few of the effects will be significant and will need to be discussed in the ES in any great depth. Other impacts may be of little or no significance for the particular development in question and will need only very brief treatment to indicate that their possible relevance has been considered. While each ES must comply with the requirements of the Regulations, it is important that they should be prepared on a realistic basis and without unnecessary elaboration."

The grounds of challenge

40 These fall under two heads: failure to comply with the requirements of the assessment regulations and failure to comply with UDP policy EC/6d.

41 Under the former, it is submitted that, notwithstanding the amendments to the form of the business park application, it still does not provide "a description of the development proposed", which is sufficient for the purposes of paragraph 2(a) of Schedule 3 to the assessment regulations, because although information is provided in respect of the size or scale of the development, design is a reserved matter. The submission that an application for outline planning permission may not be made for

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

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

43 I find it convenient to deal with this ground at the outset.

Ground 2

44 Section 54A of the 1990 Act is in the following terms:

> "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

45 Section 70 deals with the determination of applications for planning permission. Subsection (2) provides:

> "In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

46 Since development plans contain numerous policies, the local planning authority must have regard to those policies (or "provisions") which are relevant to the application under consideration. The initial judgement as to which policies are relevant is for the local planning authority to make. Inevitably some policies will be more relevant than others, but section 70

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

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

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

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

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

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

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

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

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

> "Land is allocated between the A664 Kingsway, M62 motorway, B6194 Broad Lane and the Rochdale-Oldham Railway line for high quality general and light industry, offices, distribution and storage, research and development, and associated and complementary uses.
>
> The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park)."

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

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

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

55 Pausing there, it could not sensibly be concluded that failure to achieve part of what was required by criterion (d) meant that the proposal was not "in accordance" with the UDP or was a departure from that plan. Indeed, such a conclusion by the Council would have been vulnerable to a challenge on the grounds of *Wednesbury* unreasonableness. Mr Beckwith was not required to draw the Council's attention to the views of the UDP inspector, since that inspector's recommendations had been incorporated into the text of the policy EC/6 as adopted, which was set out in full in Mr Beckwith's report.

56 Dedication of the open land along Stanney Brook Corridor as a public open space could not have been achieved by the imposition of a condition. It is true that the Council could have considered whether dedication should be secured by the imposition of a negative condition, but it was not required to do so, because it was fully entitled to place reliance upon the assurance given by the NWDA, which is a non-departmental public body with a statutory responsibility to promote sustainable economic development and social and physical regeneration in the north-west of England under the Regional Development Agencies Act 1998. Planning conditions should not be imposed on a "belt and braces" basis, but only if they are required. There is no suggestion that the NWDA will fail to honour its undertaking. Mr Howell makes the point that a planning permission runs with the land. That is true, but the background to the NWDA's undertaking was that the application site is in a number of ownerships and, as was foreshadowed in 1998, the Council has authorised the making of a compulsory purchase order to facilitate the carrying out of the business park development, see page 102G.

57 Of course, those compulsory purchase order proceedings might fail, in which case the business park would not be able to proceed, but if the development does proceed the Council will be in a position to dispose of the necessary land to the NWDA, which will then be in a position to honour its undertaking. For all of these reasons I reject ground 2.

Ground 1

58 Turning to ground 1, Mr Howell submits, correctly, that the conclusion at page 96C to D of *Tew* (which is set out above) was *obiter*, because in that decision I was dealing with a bare outline application where all matters had been reserved.

59 He referred to the directive. In addition to the provisions set out between pages 88D to 89 H, he referred to a number of the recitals, laying particular stress upon the 10th:

> "Whereas, for projects which are subject to assessment, a certain minimum amount of information must be supplied concerning the project and its effects."

60 As mentioned on page 89C, Article 5.2 of the directive requires the developer of a project subject to assessment to provide "at least":

> "a description of the project comprising information on the site, design and size of a project."

61 It is this minimal amount of information which must, in all cases, subject to environmental assessment, be provided by the developer, according to Mr. Howell's skeleton argument which, "the information specified in paragraph 2 of Schedule 3 to the assessment regulations is intended to specify".

62 Mr Howell referred to regulations 2 and 3 of the applications regulations (page 80D to G)) emphasising that whereas a "full" application for planning permission must include the information "necessary to describe the development", an outline application did not have to describe the development in respect of any matter reserved for subsequent approval. It cannot be said that reserved matters, that is to say siting, design, external appearance, means of access and landscaping, can have no significant effect on the environment.

63 The purpose of the directive is "to ensure that planning decisions which may affect the environment are made on the basis of full information": see *per* Lord Hoffmann at page 404 of *R. v. North Yorkshire C.C., ex p. Brown* [2000] 1 A.C. 397, as amplified on page 430 of *Berkeley v. Secretary of State for the Environment* [2000] 3 W.L.R. 420.

64 Lord Hoffmann's speech in the latter case stressed the importance, both of the public being able to participate in the environmental assessment process, and of the need for "a single and accessible compilation, produced by the applicant at the very start of the application process", see pages 430H to 431E, and 432F.

65 A partial description of the development proposed, omitting a description of a reserved matter, does not enable that objective to be achieved. A description of the development proposed is also required to ensure that the project which is executed is the project which has been comprehensively assessed: see *Tew* at page 99D.

66 Mr Howell argued that one should not be influenced by the "commercial imperative" for there to be a measure of flexibility in applications for industrial estate developments, or urban development projects, even though he recognised that such projects might well be developed over a period of many years. He submitted, in effect, that all details of a project had to be described at the outset. If, subsequently, it was desired to change those details, then a fresh application for planning permission, accompanied by a fresh environmental statement, should be submitted. In this context he said that assistance could be derived from the decision of

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

> "[40] Thus observing that the scope of the Directive was wide and its purpose very broad, the Court held that the Directive covered 'modifications to development projects' even in relation to projects falling within Annex II, on the ground that its purpose would be undermined if 'modifications to development projects' were so construed as to enable certain works to escape the requirement of an impact assessment when, by reason of their nature, size or location, they were likely to have significant effects on the environment.
>
> ...
>
> [49] In view of the foregoing considerations, the answer to the first and second questions must be that Articles 4(2) and 2(1) of the Directive are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2,100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.
>
> ...
>
> [62] It follows that the details of a project cannot be considered to be adopted by a Law, for the purposes of Article 1(5) of the Directive, if the Law does not include the elements necessary to assess the environmental impact of the project but, on the contrary, requires a study to be carried out for that purpose, which must be drawn up subsequently, and if the adoption of other measures are needed in order for the developer to be entitled to proceed with the project."

67 Mr Howell derives two propositions from *Bozen*:

(1) Any development consent for the purposes of the Directive must be defined in detail, so as not to omit any element which could be capable of having a significant effect on the environment.
(2) Any later modification to a project must be subject to a further environmental assessment unless it is not likely to have a significant effect on the environment.

68 It follows, he says, that to comply with the requirements of paragraph 2(a) of Schedule 3 the development proposed must be described in such detail that nothing is omitted which may be capable of having a significant effect on the environment if comprehensively assessed.

69 Since it is impossible to say that the ultimate treatment of any of the reserved matters in an outline application is incapable of having a significant effect on the environment, the outline application procedure is inconsistent with the requirements of environmental assessment. Put shortly, the Directive's aim is that decisions should be taken "in full knowledge of the project's likely significant effects on the environment" (see the first recital of Directive 97/11 which is set out in full on page 89G of *Tew*). It is not aimed at permitting decisions to be taken "in principle" on relevant projects, but only after a comprehensive assessment of them.

70 Assessment on a "worst case" basis is no answer, because the assessment regulations require the "likely significant effects" to be assessed. The objective of environmental assessment is not to see whether the "worst case" is tolerable but to optimise effects on the environment: see the 11th recital of the Directive which refers to the contribution "of a better environment to the quality of life" and Article 174 of the Treaty which states that "community policy on the environment shall contribute to the pursuit of the following objectives ... preserving, protecting and improving the quality of the environment".

71 If the submission that an outline application is in principle incompatible with the requirements of paragraph 2(a) of Schedule 3 to the assessment regulations is not accepted, it is argued that this particular outline application did not provide a sufficient description of the development proposed, because notwithstanding the information supplied about size and scale, information on "the design ... of the development" was not provided. Mr Howell accepts that "design" in paragraph 2(a) of Schedule 3 may extend to more than the design of individual buildings within an industrial estate project. It may, for example, encompass such matters as the layout shown on the masterplan, but he submits that it includes their detailed design. In the case of all the plots details of design, external appearance and landscaping were reserved and in the case of the majority of plots, siting and means of access will also be reserved. Mr Howell

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

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

> "External materials should be of a high quality, commensurate with the use of each building. Consideration should be given to the use of masonry at low level and on principal elevations in combination with cladding and glazing.
>
> The use of colours that blend with the surrounding landscape will be necessary and therefore dense dark or bright colours will be discouraged. Primary colours should be restricted to window and door frames and will not be allowed for major elevational treatment. A preferred colour range will be made available to ensure continuity within the overall development.
>
> Particular attention should be paid to the design of the elevational treatment of larger scale buildings, which are require to be of high quality and design. The articulation of the facade through the use of contrasting tone, colour and texture is required to provide an attractive appearance."

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

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

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

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

75 Under "Building design and materials" we find in paragraph 6.59:

> "The visual impact, particularly of high sided warehouse buildings can be substantially reduced by appropriate detailed design choices. Each elevation needs to be considered in the context of both short, middle and long distance views. Dark coloured finishes should generally be used for those buildings (or parts of buildings) which will be seen against a landscape or urban backdrop, with light colours where the building will be seen against the sky. Potential nuisance from reflective materials must be avoided. White (as against pale) finishes are also generally unsatisfactory."

76 Both the impact on the setting of three listed buildings within the development site and the mitigation measures proposed are also dealt with in very general terms. That, says Mr Howell, is because design and landscaping on adjoining plots are reserved matters. Without detailed information about those reserved matters the public cannot make any meaningful representations about the effects of the project on the listed buildings. The B8 building proposed on plot T, at over 80,000 square metres, will be a very large building indeed and the environmental statement acknowledges that it will have "a significant impact" on certain views from within the development site, although the impact on views from outside the site is assessed as moderate. It is submitted that without details of the design and elevational treatment of this building one cannot sensibly assess its impact on the environment.

77 Finally, in respect of mitigation measures, Mr Howell points to the Outline Ecology Management Plan which formed part of the environmental statement. It contains a table which summarises, "Key management proposals" under three headings: "Objective", "Outline management prescription" and "Timetable". By way of example, the first objective is:

> "Ensure that all affected areas have been appropriately surveyed for protected species."

78 The prescription is:

> "Undertake further bat survey work in all buildings to be demolished and inspect all appropriate trees which are to be removed. The findings will be discussed with English Nature to determine the need for any specific mitigation measures.
>
> Re-survey the site for great crested newts. The findings to be discussed with English Nature to determine the need for mitigation measures."

79 Timescales are given for both surveys.

80 It is submitted that paragraph 2(d) of Schedule 3 to the assessment regulations requires a description of mitigation measures. The environ-

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

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

My conclusions

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

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

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

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

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

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

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

86 I have already mentioned the fact that it is not expected that the business park will be completely occupied until 2013. There is no challenge to this evidence and no reason has been advanced as to why the points made by the respondents should not hold good for other substantial projects of this kind.

87 At pages 96G to 97H of *Tew* I mentioned the contrast between projects such as this and most of the other descriptions of development that are listed in annex II to the directive and repeated in Schedule 2 to the assessment regulations. The other projects are either industrial projects for particular processes, or "one off" infrastructure projects, such as the construction of roads, tramways, dams or pipelines, which will, by their very nature, have to be defined in considerable engineering detail at the outset.

88 Article 2(2) of the directive allows Member States to integrate environmental impact assessment into their existing procedures for giving development consent, or to devise new procedures. Article 3 (which is set out on page 88H) states that the environmental impact assessment will

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

89 Since the "description of the project" required by Article 5(2) is a means to that end, in that it provides the starting point for the assessment process, there is no reason to believe that the directive was seeking to be unduly prescriptive as to what would amount to an appropriate description of a particular project. The requirement in Article 5(2) (see page 89C to E) to provide "information on the site, design and size of the project" is, and is intended to be, sufficiently flexible to accommodate the particular characteristics of the different types of project listed in annexes I and II (Schedules 1 and 2 to the assessment regulations). It may be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed.

90 If a particular kind of project, such as an industrial estate development project (or perhaps an urban development project) is, by its very nature, not fixed at the outset, but is expected to evolve over a number of years depending on market demand, there is no reason why "a description of the project" for the purposes of the directive should not recognise that reality. What is important is that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of for flexibility. The assessment process may well be easier in the case of projects which are "fixed" in every detail from the outset, but the difficulty of assessing projects which do require a degree of flexibility is not a reason for frustrating their implementation. It is for the authority responsible for granting the development consent (in England the local planning authority or the Secretary of State) to decide whether the difficulties and uncertainties are such that the proposed degree of flexibility is not acceptable in terms of its potential effect on the environment.

91 In *Tew* I said at page 97C that projects such as industrial estate developments and urban development projects have been placed "in a legal straitjacket" by the assessment regulations, in transposing the requirements of the directive into domestic law. The directive did not envisage that the "straitjacket" would be drawn so tightly as to suffocate such projects.

92 It has to be recognised that even if it was practical (despite the commercial realities described by Mr Ward) to prepare detailed drawings showing siting, design, external appearance, means of access and landscaping for every building within the proposed business park, the resulting environmental statement would be an immensely detailed work of fiction, since it would not be assessing the effect on the environment of any project that was ever likely to be carried out. All concerned with the

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

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

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

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

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

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

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

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

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

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

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

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

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

103 The fact that the developer then has to supply such further information does not mean that he will have failed to provide "a description of the development proposed" and thus failed to provide an environmental statement.

104 If one asks the question "how much information about the site, design, size or scale of the development is required to fall within 'a description of the development proposed' for the purposes of paragraph 2(a)?", the answer must be: sufficient information to enable "the main", or the "likely significant" effects on the environment to be assessed under paragraphs 2(b) and (c), and the mitigation measures to be described under paragraph 2(d).

105 In addition, the development which is described and assessed in the environmental statement must be the development which is proposed to be carried out and therefore the development which is the subject of the development consent and not some other development. An assessment of an illustrative masterplan, accompanying a "bare outline" application, which is not tied by condition to the resulting outline planning permission could not meet these requirements: see page 99C to E (cited above).

106 Whether the information provided about the site, design, size or scale of the development proposed is sufficient for these purposes is for the local planning authority, or on appeal or call in, the Secretary of State, to decide. I reject Mr Howell's submission that the issue is one for the court to decide, as a question of primary fact. That would be contrary, not merely to the structure of the regulations, but to the statutory Town and Country Planning framework of which they are but a part. Under the regulations it is for the local planning authority, or the Secretary of State, to decide whether a proposed development falls within the descriptions of the development set out in schedules 1 and 2, and in the case of the latter whether it would be likely to have significant effects on the environment: see the speech of Lord Hoffmann at page 429H to 430A in *Berkeley*. The local planning authority's or the Secretary of State's decision is subject to review on *Wednesbury* grounds. Regulation 4(2) requires the local planning authority or the Secretary of State to take the environmental information (which includes the environmental statement) into consideration before granting planning permission. Against this background the regulations plainly envisage that the local planning authority or the Secretary of State will also consider the adequacy of the environmental information, including any document or documents which purport to be an environmental statement.

107 The assessment regulations are part of a statutory planning framework which requires the local planning authority in dealing with an application to have regard to all material considerations: see section 70(2) of the 1990 Act above.

108 It is for the local planning authority to decide whether it has sufficient information in respect of the material considerations. Its decision is subject to review by the courts, but the courts will defer to the local planning authority's judgment in that matter in all but the most extreme cases. Regulation 4(2) reinforces this general obligation to have regard to all material considerations in the case of a particularly material consideration; "environmental information" which has been provided pursuant to the assessment regulations.

109 There is no reason why the adequacy of this information, which includes the sufficiency of information about the site, design, size and scale of development should not be determined by the local planning authority: see paragraph 48 of circular 2/99 above.

110 The question whether such information does provide a sufficient "description of the development proposed" for the purposes of the assessment regulations is, in any event, not a question of primary fact, which the court would be well equipped to answer. It is pre-eminently a question of planning judgment, highly dependent on a detailed knowledge of the locality, of local planning policies and the essential characteristics of the various kinds of development project that have to be assessed.

111 I do not accept the applicant's argument based on regulations 2 and 3 of the applications regulations, see page 80D to G. Reserved matters as defined in those regulations are not "information necessary to describe the development" which may, as a matter of concession, be omitted from an outline application. Such details may be omitted precisely because they may not be necessary to describe some developments for the local planning authority's purposes. The local planning authority will need to be satisfied that the description of the proposed development in the outline planning permission is adequate, given that it will be able to impose conditions in respect of reserved matters so that matters of detail can be dealt with at a later stage.

112 It will be noted that an outline planning permission is defined as a planning permission for the erection of a building which contains "one or more reserved matters". Thus, a planning permission which simply reserves one matter, for example details of means of access or landscaping is still an outline planning permission. It is difficult to see why an application for outline planning permission that includes details of siting, design and external appearance, should not be able to provide the basis for an environmental statement containing "a description of the development proposed, comprising information about the site and design, size or scale of the development".

113 Mr Howell submits that reserved matters, details of the means of access or landscaping, are capable of having an effect on the environment, that is why they are reserved for subsequent approval. That ignores the fact that

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

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

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

> "My judgment and that of the Council was that the information given enabled assessment of all the significant effects of the Kingsway Business Park development, and that it amounted to a description of the development comprising information on its site, design and size.
>
> The design information given was adequate for the significant environmental effects to be considered. The information included size and mass of the buildings, and the location of the structural planning. In the case of a substantial business park, I consider that such information is key to an understanding of the significant visual impacts of the development. While the number and position of apertures and choice of construction materials are all liable to affect visual impact to some slight degree, they will not alter the appraisal of the significant impacts of development. The simple point is that one can clearly envisage the design and size of the development."

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

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

117 He said this:

> "The environmental statement considers an almost fully defined development. Given the overall scale of the development, any significant visual impacts will arise from the overall massing of the buildings not from the details of their elevational treatments. With the nature of the development clearly defined in the applications, I could make sensible assumptions about the minor details of the elevations, the colour of the surface finishes and the likely growth of the landscaping and hence the residual visual impacts that might affect nearby residents ...
>
> Across the whole proposed development, the level of detail defined was more than sufficient to identify the 'likely significant effects', both in relation to design and the worst case that could arise in relation to other environmental effects, for example, archaeology, ecology, traffic, noise, water and air pollution. In my view, only minor matters have been reserved for subsequent approval. The Council, when it considered the applications, was fully informed about the worst environmental impact that could arise and was able to make a decision in the knowledge that only minor matters of design and implementation were to be left as reserved matters."

118 The approach of Mr Beckwith and Mr Gilder accords with the advice in paragraph 82 of circular 2/99 above. Whilst it is important that a "full factual description" of the development is provided, it is equally important that an environmental statement should be prepared "on a realistic basis and without unnecessary elaboration".

119 It has to be remembered that the project which required assessment was an "industrial estate development", in this case a business park. Plainly, there is a great deal of information about the design of the business park in the documents forming part of the application, see above. Whether information should also be provided about the detailed design of the individual buildings that are to comprise the park is a separate question. In some circumstances such details might be required because they could reasonably be expected to have a significant effect on the environment. The local planning authority concluded that this was not so in the present case. That is not a surprising conclusion. The extent of the information supplied about the site, size and scale of the project is not criticised. The local planning authority had as much information about "the design" of an industrial estate development project of this kind as could reasonably have been expected.

120 Acknowledging the uncertainties that are inherent in a project of this nature and scale Mr Gilder explained that the environmental statement had considered "the worst environmental impacts which would arise from the development, the so-called worst case".

121 He explained that although the definition of the worst case might differ according to which environmental effect was being assessed:

> "Where details were to be reserved for subsequent approval by the local planning authority, the worst case was defined as the minimum standards which a reasonable local planning authority might require, taking account of all other matters already fully defined in the applications.
>
> In the case of construction impacts, such as noise and dust, the worst case was taken to be the minimum standards which would be required by the regulatory authorities under, for example, the Control of Pollution Act 1974 and/or the relevant British Standards."

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

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

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

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

125 The passage in *Tew* continues:

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

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

126 Whilst the Council has deferred a decision on some matters of detail, which, as Mr Beckwith acknowledges, may have some environmental effect, it has not deferred a decision on any matter which is likely to have a significant effect, or on any mitigation measures in respect of such an effect.

127 It is true that at the reserved matters stage the council might theoretically approve a building in a particularly shocking colour, or with a particularly visually intrusive roof design, but that is not the test, since it can be satisfied that it is not likely to do so, hence the effect, for example, of a rainbow coloured building T, or a bizarre "landmark" building is not a "likely effect", let alone a "likely significant effect" on the environment.

128 Any major development project will be subject to a number of detailed controls, not all of them included within the planning permission. Emissions to air, discharges into water, disposal of the waste produced by the project, will all be subject to controls under legislation dealing with environmental protection. In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority: see, for example, the assumptions made in respect of construction impacts, above. The same approach should be adopted to the local planning authority's power to approve reserved matters. Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the "likely significant effects", not every conceivable effect, however minor or unlikely, of a major project.

129 For all these reasons, I am satisfied that Mr Howell's primary submission that an application for outline planning permission does not satisfy the requirement in paragraph 2(a) of Schedule 3 to the assessment regulations because it does not provide "a description of the development proposed" is not well-founded.

130 I can deal very shortly with the remaining argument that the 1999 application for outline planning permission did not contain sufficient information about the design of the development. As is explained above, a great deal of information was provided in the application documents about the design of the business park, even though details of the design and external appearance of individual buildings were not given. Taking building T as a convenient example, since it is the largest proposed building in the business park, its proposed use (B8), its siting, its size and scale are all known. In particular its principal dimensions, including its height to eaves from a defined plateau level are known. The plot size is known, together with the number of car parking spaces that are to be accommodated with the building on that plot. The position of the spine

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

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

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

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

133 It is to be noted that neither English Nature nor the Greater Manchester Ecology Unit objected to the application. They expressed certain detailed concerns. The Outline Ecology Management Plan was then prepared as a response to those concerns. Mr Beckwith's report explains that those bodies were satisfied with the response, together with the conditions that were imposed on the outline planning permission.

134 In short, there was "full knowledge", in the sense of there being available as much information as could reasonably be expected at this stage, about this kind of mitigation measure.

135 I repeat the view expressed in *Tew* that "full knowledge" does not mean "every conceivable scrap of information" about a project. Such an approach would not assist local planning authorities in identifying the likely significant environmental effects of major projects, and would merely serve to obstruct the development of such projects to no good purpose.

136 I therefore declare the respondents the victors in round 2 and dismiss this application for judicial review.

137 In conclusion I would like to pay tribute to the very able submissions of all leading counsel.

H17 *Solicitors*—Fatema Patwa, Smethwick; Borough Council; Pinsent Curtis.

SMITH v SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS

COURT OF APPEAL (CIVIL DIVISION)

(Waller and Sedley L.JJ. and Black J.): March 5, 2003[1]

[2003] EWCA Civ 262; [2003] Env. L.R. 32

H1 *Environmental assessment—planning permission for quarrying followed by landfilling—permission granted on appeal and made subject to conditions—whether lawful for Inspector to leave extent of obligation to carry out mitigation measures to local planning authority—whether rational to impose condition with respect to dust but leave odour and vermin to control by IPPC regime*

H2 The appellant (''S'') sought to quash the grant of planning permission, following a public inquiry, which extended the time and scope permitted under an earlier permission for quarrying activities, with permission also granted for landfilling once quarrying had been completed. A first planning application had been made in April 1998, accompanied by an environmental statement (''ES''), which was refused in July 1999. An appeal was lodged and a second planning application made. S claimed that the local planning authority had considered the first ES to be defective as it failed to set out mitigating measures (as required by Directive 85/337/EEC on environmental assessment (as amended) and the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199)). The planning authority received a second ES (including the mitigation information) with the second planning application. Following the grant of outline permission by the Inspector on appeal against refusal of the first application, S's application for judicial review was rejected. The grounds for that application had included that the Inspector had failed to comply with reg.21 of the 1988 Regulations as he incorporated a part of the second ES as part of the environmental information before the public inquiry, without invoking or complying with the Regulation.

H3 S then appealed, the main grounds concerning the extent to which the Inspector had to, in granting planning permission, make it an obligation of the applicant to carry out measures which would mitigate the impact on the environment, and the extent to which the Inspector could leave the extent of the obligation to carry out mitigation measures to a third party (in this instance the Local Planning Authority). Conditions had been imposed in the Inspector's Decision Letter which S argued were defective, those conditions including:

[1] Paragraph numbers in this judgment are as assigned by the court.

"3. Unless otherwise agreed in writing by the Local Planning Authority mineral extraction, landfilling, restoration and aftercare of the site shall be carried out in accordance with the following plans:

. . . [List of Plans] . . .

Save where measures are required by the conditions set out elsewhere on this permission which shall take precedence over the above approved plans."

"5. No development shall take place until a detailed scheme for the landscaping of the site has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall included details of:

(a) the positions, species and sizes of all existing trees, shrubs and hedgerows on the site which are to be retained and the proposals for their protection throughout all operations on site,
(b) the position, species, density and initial sizes of all new trees and shrubs,
(c) the method of planting to be used including any protection measures,
(d) the programme for implementation and carrying out of the scheme.

The scheme as approved shall be carried out in full accordance with the agreed programme of implementation following the date of such approval in writing."

"6. A landscape management plan including management responsibilities and maintenance schedules for all landscaped areas shall be submitted to the Local Planning Authority for approval in writing concurrent with the landscaping scheme required by condition 5 above. The landscape management plan shall be carried out as approved by the Local Planning Authority for the duration of the landfilling site restoration works."

"9. No development shall take place until a scheme to suppress dust generated on site, has been submitted to and approved in writing by the Local Planning Authority. Once approved such scheme shall be implemented in full until site restoration is completed in accordance with condition 19 below."

H4 S submitted that these conditions left the planning authority free to give consent to proposals which departed from those set out in the (second) ES, and that it had been irrational to impose a condition with respect to dust, but leave odour and vermin to control by the Integrated Pollution Prevention and Control regime.

H5 **Held,** in dismissing the appeal:

H6 (1) A condition could not lawfully be so wide as to permit the subsequent renegotiation of an element of the planning permission of which it formed part. If the conditions had in fact provided the degree of latitude submitted, and so had allowed for a total reassessment of the impact on the environment, that would have been contrary to Art.4(2) of Directive 85/337/EEC (as amended). However, the wording of the Decision Letter as a whole was such that the Local Planning Authority was not free to go outside the constraints imposed by the plans submit-

ted in respect of the ES. It had not been intended that that the planning authority could in effect reconsider the impact on the environment and vary the conditions imposed by the approved plans.

H7 (2) It had been permissible for the Inspector to leave details such as species of trees, and planting of the same, to the planning authority, and to rely on the fact that the adverse impact on the environment would be dealt with by approved Landscape and Landscape Management Plans. Having set the parameters of the planning permission, including contours of the land and the provision of trees, the Inspector had been entitled to consider how the planning authority was likely to deal with the details and to conclude that the way in which the details would be dealt would mitigate the environment. In doing so, he had complied with his obligations under Art.4(2) of the Directive.

H8 (3) As there were two aspects to the proposed development—extraction of minerals and landfill—and only the latter would be subject to the IPPC regime, it had been logical to distinguish between the relevant impacts and to leave control of odour and vermin to IPPC (the odour and vermin impacts potentially arising from the second phase of the development, which was subject to IPPC).

H9 **Legislation referred to:**

Directive 85/337/EEC on Environmental Assessment

Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199), regs 2(1) and 4(2) and Sch.3

Town and Country Planning Act 1990, ss.78(1) and 288

H10 **Cases referred to:**

Berkeley v Secretary of State for the Environment, Transport and the Regions (No.1) [2001] 2 A.C. 603; [2000] 3 W.L.R. 420; [2000] 3 All E.R. 897; [2001] 2 C.M.L.R. 38; [2001] Env. L.R. 16; (2001) 81 P. & C.R. 35; [2000] 3 P.L.R. 111; [2001] J.P.L. 58; [2000] E.G.C.S. 86; [2000] N.P.C. 77

Gateshead MBC v Secretary of State for the Environment [1995] Env. L.R. 37; (1996) 71 P. & C.R. 350; [1994] 1 P.L.R. 85; [1995] J.P.L. 432; [1994] E.G.C.S. 92

R. (on the application of Barker) v London Borough of Bromley [2001] EWCA Civ 1766; [2002] Env. L.R. 25; [2002] 2 P. & C.R. 8; [2001] 49 E.G.C.S. 117; [2001] N.P.C. 170

R. v Cornwall County Council Ex p. Hardy [2001] Env LR 25; [2001] J.P.L. 786

R. v Rochdale Metropolitan Borough Council Ex p. Tew [2000] Env. L.R. 1; [1999] 3 P.L.R. 74; [2000] J.P.L. 54; [1999] E.G.C.S. 70; (1999) 96(20) L.S.G. 41

R. v Rochdale Metropolitan Borough Council Ex p. Milne [2001] Env. L.R. 22; (2001) 81 P. & C.R. 27; [2001] J.P.L. 229 (Note); [2001] J.P.L. 470; [2000] E.G.C.S. 103

Policy referred to:

H11 DoE Circular 11/95 on ''The Use of Conditions in Planning Permissions''

H12 *Mr R. Clayton Q.C.* and *Mr C. Zwart*, instructed by Patwa solicitors, for the appellant.
Mr T. Corner Q.C., instructed by the Treasury Solicitor, for the first respondent.
Mr J. Barrett, instructed by Walker Morris, for the second respondent.

JUDGMENT

1 **WALLER L.J.:** This is an appeal from the decision of Silber J. given on December 19, 2001 whereby he dismissed an appeal, brought under s.288 of the Town and Country Planning Act, 1990 (''the 1990 Act''), by Maureen Smith (''the claimant''). By that appeal and the appeal to this court the claimant seeks to challenge the decision of the first defendant, the Secretary of State for the Environment, Transport and the Regions (''the Secretary of State''), who by his Inspector in a Decision Letter dated March 14, 2001 (''the Decision Letter'') granted planning permission in respect of a proposed development at Buck Park Quarry, Whalley Lane, Denholme (''Buck Park Quarry'') subject to certain conditions.

2 The effect of the decision was to extend planning permission (90/9/02224) (''the 1992 permission'') granted on March 26, 1992 for the extraction of stone from Buck Park Quarry so as to extend the period for which permission had been granted, permit an increase in the depth of extraction at the quarry, and at the same time to facilitate the use of the quarry for the landfill disposal of up to 250,000 tonnes per annum of controlled waste for a period of ten years.

3 There were in fact two applications seeking the extension, the first of which was the subject of the appeal to the Inspector, and the second of which was not. Each was supported by an Environmental Statement (''ES''). The first point dealt with by Silber J. related to the question whether the Inspector on the appeal from the first refusal, was entitled to treat the ES relating to the second application as subsumed in the evidence before him. Silber J. decided that the Inspector was so entitled. That point was to be the subject of an appeal, but at the commencement of the hearing Mr Clayton Q.C. for the claimant abandoned that aspect of the appeal. For the purposes of this appeal it is accordingly possible to concentrate on the first application and its history.

4 The main point argued on the appeal did still concern the ES. An Environmental Statement was required by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations, 1988, as amended (''the 1988 Regulations''), which were made pursuant to the Council Directive 85/337/EEC (''the Directive''). There are now some new regulations, but it is common ground that it is the 1988 Regulations that apply to this application. Certain of the authorities cited to us deal with the later regulations. It is not suggested that any change in language makes consideration of those authorities inapposite to the points that arise on this appeal. Certain important provisions of the Regulations and the Directive are matters to which I will return, but in broad terms an ES requires identification of any significant impact on the environment, and identification of mitigating measures to deal with that impact, and the Regulations require the planning authority or the Inspector on an appeal to take into

consideration the ES. The main point raised on the appeal requires consideration of the extent to which the Inspector must in granting planning permission make it an obligation of the applicant to carry out measures which will mitigate the impact on the environment, and the extent to which the Inspector can leave the extent of the obligation to carry out mitigation measures to a third party, in this instance the Local Planning Authority.

The History

5 The applicant and second respondent to this appeal is Integrated Waste Management Limited (''IWM''), 90 per cent of which is owned by the local authorities of Hull, East Riding, North Lincolnshire and North East Lincolnshire. By planning application (98/01089/FUL) dated April 9, 1998 (''the planning application''), IWM applied to their Local Planning Authority, the City of Bradford Metropolitan District Council, (''the LPA''). The planning application sought to achieve three objectives:

(1) to vary conditions 2 and 24 of the 1992 permission,
(2) to landfill the quarry with controlled waste (that is, domestic, commercial and industrial waste),
(3) to introduce access improvements to the site.

6 Condition 2 had provided for a period of ten years, and the extension was for a further four years; Condition 24 permitted quarrying to a certain depth, and the application sought an extra eight metres.

7 The application was supported by an ES setting out the details of the development, the likely impact on the environment, and the measures proposed in mitigation. The application was also supported by the Report of the Head of Transportation and Planning [Tab 4 Core Bundle] (''the Report'').

8 The planning application was opposed by, amongst others, an action Group of which the claimant was one. The claimant has lived in the village of Denholme for many years and she lives less than a mile from the proposed development. She with others contended that she was directly affected by the existing quarrying operation at the site and was likely to be substantially affected by the proposed development. The claimant's concern was, and still is, that the grant of planning permission to extend time, to increase the depth of workings at Buck Park Quarry and to permit the site to be used for the landfill disposal of controlled waste might generate considerable traffic, noise and other nuisance damage particularly from dust, odours or vermin.

9 The application was refused by the LPA by notice dated July 23 1999, on the grounds that:

> ''The proposal will be contrary to GP2 (I), (II), (IV) and policy W1 (I) of the approved Unitary Development Plan, particularly by reason of the smell which would be generated, the visual impact on the surrounding environment and to the detriment of pedestrian safety along the A629 through Denholme Village''.

10 IWM appealed that decision. Mr Keith Durrant was appointed to hear the appeal. IWM was represented by Mr Barrett as they were before Silber J. and before us. The claimant, through her action group, was represented (we were told) by a Planning Consultant Advocate. The LPA took very little part, only appearing in relation to the question as to what conditions should be imposed if the Inspector allowed the appeal, and on the question of costs. The LPA, although defendants to these proceedings, have not been represented either before Silber J. or before us.

11 The hearing took place over 10 days. There was before the Inspector obviously the ES (and the subsumed ES) and the Report. By a Decision Letter dated March 14, 2001 the Inspector allowed the appeal granting permission subject to certain conditions.

12 The terms of the Decision Letter are critical to the points that arise on this appeal . The Inspector by para.6 identified the main issues:

> "Given this site context, I have come to the view that the main issues in this appeal are whether:
>
> filling the quarry with waste would harm the visual amenities of the Green Belt, having regard to the proximity of a Special Landscape Area to the west and to the setting of Park Farm, a Grade II listed building;
>
> a continuation of quarry working and a phased restoration by landfill could be carried out without polluting the local environment and disrupting the lives of local residents to an unacceptable degree;
>
> and, in the light of my conclusions on the above, whether:
>
> the proposed development would be inappropriate in the Green Belt (and if so, whether there are any very special circumstances that would justify it);
>
> there is a need for a new landfill site proximate to Bradford conurbation, involving additional stone extraction, to which appropriate weight should be given in balancing any benefits against harm (having regard to the Best Practical Environmental Option—the BPEO)."

Impact on the environment was therefore identified by the Inspector as the key issue.

13 He then, by paras 13 to 18, dealt with the first issue "the visual impact of the development". It is sufficient to quote paras 14 to 17:

> "14. The phasing and restoration proposals have however been carefully designed, both to screen most of the workings during the extraction and landfill phases and to create a land form appropriate to the grazed and wooded moorland fringe slopes of the areas. Although local climatic conditions are not favourable to fast tree growth, a sensible choice of species and planting techniques can achieve a degree of impact that would help absorb the development into the landscape. In the two key locations of visual impact, I believe therefore that the character of the local landscape would be sustained and that the end result would be attractive. Those locations are

> firstly, along Whalley Lane and in views towards the southern site boundary from Denholme Edge, and secondly from the end of Hewenden Reservoir and its eastern slopes.
>
> 15. In the first case, although for relatively short periods the top of the landfill and/or noise attenuation mounds would be seen during the operational and surcharge phases, set against the broader sweep of the landscape beyond or in passing down Whalley Lane its impact would be slight. In the second example, although there would for short periods be views into the landfall area that would be less pleasant than looking at a stone extraction face, that would be a receding and partially screened experience in the middle distance, again set within a strong land form that can absorb it. After restoration, the landform and its associated woodland planting would, I conclude, be seen as an integral part of the local landscape.
>
> 16. At Buck Park Farm (a listed building), the existing screening bund would have, behind it, an admittedly high but temporary additional earthwork and (possibly) a stone wall both acting as noise attenuation barriers. I conclude below in respect of noise that I see no need for a permanent wall (which could be oppressive immediately above the farmhouse on the skyline). The profile of the temporary bund would slope steeply away from viewpoints on Whalley Lane and be beyond the present high bund at the back of the farmhouse. Subject to noise attenuation being achieved only by temporary earthworks, I conclude that the setting of the farmhouse would not be changed by the development.
>
> 17. The site design and management regime that can be exercised, through landscaping and aftercare planning conditions, through the legal agreements submitted and through the Integrated Pollution Control and Prevention and Control (IPPC) permit under the jurisdiction of the Environment Agency is extensive. I therefore have no reason to doubt that the appellant company is capable of ensuring that the visual impact of the development on the Green Belt, during and after development, would be acceptable.''

I draw particular attention to the reliance by the Inspector in coming to his decision, so far as trees were concerned, on there being in the future ''a sensible choice of species and planting techniques'' (para.14), and on the degree of control that could be exercised ''through landscaping and aftercare planning condition . . . (para.17).

14 He then dealt with ''Water, gas, noise, traffic and other pollution from the development'' from paras 19 to 33. The only paragraph of relevance and then only to the second issue on this appeal, is para.32 which states:

> ''32. Finally in this issue, I turn to other potential pollutants: dust, odour and vermin. I agree with the appellant that the latter two are more properly matters for site management and would be controlled on a day-to-day basis through the operation of an IPPC permit using the best available technique. Although I do not underestimate the concerns of residents after their well-documented local experience at Manywells, such techniques are proven

to be effective when properly and speedily applied on a well-run site. I do however accept that the proximity of Buck Park Farm to potential dust generating activities is a material land use consideration that deserves attention at this stage. I consider nonetheless that any potential harm can be overcome by requiring a dust suppression scheme to be agreed and implemented as a planning condition.''

15 He then dealt with the Green Belt issue, the need for the development and other matters before turning to ''Conditions and Legal Agreements'' under which he said:

''48. In my reasoning above, I have referred directly or indirectly to a number of planning conditions that will need to be imposed and the reasons for them. Overall, I shall impose conditions that seek to:

define the development and its methods and hours of operation;

describe the details and procedures that are needed to ensure that the various phases of development are implemented in a way that mitigates their environmental impact and ensures a high and safe standard of working, set out the arrangements (and where appropriate standards) for the control of the access, noise, dust, odour and water pollution consistent with the controls that are the province of the Environment Agency under LPPC;

control the restoration and aftercare of the site and its associated landscaping;

and in doing so incorporate and update those conditions which are still relevant from the 1990 permission. They are based on those discussed and generally (but not totally) agreed at the inquiry between the appellant and the Local Planning Authority, having considered also the suggestions also made by the third parties.

49. The appellant has submitted a unilateral undertaking under s.106 of the Act. This provides for additional controls over the adequacy of site engineering works, for the provision of highway improvements, for a contribution to Bradford City Council of £40,000 for traffic safety measures in Denholme, and for the landscape management of the site and its immediate surroundings. A local liaison committee would also be established. I regard these obligations on the appellant and the landowner as providing significant environmental and community benefits which would mitigate the impact of the development, as already discussed above.

50. I also note that other agreements and a deed between the appellant and the landowner define the respective responsibilities of the two parties in working the site (the appellant being responsible for the landfill, the owner for stone extraction). Importantly, they provide for the appellant to take control in the event of the landowner not complying with best environmental practice in working the quarry. Given the history of the site, this adds confidence to my conclusions as to the acceptability of the overall development.''

16 He then expressed his overall conclusions in these words, and formal decision in these words:

> "51. I have concluded above that the development as whole would be appropriate in the Green Belt. With the imposition of suitable planning conditions and giving weight to the provisions of the s.106 Obligation and other legal safeguards, I am satisfied that the site can be worked and filled to high environmental standards and can be restored to fit in with the local landscape. I have also concluded that, whilst the outcome of the deliberations on need and proximity is not entirely clear cut, there are strategic advantages to locating a landfill site in this part of Bradford. For these and the more detailed reasons given above and having regard to all other matters raised, I therefore conclude overall that the appeal should be allowed.
>
> 52. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for (1) the continuation of mineral extraction without complying with conditions numbered 2 and 24 of planning permission 90/9/02224 granted by Bradford City Council on March 26, 1992, (2) the improvement of the access arrangements and (3) the disposal of controlled waste, all at Buck Park Quarry, Whalley Lane, Denholme; in accordance with the terms of the Application No.98/01809/FUL dated July 23, 1999, as amended by the letter dated December 3, 1998, and the plans listed below, subject to the following conditions: . . ."

17 The conditions he imposed included conditions 3, 5, 6, and 9 which are as follows:

> "3. Unless otherwise agreed in writing by the Local Planning Authority mineral extraction, landfilling, restoration and aftercare of the site shall be carried out in accordance with the following plans:
> Amended plan referenced 13/5059/4 and titled 'Application Boundary and Land Ownership' as received by the Local Planning Authority on December 1998
> Plan titled 'Site configuration and Phasing' as referenced 16/5059/4 as revised in February 2000
> Plan titled 'Junction improvements (Ghost Island Junction) and Footpath Alterations' referenced ref NL 02785 as revised in December 2000
> Plan titled 'General Layout of Site facilities' referenced and dated 30/5059/4 January 1998
> Plan titled 'Restoration Plan Pre-settlement (Worst Case Scenario) Contours Shown' referenced NL02785/49 and dated Feb 2000
> Plan titled 'Restoration and Pre-Settlement Contours' referenced 25/5059/4 and dated Nov 1997
> Plan titled 'Site topography & Proposed Access Road' referenced 34/5059/4 and dated September 1997
> Save where measures are required by the conditions set out elsewhere on this permission which shall take precedence over the above approved plans.

5. No development shall take place until a detailed scheme for the landscaping of the site has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall included details of:
   (a) the positions, species and sizes of all existing trees, shrubs and hedgerows on the site which are to be retained and the proposals for their protection throughout all operations on site,
   (b) the position, species, density and initial sizes of all new trees and shrubs,
   (c) the method of planting to be used including any protection measures,
   (d) the programme for implementation and carrying out of the scheme. The scheme as approved shall be carried out in full accordance with the agreed programme of implementation following the date of such approval in writing.
6. A landscape management plan including management responsibilities and maintenance schedules for all landscaped areas shall be submitted to the Local Planning Authority for approval in writing concurrent with the landscaping scheme required by condition 5 above. The landscape management plan shall be carried out as approved by the Local Planning Authority for the duration of the landfilling site restoration works.
9. No development shall take place until a scheme to suppress dust generated on site, has been submitted to and approved in writing by the Local Planning Authority. Once approved such scheme shall be implemented in full until site restoration is completed in accordance with condition 19 below.''

18 The first issue which arises on this appeal was identified by the judge in the following terms:

(i) Whether condition 5 of the Inspector's Decision Letter was defective as it failed to require the proposed development to comply with the proposed tree planting and grassland seeding schemes and mitigation measures set out in the Landscape Proposals contained in the Second ES (''*the Landscaping Issue*'');
(ii) Whether condition 9 of the Inspector's decision was defective as it, failed to require the proposed development to comply with the proposed dust mitigation measures set out in the second ES (''*the Dust Issue*'');

19 The only expansion of the above which is necessary so far as identifying the issue in the court of appeal is concerned, would be to include a reference to the wording with which condition 3 commences *i.e.* ''unless otherwise agreed in writing'', and the proviso to that condition ''Save where measures are required by the conditions set out elsewhere . . . which shall take precedence over the approved plans''. Mr Clayton placed considerable reliance on these aspects of condition 3 as supporting his argument that by virtue of the conditions imposed IWM were not tied to implementing the mitigation measures in so far as they were identified in the plans set out under condition 3. His argument was that

the LPA were free to give written consent to any departure from the plans and thus free to vary the mitigation in so far as it was identified in the plans.

20 In the Court of Appeal Mr Clayton has also raised a further issue not argued before Silber J. by reference to para.32 of the Decision Letter, and condition 9. He suggested that it was irrational for the Inspector to impose a condition in relation to the suppression of dust, but so far as odour and vermin was concerned leave it to the IPPC. He submitted that the Inspector should have imposed a condition in relation to odour and vermin as well as dust.

21 Mr Corner Q.C., for the Secretary of State, submitted that it was not right to allow this point to be taken for the first time in the Court of Appeal, but in addition he and Mr Barrett gave their suggested answer to the point. In my view their answer was a complete one, and I would propose to deal with the point without considering whether technically Mr Clayton should be free to argue the matter as he did.

The Statutory provisions and authorities

22 The starting point is the Directive to which the United Kingdom gave effect by the 1988 Regulations. I will quote the relevant provisions of the 1988 Regulations, but the approach to the Regulations is coloured by the Directive, the purpose of which is described in the speech of Lord Hoffman in *Berkley v Secretary of State for the Environment* [2001] 2 A.C. 603 at 615 in the following terms:

> "I said in *R. v North Yorkshire County Council Ex p. Brown* [2000] 1 A.C. 397, 404 that the purpose of the Directive was 'to ensure that planning decisions which may affect the environment are made on the basis of full information'. This was a concise statement, adequate in its context, but which needs for present purposes to be filled out. The Directive requires not merely that the planning authority should have the necessary information, but that it should have been obtained by means of a particular procedure, namely that of an EIA. And an essential element in this procedure is that what the Regulations call the 'environmental statement' by the developer should have been 'made available to the public' and that the public should have been 'given the opportunity to express an opinion' in accordance with Art.6(2) of the Directive. As Advocate General Elmer said in *Commission of the European Communities v Federal Republic of Germany* (Case C-431/92) [1995] E.C.R. 1–2189, 2208–2209, para.35:
>
> > 'It must be emphasised that the provisions of the Directive are essentially of a procedural nature. By the inclusion of information on the environment in the consent procedure it is ensured that the environmental impact of the project shall be included in the public debate and that the decision as to whether consent is to be given shall be adopted on an appropriate basis.'
>
> The directly enforceable right of the citizen which is accorded by the Directive is not merely a right to a fully informed decision on the substantive

issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues. In a later case (*Aannemersbedrif P K Kraaijeveld BV v Gedeputeerde Staten van Zuid-Holland* (Case C-72/95) [1996] E.C.R. 1–5403, 5427, para.70), Advocate General Elmer made this point again:

> 'Where a member state's implementation of the Directive is such that projects which are likely to have significant effects on the environment are not made the subject of an environmental impact assessment, the citizen is prevented from exercising his right to be heard.'"

23 Regulation 4(2) of the 1988 Regulations provides:

> "24 The local planning authority . . . shall not grant planning permission pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration [and state in their decision that they have done so]".

According to Reg.2(1):

> "'environmental information' means:
> . . . such a statement as is described in Sch.3."

Schedule 3 describes an "environmental statement" as comprising, with emphasis added:

> "1. . . . a document or series of documents providing, for the purposes of assessing the likely impact upon the environment of the development proposed to be carried out, the information specified in para.2 (referred to in this Schedule as 'the specified information');
>
> 2. The specified information is—
>
> (a) a description of the development proposed, comprising information about the site and design and size or scale of the development;
>
> (b) the data necessary to identify and assess the *main* effects which that development is likely to have on the environment;
>
> (c) a description of the *likely significant* effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on—
>
> human beings; flora; fauna; soil; water; air; climate; the landscape; the inter-action between any of the foregoing; material assets the cultural heritage;
>
> (d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and
>
> (e) . . ."

24 We have also been referred to the following decisions: *R. v Rochdale Metropolitan Borough Council Ex p. Tew* [1999] 3 P.L.R. 74 and *R. v Rochdale*

Metropolitan Borough Council Ex p. Milne [2001] J.P.L. 470 decisions of Sullivan J.; *R. v Cornwall County Council Ex p. Hardy* [2001] Env. L.R. 26 a decision of Harrison J. which followed Sullivan J.'s approach in *Tew* and *Milne*; *R. (on the application of Barker) v London Borough of Bromley* [2002] Env. L.R. 631 CA in which Sullivan J.'s approach in *Milne* and *Tew* was approved.

25 Principles which those authorities establish seem to me to be the following: First, where outline planning consent is being applied for (and *Tew and Milne* were cases concerned with outline planning consent, *Milne* being round two of a battle over the same development), it is at the outline consent stage that the planning authority must have sufficient details of the proposed development, sufficient details of any impact on the environment, and sufficient details of any mitigation to enable it to comply with its Art.4(2) obligation.

26 Second, the reason for that is that once outline planning consent has been given there is effectively no going back without (at the very least) the payment of compensation. As Sullivan J. said in *Tew*:

> "Even if significant adverse impacts are identified at the reserved matters stage, and it is then realised that mitigation measures will be inadequate, the local planning authority is powerless to prevent the development from proceeding" [97F].

There will accordingly be no proper opportunity when the planning authority considers the matters reserved to reappraise the environmental issues. Indeed *Barker* held that the obligation under Art.4(2) is not an obligation on the planning authority at the consideration of the reserved issue stage.

27 Third, the planning authority or the Inspector will have failed to comply with Art.4(2) if they attempt to leave over questions which relate to the significance of the impact on the environment, and the effectiveness of any mitigation. This is so because the scheme of the regulations giving effect to the Directive is to allow the public to have an opportunity to debate the environmental issues, and because it is for those considering whether consent to the development should be given to consider the impact and mitigation after that opportunity has been given. As Harrison J. put it in *Hardy*:

> "Mr Straker laid emphasis upon the fact that the local planning authority felt that, in imposing conditions, it had ensured that adequate powers would be available to it at the reserved matters stage. That, in my view, is no answer. At the reserved matters stage there are not the same statutory requirements for publicity and consultation. The environmental statement does not stand alone. Representations made by consultees are an important part of the environmental information which must be considered by the local planning authority before granting planning permission. Moreover, it is clear from the comprehensive list of likely significant effects in para.2(c) of Sch.3, and the reference to mitigation measures in para.2(d), that it is intended that in accordance with the objectives of the Directive, the information contained in the environmental statement should be both comprehensive and systematic, so that a decision to grant planning permission is taken 'in full

> knowledge' of the project's likely significant effects on the environment. If consideration of some of the environmental impacts and mitigation measures is effectively postponed until the reserved matters stage, the decision to grant planning permission would have been taken with only a partial rather than a 'full knowledge' of the likely significant effects of the project. That is not to suggest that full knowledge requires an environmental information statement to contain every conceivable scrap of environmental information about a particular project. The Directive and the Assessment Regulations require likely significant effects to be assessed. It will be for the local planning authority to decide whether a particular effect is significant, but a decision to defer a description of a likely significant adverse effect and any measures to avoid, reduce or remedy it to a later stage would not be in accordance with the terms in Sch.3, would conflict with the public's right to make an input into the environmental information and would therefore conflict with the underlying purpose of the Directive.''

28 Fourth, (and here as it seems to me one reaches the most difficult area) it is certainly possible consistent with the above principles to leave the final details of for example a landscaping scheme to be clarified either in the context of a reserved matter where outline planning consent has been granted, or by virtue of a condition where full planning consent is being given as in the instant case.

29 The above quotation from Harrison J. in *Hardy* refers to the ES not having to contain ''every conceivable scrap of environmental information''. This reflects a passage in the judgment of Sullivan J. in *Tew* at 98B. Sullivan J, dealing with the same kind of point in *Milne*, and with the argument that where an ES was required Outline Planning Consent which contemplates landscaping as a reserved matter simply could not be granted said this at para.113:

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

Then at para.126 he said:

> ''Whilst the Council has deferred a decision on some matters of detail, which, as Mr Beckwith acknowledges, may have some environmental effect, it has not deferred a decision on any matter which is likely to have a significant effect, or any mitigation measures in respect of such an effect.''

At para.131 he said:

> ''The Council has power to ensure that the details which come forward at the reserved matters stage are in 'substantial accordance' with the Development Framework: see condition 1.7 above. It will be noted that the effect of condition 1.7 is that even where siting and means of access are reserved they will have to be substantially in accord with the Masterplan. Armed with all of this information about the proposed building on plot T, ERM were able to carry out a comprehensive assessment of its likely significant effects on the environment including, for example, its likely effect on the setting of listed buildings, and the public were able to make informed comments about the reliability of that assessment and to suggest further mitigation measures if they wished.''

30 The reference to condition 1.7 is of some interest. In the planning permission being considered in *Tew* three conditions appeared and were quoted by the judge at 78G to 79B:

> ''Condition 1.3 states:
>
> The development shall be carried out in accordance with the mitigation measures set out in the Environmental Statement submitted with the application, unless otherwise agreed in writing by the Local Planning Authority and unless otherwise provided for in any other condition attached to this planning permission.
>
> Condition 1.7:
>
> No development shall be commenced until a scheme (the Framework Document) has been submitted to and approved by the Local Planning Authority showing the overall design and layout of the proposed Business Park, including details of the phasing of development and the timescale of that phasing. The Framework Document shall show details of the type and disposition of development and the provision of structural landscaping within and on the perimeters of the site. The Business Park shall be constructed in accordance with the approved Framework Document unless the Local Planning Authority consent in writing to a variation or variations.
>
> Condition 1.11
>
> This permission shall be not construed as giving any approval to the Illustrative Masterplan accompanying the application.''

31 On the renewed application details, although landscaping, design and external appearances of all buildings were reserved, the Outline Planning Application included a ''masterplan and a framework document showing the overall design and layout of the whole site'', and the judge deals with the conditions proposed in paras 28 to 34 as follows:

"28. 1.7:

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

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

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

30. Condition 1.8:

'No building within any plot shall exceed the height specified for buildings within that plot as set out in the "Schedule of Development . . . submitted with and forming part of the application".'

31. Conditions 1.9 and 1.10 modified this by reducing the maximum eaves height of certain buildings in the interests of the amenity of residents in adjacent dwellings.

1.11: 'The development shall be carried out in accordance with the mitigation measures set out in the Environmental Statement submitted with the application unless provided for in any other condition attached to this permission.'

1.12: 'The development shall be carried out in accordance with the principles and proposals contained in the Development Framework document submitted as part of the application unless provided for in any other condition attached to this permission.'

1.13: 'The phasing of works within the site shall be carried out in accordance with the details set out in the section entitled "Phasing" in the Development Framework document, subject to the detailed requirements of other conditions in this permission.'

32. In respect of the Stanney Brook Corridor, condition 1.15 said:

'The area of the Stanney Brook Corridor (as defined on (a) drawing and described in the Development Framework Document) shall remain undeveloped apart from the construction of surface water attenuation areas and footpaths/cycleways.'

33. The reason given was:

'to ensure that an area of undeveloped open space is retained in the interests of amenity.'

34. Conditions 1.16 to 1.18 effectively divided the corridor into three parts and required the different parts of the corridor to be enhanced and landscaped in accordance with the principles shown on three application drawings and in accordance with detailed treatment to be approved in writing by the local planning authority, concurrently with the construction of building on certain of the plots. The reasons given were:

'In order to ensure the maintenance of areas of nature conservation interest and to create areas of wildlife habitat in a phased order prior to the loss of existing habitat within the application site.'"

The conditions in *Milne* as I understand it in the view of the judge placed constraints on the degree to which any decision at the reserved stage could have any environmental impact, and the constraints ensured that no decision should have a significant impact.

32 In addition, at para.128 of his judgment in *Milne* Sullivan J. said this:

> "Any major development project will be subject to a number of detailed controls, not all of them included within the planning permission. Emissions to air, discharges into water, disposal of the waste produced by the project, will all be subject to controls under legislation dealing with environmental protection. In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority: see, for example, the assumptions made in respect of construction impacts, above. The same approach should be adopted to the local planning authority's power to approve reserved matters. Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the 'likely significant effects', not every conceivable effect, however minor or unlikely, of a major project."

33 In my view it is a further important principle that when consideration is being given to the impact on the environment in the context of a planning decision, it is permissible for the decision maker to contemplate the likely decisions that others will take in relation to details where those others have the interests of the environment as one of their objectives. The decision maker is not however entitled to leave the assessment of likely impact to a future occasion simply because he contemplates that the future decision maker will act competently. Constraints must be placed on the planning permission within which future details can be worked out, and the decision maker must form a view about the likely details and their impact on the environment.

Application of the principles

34 In this case Mr Clayton did not argue that the ES did not contain sufficient details of the development; nor did he argue that the significance of the impact on the environment was not sufficiently identified; nor did he argue that the mitigation features were not fully set out; nor did he argue that the Inspector was not entitled to reach the conclusion that if the mitigation as set out was carried out the Inspector was entitled to reach the view he did as to the granting of permission. His complaint related to the conditions imposed. His first argument was that by virtue of the opening words of condition 3, the proviso at the end of condition 3 and condition 5 and condition 6, IWM, if it could persuade the LPA to consent, would in fact be free to do many things that would have a significant impact on the environment, and be free not to mitigate them. If that were so, his argument ran, it would follow that the actual impact on the environment of what IWM wished to do would not have been the subject of an ES, and would not have

been considered by the Inspector as required by Art.4(2). That would make the permission granted unlawful.

35 This argument led to a considerable debate as to the meaning of the words at the commencement of condition 3, and as to whether there were any limits on what the LPA could consent to under condition 5 and condition 6. If the conditions in effect allowed the LPA to reassess the impact on the environment and alter the features of the plans which were intended to mitigate any adverse effect, that would appear to be a contravention of Art.4(2) of the 1988 Regulations.

36 Mr Clayton's second argument was that by leaving for example the details of the species and planting of the trees etc to a landscape plan to be approved by the LPA, and by relying on the fact that that plan and the landscape management plan under condition 6 would have to be approved by the LPA, the Inspector was in breach of Art.4(2), in that the Inspector was not taking the decision on matters which could have an impact on the environment.

37 Let me deal first with the proper construction of the conditions. Do the conditions allow the LPA to approve a deviation from the plans which might have a significant adverse impact on the environment, or are the LPA constrained when considering the landscape scheme to dealing with details within the parameters identified by the plans? Mr Clayton suggested that the opening words of condition 3 could be read as entitling the LPA to agree in writing that one of the plans should no longer have to be complied with at all, or that some significant aspect of a plan should now be altered including some aspect of the plan that affected the impact on the environment. Thus he submitted that condition 5 can be read as giving the LPA a totally free rein as to landscaping and condition 6 a free rein over the landscape management plans.

38 At one point Mr Corner appeared to accept that the LPA could agree in writing that no trees as shown on the plans would need to be planted at all. His submission was however, that that would simply lead to the LPA not being able to enforce the condition for breach thereof. His argument was that that would not stop the LPA arguing that if no trees at all were planted, that the planning permission had not been complied with as the planning permission was being identified as "in accordance with the plans listed." His submission that nothing apart from a further planning application could alter the planning permission granted was the foundation of this argument.

39 On reflection he retreated from that argument. The concept of IWM gaining written consent to something on which they could rely for not being in breach of a condition, but on which they could not rely if it was alleged they had no planning permission was difficult to sustain. His argument, and that of Mr Barrett, became on refinement that nothing in the conditions could allow for a significant deviation from the plans forming the essentials of the planning consent. The conditions were designed simply to leave matters of detail to the LPA, but all within the concept as identified in the plans including the provision of trees even if the species had not been identified. The submission remained that a condition could not give the power to vary a planning permission.

40 As for the proviso to condition 3, Mr Corner, supported by Mr Barrett, submitted that those words simply allowed for the express wording of a further condition to take precedence, *e.g.* if condition 32 as to depth was inconsistent with the plans, that condition would take precedence.

41 In his response Mr Clayton did not, as I understood him, feel able to refute Mr Corner's submission that a condition cannot give the power to vary a planning consent. I did not understand him therefore to go so far as to say that a plan or an essential feature of a plan could be removed under condition 3 with the written consent of the LPA. My view on construction is as follows.

42 Mr Corner and Mr Barrett's construction of the proviso "Save where measures are required by the conditions set out elsewhere . . ." is clearly right. It is only dealing with conditions that expressly contradict an aspect of a plan to which the proviso applies. Those words if they stood alone would not allow a landscape scheme approved by the LPA to override the approved plans.

43 But I have been troubled by the first words of condition 3 in the context of which conditions 5 and 6 must be construed, and also by what at first sight seem the very general words requiring a "detailed scheme for the landscaping . . . to be approved in writing by the Local Planning Authority." Would this allow a landscape scheme without matters provided for on the plans to be approved by the LPA, and for the LPA to consent in writing to the removal of aspects from the plans? If so, this would seem to allow for a total reassessment of the impact on the environment by the LPA, which would, in my view, be contrary to Art.4(2). Mr Corner and Mr Barrett say clearly not. They say that the words at the commencement of condition 3 relate only to details and could not allow the LPA to consent to IWM not complying with the plans in any substantial way, and in particular, in any way which might have a significant impact on the environment. They submit that condition 5 also allows for a detailed scheme for landscaping, but would not allow a scheme which entailed any substantial non-compliance with the plans, and in particular which allowed for any significant impact on the environment contrary to the plans.

44 It might have made for greater clarity if the first words of condition 3 had stated that what was envisaged was consent as to details and that no consent could be given to any aspect of the plans that affected the substance of the permission granted or the significance of the impact on the environment or the significance of the mitigating measures contained in the plans. Condition 5 could have made clear that a landscape scheme could not allow for anything which had a significant adverse effect on the environment unconsidered by the Inspector. Condition 6 also could have been so limited. The conditions considered in *Milne* to which I have referred above, appear to have such express wording. Does the absence of such express wording lead to the conclusion for which Mr Clayton argues? I think not.

45 If one reads the Decision Letter, and in particular para.48, and if one has regard to the details of the plans which set the contours of the land and the position of trees, it seems to me that it simply cannot have been contemplated that by imposing conditions the Inspector was intending the LPA to go outside the constraints

placed by the plans. It was not intended that the LPA could in effect reconsider the impact on the environment and vary the conditions imposed by the plans.

46 The next question is whether it was permissible for the Inspector to leave details such as species of trees and planting of the same to the LPA, and to rely on the fact that the adverse impact on the environment would be dealt with by an approved Landscape Plan (condition 5) and a Landscape Management Plan (condition 6).

47 It was the LPA who proposed conditions 3, 5 and 6. The reasons they gave for proposing them was as follows:

> ''Condition 3:
>
> 'To ensure the planning permission is implemented in all respects in accordance with the submitted details.'
>
> Condition 5:
>
> 'The provision and maintenance of landscaping [around the site] is required in the interests of visual amenity.'
>
> Condition 6:
>
> 'The provision and maintenance of landscaping [around the site] is required in the interests of visual amenity.'''

48 Mr Clayton would argue that the Inspector was leaving the assessment of impact to the LPA by virtue of the fact that the details identified in condition 5, and the approval of a landscape plan and a landscape management plan was left to the LPA. Mr Corner and Mr Barrett argued that what has been left are the details and the Inspector can and has legitimately assessed the impact by reference to the likelihood of the way which the LPA will act.

49 In my view, the Inspector having set the parameters of the planning permission, including contours of the land and the provision of trees, was entitled to consider how the LPA was likely to deal with the details and to conclude that the way the details would be dealt with would mitigate the adverse effect on the environment. In so doing he complied with his obligations under Art.4(2).

50 Mr Clayton did not address any separate argument on condition 9. The point is once again that the Inspector having made it a condition that a dust suppression scheme be introduced, was entitled to leave the details to the LPA.

Paragraph 32 —distinction between dust, odour and vermin

51 This point was dealt with concisely by Mr Barrett. He pointed out that there were two aspects of the development, landfill and the extraction of minerals. So far as landfill was concerned that would be the subject of the IPPC regime. The extraction of minerals is not subject to that regime. There was thus a logical basis for leaving odour and vermin to the IPPC regime and making dust the subject of a condition. If, and in so far as Mr Clayton was pursuing an argument that even though vermin and odour were the subject of the IPPC regime it was still incumbent on the Inspector to impose a condition, it was not pursued with any

vigour. *Gateshead MBC v Secretary of State for the Environment* [1994] 1 P.L.R. 85, CA is authority for the proposition that it is open to the planning authority to leave matters within an agency such as the IPPC to that statutory body. Once again the principle identified in para.33 above applies.

52 I would accordingly dismiss the appeal.

53 **SEDLEY L.J.:** This contentious new phase of quarrying was correctly regarded by the inspector as involving a significant adverse effect on the environment. It followed that it was his duty to set conditions which would appropriately mitigate the effect; in fact, if he had not been able do so he would arguably have been precluded from granting planning permission at all.

54 Yet anybody reading items 3, 5, 6 and 9 of the conditions which the inspector decided to set could be forgiven for concluding that instead of fulfilling this obligation he had simply passed the buck to the local planning authority, with two apparent results. One was that the content of the conditions could thereafter be set by private negotiation between developer and local authority and become known to the public only when they were a *fait accompli*. The second was that the negotiated content might modify significant elements of the consent.

55 If either of these were the true effect of the conditions which form part of the grant I would have had little hesitation in holding the decision to constitute an abdication of the inspector's functions. It is only if what is left over is so defined that it cannot modify or disrupt the terms on which planning permission is being granted that, in my judgment, the handover of responsibility to the local planning authority is permissible. Not without some doubts, I am prepared to agree with Waller and Black L.JJ. that, carefully and narrowly construed, the conditions imposed by the inspector in the present case are contained in this box. They are to be read, in other words, as operating within not only the plans which the inspector is giving permission to implement but the conditions set by him for remedying the consequent impact on the environment. (I confess in this connection that I have been entirely unable to follow the distinction which Mr Corner Q.C. has sought to make between the variation or enforcement of a condition and the variation or enforcement of the planning permission of which it is part. I am consoled by the fact that Mr Barrett appeared to share my difficulty.)

56 In argument, sensing the proximity of the wall to their backs, counsel for both the Secretary of State and the developer stressed how little was being left by the inspector in the local planning authority's hands—matters only of detail, said Mr Corner, none of them capable of aggravating the environmental impact of the development or impeding its remediation. I am prepared to agree with the other members of the court that counsel are right—but the now accepted modesty of the reserved matters does not exactly leap from the page, and if it had not been for its emergence as a serious issue in this court, I doubt whether the chorus of self-denial would have been quite so plangent. Unglossed, the conditions would have constituted an invitation to the developer to press the local planning authority for relaxation of significant elements of the permission granted by the inspector, and no doubt also an invitation to the local planning authority to try to tighten them up. Such elastic wording, capable of being narrowed only by lega-

listic construction, has no place in decisions on which the public, the developer and the local planning authority are entitled to depend with some expectation of legal certainty.

57 It is evident that, apart from the rider to condition 3, the conditions adopted by the inspector follow the model conditions appended to Circular 11/95. Since the circular is directed principally, though not solely, to local planning authorities it is unsurprising that the model conditions provide for held over matters to be reserved to those authorities. But one apparent result of the absence of a distinction in the circular between local planning authorities and the inspectorate in relation to the framing of the model conditions is that inspectors, we are told, commonly remit matters (landscape management plans, for example) to the local planning authority.

58 If there are significant environmental elements (not, that is, matters of detail arising within a comprehensive grant of permission) it might seem on principle more appropriate that the Secretary of State, through his inspectorate, should reserve them to himself and thereby keep the public in the picture. It may be for consideration whether the full extent of the practice, which appears for many years to have been to remit the amplification of conditions to the local planning authority, is appropriate under the modern regime of environmental protection. It would be odd if such a carefully structured regime could be circumvented in this way by the surrender of public judgment to private negotiation. The point which has been put to us, that on the grant of outline planning permission it is to the local planning authority that outstanding matters are reserved, is not only not an answer: it reinforces the proposition that it is to the decision maker, and not to somebody else, that such matters should be reserved. On the other hand, s.78(1)(b) of the 1990 Act contemplates an appeal to the Secretary of State against, among other things, a local planning authority's refusal of approval required by a condition imposed on a grant of planning permission. This does not in terms include a condition imposed by an inspector, but neither does it exclude it.

59 The issue needs fuller debate than has been possible before us. What is clear for the present is that, remitted or retained, a condition cannot lawfully be so wide as to permit the subsequent renegotiation of an element of the planning permission of which it forms part. This I understand to be a premise of what is spelt out in para.33 of the judgment of Waller L.J.

60 So far as concerns provision for tree cover, my reason for agreeing that this too was made within the inspector's powers is the same as the foregoing—namely that on its proper construction it is limited to the carrying into effect of the elements of landscaping and planting recognised as necessary in the inspector's decision letter.

61 As to odour and vermin control, I agree that it was a proper compliance with the inspector's duty to leave these to the IPPC system, and that there was nothing inconsistent with this in making dust control subject to a distinct condition.

62 I wish lastly to record my concern at the reliance placed by the inspector on a purported s.106 Agreement tendered by the developer and stated on its title page to be unilateral. The inspector noted this but wrote (para.49) that he regarded

some of the obligations it contained as ''providing significant environmental and community benefits which would mitigate the impact of the development''. What he appears to have overlooked is that this unilateral undertaking purports at several points to bind the local planning authority. For example, para.5.3 purports to oblige the authority not unreasonably to withhold or delay approval of the developers' landscape management plan, and para.5.8 purports to bind the council, ''acting reasonably'', to determine outstanding works of maintenance and management. Reasonableness has many registers, the contractual one frequently more interventionist than the public law one. The adoption of a document of this kind, purporting to place obligations of reasonableness upon a public authority which is not a party to it, is capable of causing much dispute and confusion. Mr Barrett did not seek to suggest that its framing was other than unfortunate. Inspectors for their part need to be on the lookout for such Trojan horses.

63 **BLACK L.J.:** For the reasons given by Waller L.J. I agree that this appeal should be dismissed.

A

Supreme Court

Regina (Sainsbury's Supermarkets Ltd) *v* Wolverhampton City Council

[2010] UKSC 20

B

2010 Feb 1, 2; May 12

Lord Phillips of Worth Matravers PSC, Lord Hope of Craighead DPSC, Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood, Lord Mance, Lord Collins of Mapesbury JJSC

Compulsory purchase — Development — Competing proposals — Planning authority determining how to exercise compulsory purchase powers — Whether entitled when considering benefits of rival schemes to have regard to benefits accruing to site not within proposed development area — Town and Country Planning Act 1990 (c 8) (as amended by Planning and Compulsory Purchase Act 2004 (c 5), s 99, Sch 9), ss 226(1)(a)(1A), 233

C

The claimant supermarket company owned or controlled 86% of site A and another supermarket company, T Ltd, owned or controlled most of the remainder of the site. Both companies wished to develop site A but, unless the defendant local authority used its compulsory purchase powers in respect of that site, neither of the proposed developments could take place. T Ltd also owned site B, about 850 metres away, which contained a number of listed buildings which were in poor condition. For many years it had been an objective of the local authority to secure the regeneration of site B. T Ltd, who considered that it was not financially viable to develop site B on its own, offered to link its scheme for site A with the redevelopment of site B on the basis that that would amount to a subsidy at least equal to the loss it would sustain in carrying out the development of site B. The local authority approved in principle the making of a compulsory purchase order under section 226(1)(a) of the Town and Country Planning Act 1990[1] in respect of the claimant's land at site A to facilitate a development of the site by T Ltd. In resolving to make that order, the local authority took into account T Ltd's commitment to develop site B. The claimant sought judicial review of the local authority's decision on the ground that it was illegitimate for the local authority, in resolving to make the compulsory purchase order, to have regard to the regeneration of site B. The judge dismissed the claim. On the claimant's appeal, the Court of Appeal held that section 226(1)(a) required the local authority to be satisfied that the compulsory purchase order would facilitate the redevelopment of site A but that section 226(1A) required it to consider whether and to what extent the redevelopment of site A would bring well-being benefits to a wider area and that, if a redevelopment was likely to act as a catalyst for the redevelopment of some other site, such catalytic effects were capable of falling within the scope of section 226(1A) and it dismissed the appeal.

D E F G

On the claimant's appeal—

Held, (1) that the principles which applied to the determination of planning applications could apply, by analogy, to compulsory acquisition for development purposes, provided that (per Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Mance and Lord Collins of Mapesbury JJSC) because of the serious invasion of proprietary rights involved in compulsory acquisition, a strict approach to the application of those principles was adopted; that, therefore, a local authority

H

[1] Town and Country Planning Act 1990, as amended, ss 226(1)(a)(1A), 233: see post, para 108.

could take into account off-site benefits of a proposed development provided that such benefits were related to or connected with the development for which the compulsory acquisition was made; and that (per Lord Phillips of Worth Matravers PSC, Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Mance and Lord Collins of Mapesbury JJSC) such a connection had to be a real rather than a fanciful or remote one and (Lord Brown of Eaton-under Heywood JSC dissenting) in the absence of any other connection a cross-subsidy from the acquisition site to another site would not suffice (post, paras 70, 71–72, 80, 82, 83, 84, 89, 90, 97, 98, 120, 127–128, 134–135, 137–138, 151, 168, 173, 181).

(2) That (per Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Mance and Lord Collins of Mapesbury JJSC) the power of compulsory acquisition had to be capable of being exercised under section 226(1)(a) of the 1990 Act before the limitation in section 226(1A) applied; that (Lord Brown of Eaton-under-Heywood JSC dissenting) the claimed financial connection between the two developments did not amount to a relevant matter for the purposes of section 226(1)(a); and that (Lord Phillips of Worth Matravers PSC and Lord Hope of Craighead DPSC dissenting) no different result was required by the fact that T Ltd and the claimant co-owned and were in competition for site A and the council was proposing to dispose of the land to T Ltd under section 233 (post, paras 74, 75, 76, 80, 83, 90, 91, 96, 97, 100, 106, 151).

(3) Allowing the appeal (Lord Phillips of Worth Matravers PSC, Lord Hope of Craighead DPSC and Lord Brown of Eaton-under Heywood JSC dissenting), that, accordingly, there should be a declaration that the opportunity for redevelopment of site B was not a lawful consideration in deciding whether to make a compulsory purchase order in relation to site A (post, paras 79, 80, 89, 90, 97, 106).

R v Westminster City Council, Ex p Monahan [1990] 1 QB 87, CA, *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* (1993) 67 P & CR 78, CA, *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, HL(E) and *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, HL(Sc) considered.

Decision of the Court of Appeal [2009] EWCA Civ 835; [2009] 3 EGLR 94 reversed.

The following cases are referred to in the judgments:

Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223; [1947] 2 All ER 680, CA

Bradford (City of) Metropolitan Council v Secretary of State for the Environment (1986) 53 P & CR 55, CA

Brighton Borough Council v Secretary of State for the Environment (1978) 39 P & CR 46

Chesterfield Properties plc v Secretary of State for the Environment (1997) 76 P & CR 117

Clunies-Ross v Commonwealth of Australia (1984) 155 CLR 193

Galloway v Mayor and Commonalty of London (1866) LR 1 HL 34, HL(E)

Grampian Regional Council v Secretary of State for Scotland 1984 SC (HL) 58, HL(Sc)

Hall & Co Ltd v Shoreham-by-Sea Urban District Council [1964] 1 WLR 240; [1964] 1 All ER 1, CA

Hanks v Minister of Housing and Local Government [1963] 1 QB 999; [1962] 3 WLR 1482; [1963] 1 All ER 47

Kelo v City of New London, Connecticut (2005) 554 US 469

Municipal Council of Sydney v Campbell [1925] AC 338, PC

Newbury District Council v Secretary of State for the Environment [1981] AC 578; [1980] 2 WLR 379; [1980] 1 All ER 731, HL(E)

Prest v Secretary of State for Wales (1982) 81 LGR 193, CA

Pyx Granite Co Ltd v Ministry of Housing and Local Government [1958] 1 QB 554; [1958] 2 WLR 371; [1958] 1 All ER 625, CA
R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd (1993) 67 P & CR 78; [1993] JPL 538, CA
R v Secretary of State for Transport, Ex p de Rothschild [1989] 1 All ER 933; 87 LGR 511; sub nom *de Rothschild v Secretary of State for Transport* 57 P & CR 330, CA
R v Westminster City Council, Ex p Monahan [1990] 1 QB 87; [1989] 3 WLR 408; [1989] 2 All ER 74, CA
R & R Fazzolari Pty Ltd v Parramatta City Council [2009] HCA 12; 237 CLR 603
Rugby Joint Water Board v Shaw-Fox [1973] AC 202; [1972] 2 WLR 757; [1972] 1 All ER 1057, HL(E)
Simpsons Motor Sales (London) Ltd v Hendon Corpn [1964] AC 1088; [1963] 2 WLR 1187; [1963] 2 All ER 484, HL(E)
Sosmo Trust Ltd v Secretary of State for the Environment [1983] JPL 806
Sovmots Investments Ltd v Secretary of State for the Environment [1977] QB 411; [1976] 2 WLR 73; [1976] 1 All ER 178; [1977] QB 411; [1976] 3 WLR 597; [1976] 3 All ER 720, CA; [1979] AC 144; [1977] 2 WLR 951; [1977] 2 All ER 385, HL(E)
Standard Commercial Property Securities Ltd v Glasgow City Council (No 2) 2005 SLT 144; [2006] UKHL 50; 2007 SC (HL) 33, HL(Sc)
Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759; [1995] 2 All ER 636, HL(E)
Waters v Welsh Development Agency [2004] UKHL 19; [2004] 1 WLR 1304; [2004] 2 All ER 915, HL(E)
Westminster Renslade Ltd v Secretary of State for the Environment (1983) 48 P & CR 255

The following additional case was cited in argument:

Belfields Ltd v Secretary of State for Communities and Local Government [2007] EWHC 3040 (Admin); [2008] JPL 954

APPEAL from the Court of Appeal

The claimant, Sainsbury's Supermarkets Ltd, appealed, with permission of the Supreme Court (Lord Walker of Gestingthorpe, Lord Mance and Lord Collins of Mapesbury JJSC) granted on 5 November 2009, from a decision of the Court of Appeal (Ward, Mummery, Sullivan LJJ) [2009] 3 EGLR 94 given on 31 July 2009, dismissing its appeal against a decision of Elias J [2009] EWHC 134 (Admin) given on 3 February 2009 whereby he had dismissed its claim for judicial review of the decision of the defendant local authority, Wolverhampton City Council, given on 30 January 2008 to give approval in principle to the making of a compulsory purchase order under section 226(1)(a) of the Town and Country Planning Act 1990 in respect of land owned by the claimant. Tesco Stores Ltd was an interested party

The facts are stated in the judgment of Lord Collins of Mapesbury JSC.

Christopher Lockhart-Mummery QC, *Eian Caws* and *Charles Banner* (instructed by *CMS Cameron McKenna LLP*) for the claimant.

Compulsory purchase powers should only be exercised as a last resort, where the interference with property rights is necessary to achieve the relevant objectives. The court must carefully scrutinise the exercise of compulsory purchase powers to ensure that the statutory authority has been properly exercised: see *Prest v Secretary of State for Wales* (1982) 81 LGR 193, 198, 211. In deciding whether, and how, to exercise

compulsory purchase powers in relation to a site under section 226 of the Town and Country Planning Act 1990, as amended, a local authority may only lawfully take into account those factors relevant to the achievement of the statutory purpose. A proposal to cross-subsidise development elsewhere is entirely unrelated to the achievement of the statutory purpose and, in making its decision by reference to that factor, the local authority was pursuing a purpose outside the statutory scheme and/or was taking into account an immaterial consideration.

The Court of Appeal's construction of section 226(1A) was fundamentally flawed because it treated the terms of subsection (1A) as an enlargement, rather than as a restriction, of the powers under subsection (1)(a). The power under subsection (1)(a) may be exercised by a local authority if it thinks that the acquisition will facilitate, inter alia, the carrying out of redevelopment on the land to be acquired. However, by virtue of subsection (1A), it may only proceed to exercise that power if it thinks that the redevelopment is likely to contribute to one of the specified well-being objects. Subsection (1A) does not, therefore, confer any power on the local authority to acquire a site under subsection (1)(a) *because* such acquisition is likely to contribute to the well-being objects, but it prevents such acquisition if those benefits are not considered likely to arise as a result of the acquisition: see *Belfields Ltd v Secretary of State for Communities and Local Government* [2008] JPL 954. The exercise of the power of acquisition is rooted in subsection (1)(a) and requires the authority to decide that the acquisition will facilitate the redevelopment of the land that it proposes to acquire rather than some other unrelated land in a wholly different location. The Court of Appeal wrongly treated the limitation on the exercise of the power provided by subsection (1A) as providing a new class of material considerations which may be taken into account by a local authority in deciding whether to exercise its power compulsorily to acquire land under section 226. The ministerial advice in ODPM Circular 06/2004, *Compulsory Purchase and the Crichel Down Rules*, gives no support to the Court of Appeal's approach to the construction of subsection (1A). The claimant's approach to section 226 reflects the approach adopted by Parliament in section 3 of the Local Government Act 2000, under which the power to promote well-being in section 2 of that Act is curtailed by any prohibition, restriction or limitation imposed by another statute. In the field of compulsory purchase, subsections (1)(a) and (1A) of section 226 of the 1990 Act set such constraints on a local authority's powers of acquisition.

Irrespective of the provisions of section 226(1A), an acquiring authority, when making a compulsory purchase order of a site under section 226(1)(a), and the Secretary of State when authorising that order, may not have regard to a commitment to secure through cross-subsidy the development of an unrelated site, thereby seeking to achieve well-being benefits from such development. The lawfulness of the exercise of a statutory discretion is to be determined by looking at the relevant legislation and its scope and object in order to assess whether irrelevant considerations have motivated or influenced the decision. It is also fundamental to the exercise of discretionary powers that decision-makers must not pursue collateral purposes or ends which are outside the objects and purposes of the statute. Where compulsory purchase is concerned, the courts have consistently confined the exercise of such powers strictly to the stated statutory purpose:

see *Galloway v Mayor and Commonalty of London* (1866) LR 1 HL 34, 43. Where a plurality of purposes is pursued, but one purpose is unauthorised by the statute, the power will have been invalidly exercised. Subsection (1)(a) does not authorise the acquisition of land in order to facilitate the development of some other, unrelated land: see *Chesterfield Properties plc v Secretary of State for the Environment* (1997) 76 P & CR 117, 125. The contentions of the local authority and the interested party are contrary to the intention of Parliament as expressed in the clear language of section 226. Parliament has provided that the power of subsection (1)(a) is not to be exercised unless the authority thinks that well-being will result from the carrying out of development on the site to be acquired. If Parliament had contemplated that the achievement of the wider well-being of the local authority's area was to be a relevant factor in the overall discretion arising under section 226(1)(a), it would have expressed subsection (1A) differently. A local authority cannot use its powers for an ulterior object, however desirable that object may seem to it to be in the public interest: see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554, 572 and *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 772.

In the context of planning permission, an offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, is not a material consideration and is regarded as an attempt to buy planning permission: see the *Tesco Stores* case, at p 770. Benefits which are embellishments of the development itself or by way of appropriate mitigation to offset the impacts arising from the development can lawfully be taken into account: see *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* [1993] JPL 538. The possibility of one development cross-subsidising another highly desirable development is capable of being a material consideration under section 70(2) of the 1990 Act if the two developments form part of one composite development project: see *R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87. Whilst there is not an exact parallel between the scope of the material considerations under section 70(2) and those under section 226, there is no proper basis for distinguishing the approach taken in the planning cases from that involving the exercise of compulsory powers of acquisition. The Court of Appeal's suggestion that, unlike section 70(2), section 226(1A) imposes an express obligation to have regard to off-site benefits, is incorrect. The effect of section 226(1A) is to require consideration of the well-being benefits resulting from the physical development of the site to be acquired, which may in some cases also be experienced off-site, but not to have regard to benefits that might flow from the development of another unrelated site, purely because the prospective developer of the acquired site has chosen to create a financial link between the two developments. The Court of Appeal also erred in attaching weight to the fact that the financial viability of an application for planning permission is unlikely to be a material consideration for the purposes of determining an application under section 70(2) but that it was a highly material factor in the consideration by the Secretary of State of the merits of authorising compulsory acquisition. A distinction has to be made between the viability of the development for which the compulsory purchase order is being acquired and the viability of the development of some other unrelated

land. The former is a material consideration but that does not support the proposition that the latter is also material. The Court of Appeal also wrongly attached significance to the distinction between the scrutiny given to a compulsory purchase order compared with that given to a grant of planning permission. The scope of the power under section 226 cannot be affected by the fact that its purported exercise may be subject to subsequent scrutiny. The courts have defined the legitimacy of off-site benefits by reference to their direct relationship to the development in question in order to avoid a regime whereby planning permission can be granted to the highest bidder. There is an equal need to draw the same dividing line in the case of compulsory purchase, if not a greater need in view of its consequences. A comparison of the statutory language supports that position. The courts have carved out of the phrase "material considerations" in section 70(2) the principle of benefits related to the development. The far more specific language of subsections (1)(a) and (1A) of section 226 compels the same conclusion. There is no discernible justification or logic for treating as material in the context of a compulsory acquisition brought under the 1990 Act a consideration to which it would be unlawful for a planning authority to have regard when deciding whether to grant planning permission for the development which the compulsory purchase order is to facilitate. *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2005 SLT 144; 2007 SC (HL) 33 concerns a different statutory provision and can be distinguished.

Neil King QC and *Guy Williams* (instructed by *Wragge & Co LLP, Birmingham*) for the local authority.

In order lawfully to exercise its powers of compulsory acquisition under section 226(1)(a) of the 1990 Act a local authority must think that (i) the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land; and (ii) the development is likely to contribute to the achievement of the promotion or improvement of the economic, social and/or environmental well-being of their area. Thus, subsection (1)(a) is concerned with the purpose for which land may be compulsorily acquired and subsection (1A) is concerned with the consequences, in terms of achieving specific objects, which may flow from the acquisition; but the requirements of both provisions must be met before a compulsory purchase order can be made. The purpose of the acquisition of the claimant's land falls squarely within section 226(1)(a). The development which will be facilitated by the acquisition will then, via a cross-subsidy to the related development, also result in well-being benefits within section 226(1A). ODPM Circular 06/2004 correctly advises that the statutory concept of well-being extends to the whole of the relevant local authority area: see Appendix A, para 6.

The words of section 226(1A) should be given their ordinary meaning. If Parliament had wished to confine consideration to the economic, social and environmental well-being of only the land being acquired, it would have done so, although that would have made little sense. Section 226(1A) requires an acquiring authority to satisfy itself that the proposed acquisition will have beneficial consequences in terms of the well-being of its area. The nature of those consequences will vary widely depending on the circumstances; but there is no reason why bringing forward the beneficial

development of other land in its area is incapable, as a matter of law, of constituting such a consequence. The claimant's argument ignores the requirements of subsection (1A), by virtue of which the authority must think that the proposed development "is likely to contribute to the achievement of" the well-being objects of its area, and it is inconsistent with Government policy as set out in ODPM Circular 06/2004 that the benefit to be derived from exercising the power is not restricted to the area subject to the order, as the concept is applied to the well-being of the whole, or any part, of the acquiring authority's area. The words "contribute to" are wide. As a matter of ordinary language the proposed development will contribute to well-being objectives through the economic, social and environmental benefits which will result from the development of both sites. There is no difference in principle, in terms of the requirements of section 226(1A), between the benefits resulting from the proposed development itself and the benefits resulting from the related development. Section 226 is drafted in broad terms to encompass wide ranging well-being benefits. The necessary connection between the well-being benefit in question and the development of the compulsory purchase order land is clearly set out within subsection (1A). There is no reason to restrict the ordinary meaning of those words. Without the cross-subsidy which the related development will provide, the development of the compulsory purchase order site is unlikely to happen. Thus the development of the compulsory purchase order site is likely to contribute to the objects set out in section 226(1A) through both the development of that site and the consequential development of the other site. Accordingly, the benefits of the related development may lawfully be taken into account by the local authority by reference to section 226(1A) in exercising its powers under section 226(1)(a).

It is not appropriate to carry across dicta in cases which are concerned with the lawfulness of planning conditions and section 106 agreements directly and without any modification to the power to make compulsory purchase orders under section 226. The reasoning of the Court of Appeal, in drawing a distinction between the considerations material to the grant of planning permission under section 70(2) and the approach to the compulsory acquisition of land under section 226, is endorsed. The relevance of the well-being benefits which will be secured through the cross-subsidy which one development will provide for the other is not a matter of law but of weight for the decision-maker. The lawfulness of the considerations taken into account by the local authority should be resolved by reference to the plain wording of section 226 without more.

However, if it is appropriate to apply, in some way, the principles established in relation to section 70(2), it must be done in such a way as properly to reflect the different context and statutory purpose of compulsory acquisition, namely to facilitate development and to promote the well-being of the authority's area. *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 does not address, nor does it therefore seek to prescribe, what matters may, or may not, be taken into account by a local authority when deciding whether to exercise its powers of compulsory acquisition in order to facilitate the carrying out of one or other of two, or more, rival schemes of development on a site. In deciding whether to make a compulsory purchase order in such circumstances, there can be no reason in principle why the local authority should be precluded as a matter of law

from taking into account all the benefits to its area which will result from the making of the order: see *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, paras 39, 70. The authority is deciding whether to use its powers of compulsory acquisition in order to facilitate development which would not take place without intervention and so bring about well-being benefits to its area as a whole. Regard must be had to the statutory obligation to take wider well-being benefits into account, and the significance of viability and well-being. [Reference was also made to *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* [1993] JPL 538.]

The weight to be attributed to the cross-subsidy is a matter for the authority, subject to a challenge for unreasonableness: see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223. The potential materiality of cross-subsidy and financial considerations in the planning permission context is established by *R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87: see also *Brighton Borough Council v Secretary of State for the Environment* (1978) 39 P & CR 46; *Sosmo Trust Ltd v Secretary of State for the Environment* [1983] JPL 806 and *Sovmots Investments Ltd v Secretary of State for the Environment* [1977] QB 411.

Even if the well-being benefits which would result from the related development could not lawfully be taken into consideration under section 226(1A), in choosing between the two development proposals in the context of deciding which one, if either, to facilitate through the exercise of its powers of compulsory acquisition, the authority was entitled to take account of the overall benefits to its area which each scheme would provide. Such an approach does not enable a developer to buy the exercise of compulsory purchase powers, rather it means that the authority may take all material considerations into account in determining whether, and in whose favour, to exercise powers of compulsory acquisition.

Christopher Katkowski QC and *Scott Lyness* (instructed by *Ashurst LLP*) for the interested party.

The arguments of the local authority are adopted.

Under section 226(1A) the question is not whether the development is *likely to contribute* to the achievement of any one or more of the specified objects but whether the local authority *think that* it is likely to so contribute. The decision-maker is the local authority and it is then for the Secretary of State, if objection is made, to decide whether the development is likely to contribute to the achievement of one or more of the specified objects. A discretion is therefore given to the decision-maker and there are no clear grounds for interfering with it in this case.

In any event, the statutory purpose is not to be determined from subsection (1)(a) exclusively but from subsections (1)(a) and (1A) together. Even if the benefits of the related development do not fall within subsection (1A), where there is a competition between two rival contenders there is no public law reason not to allow additional benefits put forward by one contender to be taken into account.

Lockhart-Mummery QC replied.

The court took time for consideration.

12 May 2010. The following judgments were handed down.

LORD COLLINS OF MAPESBURY JSC

Introduction

1 This appeal is about compulsory acquisition of private property by local authorities under the Town and Country Planning Act 1990 in connection with the development or redevelopment of land. It raises for the first time, in the context of compulsory acquisition, a number of controversial issues which have arisen in the context of planning permission, including these: how far a local authority may go in finding a solution to problems caused by the deterioration of listed buildings; to what extent a local authority may take into account off-site benefits offered by a developer; and what offers (if any) made by a developer infringe the principle or policy that planning permissions may not be bought or sold.

2 The Raglan Street site is a semi-derelict site situated immediately to the west of, and just outside, the Wolverhampton Ring Road, which encircles the Wolverhampton city centre retail, business and leisure core. Sainsbury's Supermarkets Ltd ("Sainsbury's") owns or controls 86% of the site and Tesco Stores Ltd ("Tesco") controls most of the remainder. Sainsbury's and Tesco each wish to develop the Raglan Street site. Outline planning permission has been granted to Tesco, and the local authority has resolved to grant outline planning permission to Sainsbury's.

3 Tesco controls a site in the Wolverhampton city centre known as the Royal Hospital site, which is about 850 metres away from the Raglan Street site on the other side of the city centre. The Royal Hospital site is a large site with a number of listed buildings which are in poor condition. It has been an objective of Wolverhampton City Council ("the council") over several years to secure the regeneration of the Royal Hospital site. Tesco's position has been that it was not financially viable to develop the Royal Hospital site in accordance with the council's planning requirements and its space requirements on the site for the primary care trust. It offered to link its scheme for the Raglan Street site with the redevelopment of the Royal Hospital site and said that this would amount to a subsidy at least equal to the loss it would sustain in carrying out the Royal Hospital site development.

4 The council accepted that the Royal Hospital site would not be attractive to developers if it were restricted to the council's scheme. Even on optimistic assumptions, there did not appear to be a level of profit available which would make the site an attractive proposition when weighed against the risks. Development was unlikely to take place for the foreseeable future unless Tesco's proposals were brought forward through a cross-subsidy from the Raglan Street site.

5 In January 2008 the council approved in principle the making of a compulsory purchase order ("CPO") under section 226(1)(a) of the 1990 Act in respect of the land owned by Sainsbury's at the Raglan Street site to facilitate a development of the site by Tesco. In resolving to make the CPO, the council took into account Tesco's commitment to develop the Royal Hospital site (and indeed passed a resolution which indicated that one of the purposes of the CPO was to facilitate the carrying out of the Royal Hospital site development).

6 Sainsbury's wishes to develop the Raglan Street site and claims that it is illegitimate for the council, in resolving to make a CPO of the Sainsbury's land on the Raglan Street site, to have regard to the regeneration of the Royal Hospital site to which Tesco will be committed if it is able to develop the Raglan Street site. Elias J dismissed the claim by Sainsbury's for judicial review of the council's decision, and the Court of Appeal [2009] 3 EGLR 94 dismissed an appeal in a judgment of Sullivan LJ, with whom Ward and Mummery LJJ agreed.

Compulsory purchase

7 Section 226 of the 1990 Act, as amended by section 99 of and Schedule 9 to the Planning and Compulsory Purchase Act 2004, provides:

> "(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area— (a) if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, or (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
>
> "(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects— (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area."

8 CPOs made by a local authority under section 226 must be confirmed by the Secretary of State. If the owner of the land which is the subject of a CPO objects to the order, the Secretary of State will appoint an independent inspector to conduct a public inquiry. The inspector's report and recommendation will be considered by the Secretary of State when a decision whether or not to confirm the CPO is taken. Where land has been acquired by a local authority for planning purposes, the authority may dispose of the land to secure the best use of that or other land, or to secure the construction of buildings needed for the proper planning of the area: section 233(1).

9 Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute: *Rugby Joint Water Board v Shaw-Fox* [1973] AC 202, 214. The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose: see Taggart, "Expropriation, Public Purpose and the Constitution", in *The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade*, (1998) ed Forsyth & Hare, p 91.

10 In *Prest v Secretary of State for Wales* (1982) 81 LGR 193, 198 Lord Denning MR said:

> "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is

A expressly authorised by Parliament and the public interest decisively so demands . . ."

and Watkins LJ said, at pp 211–212:

"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must B be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."

C **11** Recently, in the High Court of Australia, French CJ said in *R & R Fazzolari Pty Ltd v Parramatta City Council* [2009] HCA 12, paras 40, 42, 43:

"40. Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These protections are not absolute but take the form of interpretative approaches where statutes are said to affect such rights."

D "42. The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights . . .

"43. The terminology of 'presumption' is linked to that of 'legislative intention'. As a practical matter it means that, where a statute is capable E of more than one construction, that construction will be chosen which interferes least with private property rights."

The facts

12 It was originally envisaged by Tesco that the Royal Hospital site would be a suitable location for a scheme which made provision for a F superstore whilst retaining and restoring much of the fabric of the former Royal Hospital buildings.

13 In January 2001, Sainsbury's applied for outline planning permission to redevelop the Raglan Street site for a mixed use development comprising retail uses, residential, leisure, parking and associated highway and access works. The application was called in by the Secretary of State and, following a public inquiry, planning permission was granted on G 12 November 2002.

14 In early 2005 Sainsbury's informed the council that it no longer intended to develop the Raglan Street site, because it had agreed to sell its interests in the Raglan Street site to Tesco, which was developing a revised scheme. Sale documentation was agreed and engrossments circulated for execution. In addition, Tesco acquired interests in the Raglan Street site owned by third parties.

H **15** On 28 June 2005 the council's cabinet (resources) panel reported on the proposed Tesco scheme, and said that the grant of permission would be linked to obligations relating to the Royal Hospital site. The panel approved in principle the use of compulsory purchase powers to assemble the Raglan Street site should the need arise. This was on the then understanding that the

interests of Sainsbury's would be transferred to Tesco by agreement and that any CPO would be required only to acquire minor interests within the site.

16 On 3 November 2005 Tesco entered into a conditional sale agreement with the council, which provided for the sale of the council's interest in the Raglan Street site to Tesco and for the council to use its compulsory purchase powers, if necessary, to facilitate the acquisition of outstanding interests in the site. The agreement also imposed an obligation on Tesco to carry out and complete works of demolition and repairs at the Royal Hospital site before the commencement of works at the Raglan Street site. This agreement was replaced in July 2009 by a conditional agreement for lease.

17 Following exchange of the agreement with the council and its acquisition of third party interests in the Raglan Street site, Tesco sought an exchange of its agreement with Sainsbury's. This did not happen because Sainsbury's decided that it did in fact wish to redevelop the Raglan Street site, and to submit a fresh planning application for redevelopment of the site.

18 In accordance with its obligations in the agreement with the council, Tesco submitted planning applications to the council for the development of both the Royal Hospital site (in April 2006) and the Raglan Street site (in July 2006). In October 2006, Sainsbury's submitted a planning application for a new scheme for redevelopment of the Raglan Street site. Both applications for the redevelopment of the Raglan Street site proposed a supermarket with parking and a petrol filling station, private flats, sheltered housing and small commercial units. The main differences between the schemes were that the Tesco supermarket was more than 50% larger than Sainsbury's, and the Sainsbury's scheme proposed retail warehouses and a leisure centre. Outline planning permission was recommended for both schemes.

19 On 6 December 2006 the council's cabinet noted that Tesco and Sainsbury's were unable to agree on how the site should be developed and resolved to approve in principle the use of CPO powers in relation to the Raglan Street site if necessary, subject to a further report to cabinet setting out all relevant factors including the criteria for selecting the preferred redevelopment scheme.

20 Each of the applications by Sainsbury's and Tesco for development of the Raglan Street site came before the council's planning committee on 13 March 2007 when it was resolved to grant both applications subject to various requirements. In the report to committee concerning the application by Tesco, the case officer said:

> "Initially Tesco indicated that they wished the development of the Royal Hospital site to be linked to the grant of permission for the development of Raglan Street. However, when their agents were asked how such a linkage could legitimately be made, they were unable to make a suggestion. There is therefore no such linkage for committee to consider."

21 Tesco's application for planning permission for development of the Raglan Street site was therefore considered without reference to the benefits of redevelopment of the Royal Hospital site. Planning permission for the Tesco proposal at the Raglan Street site was granted on 22 July 2009, which was also the date of a new conditional agreement for lease between the council and Tesco replacing the conditional agreement for sale of

A 3 November 2005. The agreement gives the council an option to purchase Tesco's interest in the Royal Hospital building. One of the terms is that, once certain works have been carried out by Tesco, then Tesco will make a balancing payment to the council which is to be used solely in connection with the completion of the Royal Hospital building works: schedule 1.

22 On 27 June 2007, in order to decide whose land to acquire compulsorily to facilitate the development of the Raglan Street site, the B council's cabinet resolved to invite both Sainsbury's and Tesco to demonstrate the extent to which their respective development proposals met the council's objectives for the Raglan Street area. It also resolved that Sainsbury's and Tesco be advised that the council's preferred outcome remained that the parties would negotiate with each other to resolve the impasse.

C **23** On 30 January 2008 a report was presented to the council's cabinet which, having set out the statutory background and relevant advice in ODPM Circular 06/2004, *Compulsory Purchase and the Crichel Down Rules*, stated:

> "The remaining sections of this report consider the two schemes against the legal and policy tests set out in the Act and the circular and D compare them with each other. There is no doubt that both the Tesco and Sainsbury's schemes would fulfil the statutory purpose of 'facilitating the carrying out of development, redevelopment or improvement on or in relation to the land'."

24 The report noted that both schemes for the Raglan Street site were acceptable in planning terms. The report went on to describe the E circumstances relating to the development of the Royal Hospital site by Tesco. Tesco was no longer seeking planning permission for a retail store on the site. The council had promoted a proposal by Tesco for a mixed use development comprising housing, offices, primary care centre and administrative offices, retail, financial services and professional offices and food and drink uses, together with associated parking. It would provide F accommodation for a primary care centre and offices for the primary care trust.

25 The report said that Tesco's position was that a Royal Hospital site development in accordance with the council's aspirations was not viable and that the return to a developer in a scheme according with the council's aspirations (including 20% affordable housing content) would involve a substantial loss, which would mainly be caused by the refurbishment of the G listed building element for the primary care trust. The scheme would be viable only through a cross-subsidy from the development of the Raglan Street site.

26 The report went on to say that whilst there was disagreement between Tesco and Sainsbury's about the viability of the Royal Hospital site development, it was clear that Tesco was unlikely to carry out its scheme H unless it was selected as the operator of the store at Raglan Street and were thus able to cross-subsidise the Royal Hospital site development.

27 The report concluded:

> "both schemes would bring appreciable planning benefits and would promote and improve the economic, social and environmental well-being

of the city. However, the Tesco scheme enjoys a decisive advantage in that it will enable the development of the RHS to be brought forward in a manner that is consistent with the council's planning objectives for that site. Making a CPO for the Tesco scheme will therefore result in a significantly greater contribution to the economic, social and environmental well-being of the council's area than would making a CPO for the Sainsbury's scheme. On this basis, and subject to the satisfactory resolution of the matters identified in the recommendations set out at the beginning of this report, there is a compelling case in the public interest to make a CPO to enable the Tesco scheme to proceed."

28 In accordance with the recommendation made in the report, the council's cabinet resolved to approve the principle of the making of a CPO of land owned by Sainsbury's to facilitate the carrying out of (i) Tesco's development proposals for the Raglan Street site and (ii) a mixed use retail, office and residential development of the Royal Hospital site, subject to, amongst other matters, Tesco producing satisfactory evidence of a commitment to the carrying out of the development of the Royal Hospital site before consideration be given to a resolution to authorise the making of the CPO. The cabinet decision of 30 January 2008 was referred to the council's scrutiny board and on 19 February 2008 the board resolved that the report be received and noted.

The issues

29 In the absence of agreement between Sainsbury's and Tesco, the only way in which the Raglan Street site can come forward for redevelopment is through the exercise of compulsory purchase powers. Section 226(1)(a) provides that the local authority has power to acquire compulsorily any land in its area if it thinks "that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land". A local authority may use its powers of compulsory purchase to assemble a site for development by a preferred developer: *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, para 6. It is common ground that the compulsory acquisition of the outstanding interests in the Raglan Street site would facilitate the carrying out of development, redevelopment or improvement on the land under either the Tesco scheme or the Sainsbury's scheme such that the test in section 226(1)(a) is met.

30 So also it is common ground that both schemes of redevelopment on the Raglan Street site would promote and improve the economic, social and environmental well-being of the city and therefore satisfy the requirement in section 226(1A) that a local authority must not exercise the power unless it thinks that "the development, redevelopment or improvement is likely to contribute to the achievement" of the well-being objects set out in the subsection. It is also agreed that the redevelopment of the Royal Hospital site as proposed would bring well-being benefits to the council's area, but Sainsbury's says that, contrary to the approach of the Court of Appeal, those well-being objects are not within section 226(1A), because they do not flow from the proposed redevelopment of the Raglan Street site.

31 The issues on this appeal are these. (1) Whether, on a proper construction of section 226(1A), the council was entitled to take into

account, in discharging its duty under that subsection, a commitment by the developer of a site part of which was to be the subject of a CPO to secure (by way of cross-subsidy) the development, redevelopment or improvement of another (unconnected) site and so achieve further well-being benefits for the area. (2) Whether the council was entitled, in deciding whether and how to exercise its powers under section 226(1)(a), to take into account such a commitment by a developer.

32 On the first issue, relating to the interpretation and application of section 226(1A), the Court of Appeal, differing from Elias J, found in favour of the council and Tesco. On the second issue, relating to section 226(1)(a), Elias J found in favour of the council and Tesco, but the Court of Appeal did not find it necessary to decide the point because of its conclusion on section 226(1A).

The judgments of Elias J and the Court of Appeal

Section 226(1A)

33 Elias J decided that, contrary to the argument of the council and Tesco, on a proper construction of section 226(1A), the Royal Hospital site benefits did not fall within its ambit. They would have been well-being benefits in relation to a CPO of that site, but in order to fall within section 226(1A) in relation to the development of the Raglan Street site, the benefits must flow from the development of the Raglan Street site alone, since that was the site covered by the CPO. The fact that a link between the two developments could be achieved by an agreement under section 106 of the 1990 Act did not entitle the council to treat what were in reality well-being benefits resulting from development of the Royal Hospital site as if they were generated by development of the Raglan Street site.

34 The Court of Appeal held that the council was entitled to take the Royal Hospital site benefits into account because they fell within section 226(1A). Whilst section 226(1)(a) focused the local authority's attention on what was proposed to take place on the CPO site itself and required the authority to be satisfied that the CPO would facilitate the redevelopment of the CPO site, section 226(1A) required it to look beyond the benefits that would accrue on the CPO site and to consider whether and to what extent the redevelopment of the CPO site would bring well-being benefits to a wider area. If the carrying out of the redevelopment of a CPO site was likely to act as a catalyst for the development or redevelopment of some other site or sites, then such catalytic effects were capable of falling within the scope of section 226(1A).

35 The financial viability of a proposed redevelopment scheme would be a highly material factor, and the proposed redevelopment of a CPO site might have to be cross-subsidised. It would be surprising if the potential financial implications of redeveloping the CPO site, including the possibility of cross-subsidy as a result of facilitating its redevelopment, were immaterial for the purposes of any consideration of the extent to which the carrying out of the redevelopment would be likely to contribute to wider "well-being" benefits.

36 The possibility of one development cross-subsidising another highly desirable development was capable of being a material consideration in the determination of a planning application under section 70(2) of the 1990 Act:

R v Westminster City Council, Ex p Monahan [1990] 1 QB 87. The proposed cross-subsidy was a material consideration in the light of the council's obligation under section 226(1A) to take wider, off-site "well-being" benefits into account and in the light of the significance of financial viability and economic well-being in the CPO context.

Section 226(1)(a)

37 Elias J held that for the purposes of section 226(1)(a), when choosing between two developments either of which would in principle be facilitated by a CPO, the council was entitled to have regard to all the benefits which would flow from the development when determining in whose favour the CPO should be exercised, including any off-site benefits achieved by means of an agreement linking the development of the Raglan Street site to development of the Royal Hospital site. The Court of Appeal decided that it was not necessary to rule on the alternative submission by the council and Tesco that the Royal Hospital site benefits were material considerations under section 226(1)(a) in any event.

The CPO context

38 There is no doubt that where a body has a power of compulsory acquisition which is expressed or limited by reference to a particular purpose, then it is not legitimate for the body to seek to use the power for a different or collateral purpose: *Simpsons Motor Sales (London) Ltd v Hendon Corpn* [1964] AC 1088, 1118, per Lord Evershed. In *Galloway v Mayor and Commonalty of London* (1866) LR 1 HL 34, 43, Lord Cranworth LC said that persons authorised to take the land of others "cannot be allowed to exercise the powers conferred on them for any collateral object; that is, for any purposes except those for which the legislature has invested them with extraordinary powers". In *Clunies-Ross v Commonwealth of Australia* (1984) 155 CLR 193, 199 the High Court of Australia said that the statutory power to acquire land for a public purpose could not be used to "advance or achieve some more remote public purpose, however laudable". See also *Municipal Council of Sydney v Campbell* [1925] AC 338, 343.

39 So also the familiar rules on the judicial control of the exercise of legislative powers apply in the CPO context as elsewhere: see e g, among many others, *Hanks v Minister of Housing and Local Government* [1963] 1 QB 999 (Megaw J); *Prest v Secretary of State for Wales* (1982) 81 LGR 193 (as explained in *de Rothschild v Secretary of State for Transport* (1988) 57 P & CR 330; *Chesterfield Properties plc v Secretary of State for the Environment* (1997) 76 P & CR 117 (Laws J)).

40 Nor can it be doubted that off-site benefits may be taken into account in making a CPO. *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33 was a decision on the Scottish compulsory purchase provisions in the Town and Country Planning (Scotland) Act 1997, which are similar to, but not identical with, the equivalent provisions in the 1990 Act. Section 191 provided in substance that where land is acquired or appropriated by a planning authority for planning purposes, the authority might dispose of such land to any person to secure the best use of the land, and that the land could not be disposed of

A otherwise than at the best price or on the best terms that could reasonably be obtained. The property in question was in a run down part of Bath Street and Buchanan Street, Glasgow. Proposals for redevelopment of the site by the developer contained a strong element of planning gain. The issue was whether the planning authority, exercising its compulsory purchase powers to redevelop a site, had acted ultra vires by entering into a back-to-back agreement with the developer in which the council had agreed to transfer the B land to the developer in return for the developer indemnifying the council for the money expended in assembling the site and making it available. In effect the developer was to be put in the same position as if it had itself exercised the power of compulsory acquisition: para 14. It was held that the words "best terms" permitted disposal for a consideration which was not the "best price", and so terms that would produce planning benefits and gains of C value to the authority could be taken into account as well as terms resulting in cash benefits. It was accepted that the local authority could use its powers to assemble the site for development by a preferred developer: para 6. Lord Hope of Craighead (at para 39) and Lord Brown of Eaton-under-Heywood (at para 70) also accepted that account could be taken by a planning authority of the wider, off-site planning gains which would result from the exercise of its compulsory purchase powers. But these were benefits directly D related to the site, and directly flowing from the development, and the decision does not help in the solution of the present appeal.

Other contexts

41 All parties, especially Sainsbury's, relied on authorities relating to planning applications, and in particular on those relating to the extent to E which conditions attached to a planning permission must relate to the development; and the extent to which off-site benefits (whether under a section 106 agreement or not) are "other material considerations" to which the authority must have regard under section 70(2) of the 1990 Act in deciding whether to grant or refuse planning permission (or to impose conditions). In the Court of Appeal Sullivan LJ did not think that a "read-F across" from the limitations on the exercise of the section 70(2) power was appropriate in the context of section 226.

42 In summary, Sainsbury's position was (a) the cases on the legitimate scope of planning conditions were relevant, from which it followed that the only off-site benefits which could be taken into account were those which fairly and reasonably related to the development in relation to which the CPO power was being exercised, that is the Raglan Street development; G (b) the cases on section 70(2) also proceeded on the basis that there had to be a connection between the benefits and the permitted development; (c) a potential cross-subsidy was relevant only where there was a composite development. The position of the council and Tesco was that the Court of Appeal was right to say that there should not be a read-across from the planning permission cases to CPO cases, but in any event the authorities showed that financial considerations, including off-site benefits through H cross-subsidies, were relevant, and were essentially a matter for evaluation by the planning authority.

43 It is necessary to note, at the outset, the relevant legal differences between this case and the cases in which similar questions have previously arisen. The first is that there is a difference between the exercise of powers of

compulsory acquisition and the exercise of powers to control development and grant planning permission, which is rooted in the deep-seated respect for private property reflected in the decisions cited above. The second is that both compulsory acquisition and planning control are solely creatures of statute, and that while the provisions which are relevant on this appeal are contained in one statute, the 1990 Act, the statutory provisions are different. The relevant provisions of section 226 have been set out above, and it is only necessary to repeat that section 226(1)(a) gives the local authority power to acquire compulsorily if "the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land" and does not contain, by contrast with section 70(2) on planning applications, any express reference to the authority having regard to "any other material considerations". Nevertheless the policies underlying planning permission and acquisition for development purposes are similar, and considerable assistance can be obtained from the learning in the case law on planning permissions.

"Fairly and reasonably relate" and "material considerations"

44 In *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554 (reversed on other grounds [1960] AC 260) Lord Denning said (at p 572) in relation to what is now section 70(1)(a) of the 1990 Act:

> "Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,' nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development."

Pyx Granite had the right to quarry in two areas of the Malvern Hills. The company required permission to break fresh surface on one of the sites. Conditions attached to the planning permission relating to such matters as the times when machinery for crushing the stone could be used and the control of dust emissions were held valid. The facts do not appear fully in the judgments, but it seems that the equipment was on the part of the land under the control of the company which was not the land in respect of which the application for permission related, but they could properly be regarded (for the purposes of the Town and Country Planning Act 1947, section 14) as "expedient . . . in connection with" the permitted development. Lord Denning said, at p 574: "It would be very different if the Minister sought to impose like conditions about plant or machinery a mile or so away."

45 Lord Denning's formula that "the conditions must [be] fairly and reasonably [related] to the development" was approved in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, 599 (Viscount Dilhorne), 607 (Lord Fraser of Tullybelton), 618 (Lord Scarman), 627 (Lord Lane). Viscount Dilhorne said, at p 599:

> "It follows that the conditions imposed must be for a planning purpose and not for any ulterior one, and that they must fairly and reasonably relate to the development permitted. Also they must not be so unreasonable that no reasonable planning authority could have imposed them . . ."

A As Lord Hoffmann said in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 772, as a general statement this formulation has never been challenged. See eg *Grampian Regional Council v Secretary of State for Scotland* 1984 SC (HL) 58, 66. In the *Newbury* case itself it was held that the Secretary of State was entitled to come to the conclusion that a condition imposed by a local authority requiring the removal of existing substantial buildings was not sufficiently related to a B temporary change of use for which permission was granted.

46 The effect of the adoption of the *Pyx Granite/Newbury* formula was to put severe limits on the powers of planning authorities: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 772–723. Conditions requiring off-site roadway benefits were held to be unreasonable in, for example, *Hall & Co Ltd v Shoreham-by-Sea Urban District Council* C [1964] 1 WLR 240 (ancillary road condition held to be *Wednesbury* unreasonable (*Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223)); *City of Bradford Metropolitan Council v Secretary of State for the Environment* (1986) 53 P & CR 55 (where it was suggested that it would make no difference if they were included in a section 106 agreement); cf *Westminster Renslade Ltd v Secretary of State for the Environment* (1983) 48 P & CR 255 (not legitimate to refuse a planning D application because it did not contain provisions for the increase of the proportion of car parking space subject to public control: the absence of a benefit not a reason for refusing planning permission where the benefit could not have been lawfully secured by means of a condition).

47 Section 70(2) of the 1990 Act provides that in dealing with an application for planning permission, the local planning authority "shall have E regard to the provisions of the development plan, so far as material to the application, and to any other material considerations".

48 There are two decisions of the Court of Appeal, and a decision of the House of Lords, which have a bearing on the questions on this appeal: *R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87; *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* (1993) 67 P & CR 78; *Tesco Stores Ltd v Secretary of State for the* F *Environment* [1995] 1 WLR 759. They deal with one or more of the following questions: the extent to which financial considerations are "material considerations" in planning decisions; what connection (if any) is required between the development site and off-site benefits for the purpose of material considerations; and the respective roles of the planning authorities and the courts in determining what considerations are relevant and what G connection with off-site benefits is necessary.

49 *R v Westminster City Council, Ex p Monahan* and *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* are both cases in which Lord Denning's "fairly and reasonably relate" formula in relation to conditions was extended to, or discussed in connection with, the issue of material considerations under section 70(2). In that context the decisions have been superseded by the decision in the *Tesco* case, but they H contain valuable discussion by some distinguished members of the Court of Appeal on questions of some relevance to the determination of this appeal.

50 In *Ex p Monahan* Lord Denning's formula was discussed in a case involving enabling development, i e development which is contrary to established planning policy, but which is occasionally permitted because it

brings public benefits which have been demonstrated clearly to outweigh the harm that would be caused. The decision also discusses the question of the extent to which the provision of off-site benefits by the developer may be material. In the *Plymouth* case one of the issues was the extent to which off-site planning benefits promised by a section 106 agreement were material considerations.

R v Westminster City Council, Ex p Monahan

51 In *R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87 the Royal Opera House, Covent Garden Ltd, applied for planning permission and listed building consents to carry out a redevelopment, the central objective of which was to extend and improve the opera house by reconstruction and modernisation to bring it up to international standards, and to develop the surrounding area consistently with that project. Parts of the site were proposed to be used for the erection of office accommodation, which would be a departure from the development plan. The planning authority granted permission for the whole proposed development on the basis that the desirable improvements to the opera house could not be financed unless the offices were permitted. The applicants sought judicial review of that decision on the ground, inter alia, that the fact that a desirable part of a proposed development would not be financially viable unless permission were given for the other part was not capable of being a "material consideration" for the purposes of what is now section 70(2) of the 1990 Act in granting planning permission for the development as a whole.

52 It was held that financial considerations which fairly and reasonably related to the development were capable of being material considerations which could be taken into account in reaching that determination; and that the local planning authority had been entitled, in deciding to grant planning permission for the erection of the offices, to balance the fact that the improvements to the opera house would not be financially viable if the permission for the offices were not granted against the fact that the office development was contrary to the development plan.

53 On this appeal Sainsbury's accepts that in the context of section 70(2) the possibility of one development cross-subsidising another desirable development is capable, in limited circumstances, of being a material consideration, and that *Ex p Monahan* is such a case, where both developments formed part of one composite development. The council and Tesco say that *Ex p Monahan* supports their position because the Court of Appeal held the consequence of the financial viability of the proposed opera house development to be a relevant factor in the planning authority's determination.

54 Kerr LJ's reasoning was essentially this: (1) in composite or related developments (related in the sense that they can and should properly be considered in combination) the realisation of the main objective may depend on the financial implications or consequences of others; (2) provided that the ultimate determination is based on planning grounds and not on some ulterior motive, and that it is not irrational, there would be no basis for holding it to be invalid in law solely on the ground that it has taken account of, and adjusted itself to, the financial realities of the overall situation; (3) financial considerations may be treated as material in appropriate cases: *Brighton Borough Council v Secretary of State for Environment*

(1978) 39 P & CR 46; *Sosmo Trust Ltd v Secretary of State for the Environment* [1983] JPL 806. He concluded, at p 117, by agreeing with Webster J's conclusion at first instance. Webster J had said:

> "It seems to me to be quite beyond doubt [but] that the fact that the finances made available from the commercial development would enable the improvements to be carried out was capable of being a material consideration, that is to say, that it was a consideration which related to the use or development of the land, that it related to a planning purpose and to the character of the use of the land, namely the improvements to the Royal Opera House which I have already described, particularly as the proposed commercial development was on the same site as the Royal Opera House and as the commercial development and the proposed improvements to the Royal Opera House all formed part of one proposal."

55 The "fairly and reasonably related to the development" formula was applied by Kerr LJ (at pp 111–112), and Staughton LJ (at p 122) (who also agreed that there was a composite or related development).

56 There was some discussion in the *Ex p Monahan* decision of the limits of what could be taken into consideration, by reference to two hypothetical examples. The first example (which Kerr LJ said was an extreme example) was the case of the development of an undesirable office block in Victoria which was said to be necessary to generate the finance for a desirable development in Covent Garden. Kerr LJ said that a combination of this nature would be unlikely to be properly entertained as a single planning application or as an application for one composite development, and that such a case would involve considerations of fact and degree rather than of principle: at p 117. Nicholls LJ dealt with this point by saying, at p 121:

> "I am not persuaded by this reductio ad absurdum argument. Circumstances vary so widely that it may be unsatisfactory and unwise to attempt to state a formula which is intended to provide a definitive answer in all types of case. All that need be said to decide this appeal is that the sites of the commercial development approved in principle are sufficiently close to the opera house for it to have been proper for the local planning authority to treat the proposed development of the office sites, in Russell Street and elsewhere, and the proposed improvements to the opera house as forming part of one composite development project. As such it was open to the planning authority to balance the pros and cons of the various features of the scheme. It was open to the authority to treat the consequence, for the opera house works, of granting or withholding permission for offices as a material consideration in considering the part of the application which related to offices."

57 The second hypothetical example, the swimming pool at the other end of the city, was dealt with by Staughton LJ, at p 122:

> "The other extreme arises from the axiom of Lloyd LJ in *City of Bradford Metropolitan Council v Secretary of State for the Environment* [1986] 1 EGLR 199, 202G that planning permission cannot be bought and sold. Suppose that a developer wished to erect an office building at one end of the town A, and offered to build a swimming-pool at the other

end B. It would in my view be wrong for the planning authority to regard the swimming-pool as a material consideration, or to impose a condition that it should be built. That case seems to me little different from the developer who offers the planning authority a cheque so that it can build the swimming-pool for itself—provided he has permission for his office development . . . Where then is the line to be drawn between those extremes? In my judgment the answer lies in the speech of Viscount Dilhorne in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, 599, which Kerr LJ has quoted. Conditions imposed must 'fairly and reasonably relate to the development permitted', if they are to be valid. So must considerations, if they are to be material."

58 The ratio of the decision in *Ex p Monahan* is that where there are composite or related developments (related in the sense that they can and should properly be considered in combination), the local authority may balance the desirable financial consequences for one part of the scheme against the undesirable aspects of another part. In *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* 67 P & CR 78, 88, Hoffmann LJ observed that the *Ex p Monahan* decision concerned what was treated as a single composite development, and held that there was a sufficient nexus between the office development and the opera house improvements to entitle the planning authority to say that the desirability of the latter fairly and reasonably related to the former, because of (1) the financial dependency of the one part of the development on the other and (2) their physical proximity.

59 The *Ex p Monahan* decision demonstrates, if demonstration were necessary, that financial considerations may be relevant in planning decisions. In *Sosmo Trust Ltd v Secretary of State for the Environment* [1983] JPL 806 (cited on this point with approval by Kerr LJ in *Ex p Monahan*, at p 116) Woolf J accepted that the consequences of the financial viability or lack of financial viability of a development were a potentially relevant factor: the true question was not whether a development would be viable but what the planning consequences would be if it were not viable: see at p 807. See also *Sovmots Investments Ltd v Secretary of State for the Environment* [1977] QB 411, 425, per Forbes J (for further proceedings see [1977] QB 411; [1979] AC 144).

R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd

60 The restrictive approach of the courts to conditions was one of the factors which led planning authorities to rely on planning obligations in attempting to secure planning gain. This led directly to the question whether planning authorities were entitled to treat benefits secured by way of a planning obligation as a material consideration in deciding whether to grant planning permission.

61 In *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* 67 P & CR 78 it was held that the planning authority could (against the opposition of the Co-op) take into account offers by Tesco and Sainsbury's to enter into section 106 agreements providing for substantial off-site benefits. The off-site benefits included an offer by

A Sainsbury's of a payment of £1m for infrastructure which would enable a separate site to be made available for industrial use, and an offer by Tesco of a park and ride facility on another site. The Co-op's position was that a consideration was only material to the question of whether to grant planning permission, if it was necessary to the grant of permission, i e, overcame some to the proposed development which would otherwise mean that permission could not be granted. It was held that although the benefits had to be B planning benefits and fairly and reasonably relate to the development, they did not have to be necessary.

62 This is a decision in which there was a connection between the development and the off-site benefits. All members of the court (Russell, Evans and Hoffmann LJJ) accepted (at pp 82, 84, 87–88) that the off-site benefits related to the superstore development applications. The offer of C £1m by Sainsbury's for infrastructure would help to compensate for the reduction in the pool of resources for employment land. The park and ride facility offered by Tesco would counteract the increase in traffic caused by the superstore development: at pp 82–83; 90–91.

Tesco Stores Ltd v Secretary of State for the Environment

D **63** But, although it has not been expressly overruled and the result would be the same today, the reasoning of the *Plymouth* decision can no longer stand, based as it was on the "fairly and reasonably related to the development" test: see at pp 81–82, 87, 89–90. In *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 there were rival plans for the development of superstores on different sites in Witney, Oxfordshire, by Tesco and Sainsbury's (in conjunction with Tarmac). At an E inquiry into proposals to alter the Witney local plan by building a new link road to relieve traffic congestion and a food superstore in the town centre, the inspector approved the proposal for a link road and rejected that for a town centre superstore. Tesco offered to provide full funding for the link road. The Secretary of State allowed the Sainsbury's/Tarmac appeal, and dismissed Tesco's application: the funding offer was not fairly and F reasonably related in scale to the development; although there was a tenuous relationship between the funding of the link road and the proposed foodstore because of a slight worsening of traffic conditions (a 10% increase) the link was not needed. But if it were to be taken into account, then because of the tenuous nature of the connection, the partial contribution was too limited to affect the ultimate decision.

64 The House of Lords confirmed that the Secretary of State had G fulfilled his duty by taking the offer into account but according it very little weight. It was held that a planning obligation offered under section 106 of the 1990 Act by a developer was a material consideration for the purposes of section 70(2) of the Act if it was relevant to the development; and that the weight to be given to such an obligation was a matter entirely within the discretion of the decision-maker. Tesco's offer to fund the link road was sufficiently related to the proposed development to constitute a material H consideration under section 70(2). For the purposes of this appeal, the importance of this decision is the light it throws on the nature of the necessary link between the development and the off-site benefit.

65 The House of Lords held that the *Pyx Granite/Newbury* test for planning conditions was not applicable in the context of the question

whether section 106 obligations were material considerations under section 70(2). Lord Keith of Kinkel said, at pp 764, 770:

> "Sir Thomas Bingham MR in the course of his judgment in this case said that 'material' in [section 70(2)] meant 'relevant,' and in my opinion he was correct in this. It is for the courts, if the matter is brought before them, to decide what is a relevant consideration. If the decision-maker wrongly takes the view that some consideration is not relevant, and therefore has no regard to it, his decision cannot stand and he must be required to think again. But it is entirely for the decision-maker to attribute to the relevant considerations such weight as he thinks fit, and the courts will not interfere unless he has acted unreasonably in the *Wednesbury* sense . . . An offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission. If it has some connection with the proposed development which is not de minimis, then regard must be had to it. But the extent, if any, to which it should affect the decision is a matter entirely within the discretion of the decision-maker and in exercising that discretion he is entitled to have regard to his established policy."

66 All members of the appellate committee agreed with Lord Keith's opinion, and the ratio of the decision is that for the purposes of section 70(2) any benefit whose connection with the development is more than de minimis will be a material consideration, but that the weight to be given to any particular material consideration is entirely a matter for the decision-maker.

67 It has often been said that planning permissions should not be bought or sold: see *City of Bradford Metropolitan Council v Secretary of State for the Environment* 53 P & CR 55, 64, per Lloyd LJ (on which see the *Plymouth* case, at p 84, per Evans LJ; *Ex p Monahan*, at p 122, per Staughton LJ; the *Tesco* case, at p 765, per Lord Keith, and p 782, per Lord Hoffmann); and accepted as a matter of policy in ODPM Circular 05/2005, *Planning Obligations*, para B6 (reflecting its predecessors):

> "The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms . . ."

68 Responding to the point that the approach in the *Plymouth* decision leads to the prospect of the sale and purchase of planning permissions, Lord Hoffmann contrasted cases in which there was a "sufficient connection" between the development and a planning obligations and those in which they were "quite unconnected". He said [1995] 1 WLR 759, 782:

> "This reluctance of the English courts to enter into questions of planning judgment means that they cannot intervene in cases in which there is sufficient connection between the development and a planning obligation to make it a material consideration but the obligation appears disproportionate to the external costs of the development. *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd*

A 67 P & CR 78, was such a case, leading to concern among academic writers and Steyn LJ in the present case that the court was condoning the sale of planning permissions to the highest bidder. My Lords, to describe a planning decision as a bargain and sale is a vivid metaphor. But I venture to suggest that such a metaphor (and I could myself have used the more emotive term 'auction' rather than 'competition' to describe the process of decision-making process in the *Plymouth* case) is an uncertain guide to the legality of a grant or refusal of planning permission. It is easy enough to apply in a clear case in which the planning authority has demanded or taken account of benefits which are quite unconnected with the proposed development. But in such a case the phrase merely adds colour to the statutory duty to have regard only to material considerations. In cases in which there is a sufficient connection, the application of the metaphor or its relevance to the legality of the planning decision may be highly debatable. I have already explained how in a case of competition such as the *Plymouth* case, in which it is contemplated that the grant of permission to one developer will be a reason for refusing it to another, it may be perfectly rational to choose the proposal which offers the greatest public benefit in terms of both the development itself and related external benefits . . ."

Conclusions

69 There is no doubt that in the light of the report of 30 January 2008, the council had purportedly resolved in principle to make the CPO for the purpose of facilitating both the development of the Raglan Street site and that of the Royal Hospital site. That would be sufficient to vitiate the resolution. But Elias J and the Court Appeal accepted that there would be no point in quashing the resolution on that ground alone, since a more felicitously worded resolution could be passed if the benefits to be derived from the development of the Royal Hospital site were relevant under section 226(1)(a) or section 226(1A).

70 What can be derived from the decisions in the planning context, and in particular the *Tesco* case, can be stated shortly. First, the question of what is a material (or relevant) consideration is a question of law, but the weight to be given to it is a matter for the decision-maker. Second, financial viability may be material if it relates to the development. Third, financial dependency of part of a composite development on another part may be a relevant consideration, in the sense that the fact that the proposed development will finance other relevant planning benefits may be material. Fourth, off-site benefits which are related to or are connected with the development will be material. These principles provide the answer to the questions raised in *Ex p Monahan* [1990] 1 QB 87 about the development in Victoria or the swimming pool on the other side of the city. They do not, as Kerr LJ thought, raise questions of fact and degree. There must be a real connection between the benefits and the development.

71 Given the similar context, there is no reason why similar principles should not apply to compulsory acquisition for development purposes provided that it is recognised that, because of the serious invasion of proprietary rights involved in compulsory acquisition, a strict approach to the application of these principles is required. There must be a real, rather

than a fanciful or remote, connection between the off-site benefits and the development for which the compulsory acquisition is made.

72 What is the connection in the present case? The expression "cross-subsidy" has been much used by Tesco and the council. The expression bears a special meaning in this case. Its most common use is in the competition field, where it usually connotes improper allocation of costs in different product or geographic markets, which may result in predatory pricing or other anti-competitive activity. Here all it means is that Tesco says that (a) the council's requirements for the Royal Hospital site have the result that Tesco cannot develop it profitably; and (b) Tesco will undertake its development if it can develop the Raglan Street site. Tesco says that the consequence of (a) and (b) is that the Raglan Street site development will "cross-subsidise" the Royal Hospital site development. But the only connections between the proposed Raglan Street site and Royal Hospital site developments are that (a) Tesco says that it will develop the latter if it can develop the former; (b) it has contractually agreed to perform building works on the Royal Hospital site if it acquires the Raglan Street site. The commercial effect will be that the deficiency on the Royal Hospital site will be made up, or "cross-subsidised", by the Raglan Street site development. Nothing in the papers before the court suggests that this will be done by any direct subvention from the income or capital proceeds of the Raglan Street site, but this would not in any event make a difference. It is entirely a matter for Tesco how it funds any loss from, or presents any lower return from, the Royal Hospital site. This is only a connection in the sense that either (a) the council is being tempted to facilitate one development because it wants another development; or (b) Tesco is being tempted to undertake one uncommercial development in order to obtain the development it wants.

73 The crucial question is whether that is a connection which the council is entitled to take into consideration under section 226(1)(a) or section 226(1A). To take the latter first, Elias J was right to hold that section 226(1A) was not the crucial provision for the purposes of this case. It does not answer the prior question of what matters can be taken into consideration.

74 The power of compulsory acquisition must be capable of being exercised under section 226(1)(a) before the limitation in section 226(1A) applies. Once it applies the local authority must think that the development will contribute to the achievement of the well-being benefits. Section 226(1A) does not permit the council to take into account a commitment by the developer of a site part of which was to be the subject of a CPO to secure the development, redevelopment or improvement of another (unconnected) site and so achieve further well-being benefits for the area. The council was entitled to come to the view for the purposes of section 226(1A) that the Raglan Street site development would contribute to well-being in its area, but not on the basis of the benefits which would derive from the Royal Hospital site development. The Raglan Street site development will not, in any legally relevant sense, contribute to the achievement of the well-being benefits flowing from the Royal Hospital site development.

75 But that matters little since the crucial question is whether the council was entitled to take it into account under section 226(1)(a). There can be no doubt that, even if there is no express reference in section 226(1)(a)

A to the local authority taking into account material considerations (by contrast with section 70(2)), only relevant matters may be taken into account. For the reasons given above, the claimed financial connection between the two sites was not such as to amount to a relevant matter. It is true, as Sullivan LJ said (at para 34), that the financial viability of a proposed redevelopment scheme would be a highly material factor, and that a proposed redevelopment of a CPO site might have to be cross-subsidised. B But Sullivan LJ was wrong to conclude that it followed that a cross-subsidy *from* a CPO site to another site was a material consideration. The fact that a conditional agreement for sale linked the obligation to carry out works on the Royal Hospital site was not a relevant connection.

76 Nor do I consider, despite the views of Lord Phillips of Worth Matravers PSC and Lord Hope of Craighead DPSC to the contrary, that a C different result on this appeal is required by the fact that Sainsbury's and Tesco were in competition for the site, and that the council is proposing to dispose of the land to Tesco under section 233. They accept that the council was not entitled to take the benefits from the Royal Hospital site development into account in making the CPO, but consider that the opportunity for redevelopment of the Royal Hospital site would be a relevant matter to be taken into account by the council in exercising the D power of disposal to Tesco under section 233.

77 First, as a matter of principle it is impossible to put into separate compartments the exercise by the council of its power of compulsory purchase of Sainsbury's property, and the exercise of the council's power to dispose of Sainsbury's property to Tesco, and then to conclude that the Royal Hospital site development may not be taken into account for the E former, but can be taken into account for the latter. It is wrong for the council to deprive Sainsbury's of its property because the council will derive from disposal of that property benefits wholly unconnected with the acquisition of the property.

78 Second, although it is plain that the power of compulsory purchase may be used to assemble a site for a preferred developer, there is nothing in *Standard Commercial Property Securities Ltd v Glasgow City Council* F *(No 2)* 2007 SC (HL) 33 which supports the proposition that unconnected benefits may be taken into account by a local authority in deciding whether property should be compulsorily acquired for the purpose of disposing of it to a preferred developer. The background to the appeal was a competition between developers for the right to develop a run down part of Buchanan Street, Glasgow. Two developers in particular were keen to develop the G site, Atlas Investments and Standard Commercial, each of which owned part of the site. The council, when inviting all the owners and occupiers of the land on the site to submit proposals for redevelopment, said that successful submissions should seek a mix of activities and functions which would bring added activity to the area outside normal retailing hours, and encouraged applicants to allocate a budget to the cost of integrating public art into the development and include improvements to the relevant areas of H adjoining streets, and so contribute to the transformation of Glasgow city centre. Those were the wider planning gain benefits to which Lord Hope referred in his opinion: para 39. Similarly Lord Brown of Eaton-under-Heywood (at para 70) referred to the council's desire to obtain economic and social benefits for Glasgow. But it is clear from Lord Hope's opinion

in that decision, as he accepts in his judgment on this appeal, that the benefits which the developers were invited to confer were related to the site, and the immediately adjoining area. There is nothing in the decision to support the conclusion that in this case the promise to develop the Royal Hospital site would have been a material consideration in a disposal under section 233.

79 I would therefore allow the appeal, and make an order declaring that the opportunity for redevelopment of the Royal Hospital site is not a lawful consideration in deciding whether to make a CPO in relation to the Raglan Street site.

LORD WALKER OF GESTINGTHORPE JSC

80 In agreement with Baroness Hale of Richmond, Lord Mance and Lord Collins of Mapesbury JJSC, I would allow this appeal. I agree with the reasons set out in the full judgment of Lord Collins JSC, supported by the shorter judgments of Baroness Hale and Lord Mance JJSC. But in view of the difference of opinion within the court I will try to summarise my reasons in my own words.

81 This appeal is concerned with compulsory acquisition of land *for planning purposes* (that being the general ambit of both paragraphs (a) and (b) in section 226(1) of the Town and Country Planning Act 1990). The land is to end up, not in public ownership and used for public purposes, but in private ownership and used for a variety of purposes, mainly retail and residential. Economic regeneration brought about by urban redevelopment is no doubt a public good, but "private to private" acquisitions by compulsory purchase may also produce large profits for powerful business interests, and courts rightly regard them as particularly sensitive. To the authorities mentioned by Lord Collins JSC in paras 9–11 of his judgment might be added the famous split of the United States Supreme Court in *Kelo v City of New London, Connecticut* (2005) 545 US 469, discussed in *Gray & Gray, Elements of Land Law*, 5th ed (2009), paras 11.2.6 and 11.2.7. *R & R Fazzolari Pty Ltd v Parramatta City Council* [2009] HCA 12 mentioned by Lord Collins JSC was also in substance largely a "private to private" acquisition, although the local authority used a declaration of trust to give the acquisition a better appearance.

82 Where a local authority is considering exercising powers of compulsory purchase for planning purposes, planning considerations must be central to the decision-making process. The public purse is to be protected against improvidence, but the local authority should not be exercising its powers in order to make a commercial profit. In *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, Lord Brown of Eaton-under-Heywood, at para 75, described that proposition as "deeply unattractive". Section 233 of the 1990 Act differs from its Scottish counterpart in that subsection (3) expressly contemplates a disposal "for a consideration less than the best that can reasonably be obtained", though only with the consent of the Secretary of State. But both in Scotland and in England a "back-to-back" arrangement (under which the local authority makes neither a commercial loss nor a commercial gain from its participation, using section 226 powers, in a scheme of comprehensive urban redevelopment) is standard practice. The dominant aim is betterment in planning terms.

A **83** That to my mind is why the issue of what would be material considerations for the purposes of deciding an application for planning permission is also relevant to a decision to exercise powers of compulsory acquisition under section 226. The quality of the proposed redevelopment of the site is of crucial importance. Its larger impact on the authority's area is also an essential element in the decision-making process, because of section 226(1A). In common with all the members of the court I consider B that section 226(1A) has the effect of imposing an extra requirement which is a necessary but not a sufficient condition for the exercise of powers under 226(1). Section 226(1A) does not qualify, still less act as a substitute for, the requirements of the preceding subsection.

84 But the exercise of powers of compulsory acquisition, especially in a "private to private" acquisition, amounts to a serious invasion of the current C owner's proprietary rights. The local authority has a direct financial interest in the matter, and not merely a general interest (as local planning authority) in the betterment and well-being of its area. A stricter approach is therefore called for. As Lord Collins JSC says in his conclusions at para 71 of his judgment, a real (rather than a fanciful or remote) connection must be shown between any off-site benefits and the proposed redevelopment for D which a compulsory purchase order is proposed.

85 Lord Brown JSC has posed a rhetorical question in para 182 of his judgment. After referring to the *Standard Commercial* case he has commented:

> "it is surely implicit in that decision—and, indeed, in the respective legislative requirements in both England and Scotland in effect to get E what I called there (para 68) 'the best overall deal available'—that, by the same token as a cash bidding match would have been possible, so too would have been an offer of other benefits, however extraneous. Why ever not?"

With great respect to Lord Brown JSC I think that he has answered his own question in the passage of his speech in the *Standard Commercial* case, at F para 75:

> "I find deeply unattractive the proposition that, almost inevitably at the expense of some beneficial aspect of the development scheme, the authority should be seeking to make a profit out of the exercise of its statutory powers of acquisition."

G **86** A cash bidding match, or the exaction of extraneous benefits, has superficial attractions as a tie-breaker, especially if there are two contenders, both with very deep pockets, like Tesco and Sainsbury. The merits of their respective schemes are closely matched, as appears from the summary in para 11 of the officers' recommendation document dated 30 January 2008. It is true that the Tesco scheme is said in the summary to offer more jobs, but the Sainsbury scheme might create an unspecified number of extra jobs H through re-use or development of its St George's Parade site: para 6.6. The Tesco scheme would be delivered "by a well resourced operator" but the detailed consideration of delivery (para 7) ranked the two contenders as equally capable. Tesco's only apparently decisive advantage was (para 11.3) the offer of cross-funding for the RHS development.

87 Since their proposals are such that there is little, if anything, to choose between them in planning terms, why should not the local authority look to some substantial extraneous benefit which one contender offers, rather than having to make the difficult choice of a winner between contenders whose proposals are equally satisfactory on planning grounds? The answer is simply that it is not the right way for a local authority to make a decision as to the exercise of its powers of compulsory purchase, any more than it could choose a new chief executive, from a short list of apparently equally well qualified candidates, by holding a closed auction for the office. As Lord Keith of Kinkel said in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 770:

> "An offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission."

88 The fact that an exercise of powers of compulsory acquisition and a "back to back" disposal to a developer are prearranged is unable: see Lord Rodger of Earlsferry in the *Standard Commercial* case, at para 53. But that does not mean that the proper consideration of the exercise of powers of compulsory acquisition under section 226 of the 1990 Act can be telescoped into the exercise of powers of disposal under section 233. On this point I am in full agreement with the judgment of Baroness Hale JSC.

89 For these reasons I would allow this appeal and make the declaration proposed by Lord Collins JSC.

BARONESS HALE OF RICHMOND JSC

90 I agree that this appeal should be allowed, for the reasons given by Lord Collins of Mapesbury JSC, together with the further reasons given by Lord Walker of Gestingthorpe and Lord Mance JJSC. Lord Phillips of Worth Matravers PSC and Lord Hope of Craighead DPSC also agree with the reasoning of Lord Collins JSC, on the points upon which he differs from Lord Brown of Eaton-under-Heywood JSC, but they disagree in the result. As I understand it, they consider that the extraneous benefit offered by Tesco, although it would not normally be a relevant consideration in the compulsory purchase decision, would be a relevant consideration when the council came to dispose of the land under section 233(1) of the Town and Country Planning Act 1990. Accordingly, as in practice the decisions may be taken simultaneously, that consideration can be read back into the decision compulsorily to purchase the Sainsbury land under section 226(1).

91 For the reasons given by Lord Mance JSC, I find it difficult to accept that proposition. It puts the cart before the horse. The council have nothing to dispose of unless they have acquired the land, whether voluntarily or compulsorily. They can only acquire the land compulsorily under section 226(1)(a) "if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land". The matters to be taken into account in making that decision have to be relevant to that purpose.

92 I agree, as Lord Mance JSC puts it at para 98 of his judgment, that the considerations admissible in relation to compulsory purchase are "no wider" than those admissible in relation to the grant of planning permission.

Although the grant of planning permission is a "useful analogy", it is a different exercise. The considerations material to that exercise are also material, but in a rather different way, to the compulsory purchase decision. Thus, under the former version of section 226(1) (quoted by Lord Phillips PSC at para 121 of his judgment), the considerations which would be material to the grant of planning permission for development on the land were also material to whether the land was "suitable for development". That was a sine qua non for compulsory purchase to "secure" development. This seems obvious. It cannot be proper to deprive a person compulsorily of his land in order to secure something which will not be allowed to take place. Under the new version of section 226(1), the permissibility of *some* development (together with a reasonable prospect of its actually taking place) should be a sine qua non for compulsory acquisition in order to "facilitate" it. The question does not arise in this case, because we are agreed that the extraneous benefit to the Royal Hospital site would not be relevant to the grant of planning permission for this site, any more than it is relevant to the compulsory purchase decision.

93 Acquiring the whole of the Raglan Street site *would* facilitate the development of *that* site (although it is worth noting that Sainsbury have so much of the site that they could carry out a development, albeit a less satisfactory one, without further compulsory acquisition). Persuading Tesco to carry out a wholly unrelated development upon another site elsewhere in the city, desirable though that may be for the city and people of Wolverhampton, does nothing to facilitate the development of the Raglan Street site. Rather, it is the other way round.

94 It is difficult to understand why the fact that Sainsbury also wish to develop the Raglan Street site should make any difference. If it would not be permissible to take into account the extraneous benefit when deciding compulsorily to purchase land from an unwilling owner who did *not* himself wish to develop it, it seems even less permissible to take it into account as against an unwilling owner who *does*. In the former situation, a development which would not otherwise take place would be facilitated; in the latter, it would not be facilitated because the development would take place in any event. (I might comment that Sainsbury would probably never have found themselves in this mess if they had not twice changed their mind about whether to develop this site.)

95 The case of *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33 is entirely consistent with this view. A council can agree to assemble a site for development, using their compulsory purchase powers if necessary, and to sell it to their chosen developer. It makes sense, but it is not essential, to conduct the two exercises in tandem. But the considerations relevant to the selection of the developer in that case were all relevant to the development of that site. The selection criteria adopted (and carefully graded) by the council were all directly related to the quality of the development of the site and the feasibility of the would-be developers' carrying it out: see Lord Hope of Craighead, at para 22. There were no subsidiary planning obligations involved, still less any wholly extraneous benefits offered. In any event, the battle was not about the selection criteria, but about whether the proposed terms of disposal were the best obtainable and there was no evidence that they were not. Even if it were permissible to take a wholly extraneous benefit into

account when deciding to whom to sell the land, it does not follow that it is permissible to take that benefit into account when deciding compulsorily to deprive a person of their land.

96 Finally, I agree that section 226(1A) operates as a limitation on the power defined by section 226(1)(a). It is therefore necessary first to consider whether the acquisition will facilitate the development of the land; and only if it will do that, to consider whether the development itself will contribute to the promotion or improvement of the economic, social or environmental well-being of the area.

LORD MANCE JSC

97 I consider that this appeal should be allowed. I agree with the reasons given by Lord Collins of Mapesbury JSC, supplemented by those given by Lord Walker of Gestingthorpe and Baroness Hale of Richmond JJSC, and wish to add only a few comments on one aspect, relating to the basis upon which Lord Phillips of Worth Matravers PSC and Lord Hope of Craighead DPSC (and Lord Brown of Eaton-under-Heywood JSC in an alternative) come in their judgments to an opposite result.

98 Like Lord Phillips PSC (paras 134–135), I agree with Lord Collins JSC's conclusion that a planning authority, when considering a planning application, is only entitled to take into account a planning obligation which the applicant offers if that obligation has some connection with the relevant development, apart from the fact of its offer. I also consider that there is a useful analogy between the grant of planning permission and the exercise of a power of compulsory purchase under section 226(1)(a) of the Town and Country Planning Act 1990, and that the considerations admissible in relation to the latter power are, in the respect mentioned in the previous sentence, no wider than those admissible in relation to the former.

99 In this case, the (decisive) attraction of Tesco's proposal in respect of the Raglan Street site consisted of Tesco's offer to use the profits to subsidise the wholly unconnected development by it of the Royal Hospital site, elsewhere in Wolverhampton, which the city council wished to see take place. Lord Phillips PSC accepts in para 138, for reasons which I have summarised in the previous paragraph, that, had Sainsbury been here "simply an owner who was unwilling to sell his land", it would not have been legitimate for Wolverhampton City Council to take this attraction into account in deciding to exercise its powers of compulsory purchase to facilitate Tesco's scheme in respect of the Raglan Street site. Likewise, he accepts (para 140) that, if Sainsbury and Tesco had been seeking in competition with each other to develop a site in the ownership of a third party, then, too, it would not been admissible for the city council to decide compulsorily to purchase the third party site because of the attraction of Tesco's offer to develop a wholly unconnected site.

100 However, Lord Phillips PSC and Lord Hope DPSC consider that it makes all the difference that, in this case, Sainsbury and Tesco were in competition for the same site (in fact owned or controlled as to 86% by the former and 14% by the latter). I cannot accept that distinction. On its logic, it should make no difference if Sainsbury owned and wanted itself to develop the whole Raglan Street site: Tesco, if it wanted to develop that site, could, by offering to devote part of the profits to the Royal Hospital project, still legitimately induce the city council compulsorily to purchase Sainsbury's

property in order to sell it to Tesco for the Raglan Street development. Lord Phillips DPSC's reference (para 147) to "the fact that the compulsory purchase of land owned by one or the other is involved" as "really peripheral" in a case where there are rival developers goes far towards accepting this conclusion. Alternatively, if some way of avoiding this conclusion exists, the logic must still be that Tesco, by acquiring only one house on the proposed Raglan Street site, could alter fundamentally the considerations admissible in relation to a decision whether compulsorily to purchase Sainsbury's property, rather than Tesco's, in order to facilitate the development of the Raglan Street site. In either case, I do not think it right to describe as "motivated by commercial rivalry" (para 147) the wish of a landowner in Sainsbury's position to develop its own land—or its wish to have any decision to compulsorily purchase its land for the benefit of some other developer made by reference to factors having at least some connection with its land.

101 The error in my view lies in divorcing the exercise of the power of compulsory purchase from the property to which it relates. Two different exercises of that power are here in issue relating to two different pieces of land. When a planning authority exercises compulsory purchase powers to promote a particular development, it does this in relation to specific property and only so far as necessary. In the present case, if Sainsbury's scheme is preferred on its admissible planning merits, then only Tesco's property will be compulsorily purchased, and vice versa. The council's first decision is therefore which development it prefers, and that will determine whose property is compulsorily purchased. The council's decision which development it prefers must be taken having regard to considerations which are admissible in the context of the development for which property is to be compulsorily purchased. Thus, when deciding whether compulsorily to purchase Sainsbury's property, it was not admissible to have regard to Tesco's offer relating to the unconnected development of the Royal Hospital site. If the Raglan Street site had already been in council ownership, and there were two interested developers, the council could of course take into account under section 233 any inducement offered by either—whether in terms of price or some unconnected benefit (such as an undertaking to develop the Royal Hospital site)—as Lord Hope DSPC says in para 155. But that is for the very reason that the only relevant decision would then relate to the disposal of the council's own property. Where the council is deciding whether compulsorily to purchase third party property under section 226(1)(a), the interests of the third party mean that the council must have regard only to considerations which are admissible in the context of the development for which such property is required.

102 *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, to which Lord Phillips PSC and Lord Hope DPSC refer, does not in my view support the conclusion which they reach. It was a case where the Glasgow City Council took its decision which development to prefer on grounds which related scrupulously to the merits of the proposed development, without reference to unconnected factors: see e g paras 21–23, per Lord Hope, para 50, per Lord Rodger of Earlsferry and para 73, per Lord Brown. There was, as Lord Hope DSPC notes in para 155 in his present judgment, a strong element of planning gain involved in the potential development. But it was planning gain related to the development,

not to some entirely unconnected development, so that the case has no analogy with the present.

103 The issue before the House arose because all potential developers were required to provide an indemnity for Glasgow City Council's costs in effecting the compulsory purchase: paras 22, 50 and 73; and it was this feature which the losing developer criticised. There was some discussion of the possibility that the rival developers might have been invited to enter a bidding match in terms of the price to be paid: para 41, per Lord Hope, para 62, per Lord Rodger and paras 72–73, per Lord Brown. In paras 41 and 72, Lord Hope and Lord Brown both expressed their difficulty in understanding how such a bidding match would work.

104 At most, one might read into the discussion in the *Standard Commercial Property* case a tacit assumption that such a bidding match might have been permissible if possible, but that does not make the case authority on a point which was evidently not argued in that case, any more than it was in fact argued on the present appeal. The focus in the *Standard Commercial Property* case was on whether the terms on which the Glasgow City Council was proposing to dispose of the property, once compulsorily acquired, met the requirements of section 191(3) of the Town and Country Planning (Scotland) Act 1997. Section 191(1) provided that any land acquired and held for planning purposes could be disposed of to such person, in such manner and subject to such conditions as might appear expedient to secure purposes mentioned in section 191(2), viz the best use of that or other land, etc. Section 191(3) provided that any land so disposed of should only be disposed of "at the best price or on the best terms that can reasonably be obtained". The requirements of section 191(1) and (2) on the one hand and of section 191(3) on the other were, as Lord Hope said, at para 34, "separate and distinct". The issue before the House was, as Lord Hope made clear throughout paras 31–42, simply whether the proposed terms of disposal fell within section 191(3).

105 It is material to think about the consequences if the *Standard Commercial Property* case were to be treated as any sort of authority that a planning authority may, when deciding whether compulsorily to acquire property belonging to one landowner ("A"), have regard to the price offered for the land by potential developer ("B"). There would seem to be no logical reason to limit these consequences to situations where A and B are in competition, or to situations where the potential development extends beyond A's property and includes some property already owned by B. If, in any situation, B were to offer to repurchase A's property from the planning authority on terms giving the planning authority a profit, once the planning authority acquired it by compulsory purchase from A, why would that be illegitimate? Yet A would have little or no means of countering such an inducement. A could not offer any corresponding profit in respect of land which it already owned. And it could not be legitimate for A to offer the local authority a share in the profit it hoped to make from developing its own land, in order to induce the local authority to refrain from compulsorily purchasing its land for the benefit of B. That would amount to buying a local authority's exercise of its discretion. It might be suggested that if, as here, B owned some land which it was desired to include in an overall development, then A might counter B's offer in respect of A's land, by offering the planning authority a profit on the resale of B's land, if it were

compulsorily to acquire that land rather than A's. Apart from the evident inappropriateness of any such bidding war, B's relevant land holding might (as here) be much smaller in area, and, unless it is supposed that A could legitimately offer a ludicrously high price for B's land, the financial attraction for the planning authority of A's offer could not match that of B's. So far, I have spoken only in terms of a bidding match relating to the price to be paid by the developer for the property to be compulsorily purchased. That was the only situation to which any discussion at all was addressed in the *Standard Commercial Property* case. The present case concerns the further question whether a proposed developer could influence the exercise by a planning authority of a discretion (viz whose property compulsorily to purchase and for the benefit of which of two potential developers) by offering some benefit wholly unconnected with any property the subject of the proposed development. In this context, it seems to me even clearer that the *Standard Commercial Property* case cannot lend support to Tesco's case on this appeal.

106 For these reasons, I do not regard the *Standard Commercial Property* case as justifying a conclusion that, as soon as rival developers are competing to develop a single site, part owned by each, considerations become material which would be immaterial if the whole site had been owned by one of them or by a third party. If the discussion in the judgments in that case lends any support to Tesco's case, the point did not arise for decision and was not argued there, any more than it was on the appeal in the present case. As a matter of principle, in my opinion, there is no basis on which the fact that Sainsbury and Tesco were, in a broad sense, rival developers in respect of the same overall site, can or should alter fundamentally the considerations admissible when the city council came to consider which development it should prefer, and which property it should, therefore, compulsorily acquire to facilitate such development. Any such decision fell to be made by reference, and only by reference, to considerations having some connection with the proposed development, and not by reference to any entirely unconnected inducement which might be held out by one of the rival developers. Like Lord Collins, Lord Walker and Baroness Hale JJSC, I would therefore allow Sainsbury's appeal.

LORD PHILLIPS OF WORTH MATRAVERS PSC

Introduction

107 The facts of this appeal are set out in detail in the judgment of Lord Collins of Mapesbury JSC. In essence they are simple. The issue that they raise is not. As every shopper knows Sainsbury and Tesco are rivals. Each owns a chain of supermarkets. Each is anxious to open a supermarket on a site at Wolverhampton ("the site"). To this end Sainsbury has acquired 86% of the site and Tesco has acquired 14%. These figures ignore, as shall I for it has no materiality, the fact that Wolverhampton City Council ("the council") owns a very small part of the site. Sainsbury and Tesco have each prepared a development plan for the site. The plans are very similar. Tesco has obtained planning permission for its plan and Sainsbury is in a position to do the same. The council is anxious that one or other development plan should be implemented, for it will be likely to contribute to the well-being of the

area. The problem is that neither of the rivals is prepared to give way, and in so doing to sell its portion of the site to the other.

108 To resolve this impasse the council is prepared to use its powers of compulsory purchase to buy the land of one of the rivals and sell it to the other. Those powers are conferred by the following sections of the Town and Country Planning Act 1990, as amended:

> "226 *Compulsory acquisition of land for development and other planning purposes*
>
> "(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area— (a) if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land or; (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
>
> "(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects— (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area."
>
> "233 *Disposal by local authorities of land held for planning purposes*
>
> "(1) Where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient in order— (a) to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person), or (b) to secure the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area of the authority . . .
>
> "(3) The consent of the Secretary of State is . . . required where the disposal is to be for a consideration less than the best that can reasonably be obtained . . ."

109 It is common ground, and rightly so, that the statutory requirements of section 226 are satisfied, so that the council has statutory power compulsorily to purchase the land owned by either of the rivals. There is little, if anything, to choose between the rival development plans. The council has, however, decided to prefer Tesco. Its intention is compulsorily to purchase Sainsbury's land and to sell this to Tesco. Its reason for this decision is as follows. Tesco own another site in Wolverhampton, the Royal Hospital site ("RHS"). This is run down and crying out for regeneration. The council wishes Tesco to redevelop this in a way which Tesco contends is uneconomic. Tesco has, however, agreed to enter into an obligation to redevelop the RHS in accordance with the council's wishes provided only that the council prefers Tesco in the competition for the development of the site. This obligation has been described as involving a "cross-subsidy" of the RHS redevelopment from the

A site development. The council has regarded this obligation as decisive in preferring Tesco to Sainsbury in the competition for the development of the site.

110 The issue raised by this appeal is whether Tesco's undertaking to develop the RHS in accordance with the council's wishes is a matter to which the council can properly have regard when deciding upon a scheme for developing the site that involves the compulsory purchase of Sainsbury's land.

B

RHS redevelopment

111 The RHS is about half a mile away from the site, on the other side of the city centre. When Tesco applied for planning permission for the development of the site, it sought initially to link this with the redevelopment of the RHS. It was, however, unable to demonstrate any connection between the two, and ultimately accepted that there was no linkage for the planning committee to consider. The reality is that there is no connection between the development of the site and the RHS development other than Tesco's agreement to proceed with the latter if granted the former.

C

D

The "cross-subsidy"

112 I am puzzled by the nature of the so-called "cross-subsidy". Under what is commonly described as a "back-to-back agreement" Tesco has agreed to indemnify the council in relation to the cost to the council of compulsorily purchasing Sainsbury's 86% of the site. Tesco has further agreed to redevelop the RHS at what Tesco contends will be a commercial loss. Tesco states that it will be able to afford this because of the cross-subsidy that will be available if it is permitted to develop the site. It is thus implicit that Tesco anticipates that development of the site will result in an economic benefit that will enable it to entertain a loss-making venture. That economic benefit should, however, be reflected in the price that Tesco, as a willing buyer, would be prepared to pay to Sainsbury, as a willing seller, if Sainsbury's land were to be sold directly to Tesco in an open market transaction. That, as I understand the position, is precisely the amount to which Sainsbury will be entitled from the council as compensation for the compulsory acquisition of their land: see *Waters v Welsh Development Agency* [2004] 1 WLR 1304, paras 17 and 18. If Tesco has to pay the council this amount under the back-to-back agreement it is not easy to see how there will remain to Tesco any surplus economic benefit to fund a loss-making venture at the RHS. Be this as it may, that is precisely what Tesco has agreed to do. Accordingly I approach this appeal on the basis that the compulsory purchase of Sainsbury's land will procure for the council the benefit, not merely of the development of the site, but of the redevelopment of the RHS under the obligation that Tesco has agreed to assume. I shall describe this, by way of shorthand, as "the RHS benefit".

E

F

G

H

An analysis of the issues

113 The basic issue raised by this appeal is whether the RHS benefit is a legitimate, or material, consideration to which the council can have regard when deciding whether to acquire Sainsbury's land by compulsory purchase

in the particular context of the competition that exists between Sainsbury and Tesco for this development. This basic issue subdivides into two separate questions: (i) Would the RHS benefit be a material consideration in deciding whether compulsorily to purchase Sainsbury's land if Sainsbury was not competing for the development? (ii) Is the RHS benefit a material consideration in deciding whether to award the development to Sainsbury or Tesco? If the first question is answered in the affirmative, the second question must necessarily also be answered in the affirmative. A negative answer to the first question will not, however, necessarily require a negative answer to the second.

Would the RHS benefit be a material consideration in deciding whether compulsorily to purchase Sainsbury's land if Sainsbury were not competing for the development?

114 The statutory power of compulsory purchase can only lawfully be used for the purpose for which the power has been conferred. In *Galloway v Mayor and Commonalty of London* (1866) LR 1 HL 34, 43 Lord Cranworth LC said:

> "The principle is this, that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the legislature to take compulsorily the lands of others, making to the latter proper compensation, the persons so authorised cannot be allowed to exercise the powers conferred on them for any collateral object; that is, for any purposes except those for which the legislature has invested them with extraordinary powers."

115 Section 226(1)(a) and 226(1A) confers the power compulsorily to purchase land, but to justify the exercise of that power the council must be able to show that this is clearly in the public interest: "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament *and the public interest decisively so demands*" (my emphasis), per Lord Denning MR in *Prest v Secretary of State for Wales* (1982) 81 LGR 193, 198. In this case it is common ground that the requirements of section 226 are satisfied and that if (i) there was no competing scheme and (ii) Tesco was not prepared to provide the RHS benefit, the public interest would none the less justify the compulsory purchase of Sainsbury's land in order to enable Tesco to carry out the development. If, however, this were not the case, would the offer by Tesco of the RHS benefit be a material consideration to which the council could have regard when deciding whether the exercise of their power of compulsory purchase was justified?

The ambit of section 226(1A)

116 Section 226(1A) of the Act sets out preconditions to the exercise of the power of compulsory purchase. The development facilitated by the compulsory purchase must be likely to contribute to the improvement of the economic, social or environmental well-being of the area. The Court of Appeal held that because the compulsory purchase of Sainsbury's land would result in the RHS benefit which, in its turn, would contribute to the economic, social or well-being of the area, this, of itself, satisfied section 226(1A).

It necessarily followed that the RHS benefit was a material consideration to which the council could have regard when considering the compulsory purchase of Sainsbury's land.

117 This finding differed from that of Elias J at first instance. I consider that Elias J was correct and the Court of Appeal wrong. The reasoning of the Court of Appeal appears from the following passages of the only reasoned judgment, which was delivered by Sullivan LJ [2009] 3 EGLR 94, paras 26–29:

> "26. Though convoluted, subsection 226(1A) is expressed in deliberately broad terms: 'likely to contribute to the achievement of . . . [the well-being] . . . objects'. It is not prescriptive as to the manner in which the carrying out of redevelopment upon a CPO site might make a contribution to such wider benefits. Mr Lockhart-Mummery accepted that one of the more obvious ways in which the carrying out of redevelopment on a CPO site might, at least in principle, be capable of bringing economic/social/environmental benefits to a wider area would be if the redevelopment was likely to act as the catalyst for the development or redevelopment of some other site or sites within the authority's area.
>
> "27. Such a catalytic effect might be direct, e g because redeveloping the CPO site would be likely to enable the occupier of another, run down site in the authority's area to relocate onto the CPO site, thus enabling the run down site to be redeveloped. Or it might be indirect, e g because the increased attractiveness after redevelopment of a hitherto run down CPO site was likely to make other sites in the area more attractive for development or redevelopment. It was common ground that such catalytic effects were capable of falling within the scope of section 226(1A).
>
> "28. In the present case the report makes it plain that the defendant was satisfied that facilitating the carrying out of the interested party's scheme for the redevelopment of the Raglan Street site would, by reason of the proposed cross-subsidy, act as the catalyst for the redevelopment of the RHS site in a manner which would contribute to the economic social and environmental well-being of its area . . .
>
> "29. In my judgment subsection 226(1A) is concerned with all of the consequences that are likely to flow from the process of the carrying out of redevelopment on the CPO site, and these are not confined to what might be described as the impact of there being new 'bricks and mortar' on the redeveloped site. Thus, disturbance during the redevelopment process and the need to relocate existing occupiers on the one hand, and the job opportunities that would be created during the carrying out of the redevelopment on the other, would both be capable of being relevant (the one negative, the other positive) for the purposes of section 226(1A)."

118 In these passages Sullivan LJ equates "the development" in section 226 (1A) with "the process of the carrying out of redevelopment". I think that this is questionable. He describes the site development as acting "as a catalyst" for the RHS redevelopment, by reason of the cross-subsidy. This is a misuse of language. Section 226(1A) focuses primarily, if not exclusively, on whether the development will be likely to enhance the economic, social or environmental well-being of the area once it is completed. The subsection cannot be satisfied by an agreement by a

developer to fund a second development that has no physical, geographical or other connection with the development that the compulsory purchase is designed to facilitate.

119 This conclusion gives effect to the natural meaning of the language of section 226(1A). In the Court of Appeal Mr Lockhart-Mummery QC for Sainsbury submitted that the same conclusion should be reached by applying, by analogy, decisions on what constitute "material considerations" in the context of planning applications. Sullivan LJ held that these decisions could not be so applied, at least directly, and Mr King QC for the council and Mr Katkowski QC for Tesco have supported his approach. Both Lord Brown of Eaton-under-Heywood and Lord Collins of Mapesbury JJSC have relied on decisions in relation to planning applications in reaching their conclusions, albeit that they have differed as to their effect. Is the analogy between compulsory purchase and planning permission in the present context a fair one?

The analogy between compulsory purchase and planning permission

120 I agree with Lord Brown and Lord Collins JJSC that it is appropriate in this case to draw an analogy, when considering whether the RHS benefit is a material consideration, with certain decisions relating to the grant of planning permission. The issue in this case is whether it is legitimate, when considering the benefits that will flow from a development that is the object of compulsory purchase, to have regard to a particular benefit offered by the developer. The relevant planning cases deal with the question of when it is legitimate, when considering a planning application, to have regard to benefits offered by the developer. Each case raises the question of what can legitimately be considered when assessing how the public interest is affected by the development of land. The analogy is obvious. There is a further point.

121 Section 226 of the Act was amended by section 99 of and Schedule 9 to the Planning and Compulsory Purchase Act 2004, which inserted subsection (1A). In its previous form it included, by section 226(2)(c), a requirement that a local authority, when considering whether land was suitable for development, redevelopment or improvement, should have regard to "any other considerations which would be material for the purpose of determining an application for planning permission for development on the land". While this provision was deleted by the 2004 Act it none the less illustrates the fact that the test of materiality in relation to planning permission can also be relevant in the context of compulsory purchase.

122 The planning obligation offered by Tesco in the present case is the RHS benefit. Could that have constituted a material consideration on Tesco's application for planning permission, notwithstanding that it had no other connection with the proposed development of the site?

Considerations that are material to the grant of planning permission

123 The history of planning permission shows an ambivalence on the part of the legislature, the executive and the judiciary in respect of the extent to which it is legitimate for a local authority to exact planning gain from a developer as a condition of the grant of planning permission. Lord Hoffmann traced this history in some detail at pp 771–777 of his speech in

Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759. I shall attempt a rather shorter summary, at least in relation to the earlier part of the history.

124 At the beginning of the 20th century, apart from some public health legislation, there were no planning controls over the use that an individual could make of his own land. A comprehensive system of planning control over the use of land was first introduced by the Town and Country Planning Act 1947. Since then there have been a series of legislative changes seeking, inter alia, to balance the private rights of owners of land against the public interest in the control of the environment, culminating with the Planning Act 2008, which allows for a new Community Infrastructure Levy. A particular problem has been the extent to which it is legitimate to require developers to take responsibility for the "off-site" consequences of their developments.

125 For present purposes, the most significant provision in force is section 70 of the Town and Country Planning Act 1990. This provides:

> "*Determination of applications: general considerations*
>
> "(1) Where an application is made to a local planning authority for planning permission— (a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or (b) they may refuse planning permission.
>
> "(2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

126 Some of the relevant authorities deal with the criteria of the "material considerations" to which subsection (2) requires the local authority to have regard. Others relate to the scope of the power to impose conditions. In relation to each of these, the following observations of Lord Denning in *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554, 572 are relevant:

> "The principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,' nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

As Lord Hoffmann observed in the *Tesco* case, at p 772, "As a general statement, this formulation has never been challenged".

127 A decision that is particularly relevant in relation to "material considerations" is *R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87. The facts of that case have been set out and analysed by Lord Collins JSC at paras 51–59 of his judgment. In short the Court of Appeal held that it was a material consideration, when considering a composite development, that one part of it, which was undesirable having regard to relevant planning considerations, would provide a necessary cross-subsidy for the development of the other part, which was highly desirable. Lord Collins JSC in his analysis at para 58, identifies the fact that the case concerned "composite or related developments" as a relevant part of the

Court of Appeal's reasoning. At para 70 he identifies the need for such a connection or relationship as being a requirement of law. Lord Brown JSC, in para 176 of his judgment, disagrees. He comments that it was expressly recognised that no discernable legal principle would have supported the need for such a connection.

128 I align myself with Lord Collins JSC's analysis. The passage from the judgment of Nicholls LJ, quoted by Lord Brown and Lord Collins JJSC at paras 169 and 56 of their respective judgments, and the passage from the judgment of Staughton LJ quoted by Lord Collins JSC at para 57, demonstrate that each of those judges saw the need for a relationship between the undesirable and the desirable developments other than the simple fact that the one would subsidise the other. The suggestion by Kerr LJ, at p 117, that the significance of the distance between developments involved "considerations of fact and degree rather than of principle" does not withstand analysis. If the distance matters, then the reason why it matters must be a matter of principle. The relevant principle appears to me to be that a cross-subsidy between two developments cannot be considered unless there is some independent reason for considering the two developments together.

129 Whether that is a rational principle is another matter. If it is acceptable that an undesirable development should be permitted in order to subsidise a desirable development it is not easy to see why there should be an inflexible requirement that one should be in proximity to, or have some other nexus with, the other.

130 A close nexus between the subject matter of a planning condition and the development in relation to which it is imposed has been required by the courts. Lord Hoffmann in the *Tesco* case [1995] 1 WLR 759, 772 referred to the triple requirement for a valid planning condition laid down by the House of Lords in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578: (i) it must be for a planning purpose and not for any ulterior one; (ii) it must fairly and reasonably relate to the permitted development; (iii) it must not be *Wednesbury* unreasonable: [1948] 1 KB 233. Lord Hoffmann went on to refer to *Hall & Co Ltd v Shoreham-by-Sea Urban District Council* [1964] 1 WLR 240 as illustrating the very strict way that the courts gave effect to these requirements, so that conditions requiring contribution to the "external costs" generated by a development were not permitted. As Lord Hoffmann explained, this gave rise to the introduction of "planning agreements", which were replaced in their turn by "planning obligations".

131 Section 106 of the Act, as substituted by section 12(1) of the Planning and Compensation Act 1991, provides:

> "*Planning obligations*
>
> "(1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as 'a planning obligation'), enforceable to the extent mentioned in subsection (3)—
> (a) restricting the development or use of the land in any specified way; (b) requiring specified operations or activities to be carried out in, on, under or over the land; (c) requiring the land to be used in any specified way; or (d) requiring a sum or sums to be paid to the authority . . ."

A This section is in very general terms and, in particular, no express restriction or qualification is placed on the undertaking to pay money to the authority. In these circumstances two separate questions arise. The first is whether, and if so what, implicit restrictions exist as to the nature of planning obligations that can lawfully be incurred. The second is the extent to which planning obligations that have been undertaken are material considerations to which the authority must have regard under section 70 of the Act. There B are two relevant decisions that relate to the latter question.

132 The first is *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* (1993) 67 P & CR 78. Lord Brown JSC has set out the facts of this case at para 170 of his judgment. The issue was whether generous planning obligations ("benefits") offered by Tesco and Sainsbury, there as here rival applicants for a development, were material C considerations to which the planning authority could have regard, notwithstanding that they went well beyond anything that the authority would have been able properly to require by way of planning conditions as being "necessary". The Court of Appeal applied the *Newbury* triple requirement, but held that there was no requirement that the benefits should be necessary, albeit that they had, fairly and reasonably, to relate to the D development. As to that requirement, this was satisfied in the case of financial contributions to works off-site designed to accommodate demands generated by the development.

133 In that case Lord Hoffmann remarked, at p 90:

> "Materiality is an entirely different matter, because there is a public interest in not allowing planning permissions to be sold in exchange for E benefits which are not planning considerations or do not relate to the proposed development."

He was subsequently in the *Tesco* case [1995] 1 WLR 759, 778 to say that the parallel between the *Newbury* triple requirement and the materiality of planning obligations was "by no means exact".

134 This brings me to the *Tesco* case, which is the most important F decision in the context of this appeal. Once again the material facts have been summarised by Lord Brown and Lord Collins JJSC at paras 173 and 63–66 of their respective judgments. What the *Tesco* case established was that the second test in the *Newbury* case does not apply to planning obligations. These, to constitute material considerations, do not have "fairly and reasonably" to relate to the relevant development. It is enough if G they have a connection to it that is not de minimis. The requirement for such a connection none the less remains. Lord Brown JSC has concluded, at para 174 of his judgment, that this connection is satisfied by an offer to cross-subsidise another development that is otherwise unconnected with the development for which planning permission is sought. He comments that such an offer could not sensibly be regarded as "an attempt to buy planning permission", a phrase he takes from the judgment of Lord Keith of Kinkel, H at p 770. Lord Brown JSC differs from Lord Collins JSC, who concludes at para 70 that the authorities, and the *Tesco* case in particular, establish that there "must be a real connection" between benefits undertaken by a planning obligation and the development to which the planning application relates.

135 Here I align myself once again with Lord Collins JSC. Lord Brown JSC's conclusions are at odds with the passage in Lord Keith's judgment from which he has borrowed a phrase. The full passage reads:

> "An offered planning obligation which has nothing to do with the proposed development, *apart from the fact that it is offered by the developer*, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission." (Emphasis mine.)

All members of the committee agreed with the judgment of Lord Keith.

136 Lord Brown JSC has quoted a passage from the judgment of Lord Hoffmann, at p 779C–D, in which he says that section 106 does not require that the planning obligation should relate to any particular development, and Lord Keith made a similar observation, at p 769B. These observations related, however, to the legality, not the materiality, of planning obligations.

137 My conclusion in relation to the effect of the authorities is as follows. When considering the merits of an application for planning permission for a development it is material for the planning authority to consider the impact on the community and the environment of every aspect of the development and of any benefits that have some relevance to that impact that is not de minimis that the developer is prepared to provide. An offer of benefits that have no relation to or connection with the development is not material, for it is no more than an attempt to buy planning permission, which is able in principle. Tesco was right, on its application for planning permission, to drop any attempt to link the development of the site with the RHS development.

138 These principles can properly be applied, by analogy, to a simple case where a local authority is considering whether the public interest justifies the compulsory purchase of land for the purpose of facilitating a development. The development itself must be justified in the public interest and it would be wrong in principle for the local authority to be influenced by the offer by the chosen developer to provide some collateral benefit that has no connection of any kind with the development in question. Thus if, in this case, Sainsbury was not a rival seeking to develop the site but simply an owner who was unwilling to sell his land, it would not be right to treat Tesco's offer of the RHS benefit as a consideration that was material to the decision of whether or not to purchase Sainsbury's land.

Is the RHS benefit a material consideration in deciding whether to award the development to Sainsbury or Tesco?

139 The principle that permits a planning authority to have regard to planning gain that has some connection with a proposed development, but not to planning gain that has no such connection, is not entirely rational. It becomes less rational in a situation where two developers are competing for the grant of planning permission in circumstances where the grant to one or the other is justifiable, but not to both. That was believed to be the position in the *Plymouth* case 67 P & CR 78, although ultimately planning permission was granted to both the rivals, being once again Sainsbury and Tesco. In the *Plymouth* case each of the rivals was anxious to be permitted to build a supermarket. In competing for planning permission each offered to embellish its development with an array of expensive "add-ons",

described by Lord Brown JSC at para 170 of his judgment. These no doubt enhanced the attraction of each of the rival schemes from the viewpoint of the public and the local authority. But the possibility must exist that the cost of these embellishments might have been spent to better advantage in providing alternative planning gain in the local authority's area that had no connection with the proposed development. The reality is that the rivals were, to use a description adopted by Lord Hoffmann in the *Tesco* case [1995] 1 WLR 759, 782, competing for the development as in an auction. If an auction is to be permissible there might be something to be said for permitting the local authority to identify, for consideration by the rival bidders, its most urgent planning needs, whether or not connected with the development. I make this observation only by way of a stepping stone to considering the more complicated issue raised by the facts of this case.

140 The council's decision involves the exercise of two statutory powers. The first is the power of compulsory purchase conferred by section 226 of the Act. The second is the power to sell the land compulsorily purchased, which is conferred by section 233. The purposes of the sale of the land described in section 233 differ from the purposes of the purchase described in section 226. Had the site been in the ownership of a third party who was unwilling to sell it, and had Tesco and Sainsbury been competing to develop it, the council would have had two separate decisions to make. First whether compulsorily to purchase the land. Secondly to which of the two rivals to sell it for the purpose of the development. The law that I have analysed suggests that, when making the first decision under section 226, the council would have been bound to disregard benefits that might be obtainable from either of the developers that were unconnected to the development. But in choosing to which of the two rivals to sell the land for development under section 233 the council would have been entitled, and perhaps bound, to negotiate the best deal available. The terms of section 233 would seem wide enough to have permitted the council to treat as material Tesco's offer to throw into the bargain the RHS benefit.

141 These conclusions receive some support from *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33. Lord Collins JSC has set out some of the complicated facts of this case at para 40 of his judgment. That case had these features in common with the present. Glasgow City Council wished to develop a run down area of the city, parts of which were owned by rival developers. The council had decided compulsorily to purchase the entire site and to sell it on back-to-back terms to one of the rival developers. The other developer challenged the deal on the basis that back-to-back terms did not represent the best deal. This the council were bound to achieve under section 191 of the Scottish Act, which closely resembles section 233 of the Act. Lord Collins JSC rightly remarks that there was in that case no offer of benefits unconnected to the development, but I do not think that this robs it of all relevance. Of significance is that in that case, as in this, the council first decided in principle that the facts justified the use of its powers of compulsory purchase, before turning to choose between the rival developers. It is also significant that the House of Lords held that, at the stage of choosing the developer, the council was not simply concerned with achieving the object of the compulsory purchase, but was also entitled to have regard to purely commercial considerations. Lord Hope of Craighead described the position as follows, at para 34:

"section 191 seeks to do two things. On the one hand it seeks to regulate those aspects of the transaction which are intended to secure the purposes set out in subsection (2). These purposes are to secure the best use of the land and the proper planning of the area. On the other it seeks in addition to protect the public purse in the manner indicated by subsection (3). These are separate and distinct requirements, although they must both be read in the light of what section 191 seeks to achieve. The prohibition in subsection (3) directs attention to one issue, and to one issue only. This is the commercial implications of the transaction for the planning authority. It is to the best commercial terms for the disposal of the land, not to what is best designed to achieve the overall planning purpose, that the authority must direct its attention at this stage. But the words 'best terms' permit disposal for a consideration which is not the 'best price'. So terms that will produce planning benefits and gains of value to the authority can be taken into account as well as terms resulting in cash benefits."

142 I can summarise the position as follows. (1) In deciding whether to exercise its powers of compulsory purchase for the purpose of development the council is not permitted to have regard to unconnected benefit that it may derive from the carrying out of the development, but (2) in deciding who shall carry out the development and, thus, to whom the land will be sold for that purpose, the council is entitled, and perhaps bound, to have regard to unconnected benefit offered by the developer. The problem is how to have regard to these principles in a case such as the present where the rival developers each owns part of the site needed for the development.

143 I have concluded that the proper approach should be as follows. The council should first decide, in the case of each of the rivals, whether compulsory purchase of his land would be approved to enable the development to proceed, disregarding any unconnected benefit that might accrue and on the premise that he was simply an unwilling seller rather than a rival developer. In the result of an affirmative answer being given in each case, the council should then decide which developer to prefer having regard to all considerations material to that choice, including the amount of the site already owned by each developer and any benefits offered by either developer, whether or not connected to the development. The fact that this may, in effect, involve an auction between the two developers for the benefit of the community does not seem to me to be inherently able.

144 In the present case this is what the council did. The council was not influenced by the RHS benefit when deciding in principle to use its power of compulsory purchase. In deciding to purchase whatever land was necessary for the development of the site the council had regard only to the proper objects of compulsory purchase. The choice of developers necessarily also determined which land would be compulsorily purchased, but the decision had already been taken to purchase whatever land would be necessary having regard to the choice of developer.

145 To summarise, the RHS benefit was not a consideration that was material to the decision to use the power of compulsory purchase, but it was very material to the decision which developer to select, and this in its turn determined whose land was to be compulsorily purchased. In these circumstances I have reached the conclusion that the RHS benefit was a

consideration that was material to the decision that determined simultaneously the developer and the land to be purchased. It cannot be said that the decision compulsorily to purchase Sainsbury's land was influenced by a consideration that was not material.

146 The decision that I have reached at laborious length was felicitously stated by Elias J in a single paragraph (para 38) and I propose to conclude my judgment by quoting this:

> "In my judgment when deciding which development should receive their support, the council could have regard to all the benefits accruing from the proposed development, including any off-site benefits achieved by way of a section 106 agreement. It seems to me that there are really two stages in the process. First, can a CPO lawfully be made in favour of a particular development? That must be determined by focusing solely on the benefits flowing from the development itself and the RHS benefits could not be taken into account at that stage. Second, if the power can lawfully be exercised, but there is more than one potential party in whose favour it could be exercised, to which development should the council lend its support? At that stage I can see no reason why the council should not have regard to its wider interests. It has established that there is in principle a proper basis in law for interfering with the rights of either of two (or more) owners of land on the site by compulsorily purchasing their interests; I see no reason why it should not select which landowner should be so affected by considering the overall benefits to the council which the respective developments would provide."

147 The reality in this case is that the real issue is which developer should be preferred by the council, which is in the position of being able to choose between the two. The fact that the compulsory purchase of land owned by one or the other is involved is really peripheral. Each purchased its land in the hope of being able to use it for the purpose of the development. Each shares the intention that its land should be used for the development. In resisting the compulsory purchase of its land each is motivated by commercial rivalry, not by any to the land being used for the proposed development. It would be unfortunate if the rigid application by analogy or principles of planning law were to rob the local community of the additional benefit of the redevelopment of the RHS. I have not found it necessary to reach such a result.

148 For these reasons I would dismiss this appeal.

LORD HOPE OF CRAIGHEAD DPSC

149 Reduced to its essentials, this case is about two decisions that the council took to facilitate the development at Raglan Street. The first was whether they should exercise their powers of compulsory acquisition to enable the development. The second was as to the choice of developer. The first decision was taken in the exercise of the powers conferred on the council by section 226 of the Town and Country Planning Act 1990, as amended. The second, as Lord Phillips of Worth Matravers PSC has said (see para 140, above), was about the exercise of two statutory powers. I put it in this way, as I think Lord Phillips PSC does too, simply to indicate the context in which each of these powers was being exercised. The cart and the

horse—if I may adopt Baroness Hale of Richmond JSC's analogy (see para 91)—go together, like a horse and carriage, at this stage of the exercise.

150 The site was not in the sole ownership, or under the sole control, of either developer. They were in competition with each other for its development, so the exercise of compulsory powers to acquire the interest in the land vested in one or other of them was inevitable. Just as inevitable is the fact that the purpose of the exercise of those powers was to enable the council to dispose of the interest that was to be acquired to the preferred developer. Section 226 is concerned with the acquisition of the interest in the land, not its disposal. The power to dispose of land that has been acquired or appropriated is set out in section 233 of the 1990 Act.

151 The compulsory acquisition of land can only be permitted if it is within the powers of the statute. Great care must be taken to see that those powers are not resorted to unless the statute permits this and that the acquisition is necessary for the purpose that the statute contemplates. The issue on this part of the case is whether the council were entitled to take into account, in discharging their duty under section 226(1A) to consider the well-being benefits for the area, Tesco's commitment to secure by way of cross-subsidy the development of the Royal Hospital site. For the reasons that Lord Phillips PSC and Lord Collins JSC give, I would hold that they were not entitled to do so. Section 226(1)(a) provides that the authority have power to acquire land compulsorily if they think that it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The reference to "the land" in this paragraph is to the land which is to be the subject of the compulsory purchase order. Section 226(1A) places a limitation on the exercise of the power under section 226(1)(a). These two provisions must be read together. The contribution by the development, redevelopment or improvement that section 226(1A) refers to must be on the land that the authority is proposing to acquire compulsorily.

152 The situation in this case is that there was no physical connection of any kind between the two sites. Development of the Royal Hospital site could not contribute anything to the carrying out of development on the Raglan Street site in any real sense at all. They were not part of the same land. There is no doubt that the development of the Royal Hospital site would bring well-being benefits to the council's area of the kind that section 226(1A) refers to. But to fall within that subsection they had to be benefits that flowed from the Raglan Street development, not anywhere else. It follows that the council were not entitled to conclude that the work which Tesco were willing to undertake on the Royal Hospital site would contribute to the well-being of the area resulting from its development of the site at Raglan Street for the purposes of section 226(1A).

153 At first sight that might seem to be the end of the case. The report which was presented to the council's cabinet on 30 January 2008 stated that the Tesco and Sainsbury's schemes for the Raglan Street site would both fulfil the purpose referred to in section 226(1)(a). Addressing itself to the choice that had to be made between the two schemes, it went on to describe the circumstances relating to the development of the Royal Hospital site by Tesco and to refer to the decisive advantage which Tesco enjoyed over Sainsbury's if the development of that site was taken into account. It concluded by recommending that there was a compelling case in the public interest to make a compulsory purchase order to enable the Tesco scheme to go ahead.

As regards the exercise of the power to acquire the land compulsorily, if looked at in isolation, this was to stray into forbidden territory.

154 In my opinion however it would be unrealistic to stop there. The legality of the use of compulsory powers to enable the Raglan Street development to proceed has not been called into question. As the report said, both schemes satisfied the requirements of section 226(1)(a), and it has never been doubted that the carrying out of either of them on that site would contribute to the achievement of the well-being of the area. If the land had been in the ownership of a third party, there would have been no need to say more. The reason why the report went further was the council had to make a choice between the two developers. Although the report did not say so in terms, it is plain that the assumption on which it was proceeding was that, having acquired the land, the council would dispose of it to the preferred developer. The surrounding circumstances show that it was never the council's intention to develop the land themselves or to retain it in their ownership. This part of the report was as much concerned with the exercise of the power to dispose of the land as with the exercise of the power to acquire it.

155 The power of disposal under section 233 confers a wide discretion on the local authority. They may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient to secure the best use of that or other land or the proper planning of their area. Like section 191 of the Town and Country Planning (Scotland) Act 1997 which is in very similar terms, that is its primary objective: see *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, para 32. It was held in that case that the council, when considering whether to use compulsory powers in conjunction with a sale of the land under a back-to-back agreement to the preferred developer, were entitled to have regard to the wider benefits that were expected to flow from the contribution that the preferred developer would make to the redevelopment, the proposals for which were to contain a strong element of planning gain. There was to be a requirement to include improvements to other areas of the urban block within which the site to be acquired compulsorily was situated: see paras 38, 39. The value of the planning gain was something that the council was entitled to take into account in its assessment of whether the disposal was achieved on the best commercial terms.

156 The focus in that case was on the terms on which the council proposed to make the assembled site available to the preferred developer. Its facts differ from those in the present case, so I am not to be taken as suggesting that it provides direct authority for the view which I take here. But it does illustrate the extent of the power of disposal that is conferred by this section on the local authority, and it shows how the authority may legitimately have regard to the way the land will be disposed of before it decides to acquire it compulsorily: taking them both together, like the horse and carriage to which I referred earlier. The council decided to use its compulsory powers to purchase the site with a view to its disposal by means of a back-to-back agreement to achieve the development. The site was part of an urban block within which properties owned by the first petitioners and the second respondents were situated. Each had their own interests and their own agendas which were in competition with each other and, as in this case,

their proposals had to be evaluated. The preferred developer was expected to achieve a scheme that would enhance the wider area within which the site itself was situated. Regard was to be had to benefits which it would provide that were extraneous to the site itself, and extraneous too to each of the properties that were to be acquired compulsorily. Among other things, it was to commit itself to supporting an order for regulating traffic on adjacent streets and to provide details of a financial commitment to the area's environmental enhancement. The whole thing was seen as a single package. The acquisition of the properties and their disposal to a developer who would achieve these benefits were each part of the same exercise: for a more complete account of the facts, see 2005 SLT 144, paras 1–16.

157 I would take from that case the proposition that it is legitimate for the acquiring and disposing authority which has to choose between competing proposals for development to have regard to planning benefits that lie outside the perimeter of the site itself. It has not been suggested that it would have been an improper use of the section 233 power for the council to take account of Tesco's commitment to develop the Royal Hospital site in the assessment as to whether a disposal of the land to Tesco was preferable to disposing of it to Sainsbury's. I can see no reason why that should be so if the land was already in the council's ownership and they were faced with a competition between two or more developers who had no interest in the land at all.

158 It was not possible in this case for the council to take these two decisions separately, each without reference to the other. The choice as to whose land to acquire was inevitably linked to the choice of the developer to whom the land was to be disposed of when it was acquired. Section 226 does not concern itself with choices of that kind. To say that it prohibits them would be to read a limitation into the section which is not there. It would unduly inhibit the exercise of the power of compulsory acquisition in a case such as this, where a site that is in need of development is in divided ownership, the owners are in competition with each other for its development and there are sound planning reasons beyond those that section 226(1A) refers to for regarding the proposal of one developer as preferable to that of the other. I would not regard the opportunity that this particular situation gives for achieving planning gain in the wider public interest as transgressing the rule that the power of compulsory purchase can only be used for the purpose for which the power has been conferred. The contrary view risks making it impossible for projects for urban renewal which can only be achieved by using compulsory powers to assemble the site for redevelopment to include measures for improvements in the public interest which lie outside the site's perimeter. As Lord Phillips PSC says (see para 147), it would be unfortunate if a rigid application of the compulsory purchase principles to proposals of that kind were to rob the community of such benefits.

159 For these reasons, and those of Lord Phillips PSC with which I agree and in respectful agreement too with what Elias J said at first instance [2009] EWHC 134 at [38], I would dismiss the appeal.

LORD BROWN OF EATON-UNDER-HEYWOOD JSC

160 Are a local planning authority, when deciding how to exercise their compulsory purchase powers, precluded in all circumstances, as a matter of

A law, from taking into account public planning benefits (however substantial and obvious) which would result, not directly from the development to be facilitated by the proposed land acquisition, but rather from a contractual obligation attaching to that development? That, crucially, is the issue arising on this appeal.

161 Take the facts of this very case, already fully recounted in the judgment of Lord Collins of Mapesbury JSC, but which may conveniently B and sufficiently be summarised as follows. Two rival supermarket chains, Sainsbury's and Tesco, each own part of a site which is ripe for development ("the site"). Each wishes to develop the site as a supermarket and each has (or is about to obtain) planning permission for such development. There is really nothing to choose between their respective proposals. Neither is willing to sell its share of the site to the other. In these circumstances it is C agreed by all that the local planning authority ("Wolverhampton") must inevitably exercise their compulsory purchase powers under section 226 of the Town and Country Planning Act 1990 (as amended). The question then becomes: who should be chosen to carry out the development of the site and whose land, therefore, should be compulsorily acquired for the purpose? Should Sainsbury's land be acquired so that Tesco may develop the site or vice versa? The issue more particularly arising is whether, in deciding to D choose Tesco as the developer, Wolverhampton acted unlawfully in taking into account Tesco's commitment, if chosen, to redevelop the Royal Hospital site, another site in Wolverhampton's area some half a mile away ("the RHS"), redevelopment which Wolverhampton are anxious to promote but which Tesco would not be prepared to undertake save by way of cross-subsidy?

E **162** It so happens that one of the two rival chains (Sainsbury's) owns 86% of the site, the other (Tesco) 14%. But it is not suggested that this disparity between their respective interests affects the question of law at issue. The same question would arise even if each owned exactly half the site. Plainly the disparity is itself a material consideration and one, indeed, which ultimately could prove decisive in Sainsbury's favour. For present F purposes, however, as Mr Lockhart-Mummery QC for Sainsbury's expressly acknowledged, it can be ignored.

163 Section 226 of the 1990 Act provides so far as material:

> "(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area— (a) if the authority think that the G acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land . . .
>
> "(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects— (a) the promotion or improvement of the economic well-being of their area; (b) the promotion H or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area."

164 For present purposes the effect of those provisions in combination can be summarised quite simply as follows: A local authority can (subject to confirmation by the Secretary of State) compulsorily acquire land if they

think, first, that this will facilitate its development (section 226(1)(a)) and, secondly, that this development is likely to contribute to the economic and/or social and/or environmental well-being of their area (section 226(1A)).

165 In the present case it seems to me self-evident that both of these pre-conditions are fully satisfied in respect of each proposed development scheme so that Wolverhampton have a discretion to make whichever CPO they regard to be appropriate, whether of Sainsbury's land or of Tesco's land. The question, I repeat, is whether, in choosing whose land to acquire, Wolverhampton can take into account the additional benefit to their area which would result from Tesco's commitment, if they are enabled to develop the site, also to develop the RHS.

166 It was the Court of Appeal's conclusion below that Wolverhampton were indeed legally entitled to take account of the proposed cross-subsidy which would enable (and commit) Tesco to redevelop the RHS and that this entitlement arose directly under section 226(1A). This subsection, the Court of Appeal held [2009] 3 EGLR 94, para 33, imposes on local planning authorities an express obligation to have regard to such "off-site, or 'external' benefits". Elias J at first instance had held to the contrary [2009] EWHC 134 (Admin) at [35] that, to fall within section 226(1A), well-being benefits had to be generated by the development of the site itself, not by some contractually linked external development. In the only reasoned judgment in the Court of Appeal, Sullivan LJ (at paras 42 and 44) agreed with Elias J that,

> "to fall within section 226(1A) the benefits in question must flow from the redevelopment of [the site]. However . . . [t]he likelihood of the redevelopment of a CPO site leading, whether because of cross-subsidy or for any other reason, to the development or redevelopment of other sites in the authority's area is precisely the kind of wider benefit that subsection (1A) requires the authority to consider."
>
> "[Section 226(1A)] ensures that wider 'well-being' benefits are not ignored, but are always treated as material considerations . . ."

167 I have to say that on this particular issue, in common with the majority of this court, I prefer Elias J's view to that of the Court of Appeal. That, however, does not seem to me the real issue in the case. Section 226(1A), I repeat, does no more than specify a precondition (additional to that in section 226(1)(a)) which has to be satisfied before any power of compulsory acquisition can be exercised. No one doubts that it was satisfied here. Wolverhampton accordingly had a discretion under the section. The critical question then arising is whether the further public benefit which Tesco was offering was or was not a material consideration which Wolverhampton could take into account when deciding how to exercise that discretion. Elias J held that it was. The Court of Appeal, having concluded (wrongly as I believe) that this further benefit had to be regarded as material by virtue of section 226(1A), chose not to deal with the question whether the benefit would in any event have been a material consideration, section 226(1A) apart. As to this Sullivan LJ merely observed, at para 44, that section 226(1A) "does not purport to cut down the considerations that are capable of being material under subsection 226(1)(a)". And that at least must be right: to stipulate, as section 226(1A) does, that the authority must

not exercise their compulsory purchase powers unless they think that the development itself is likely to contribute to the well-being of their area (whether because it will act as a catalyst for other development or provide employment or stimulate other beneficial activity in the area or whatever else) is by no means to stipulate that, the condition being satisfied, this exhausts all the considerations to which the authority can have regard and they must shut their mind to all other possible external benefits which the exercise of their compulsory purchase powers would bring.

168 In addressing the question whether such external benefits are capable of being material considerations in the exercise of compulsory purchase powers under section 226(1)(a), it seems to me helpful to begin by examining what the position would be in the broadly analogous situation of a planning authority considering rival applications for planning permission. Suppose that the competition between the rival supermarket chains was not, as here, as to which should be preferred as developers of a single site by reference to the exercise of the authority's powers of compulsory purchase, but rather as to which should be granted planning permission assuming that each owned a suitable site but there was room in the area only for one supermarket—the very situation which arose in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (between, as it happens, the same competing developers as here). Would an offer such as that made here by Tesco to develop the RHS (probably by way of a planning obligation under section 106 of the 1990 Act) be a "material consideration" within the meaning of section 70(2) of the 1990 Act? If it would, then it is difficult to see why it should not be material also for section 226(1)(a) purposes. If, on the other hand, it would not, then the court would need to be persuaded that wider financial benefits are to be regarded as material considerations when exercising compulsory purchase powers than when determining planning applications.

169 Before going to the House of Lords decision in the *Tesco* case itself it is instructive to take note of two earlier Court of Appeal authorities—*R v Westminster City Council, Ex p Monahan* [1990] 1 QB 87 and *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* (1993) 67 P & CR 78—the essential backdrop to the speeches in the *Tesco* case. Lord Collins JSC having dealt with these at some length, I content myself with the briefest summary of each. *Ex p Monahan* was the Royal Opera House case in which the planning authority were held entitled to have granted permission for an office development notwithstanding that it involved a major departure from the development plan because that would cross-subsidise the refurbishment of the listed opera house. Nicholls LJ recorded (p 121) that counsel for the planning authority (Mr Sullivan QC)

> "frankly accepted that he could discern no legal principle which distinguished between (a) what happens within one building, (b) what happens on two adjoining sites and (c) what happens on two sites which are miles away from each other"

but continued:

> "All that need be said to decide this appeal is that the sites of the commercial development approved in principle are sufficiently close to

> the opera house for it to have been proper for the local planning authority to treat the proposed development of the office sites . . . and the proposed improvements to the opera house as forming part of one composite development project. As such it was open to the planning authority to balance the pros and cons of the various features of the scheme."

As to what the position would have been had the proposed office block been in Victoria, Kerr LJ similarly suggested, at p 117, that "all such cases would . . . involve considerations of fact and degree rather than of principle".

170 The *Plymouth* case (like the *Tesco* case which followed it) involved competitive planning applications by Sainsbury's and Tesco, the council's original intention having been to allow one store only to be built. Each company was therefore invited to say why it should be preferred and both were told that the council would take into account any community benefits offered (provided they were "justifiable in land use planning terms"—the council's published policy). Sainsbury's offer included the construction of a tourist information centre on the site, an art gallery display facility, a work of art in the car park, a bird-watching hide overlooking the river, an £800,000 contribution to the establishment of a park and ride facility in the neighbourhood, and up to £1m for infrastructure works to make a different site suitable for industrial use. Tesco offered financial contribution to a crèche, a wildlife habitat, a water sculpture, and in addition it offered to sell the council a site for a park and ride facility. Both offers were by way of section 106 agreements. In the event, both applications were granted, doubtless to the satisfaction of Sainsbury's and Tesco but not that of the Co-operative Society who promptly challenged both planning permissions on the ground that the council had taken into account immaterial considerations.

171 The Co-operative Society argued that not merely must a community benefit offered under a section 106 agreement satisfy the three tests laid down by the House of Lords in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (following *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554) by which the legality of a section 70 condition is to be judged—namely (i) that it has a planning purpose, (ii) that it fairly and reasonably relates to the permitted development and (iii) that it is not *Wednesbury* unreasonable—but it must also be necessary in the sense of overcoming what would otherwise have been a planning to the development. In the leading judgment rejecting this argument and stating that "the only question is whether [the section 106 agreement] fairly and reasonably related to the development", Hoffmann LJ said (p 90) that the only benefits which gave pause for thought were the two substantial sums offered by Sainsbury's as a contribution to work to be done away from the site. The park and ride facility, however, would tend to reduce both traffic heading for the store and use of Sainsbury's own car park by people not actually shopping there. As for the £1m offer, this "was not simply to pay the council £1 million. It was to contribute up to £1m to the actual cost of infrastructure works undertaken by the council within a period of two years at a specific site": p 91.

172 As we shall shortly see, the supposed requirement that section 106 offers, like imposed section 70 conditions, have to "fairly and reasonably

relate to the permitted development" (a requirement held satisfied in the *Plymouth* case) did not survive the decision of the House of Lords in the *Tesco* case [1995] 1 WLR 759 to which I now come.

173 The *Tesco* case (like the *Plymouth* case at the initial stage) concerned rival applications by Sainsbury's and Tesco to develop their respective sites (Sainsbury's in conjunction with Tarmac), there being room in Witney for one store only. Notwithstanding that Tesco's application included an offer of £6·6m to fund in its entirety a new link road, the Secretary of State (who had to decide which of the two proposals to allow) chose to grant Sainsbury's application. Tesco appealed on the ground that the Secretary of State had failed to take account of a material consideration, namely their £6·6m offer. Albeit the appeal failed, it did so not on the basis that the offer was an immaterial consideration but rather because, although material, the Secretary of State had been entitled to give it little or no weight and to prefer Sainsbury's proposal because the Secretary of State thought its site "marginally more suitable": Lord Hoffmann, p 783. The following features of the *Tesco* case seem to me of particular importance: (1) The £6·6m offer was held to be a material consideration notwithstanding that the Secretary of State shared his inspector's view that the relationship between the proposed new development and the funding of the link road was "tenuous" (the development being likely to result only in "slight worsening of traffic conditions"). (2) The only reasoned speeches were given by Lord Keith of Kinkel (with whom the other members of the committee agreed) and Lord Hoffmann. Both of them recognised that, contrary to the Court of Appeal's assumption in the *Plymouth* case, the second *Newbury* test has no application to section 106 agreements. As Lord Hoffmann observed, at p 779:

> "section 70(2) does not apply to planning obligations. The vires of planning obligations depends entirely upon the terms of section 106. This does not require that the planning obligation should relate to any particular development. As the Court of Appeal held in *Good v Epping Forest District Council* [1994] 1 WLR 376, the only tests for the validity of a planning obligation outside the express terms of section 106 are that it must be for a planning purpose and not *Wednesbury* unreasonable."

Nevertheless, for a planning obligation to be a material consideration which can legitimately be taken into account in granting planning permission, it has to have "some connection with the proposed development which is not de minimis" (Lord Keith, p 770B); it cannot be "quite unconnected with the proposed development": Lord Hoffmann, p 782D. (3) Were it otherwise, said Lord Keith (p 770A), it "could be regarded only as an attempt to buy planning permission". Lord Hoffmann put it rather differently: p 782C–E. The metaphor of "bargain and sale", he suggested, although "vivid":

> "is an uncertain guide to the legality of a grant or refusal of planning permission. It is easy enough to apply in a clear case in which the planning authority has demanded or taken account of benefits which are quite unconnected with the proposed development. But in such a case the phrase merely adds colour to the statutory duty to have regard only to material considerations. In cases in which there is a sufficient connection, the application of the metaphor or its relevance to the legality of the

planning decision may be highly debatable. I have already explained how in a case of competition such as the *Plymouth* case, in which it is contemplated that the grant of permission to one developer will be a reason for refusing it to another, it may be perfectly rational to choose the proposal which offers the greatest public benefit in terms of both the development itself and related external benefits."

(4) In the *Tesco* case itself, Lord Hoffmann then observed, (p 782G–H), the Secretary of State had in substance accepted the argument that Tesco's "offer to pay for the whole road was wholly disproportionate and it would be quite unfair if [Sainsbury's] was disadvantaged because it was unwilling to match this offer". That, said Lord Hoffmann, "is obviously defensible on the ground that although it may not maximise the benefit for Witney, it does produce fairness between developers". However, Lord Hoffmann continued (p 783), so too was Tesco's argument (that only if they offered the whole cost of the link road would it be constructed) a perfectly respectable one. Importantly, he then said:

"the choice between a policy which emphasises the presumption in favour of development and fairness between developers, such as guided the Secretary of State in this case, and a policy of attempting to obtain the maximum legitimate public benefit, which was pursued by the local planning authority in the *Plymouth* case, lies within the area of discretion which Parliament has entrusted to planning authorities. It is not a choice which should be imposed upon them by the courts."

(5) Lord Hoffmann had earlier (p 780) emphasised the distinction to be made between materiality and weight:

"The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process."

174 Let me in the light of those authorities return to the question I posed at para 168: would an offer such as Tesco made to Wolverhampton, had it been made in a planning context have been, as a matter of law, a material consideration? To my mind the correct answer to that question should be yes, although plainly the weight (if any) to be given to it would be entirely for the planning authority. And the reason the answer should be yes is quite simply because such an offer could not sensibly have been regarded as "an attempt to buy planning permission" (Lord Keith, at p 770A); on the contrary, it would in my view have had "a sufficient connection" with the proposed development (Lord Hoffmann, at p 782D), "not de minimis": Lord Keith, at p 770A.

175 The proposition that planning consent cannot be bought or sold, although stated nearly a quarter of a century ago to be "axiomatic"

(by Lloyd LJ in *City of Bradford Metropolitan Council v Secretary of State for the Environment* (1986) 53 P & CR 55, 64), needs to be understood for what it is, essentially a prohibition against the grant of a planning permission for what would otherwise be unacceptable development induced by the offer of some entirely unrelated benefit. What it is *not* is a prohibition against, for example, the grant of permission for a development which is contrary to local planning policy on the basis that it needs to be economically viable to ensure that the site does not remain derelict—see *Sosmo Trust Ltd v Secretary of State for the Environment* [1983] JPL 806, where, indeed, Woolf J held that no Secretary of State could reasonably have regarded the economic factor in that case as irrelevant. Nor, of course, did the principle prevent office development being permitted in *Ex p Monahan* [1990] 1 QB 87 essentially because the proposed refurbishment of the opera house was financially dependant upon it.

176 *Ex p Monahan*, it must be noted, is *not* authority for the proposition that, but for the development there "forming part of one composite development project" (p 121), the office building would not have been permitted. As was expressly recognised, no discernible legal principle would have supported such a view. In any event *Ex p Monahan* is not binding on this court. That aside, the *Tesco* case [1995] 1 WLR 759 later established that offers such as that in *Ex p Monahan* to refurbish the opera house do not have to "fairly and reasonably relate to the permitted development" (as at the time of *Ex p Monahan* would have been supposed). Had Tesco in the present case offered (uneconomically) to redevelop the RHS to the benefit of the public in consideration of some planning advantage elsewhere in Wolverhampton's area, it is difficult to see why Wolverhampton would have been legally obliged to refuse.

177 Still less does the principle prevent rival developers, in competitive situations such as arose in the *Plymouth* and *Tesco* cases, seeking to outbid each other as to the external benefits their proposals would bring with them—as both those cases amply demonstrate. It is surely one thing to say that you cannot buy a planning permission (itself, as I have sought to show, only in a narrow sense an absolute principle); quite another to say that in deciding as between two competing developers, each of whose proposals is entirely acceptable on planning grounds, you must completely ignore other planning benefits on offer in your area.

178 Let it be assumed, however, contrary to my view but as I understand every other member of this court to have concluded, that, had the present issue arisen in the context of rival applications for planning permission, Tesco's offered redevelopment of the RHS would have had to be characterised as a wholly unconnected planning benefit and so not a material consideration under section 70. That majority view, as Lord Phillips of Worth Matravers PSC himself points out, at para 139, is "not entirely rational" even in a non-competitive planning context; "less rational" still "where two developers are competing for the grant of planning permission in circumstances where the grant to one or the other is justifiable, but not to both".

179 Is that approach none the less to apply equally in the present context or, as I contemplated at para 168, is the position that "wider financial benefits are to be regarded as material considerations when exercising compulsory purchase powers than when determining planning applications"?

180 The Court of Appeal thought that the case for regarding Tesco's RHS offer as a material consideration was stronger in the CPO context than had it been made in a planning context. They thought this, first, because of the wide (to my mind over-wide) construction they put upon section 226(1A) itself (para 33); secondly, because they regarded financial viability as yet more important in the CPO context than in the planning context (paras 34–40); and, thirdly, because, whereas planning authorities (subject only to the Secretary of State's call-in powers) are free to grant any planning permissions they wish, CPOs must be confirmed by the Secretary of State (who can therefore prevent any misuse of the local authority's compulsory acquisition powers): para 41. Whilst I have difficulty with that reasoning, I nevertheless agree with Lord Phillips PSC and Lord Hope of Craighead DPSC that, even assuming that Tesco's RHS offer would not have been a material consideration had Wolverhampton been determining a planning application, it was none the less material in the context of the decisions the council were in fact required to take here. These were, first, whether Wolverhampton should compulsorily acquire land to facilitate the development of the site (for which both rival developers had the requisite planning permission) and, if so, second, whose land should be acquired—should it be Tesco's land to enable Sainsburys to develop the site or vice versa (i e who should be the preferred developer)?

181 I understand all of us to agree that Wolverhampton were amply entitled to exercise their section 226 power of compulsory acquisition here: as I noted at paras 164 and 165 above, self-evidently both the section 226(1)(a) and the section 226(1A) conditions were satisfied and the development of the site was only going to take place if Wolverhampton did indeed exercise this power. As Lord Hope DPSC observes, however, this power could not be exercised until Wolverhampton had also decided the second question before them: which of the two developers to choose. There seems to me no basis in authority or reason for holding that in reaching this second decision Wolverhampton were required to ignore the off-site benefit (unconnected though I am now assuming it to be) on offer from Tesco. I would on the contrary hold it to be a material consideration for the purposes of deciding which of the rival developers to prefer and whose land, therefore, should be the subject of compulsory purchase under section 226. That is precisely what was held at first instance here and I can but echo Lord Phillips PSC's plaudits for the passage in Elias J's judgment which he quotes in full at para 146.

182 It is essentially on this basis, rather than by reference to Wolverhampton's power of disposal of acquired land under section 233, that for my part I would hold Tesco's offer to have been a material consideration (even assuming that it would not have been so in the planning context). I think it difficult for Tesco to invoke section 233 here. True, section 233 would to my mind plainly entitle a planning authority to have regard to an off-site benefit such as Tesco offered here in deciding how to exercise their section 233 power. (Although, as Baroness Hale of Richmond and Lord Mance JJSC point out, no wholly extraneous benefits were offered or considered in *Standard Commercial Property Securities Ltd v Glasgow City Council (No 2)* 2007 SC (HL) 33, it is surely implicit in that decision—and, indeed, in the respective legislative requirements in both England and Scotland in effect to get what I called there (para 68) "the best overall deal available"—that, by the same token as a cash bidding match would have been

possible, so too would have been an offer of other benefits, however extraneous. Why ever not? I do not regard this as inconsistent with what I said at para 75 of my judgment in the *Standard Commercial* case—quoted by Lord Walker of Gestingthorpe JSC at para 85: my quarrel there was with the disappointed developer's submission that the planning authority should itself have initiated a bidding war. It is quite another thing to say that they are precluded by law from accepting offers of money or other extraneous benefits when they come to dispose of a compulsorily acquired development site.)

183 My difficulty with section 233, however, is, as Baroness Hale JSC points out, that it puts the cart before the horse. Unless and until the Secretary of State confirms a section 226 compulsory purchase order, the local authority has no land to dispose of. I do not see the council here, therefore, as entitled to have regard to their section 233 powers when exercising their section 226 powers. I would be concerned also that on this approach the council might be statutorily *obliged* to accept Tesco's offer in order to obtain "the best overall deal available"—instead of merely being required to regard it as a material consideration, it being a matter for the council (and, in subsequent confirmation proceedings, the Secretary of State) to give it such weight, if any, as they thought right. (Indeed, as I observed earlier (at para 162), it might be that the Secretary of State, unlike Wolverhampton, will regard Sainsbury's substantial larger interest in the site as the determining factor here—rather as the Secretary of State in the *Tesco* case [1995] 1 WLR 759, thought it only fair to Sainsbury's to give no weight to Tesco's "wholly disproportionate" £6·6m offer to fund the link road: see para 173(4) above. That, however, in this case as in that, would be entirely a matter for the planning authorities, not for this court.)

184 All that said, I do not regard section 233 as central to either Lord Phillips PSC's or Lord Hope DPSC's reasoning in this case. Still less did it colour Elias J's approach; indeed, section 233 finds no mention whatever in his judgment.

185 Really what it all comes to is this. It is irrational and unsatisfactory that (in the view of the majority) Tesco's offer here would have had to be ignored in a competitive planning context. It is quite unnecessary and (as Lord Phillips PSC and Lord Hope DPSC observe) would be unfortunate if this irrationality were carried over into the compulsory purchase context within which the present issue arises.

186 In the result I would answer the question I posed in para 160: no, not even if the benefits are wholly unconnected with the proposed development, and dismiss this appeal. As indicated, I would do so essentially for the reasons given by Elias J at first instance rather than those given by the Court of Appeal.

Appeal allowed.
Declaration accordingly.

JILL SUTHERLAND, Barrister

Department for Transport

National Highways

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Your Ref: 551514/SRO/DFT
Our Ref: NATTRAN/HE/HAO/249
Date: 8 June 2023

Dear Ms. Mitu,

THE HIGHWAYS ENGLAND (M27 SOUTHAMPTON JUNCTION 8 IMPROVEMENT SCHEME – M27 JUNCTION 8 AND WINDHOVER ROUNDABOUT) (SPECIAL ROAD) (SIDE ROADS) ORDER 2021 ("THE SRO")

THE HIGHWAYS ENGLAND (M27 SOUTHAMPTON JUNCTION 8 IMPROVEMENT – M27 JUNCTION 8 & WINDHOVER ROUNDABOUT) (SPECIAL ROAD) COMPULSORY PURCHASE ORDER 2021 ("THE CPO")

SECRETARY OF STATE'S DECISION - SRO AND CPO NOT TO BE CONFIRMED

1. I refer to National Highways (formerly Highways England) application for confirmation of the above-named Orders, which was submitted in July 2021. The Secretary of State for Transport ("the Secretary of State") has decided that the Orders will not be confirmed at present. This letter constitutes his decision to that effect.

2. The Orders had been made by National Highways to improve congestion, journey time reliability, resilience, and safety at the M27 J8 Windhover Roundabout.

CONSIDERATIONS FOR DECISION

3. 7 objections were received to the Orders, therefore the Secretary of State arranged for a joint Public Inquiry to be held at Highpoint Centre, Bursledon Road, Thornhill, Southampton between 10th May 2022 and 17th June 2022, before I Jenkins BSc CEng MICE MCIWEM, an Inspector appointed by the Secretary of State to hear those objections and representations. The main grounds of objection to the proposals were that other junctions nearby also needed improvements, the delivery

of the link road, flood risk and that there wasn't a compelling case in the public interest.

4. 3 objections were outstanding at the opening of the Inquiry and a further 2 representations supporting the scheme had been received. The Inspector has considered all the outstanding objections to and representations about the Orders both as made in writing and presented orally at the Inquiry and has since submitted his report to the Secretary of State. A copy of that report is enclosed with this letter. References in this letter to the Inspector's report are indicated by the abbreviation "IR" followed by the paragraph number in the report.

5. The Inspector summarises the case for National Highways at IR 4.1 to 4.14. The case for supporters of the scheme is summarised at IR 5.1 to 5.2. The case for the objectors is summarised at IR 6.1 to 7.2, including National Highways' response to individual objections. The Inspector's conclusions are detailed at IR 8.1 to 8.4 whilst his recommendations are given at IR 9.0. In light of his conclusions the Inspector has recommended that the Orders not be confirmed.

6. Following the close of the Inquiry, correspondence has been received from both National Highways and Mr Keeling's (one of the objectors) representatives. It is the Secretary of State's view that this correspondence reflects matters already dealt with in the course of the Inquiry and would not materially alter this decision. It will therefore not be commented on further.

7. The Secretary of State has considered carefully all the objections to, and representations about, the Orders, including alternative proposals put forward. He has considered the Inspector's report and has also considered the Orders in line with relevant guidance set out in *Guidance on Compulsory Purchase Process and The Crichel Down Rules* and *The Highways Act 1980* in reaching this decision.

CONCLUSION

8. The Secretary of State has considered whether the purposes for which the CPO is required, sufficiently justify interfering with the human rights of those with an interest in the CPO and isn't satisfied that they do. In particular, the Secretary of State has considered the provisions of Article 1 of The First Protocol to the European Convention on Human Rights and the Human Rights Act 1998. In this respect, the Secretary of State isn't satisfied that confirming the CPO in its current form shows that a fair balance has been struck between the public interest and interests of the objectors, owners and lessees. Namely, it hasn't been clearly demonstrated that all of the land is required for the Orders to be properly implemented, including the land owned by one of the objectors, Mr Keeling, where an intended flood basin was to be situated.

9. The Secretary of State considers that the evidence provided by Mr Keeling in relation to flood data modelling, shows that the long-term risks of flooding may not be sufficiently addressed and that National Highways have not sufficiently proved that

the flood basin on Mr Keeling's land is necessary. This is highlighted at IR 8.2.4.46 to IR 8.2.4.50. The Secretary of State believes this is a convincing reason not to confirm the Orders at this time.

10. Having reflected on all aspects of the matter, the Secretary of State is satisfied there is a compelling case which would justify not confirming the CPO. Consequently, it would not be correct to confirm the SRO, as both Orders are intrinsically linked. As such, the Secretary of State agrees with the Inspector's conclusions and recommendations and has decided NOT to confirm 'The Highways England (M27 Southampton Junction 8 Improvement Scheme – M27 Junction 8 And Windhover Roundabout) (Special Road) (Side Roads) Order 2021' and 'The Highways England (M27 Southampton Junction 8 Improvement – M27 Junction 8 & Windhover Roundabout) (Special Road) Compulsory Purchase Order 2021'.

11. In making this decision, the Secretary of State has relied on the information that all parties have provided, that contained in the Orders, plans, diagrams and any statements or correspondence, as being factually correct.

AVAILABILITY OF DOCUMENTS

12. A copy of this letter, together with a copy of the Inspector's report, has been sent to those parties who appeared at the Inquiry, other interested parties and relevant Members of Parliament. Copies will be made available on request to any other persons directly concerned.

13. Please arrange for a copy of the Inspector's report and of this letter to be made available for inspection at all places used to deposit the Orders for public inspection at making stage. These are; The offices of National Highways Company Limited, Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ; Hedge End Library, 11 Upper Northam Road, Hedge End, Southampton SO30 4DY; and Thornhill Community Library, 328 Hinkler Road, Thornhill, Southampton, SO19 6DF. It should also be available to view on the National Highways website at https://nationalhighways.co.uk/our-roads/south-east/m27-southampton-junction-8/ .

14. Any person entitled to a copy of the Inspector's report may apply to the Secretary of State for Transport, at this address within 6 weeks of the receipt of this letter, to inspect any document, photograph or plan submitted by the Inspector with the Inspector's report.

RIGHT OF CHALLENGE

15. Notice is to be published of non-confirmation of the Orders. Any person who wishes to question the validity of the Secretary of State's decision on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements when reaching their decision may, under the provisions of Rule 54 of the Civil Procedure Rules, do so by application to the High Court. Such application must be made within six weeks of publication of the notice that the Orders

have not been confirmed. The High Court cannot entertain such an application before publication of the notice that the Secretary of State has not confirmed the Orders.

Yours sincerely,



Dave Candlish
Authorised by the Secretary of State
to sign in that behalf

A Supreme Court

CG Fry and Son Ltd *v* Secretary of State for Housing, Communities and Local Government and another

[On appeal from CG Fry and Son Ltd v Secretary of
B State for Levelling Up, Housing and Communities]

[2025] UKSC 35

2025 Feb 17, 18; Oct 22

Lord Reed PSC, Lord Sales, Lord Hamblen, Lord Stephens, Lady Simler JJSC

C

Planning — Planning permission — Conditions — Claimant granted outline planning permission for development and reserved matters approval for phase of development on land near Ramsar site — Subsequent scientific advice that development risking adverse environmental effect on site — Local planning authority refusing to discharge conditions attached to reserved matters approval for lack of "appropriate assessment" — Whether national planning policy
D *legally relevant when considering application for discharge of conditions — Whether appropriate assessment required for approval of reserved matters or discharge of condition attached to such approval — Conservation of Habitats and Species Regulations 2017 (SI 2017/1012), reg 63 — National Planning Policy Framework (2021), para 181*

E The claimant property developer proposed to carry out a major residential development on land near the "Somerset Levels", which was designated as a "protected site" of environmental significance under the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1971) ("Ramsar site"). Under paragraph 181 of the National Planning Policy Framework 2021[1] ("NPPF"), Ramsar sites were to be afforded the same protection as if they were protected sites designated under the Conservation of Habitats and Species
F Regulations 2017[2], although that policy was not implemented into law. A planning authority had to carry out an "appropriate assessment" pursuant to regulation 63(1) of the 2017 Regulations before deciding to give any consent, permission or "other authorisation" for a development plan or project which was likely to have a significant effect on a protected site within those Regulations. In 2015 the local planning authority granted the claimant outline planning permission for the
G development, which was to take place in eight phases, subject to conditions requiring "reserved matters approval" of certain aspects of the development at the later stages. The claimant was granted reserved matters approval in June 2020 for phase 3 of the development which comprised 190 dwellings. That approval was itself subject to further conditions ("the sub-conditions") requiring approval of further matters that had nothing to do with protection of the nearby Somerset Levels Ramsar site. At that stage no threat to the environment had been identified, but later in 2020 Natural
H England published new scientific advice which identified that the Ramsar site was at risk from the accumulation of excessive nutrients in water as a result of enrichment by phosphates linked to the development. Subsequently, the claimant applied to the

[1] National Planning Policy Framework, para 181: see post, para 3.

[2] Conservation of Habitats and Species Regulations 2017, reg 63: see post, para 37.

planning authority to approve the matters covered by, and consequently to discharge, the sub-conditions. The planning authority withheld approval on the basis that an appropriate assessment under the 2017 Regulations was required before it could be granted, relying on the Natural England advice and paragraph 181 of the NPPF. The claimant's appeal against the authority's decision was dismissed by a planning inspector appointed by the Secretary of State and the claimant's application for statutory review of the inspector's decision was dismissed by the judge. The claimant's appeal to the Court of Appeal was dismissed, the court holding, inter alia, that: (i) the policy in paragraph 181 of the NPPF was a material consideration at the stage of discharging conditions on a reserved matters approval; and (ii) regulation 63 of the 2017 Regulations required an appropriate assessment to be undertaken at the stage of considering whether to discharge conditions attached to a reserved matters approval.

On the appeal—

Held, allowing the appeal in part, (1) that national planning policy, such as paragraph 181 of the National Planning Policy Framework ("NPPF") covering the environmental impact of a development on a Ramsar site, could be a material consideration in relation to granting planning permission, including outline planning permission subject to conditions, at the start of the planning process; that, however, once planning permission was granted there was a fundamental change in the legal position in that the developer acquired rights under the planning legislation to develop land in accordance with the permission; that in the case of an outline planning permission, the meaning of any conditions imposed, and the extent of the developer's rights, were determined at the time of grant of the outline permission and thus any further sub-conditions that were imposed at the stage of reserved matters approval had to fall within the scope of the main conditions; that in deciding whether to give an approval required under such conditions, the local authority was confined to a consideration of matters fairly related to their subject matter and did not have a general power to refuse approval in order to further some other purpose or policy objective; that the local planning authority could not revisit matters which had already been approved in principle at the outline stage and, if the claimant had satisfied the conditions and sub-conditions as properly interpreted, it had the right under the planning legislation to proceed henceforth with the development for which permission had been granted; that those rights given by the planning legislation could not be overridden or diluted by general policies laid down by central government, whether in the form of the NPPF or otherwise, and thus the planning authority could not rely on a statement of national planning policy such as paragraph 181 of the NPPF to introduce a new risk factor which was not referred to in the conditions; that, while a rule introduced in later legislation such as the Conservation of Habitats and Species Regulations 2017 could affect the developer's rights in that way, those Regulations did not apply to a Ramsar site; that, accordingly, since the conditions attached to the outline planning permission made no reference to the need to protect the Somerset Levels Ramsar site, the authority had not been entitled to introduce that as a new variable or risk factor late in the development process in the way it had and could not refuse to discharge the sub-conditions on the basis that additional measures were required to protect the Ramsar site; and that the courts below had erred in treating a statement of policy, namely paragraph 181 of the NPPF, as if it were binding legislation, overlooking the critical differences between the two and the nature of the claimant's rights conferred by the grant of outline planning permission (post, paras 43, 60–65, 66–67, 69–70, 73).

Kingsway Investments (Kent) Ltd v Kent County Council [1971] AC 72, HL(E) and *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1054, CA considered.

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(2) That, having regard to the purpose of the 2017 Regulations to provide protection for the environment, together with the deliberately broad language used in regulation 63, that provision was not limited in its application to the grant of planning permission but, rather, in the context of a multi-stage planning regime, the words "or other authorisation" covered a decision to give approval for reserved matters, or to discharge conditions attached to a reserved matters approval, where that had the effect of authorising the developer to proceed with the development; and that, accordingly, in a case involving a potential impact on a European site where the Habitats Regulations had effect, regulation 63 might require an "appropriate assessment" to be carried out before a decision was made to give reserved matters approval or to discharge conditions attached to such an approval, if the planning authority had for any reason (such as oversight, misinterpretation of the law, being ignorant of relevant science or misunderstanding that science) failed to carry one out at the stage of assessing whether to grant outline planning permission (post, paras 44, 53–56, 60, 73).

No Adastral New Town Ltd v Suffolk Coastal District Council [2015] Env LR 28, CA, *R (Wingfield) v Canterbury City Council* [2019] EWHC 1974 (Admin) and *R (Swire) v Canterbury City Council* [2022] JPL 1026 considered.

Decision of the Court of Appeal [2024] EWCA Civ 730; [2024] PTSR 2000, CA reversed in part.

The following cases are referred to in the judgment of Lord Sales JSC:

Camden London Borough Council v Secretary of State for the Environment [1993] JPL 466

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (Case C-508/03) EU:C:2006:287; [2006] QB 764; [2006] 3 WLR 492; [2006] ECR I-3969; [2007] Env LR 1, ECJ

Cooper v Attorney General [2010] EWCA Civ 464; [2011] PTSR 1; [2011] QB 976; [2011] 2 WLR 448; [2011] Env LR 4, CA

Coöperatie Mobilisation for the Environment UA v College van gedeputeerde staten van Limburg (Joined Cases C-293/17 and C-294/17) EU:C:2018:882; [2019] Env LR 27, ECJ

DB Symmetry Ltd v Swindon Borough Council [2022] UKSC 33; [2023] PTSR 160; [2023] 1 WLR 198; [2023] 2 All ER 621; [2023] RTR 12, SC(E)

Elsick Development Co Ltd v Aberdeen City and Shire Strategic Development Planning Authority [2017] UKSC 66; [2017] PTSR 1413, SC(Sc)

European Commission v Federal Republic of Germany (Case C-142/16) EU:C:2017:301, ECJ

Friends of the Irish Environment Ltd v An Bord Pleanála (Case C-254/19) EU:C:2020:680; [2021] Env LR 16, ECJ

Holohan v An Bord Pleanála (Case C-461/17) EU:C:2018:883; [2019] PTSR 1054; [2019] Env LR 16, ECJ

Inter-Environnement Wallonie ASBL v Conseil des Ministres (Case C-411/17) EU:C:2019:622; [2020] Env LR 9, ECJ (GC)

Kingsway Investments (Kent) Ltd v Kent County Council [1971] AC 72; [1970] 2 WLR 397; [1970] 3 WLR 897; [1970] 1 All ER 70; 68 LGR 301, HL(E)

No Adastral New Town Ltd v Suffolk Coastal District Council [2015] EWCA Civ 88; [2015] Env LR 28, CA

Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 15; [2021] PTSR 1054, CA

Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] EWCA Civ 9; [2018] Env LR 18, CA

Proberun Ltd v Secretary of State for the Environment (1990) 61 P & CR 77, CA

R v Newbury District Council, Ex p Chieveley Parish Council [1999] PLCR 51, CA

R (Barker) v Bromley London Borough Council (Case C-290/03) EU:C:2006:286; [2006] QB 764; [2006] 3 WLR 492; [2006] ECR I-3949, ECJ
R (Barker) v Bromley London Borough Council [2006] UKHL 52; [2007] 1 AC 470; [2006] 3 WLR 1209; [2007] 1 All ER 1183; [2007] Env LR 20, HL(E)
R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28; [2023] 1 WLR 2594; [2023] 4 All ER 675, SC(E)
R (Quintavalle) v Secretary of State for Health [2003] UKHL 13; [2003] 2 AC 687; [2003] 2 WLR 692; [2003] 2 All ER 113, HL(E)
R (Swire) v Canterbury City Council [2022] EWHC 390 (Admin); [2022] JPL 1026
R (Whiteside) v Croydon London Borough Council [2023] EWHC 3289 (Admin)
R (Wingfield) v Canterbury City Council [2019] EWHC 1974 (Admin); [2021] EWCA Civ 1588; [2021] 1 WLR 2863, CA
R (Wright) v Forest of Dean District Council [2019] UKSC 53; [2019] 1 WLR 6562; [2020] 2 All ER 1, SC(E)
R (Wyatt) v Fareham Borough Council [2022] EWCA Civ 983; [2023] PTSR 1952; [2023] Env LR 14, CA
Redrow Homes Ltd v First Secretary of State [2004] EWCA Civ 1375; [2005] JPL 502, CA
Shemara Ltd v Luton Corpn (1967) 18 P & CR 520
Thirkwell, Lewis v Secretary of State for the Environment [1978] JPL 844
UBS AG v Revenue and Customs Comrs [2016] UKSC 13; [2016] 1 WLR 1005; [2016] 3 All ER 1, SC(E)
Uber BV v Aslam [2021] UKSC 5; [2021] ICR 657; [2021] 4 All ER 209, SC(E)

The following additional cases were cited in argument:

Dansk Industri (DI) v Rasmussen's Estate (Case C-441/14) EU:C:2016:278; [2016] 3 CMLR 27, ECJ (GC)
Ghaidan v Godin-Mendoza [2004] UKHL 30; [2004] 2 AC 557; [2004] 3 WLR 113; [2004] 3 All ER 411, HL(E)
Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011] EWCA Civ 908; [2011] 3 EGLR 93, CA
Marleasing SA v La Comercial Internacional de Alimentación SA (Case C-106/89) EU:C:1990:395; [1990] ECR I-4135, ECJ
Mercer v Alternative Future Group Ltd [2024] UKSC 12; [2024] ICR 814; [2024] 4 All ER 1, SC(E)
R v Newbury District Council, Ex p Stevens (1992) 65 P & CR 438
R v Somerset County Council, Ex p Fewings [1995] 1 WLR 1037; [1995] 3 All ER 20, CA
R (Buckinghamshire County Council) v Secretary of State for Transport [2014] UKSC 3; [2014] PTSR 182; [2014] 1 WLR 324; [2014] 2 All ER 109, SC(E)
R (Champion) v North Norfolk District Council [2015] UKSC 52; [2015] 1 WLR 3710; [2015] 4 All ER 169; [2015] LGR 593, SC(E)
R (Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359; [2020] PTSR 152, CA
R (Noble Organisation Ltd) v Thanet District Council [2005] EWCA Civ 782; [2006] Env LR 8, CA
R (Wells) v Secretary of State for Transport, Local Government and the Regions (Case C-201/02) EU:C:2004:12; [2005] All ER (EC) 323; [2004] ECR I-723; [2004] Env LR 27, ECJ
Rossendale Borough Council v Hurstwood Properties (A) Ltd [2021] UKSC 16; [2022] AC 690; [2021] 2 WLR 1125; [2022] 2 All ER 113, SC(E)
Shahid v Scottish Ministers [2015] UKSC 58; [2016] AC 429; [2015] 3 WLR 1003; [2016] 4 All ER 363, SC(Sc)
Sweetman v An Bord Pleanála (Case C-258/11) EU:C:2013:220; [2014] PTSR 1092; [2015] Env LR 18, ECJ

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Von Colson v Land Nordrhein-Westfalen (Case 14/83) EU:C:1984:153; [1984] ECR 1891, ECJ

Whitley (FG) & Sons Co Ltd v Secretary of State for Wales (1992) 64 P & CR 296, CA

APPEAL from the Court of Appeal

By a CPR Pt 8 claim form the claimant, CG Fry and Son Ltd, applied for statutory review pursuant to section 288 of the Town and Country Planning Act 1990 seeking to quash the decision of an inspector appointed by the first defendant, the Secretary of State for Levelling Up, Housing and Communities (now the Secretary of State for Housing, Communities and Local Government), dated 24 November 2022 dismissing its appeal against the failure of the second defendant local planning authority, Somerset Council, to give notice within the prescribed period on an application to discharge conditions on the grant of a reserved matters approval related to land at Jurston Farm, Near Wellington, Somerset for the third phase of a planning permission for a mixed use development which was to take place over eight phases. The grounds of challenge were that: (i) the inspector had erred in applying the assessment provisions of regulation 63 of the Conservation of Habitats and Species Regulations 2017 to the discharge of conditions on a planning permission; (ii) the inspector had erred in considering that paragraph 181 of the National Planning Policy Framework ("NPPF") had the effect of making the 2017 Regulations a relevant consideration; and (iii) if regulation 63 of the 2017 Regulations did apply to the discharge of conditions, it ought to be interpreted as limiting the scope of the appropriate assessment to reflect the scope of the conditions being considered. By a decision dated 30 June 2023, and by order dated 20 July 2023, Sir Ross Cranston sitting as a judge of the King's Bench Division [2023] EWHC 1622 (Admin); [2024] PTSR 184 rejected the claimant's challenge to the inspector's decision on all grounds.

By an appellant's notice, and with permission granted by the judge, the claimant appealed. By a judgment dated 28 June 2024 the Court of Appeal (Sir Keith Lindblom SPT, Singh and Arnold LJJ) [2024] EWCA Civ 730; [2024] PTSR 2000 dismissed the appeal.

The claimant appealed with permission of the Supreme Court (Lord Lloyd-Jones, Lord Leggatt and Lord Richards JJSC) granted on 1 November 2024. By orders dated 29 January 2025, the Supreme Court (Lord Reed PSC, Lord Sales, Lord Hamblen, Lord Stephens and Lady Simler JJSC) granted the Home Builders Federation and the Land, Planning and Development Federation, the Office for Environmental Protection and the Wildlife and Countryside Link permission to intervene. The issues for the Supreme Court, as stated in the agreed statement of facts and issues, were: (i) whether the environmental impact of the development on the nearby Ramsar site was legally irrelevant to the discharge of the conditions in issue; and (ii) whether the Court of Appeal had been correct to identify that regulations 63 and 70 of the 2017 Regulations, read together, required an appropriate assessment of the approval of reserved matters and the discharge of conditions, and, if not, whether the Court of Appeal's alternative analysis justified the same outcome.

The facts are stated in the judgment of Lord Sales JSC, post, paras 4–13, 16, 19.

Lord Banner KC, *Ashley Bowes* and *Matthew Henderson* (instructed by *Clarke Willmott LLP, Taunton*) for the claimant.

Sir James Eadie KC, *Richard Moules KC* and *Nick Grant* (instructed by *Treasury Solicitor*) for the Secretary of State.

Luke Wilcox (instructed by *Somerset Council Legal Department*, *Taunton*) for the local planning authority.

Zack Simons KC and *Matthew Henderson* (instructed by *Shoosmiths LLP*) for the first intervener, by written submissions only.

Stephen Tromans KC and *Ruth Keating* (instructed by *Office for Environmental Protection*) for the second intervener, by written submissions only.

Estelle Dehon KC, *Nina Pindham* and *Hannah Taylor* (instructed by *Leigh Day*) for the third intervener, by written submissions only.

The court took time for consideration.

22 October 2025. **LORD SALES JSC** (with whom **LORD REED PSC**, **LORD HAMBLEN**, **LORD STEPHENS** and **LADY SIMLER JJSC** agreed) handed down the following judgment.

1 This appeal is concerned with two issues of planning law in relation to environmental protection and large-scale development of land for residential dwellings. The environmental concern relates to the introduction of phosphates arising from the development into the water systems feeding the Somerset Levels and the effect that may have on the Somerset Levels and Moors Ramsar Site ("the Ramsar site"). The first issue of planning law relates to the interpretation of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") and the question whether an "appropriate assessment" is required before a local planning authority decides to discharge conditions requiring the approval of reserved matters in a grant of outline planning permission for that development ("Issue 1"). The second issue relates to the effect of a grant of outline planning permission and the impact on that of a policy adopted by the Government, which is the method by which Ramsar sites are protected in the United Kingdom, and a change of scientific advice bearing on the application of that policy ("Issue 2").

2 The Habitats Regulations, in their original 1994 form and as amended, were promulgated to implement Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna ("the Habitats Directive") in domestic law. This background is relevant to the question of interpretation which arises under Issue 1. The Habitats Regulations remain in effect despite the withdrawal of the United Kingdom from the European Union. They constituted retained EU law under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"), now called assimilated law by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

Ramsar sites

3 Ramsar sites are designated sites requiring environmental protection. They are designated under paragraph 1 of article 2 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat of

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A 2 February 1971 ("the Ramsar Convention") and, in England, under section 37A of the Wildlife and Countryside Act 1981. They are not protected by the Habitats Regulations. However, it is a matter of national planning policy that they should be protected, as explained in paragraph 181 of the National Planning Policy Framework ("the NPPF"): "The following should be given the same protection as habitats sites … (b) listed or proposed Ramsar sites …" "Habitats sites" are defined in Annex 2 of the NPPF as:

B

> "Any site which would be included within the definition at regulation 8 of [the Habitats Regulations] for the purposes of those Regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites."

C Para 181 of the NPPF in place at the material time, issued in July 2021, has become paragraph 194 in the latest version of the NPPF issued in December 2024.

Factual background

4 The appellant developer wishes to build a mixed use development D including 650 dwellings and commercial and community uses, a primary school and associated infrastructure on land at Jurston Farm, near Wellington, Somerset. The development site is in the catchment area of the River Tone, which feeds into the Somerset Levels.

5 There is a risk that the development will generate phosphates in waste water and surface water entering the river, with consequent detrimental effects on the Ramsar site. The introduction of excessive phosphates into E water habitats causes eutrophication and undue growth of oxygen-depleting micro-organisms which harm the ecology of those habitats.

6 On 22 December 2015 the local planning authority, Somerset West and Taunton Council, now Somerset Council ("the Council"), granted outline planning permission for the proposed development subject to 19 conditions. Condition 4 required that, before any reserved matters approval was given, F the Council had to agree details of a site-wide surface water strategy. That condition was discharged on 5 December 2016. It was proposed that the development would come forward in eight phases.

7 In June 2020 the Council granted reserved matters approval for Phase 3, comprising 190 dwellings. Ten conditions were imposed on that approval. Those which are relevant to this appeal are: the conditions relating to the G need for the Council to approve measures in respect of tree protection (condition 3); "details of the surface water drainage scheme based on sustainable drainage principles" (condition 4); a construction environment management plan (condition 5); infrastructure details (condition 6); a cycleway and footpath network (condition 7); and details of the material to be used at damp-proof course level (condition 10). Conditions 3, 4 and 5 were pre-commencement conditions.

H **8** On 17 August 2020 Natural England published an advice note in respect of development with possible effects on protected or vulnerable sites such as the Ramsar site ("the Natural England advice"). This constituted new scientific advice in relation to the protection of the Ramsar site. It stated that in the light of the judgment of the Court of Justice of the European Union ("the CJEU") in *Coöperatie Mobilisation for the Environment UA v*

College van gedeputeerde staten van Limburg (Joined Cases C-293/17 and C-294/17) [2019] Env LR 27 ("*Dutch Nitrogen*"), greater scrutiny should be given to plans and projects resulting in increased nutrient loads that might have an effect on Special Areas of Conservation, Special Protection Areas designated under the Habitats Regulations and sites designated under the Ramsar Convention. Natural England noted that the Ramsar site was at risk from eutrophication caused by phosphates arising from the development of new housing and other forms of development. It therefore advised that "before determining a planning application that may give rise to additional phosphates within the catchment [for the Ramsar site], competent authorities should undertake a Habitats Regulations assessment" (p 3). Planning permission should only be granted if the assessment enabled the planning authority to conclude that the development "will not have an adverse effect on the integrity of the site" (p 2). A "nutrient neutrality" approach (meaning that by the taking of mitigation measures there should be no net addition of phosphates or nitrates to the protected site) was likely to be a "lawfully robust solution" (p 3).

9 The Home Builders Federation, which has intervened in these proceedings, says that there is only very limited scope for mitigation measures to be taken in the vicinity of the Ramsar site, with the result that following the approach proposed by Natural England would be liable to block development near it.

10 On 9 June 2021 the appellant applied to the Council for the discharge of (which is to say, approval in respect of the matters covered by) conditions 3, 4, 5, 6, 7 and 10 of the reserved matters approval. The Council withheld its approval, relying on paragraph 181 of the NPPF. It maintained that an appropriate assessment under the Habitats Regulations (if they had been applicable) would have been required before such a decision could be made. The validity of this contention is the subject of Issue 1.

11 On 5 April 2022 the appellant appealed pursuant to section 78 of the Town and Country Planning Act 1990 ("the TCPA 1990") to the Secretary of State, the first respondent to this appeal, against the Council's failure to give notice of its decision within the prescribed period. The Council resisted that appeal, relying on paragraph 181 of the NPPF and the Natural England advice. The Council published its own provisional (or, as it was called, "shadow") appropriate assessment of Phase 3 of the proposed development which stated that it would increase phosphate loading within the hydrological catchment of the Ramsar site through the production of waste water and by increased surface flows over urban land. The assessment continued: "It cannot be concluded that the project will not adversely affect the integrity of the [Ramsar site], either alone or in combination with other plans or projects." The Council calculated that the phosphorus loading of the proposed project was 41.19 kilograms/year and stated that no mitigation had been provided to offset that impact.

12 The inspector appointed by the Secretary of State to determine the appeal held an inquiry. On 24 November 2022 he issued his decision letter. He considered that, on its proper interpretation, the policy in paragraph 181 of the NPPF applies at the discharge of conditions stage. The Ramsar site was therefore to be accorded the same protection as a site covered by the Habitats Regulations (like the inspector, I will refer to this as "a European site"). He concluded that, in respect of such a site, regulation 63 of the

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A Habitats Regulations would have required an appropriate assessment before the conditions attached to the reserved matters approval could be discharged. Despite the United Kingdom's departure from the European Union, the Habitats Regulations were, by virtue of provisions of the Withdrawal Act, still to be interpreted in the light of the Habitats Directive which they were promulgated to implement, and the case law of the CJEU interpreting that
B Directive, including in particular in light of the precautionary principle as a principle of EU law. The inspector dismissed an argument by the appellant that, by reason of the grant of outline planning permission and reserved matters approval for the development, it was not permissible to introduce at this stage, by the application of national policy, a requirement for an appropriate assessment before the conditions were discharged. He therefore dismissed the appeal.

C **13** The appellant brought a claim for statutory review in the High Court to challenge the inspector's decision under section 288 of the TCPA 1990. By a judgment dated 30 June 2023 Sir Ross Cranston, sitting as a judge of the High Court, dismissed that challenge: [2024] PTSR 184.

14 So far as is relevant to Issue 1, before the judge the appellant argued that in relation to a development like that in the present case, if it affected a
D European site, the Habitats Regulations only required (by virtue of regulation 70) an appropriate assessment to be carried out when outline planning permission was granted and had no application at the stage of consideration of discharge of reserved matters, since regulation 63, relied on by the inspector, did not cover that case. Under the Withdrawal Act the Habitats Regulations constituted retained EU law derived from the Habitats Directive, and the appellant accepted that the Regulations should be construed in light
E of the Directive and that principles of EU law governing the interpretation of EU legislative instruments, such as the Directive (in particular, the principle that a purposive interpretation and the precautionary principle in relation to environmental protections should be applied) were also applicable when interpreting the Habitats Regulations. But the appellant maintained that the wording of regulations 63 and 70 of the Habitats Regulations was
F clearly to the effect that it was only at the stage of the grant of outline planning permission (and not at the stage of consideration of reserved matters approval), that the Habitats Directive permitted such an approach to be adopted by member states, and that application of a purposive approach and the precautionary principle did not permit or require any modification of the natural textual meaning of that wording. The judge did not accept that argument. He held that the Habitats Directive and a purposive approach
G to the interpretation of the Habitats Regulations require the application of the assessment provisions to the discharge of conditions attached to reserved matters approval and that the precautionary principle would be undermined if the application of the assessment provisions was limited to the stage of the grant of outline planning permission: para 64.

15 So far as is relevant to Issue 2 the appellant argued: that, even if it
H was wrong in its submission about the meaning of the Habitats Regulations, since the Ramsar site is not a European site and those Regulations do not apply to it there is no requirement in law that an appropriate assessment be carried out at the stage of consideration of reserved matters approval or the discharge of conditions attached to such approval; that phosphate generation is outside the scope of the conditions attached to the grant of

reserved matters approval in this case and is, therefore, not a matter which is a material planning consideration when deciding whether those conditions should be discharged, but rather is legally irrelevant to such a decision; and that paragraph 181 of the NPPF did not make an irrelevant consideration into a relevant consideration so as to enable the Council or the inspector to take phosphate generation and the Natural England advice into account when deciding whether the conditions attached to the reserved matters approval should be discharged. The judge rejected this submission as well, holding that if the conditions were discharged the consequence would be that a development with a potential detrimental impact on a Ramsar site protected by national policy would be authorised by the planning system, and "that creates the nexus to NPPF's policy on the protection of Ramsar sites. It is open to the Secretary of State to introduce such a consideration as a matter of national planning policy": [2024] PTSR 184, para 67.

16 The appellant appealed to the Court of Appeal. By a judgment of the court (the Senior President of Tribunals (Sir Keith Lindblom) and Singh and Arnold LJJ) the appeal was dismissed ([2024] PTSR 2000).

17 As regards Issue 1, the court treated the Habitats Regulations and the principles of EU law governing the interpretation of the Habitats Directive and those Regulations as retained EU law within the meaning of the Withdrawal Act. They reviewed those principles of EU law and the case law of the CJEU which elucidated their application in relation to the Habitats Directive. In agreement with the judge they held that, properly interpreted, regulation 63 of the Habitats Regulations applied at the stage of consideration whether conditions attached to reserved matters approval should be discharged and that it required an appropriate assessment to be carried out before such discharge. The court held that ordinary principles of statutory interpretation in domestic law, which involve a purposive approach to construction of legislation (as stated in recent authorities including *UBS AG v Revenue and Customs Comrs* [2016] 1 WLR 1005, para 62; *Uber BV v Aslam* [2021] ICR 657, para 70 and *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] 1 WLR 2594, paras 40–41), led to this conclusion. Giving the words of regulation 63 their natural and ordinary meaning in the context of this legislation, they were capable of covering that stage in the planning process "on a straightforward reading of the language used, having regard to that legislative purpose [of the assessment provisions]", which is to avoid any risk of harm to the integrity of a protected site, "and to the underlying precautionary principle"; and "any other interpretation would … be incompatible with the words of the provision, inconsistent with the legislative purpose and inimical to the precautionary principle": para 75.

18 As regards Issue 2, the court held that the judge had been correct in his analysis. The policy in paragraph 181 of the NPPF was engaged because of the connection between the consequence of discharging the conditions, namely to authorise Phase 3 of the development, and the object of the policy, namely to prevent harm to relevant protected sites: para 106. In the court's view, in promulgating the policy in paragraph 181, the Government had not usurped the role of the legislature by seeking to lay down new legal conditions; it had exercised its own proper role to lay down national planning policy, "which may then be a material consideration in decision-making"; and "this was not to displace or override the provisions of the habitats legislation, which NPPF policy could not lawfully have done, but simply to

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establish as a matter of national planning policy that Ramsar sites were to have the same practical level of protection in planning decision-making as [European sites]": para 108.

19 The appellant now appeals to this court.

The Town and Country Planning Act 1990

20 Section 70 of the TCPA 1990 governs the grant of planning permission by a local planning authority. Planning permission may be granted unconditionally or subject to conditions. Section 70(1) and (2) (as amended) provides in material part as follows:

> "*Determination of applications: general considerations.*
>
> "(1) Where an application is made to a local planning authority for planning permission— (a) subject to section 62D(5) and sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or (b) they may refuse planning permission. …
>
> "(2) In dealing with an application for planning permission … the authority shall have regard to— (a) the provisions of the development plan, so far as material to the application, (aza) a post-examination draft neighbourhood development plan, so far as material to the application, (aa) any considerations relating to the use of the Welsh language, so far as material to the application; (b) any local finance considerations, so far as material to the application, and (c) any other material considerations."

(In parallel with section 70(2), section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that where a planning authority is required to have regard to the development plan for the purpose of any determination to be made under the planning Acts "the determination must be made in accordance with the plan unless material considerations indicate otherwise".)

21 Section 78(1) provides that where a local planning authority "refuse an application for planning permission or grant it subject to conditions" (paragraph (a)) or "refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions" (paragraph (b)) the applicant may appeal to the Secretary of State. Section 78(2) also provides for a right of appeal where a local planning authority fail to determine the application within a specified period. On an appeal, the Secretary of State may, among other things, deal with the application as if it had been made to him in the first instance: section 79.

22 Section 91 provides that, subject to certain exceptions, every planning permission which is granted is subject to the condition that the development to which it relates must be begun "not later than the expiration of … the applicable period, beginning with the date on which the permission is granted" (subsection (1)(a)). In England, the applicable period is three years: section 91(5). That time limit does not apply to any outline planning permission: section 91(4)(g).

23 Outline planning permission is governed by section 92. So far as relevant, "Outline planning permission" means "planning permission

granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority … of matters not particularised in the application ('reserved matters')": section 92(1). Section 92(2) stipulates that where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to certain timing conditions, including that application for approval of any reserved matter must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission (paragraph (a)) and, in relation to land in England, that the development to which the permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters (paragraph (b)). Subsections (4) and (5) confer powers on the planning authority to vary those periods, and subsection (6) provides that in considering whether to exercise those powers "the authority shall have regard to the provisions of the development plan and to any other material considerations".

24 Section 336(1) defines various terms used in the TCPA 1990. So far as is relevant, "planning permission" is defined to mean "permission under Part [3] … but does not include permission in principle". Part 3 is headed "Control over development". It includes the provisions set out above. Sections 70(1), 92(1) and 336(1) make it clear that outline planning permission is itself a form of planning permission governed by section 70(1).

The Habitats Directive and European case law

25 Article 6 of the Habitats Directive states:

> "2. Member states shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
>
> "3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

26 It is recognised in the case law of the CJEU and in domestic law that article 6(3) requires a strict "precautionary approach". The case law was reviewed by the Senior President of Tribunals in *R (Wyatt) v Fareham Borough Council* [2023] PTSR 1952, at para 9. The following points are relevant:

> "(6) The requirement in the second sentence of article 6(3) of the Habitats Directive and in regulation 63(5) of the Habitats Regulations embodies the 'precautionary principle, and makes it possible effectively to prevent adverse effects on the integrity of protected sites as a result of

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the plans or projects being considered' (see the judgment of the CJEU in *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij* (Case C-127/02) [2005] All ER (EC) 353 ('*Waddenzee*'), at para 58). The 'precautionary principle' requires a high standard of investigation (see the judgment in *Waddenzee*, at paras 44, 58, 59 and 61).

"(7) … the competent authority [responsible for considering whether to allow a development to proceed] must be 'satisfied that there is no reasonable doubt as to the absence of adverse effects on the integrity of the protected site concerned' (paras 44, 58, 59 and 61 of the CJEU's judgment in … *Waddenzee* …)."

"(10) … If an appropriate assessment is to comply with article 6(3) of the Habitats Directive it 'cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned' (see the judgment of the CJEU in *Sweetman v An Bord Pleanála* (Case C-258/11) [2014] PTSR 1092, at para 44, and its judgment in *People Over Wind v Coillte Teoranta* (Case C-323/17) [2018] PTSR 1668, at para 38)."

27 In *Holohan v An Bord Pleanála* (Case C-461/17) [2019] PTSR 1054, at para 33, the CJEU emphasised the rigour required in applying the "appropriate assessment" provision:

"Under article 6(3) of the Habitats Directive, an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects …"

28 The precautionary principle was explained further by the CJEU in its judgment in *Dutch Nitrogen* [2019] Env LR 27:

"99. … [The] second stage of the assessment procedure, which is envisaged in the second sentence of article 6(3) of the Habitats Directive and occurs following the appropriate assessment of the implications of the plan or project for the site concerned, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned …

"100. Article 6(3) of the Habitats Directive thus integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects envisaged. A less stringent authorisation criterion than that in question could not ensure as effectively the fulfilment of the objective of site protection intended under that provision …"

29 The meaning of the expression "agree to" in the second sentence of article 6(3) was considered by the CJEU in its judgment in *Inter-*

Environnement Wallonie ASBL v Conseil des Ministres (Case C-411/17) [2020] Env LR 9:

> "140. The second sentence of article 6(3) of the Habitats Directive specifies that following an appropriate assessment, the competent national authorities are to 'agree' to the project only after having ascertained that it will not adversely affect the integrity of the site concerned …
>
> "141. It follows that the assessment must be conducted before agreement is given.
>
> "142. Furthermore, while the Habitats Directive does not define the conditions governing how the authorities 'agree' to a given project under article 6(3) of that Directive, the definition of 'development consent' in article 1(2)(c) of the EIA Directive [the Environmental Impact Directive, Council Directive 85/337/EEC] is relevant in defining that term.
>
> "143. Accordingly, by analogy with the court's findings on the EIA Directive, if national law provides for a number of steps in the consent procedure, the assessment under article 6(3) of the Habitats Directive should, in principle, be carried out as soon as the effects which the project in question is likely to have on a protected site are sufficiently identifiable."

30 In *Friends of the Irish Environment Ltd v An Bord Pleanála* (Case C-254/19) [2021] Env LR 16, at paras 42 and 43, the CJEU repeated what it had said in *Inter-Environnement Wallonie*, para 142, about the relevance of the term "development consent" as defined in article 1(2)(c) of the EIA Directive as follows: "the decision of the competent authority or authorities which entitles the developer to proceed with the project".

31 Under article 2(1) of the EIA Directive an environmental impact assessment is required before development consent is given. In *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (Case C-508/03) [2006] QB 764 and in *R (Barker) v Bromley London Borough Council* (Case C-290/03) [2006] QB 764, at paras 47–48, the CJEU held that where consent for a development is given in stages, by way of a principal decision (to grant outline planning permission) followed by a subsidiary decision (approval of reserved matters), an environmental impact assessment is required to be undertaken at the first stage when the environmental impact is capable of being assessed at that point, but if it was not undertaken then such an assessment will be required at the reserved matters stage where it appears the project will have an environmental impact.

The Habitats Regulations and domestic case law

32 The Habitats Directive was transposed into domestic law by the Habitats Regulations. The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Explanatory Memorandum to those Regulations made it clear that they were not intended to introduce any change in policy (para 2.4).

33 Regulation 3A of the Habitats Regulations (as amended) states that where the Habitats Directive is referred to it should be construed as if the United Kingdom were still a member state of the European Union.

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34 Regulation 9(1) requires "the appropriate authority" to "exercise [its] functions which are relevant to nature conservation … so as to secure compliance with the requirements of" certain specified Directives, which include the Habitats Directive. Regulation 9(3) requires a "competent authority, in exercising any of its functions" to "have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions".

35 Part 6 of the Habitats Regulations contains provisions for the "Assessment of plans and projects". Regulations 61 to 64 are in Chapter 1 of Part 6. Regulations 63 and 64 are defined in regulation 61 as "the assessment provisions".

36 Regulation 62(1) states:

> "(1) The requirements of the assessment provisions … apply— (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions …"

37 Regulation 63, entitled "Assessment of implications for European Sites and European offshore marine sites", appears in the section of Part 6 headed "General provisions" and (together with regulation 64) in the subsection headed "General provisions for protection of European sites and European offshore marine sites". Regulation 63 provides:

> "(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which— (a) is likely to have a significant effect on a European site … (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives …"
>
> "(5) In the light of the conclusions of the assessment, and subject to regulation 64 [which provides for 'Considerations of overriding public interest'], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site …"
>
> "(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given."

38 Regulation 70, entitled "Grant of planning permission", is in Chapter 2 of Part 6. It appears in a section headed "Planning" and a subsection headed "Planning permission". Regulation 70 provides:

> "(1) The assessment provisions apply in relation to— (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development) … (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act … in respect of such an application …"

> "(3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site … could be carried out under the permission, whether before or after obtaining approval of any reserved matters."

39 In paragraph (3), "outline planning permission" and "reserved matters" have the same meanings as in section 92 of the TCPA 1990 (outline planning permission). Whether, in the absence of an appropriate assessment at the outline planning permission stage, such an assessment can properly be carried out at a later stage was considered by Lang J in *R (Wingfield) v Canterbury City Council* [2019] EWHC 1974 (Admin) and by Holgate J in *R (Swire) v Canterbury City Council* [2022] JPL 1026. Both judges referred to the speech of Lord Hope of Craighead in *R (Barker) v Bromley London Borough Council* [2007] 1 AC 470, concerning the requirement for an environmental impact assessment under the EIA Directive, where he acknowledged (para 5) that it was "possible to conceive of cases where [the likely significant effects on the environment] only become apparent when consideration is being given to the reserved matters or where further consideration is necessary due to a material change in circumstances". He went on to say (para 24):

> "As the [CJEU] … said in para 48 of its judgment [in the *Barker* case], however, the competent authority may be obliged in some circumstances to carry out an [environmental impact assessment] even after outline planning permission has been granted. This is because it is not possible to eliminate entirely the possibility that it will not become apparent until a later stage in the multi-stage consent process that the project is likely to have significant effects on the environment. In that event account will have to be taken of all the aspects of the project which have not yet been assessed or which have been identified for the first time as requiring an assessment. This may be because the need for an [environmental impact assessment] was overlooked at the outline stage, or it may be because a detailed description of the proposal to the extent necessary to obtain approval of reserved matters has revealed that the development may have significant effects on the environment that were not anticipated earlier."

At para 29 he said:

> "If it is likely that there will be significant effects on the environment which have not previously been identified, an [environmental impact assessment] must be carried out at the reserved matters stage before consent is given for the development."

40 In the light of these observations, in *Wingfield* [2019] EWHC 1974 (Admin) at [69] Lang J rejected the suggestion that the only situation in which an environmental impact assessment might be required at the reserved matters stage was if the environmental effects of the development had not been identifiable at the outline permission stage and held that such an assessment "may also be required at reserved matters stage where the need

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for [it] was overlooked at the outline stage" (also citing *Cooper v Attorney General* [2011] PTSR 1; [2011] QB 976, paras 20–21 and 92, in support of this). She concluded (para 70) that in the case before her the need for an appropriate assessment under the Habitats Directive was overlooked at the outline permission stage; the Habitats Directive did not require that the assessment be carried out at the earliest possible stage (unlike the EIA Directive, as to which see *Preston New Road Action Group v Secretary of State for Communities and Local Government* [2018] Env LR 18, para 58), but was focused instead on the end result of ensuring the avoidance of harm to the integrity of protected sites (para 72), meaning that the grant of outline planning permission in the absence of an appropriate assessment was not itself unlawful; and in the circumstances the local planning authority could conduct an appropriate assessment under the Habitats Directive at the stage of considering approval of reserved matters (para 71).

41 Lang J referred (para 73) to the decision of the Court of Appeal in *No Adastral New Town Ltd v Suffolk Coastal District Council* [2015] Env LR 28 ("*No Adastral New Town*"), in which it was held that, unlike the EIA Directive, the Habitats Directive did not require an appropriate assessment to be carried out at an early stage, because article 6 of the Habitats Directive focuses on the end result of avoiding damage to a protected site and that objective could be achieved if such an assessment was conducted at the end of a multi-stage planning process before the project was implemented (see paras 61–69 per Richards LJ). Lang J concluded (para 74) that the date when a national competent authority "agrees" to the plan or project for the purposes of article 6(3) of the Habitats Directive is "the date of adoption of the decision authorising implementation of the project" (*European Commission v Federal Republic of Germany* (Case C-142/16) EU:C:2017:301, at para 42), observing that:

> "In a 'multi-stage consent' there is no 'agreement to the … project' until reserved matters consent has been granted; indeed the CJEU described the reserved matters approval as 'the implementing decision' in *Wells* [*R (Wells) v Secretary of State for Transport, Local Government and the Regions* (Case C-201/02) [2004] ECR I-723] at para 52 and *Commission v United Kingdom* [2006] QB 764 at paras 101, 104. By regulations 63(1) and 63(5) [of the Habitats Regulations], reserved matters consent cannot be granted unless it has been established that the integrity of the European site will not be adversely affected. So an [appropriate assessment] was required."

(The Court of Appeal refused permission to appeal, including upon a reconsideration, but it relied primarily on Lang J's further reasoning that even if an appropriate assessment had been conducted before the grant of outline planning permission it would have made no difference: [2021] 1 WLR 2863).

42 In *Swire* [2022] EWHC 390 (Admin) the claimant in judicial review proceedings challenged, among other things, a local planning authority's decision in 2021 to give reserved matters approval, under an outline planning permission granted in 2018, for the masterplan for a development near protected European sites. This was on the basis that, although an appropriate assessment under the Habitats Regulations had been carried out prior to the grant of the outline planning permission, no further appropriate assessment had been carried out under the Habitats Regulations subsequent to the

issuing of the Natural England advice about the potential effects of waste water discharges on such sites. That advice represented a change of stance by Natural England which was materially relevant to the integrity of the sites, raising an issue which had not been adequately addressed by the previous appropriate assessment. However, the local planning authority was going to conduct a further appropriate assessment in relation to applications for approval of other reserved matters which would address that issue. At paras 94 and 95 Holgate J interpreted the Habitats Regulations in the same way as in *Wingfield* and *No Adastral New Town*: the later proposed consideration whether to give reserved matters approval would be the relevant implementing decision which allowed the development to proceed and there would be compliance with the Regulations if an appropriate assessment addressing the waste water issue was conducted prior to the giving of such approval, there being no requirement that the appropriate assessment be carried out at the earliest possible stage.

Issue 1: Interpretation of regulation 63 of the Habitats Regulations

43 The Habitats Regulations are, of course, binding law in relation to planning for development which may affect a European site to which they apply. As explained above, they do not apply to the Ramsar site in this case. However, paragraph 181 of the NPPF depends upon the interpretation of the Habitats Regulations. The interpretation of the Habitats Regulations was thus a critical point in the reasoning of the judge and the Court of Appeal and they gave very full judgments on the issue. As appears from my discussion of Issue 2 below, this is not a critical point in my reasoning. However, we heard full argument on the point and if we considered that the judgments below were in error on it, it would be desirable that we should correct them since the Habitats Regulations apply in many situations. I therefore consider that it is appropriate that this court should deal with this issue.

44 In my view, the Court of Appeal interpreted regulation 63 of the Habitat Regulations correctly. They were right to conclude that this interpretation was required by application of ordinary domestic principles of statutory interpretation.

45 In relation to those principles, the Court of Appeal cited a range of relevant authority (see para 17 above) which emphasises that a purposive approach should be adopted. This is encapsulated in the oft-cited statement of Lord Bingham of Cornhill in *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, at para 8:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

This is as relevant to the interpretation of subordinate legislation such as the Habitats Regulations as to the interpretation of primary legislation. In the former case it is the purpose of the relevant legislator—typically a Secretary of State acting under a power conferred by Parliament—which matters.

46 In this case the Court of Appeal correctly observed ([2024] PTSR 2000, para 68) that there is no dichotomy between looking at the natural and ordinary meaning of legislation and a purposive approach to construction.

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The authorities make it clear that the correct approach is that legislation must be construed having regard to its context and in the light of its purpose. "The purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it": *PACCAR* [2023] 1 WLR 2594, para 41.

47 The historical context which led to the enactment of the Habitats Regulations was the intention to give effect in domestic law to the regime set out in the Habitats Directive. The object of that Directive was to ensure a high degree of protection for vulnerable habitats and sites of various kinds as identified for the purposes of the Directive, and to ensure careful scrutiny of development proposals likely to have an impact on such habitats and sites with a view to minimising or avoiding such impact. This is made clear by the recitals to the Directive and by its operative terms.

48 The recitals to the Habitats Directive state:

> "the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community …"
>
> "it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued …"
>
> "an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future …"

49 Article 2(1) states that the Directive's aim is "to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora" and article 2(2) states that measures taken pursuant to the Directive "shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora". Article 6(2) requires member states to take appropriate steps to avoid the deterioration of protected habitats; and article 6(3) (see para 25 above) makes it clear that the point of an appropriate assessment is to equip the relevant authority with information to enable it to comply with its obligation to "agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned".

50 Further, it is well established in the European case law reviewed above that the Habitats Directive has to be interpreted in light of the precautionary principle, which again aims to ensure that vulnerable sites are accorded a high degree of protection. In substance, the precautionary principle reflects and gives expression to the purpose of the Directive.

51 The purpose of the Habitats Regulations is to implement and follow the Habitats Directive in pursuing the same objective. Brexit has made no difference to this. There is nothing in the Withdrawal Act which affects the application of ordinary domestic law principles of interpretation so far as the Habitats Regulations are concerned. Although the Court of Appeal referred to provisions of the Withdrawal Act it is not necessary to examine them in this judgment since it is not suggested that the outcome of the appeal depends upon them.

52 Lord Banner KC, for the appellant, did not dispute in this court that we should interpret the Habitats Regulations purposively, having regard to

these objectives, and having regard to the precautionary principle. Nor did he dispute these points in the courts below. His submission is that even applying the purposive approach and the precautionary principle, the wording of regulation 70 is clearly to the effect that an appropriate assessment is only to be carried out at the stage when planning permission is granted (including when outline planning permission is granted) and that the Court of Appeal erred in construing regulation 63 as conferring a power or imposing a duty for a planning authority to carry out an appropriate assessment at a later stage of the planning process, such as when considering whether to give reserved matters approval or to discharge conditions attached to a reserved matters approval. He places emphasis on the statement in regulation 62 that "the assessment provisions" (that is, as defined in regulations 61, 63 and 64) apply "subject to and in accordance with the provisions of" Chapter 2, which includes regulation 70.

53 In my judgment this submission is unsustainable. Regulation 70(1) states positively, in the section of the Regulations dealing with planning permission, that the assessment provisions apply in relation to the grant of planning permission. But it does not say, in negative terms, that they do not apply in relation to any other stage of the planning process where it may be appropriate for them to operate in order to fulfil the purposes of the Habitats Regulations and to respect the precautionary principle.

54 Regulations 63 and 64 are grouped together under the heading "General provisions for protection of European sites and European offshore marine sites" and they are expressed in clear, self-contained terms setting out relevant powers and obligations which arise under them. That heading indicates that they are to have general effect in relation to the relevant sites. In line with that indication, regulation 63(1) uses entirely general language to indicate when the obligation to make an appropriate assessment which it sets out applies, that is to say "before deciding to undertake, or give any consent, permission or other authorisation for" a relevant plan or project. That is not language capable of being limited to the grant of planning permission. On the contrary, as the Court of Appeal rightly observed, the language is deliberately broad in its effect and, having regard to the way in which the planning system works in the context of the multi-stage planning regime of the kind operated in the present case, the words "or other authorisation" naturally cover a decision to give approval for reserved matters or to discharge conditions attached to a reserved matters approval which would have the effect of authorising the developer to proceed with the development.

55 Regulation 62(1) (see para 36 above) does not support Lord Banner's submission. In my opinion this provision undermines the submission. The opening words of the provision indicate and acknowledge that the assessment provisions set out "requirements", so it is natural that the content of those requirements should be determined by reading regulations 63 and 64 according to their own terms. Regulation 62(1)(a) and (b) stipulates specific qualifications on the application of the assessment provisions: in the case of paragraph (a), that they should apply "subject to and in accordance with the provisions of Chapters 2 to 7", but only "in relation to the matters specified in those provisions". The operation of the later stages of a multi-stage planning process, after the grant of outline planning permission, is not a matter specified in those provisions. Therefore the wording of regulation 62(1) indicates that a deliberate choice has been made that the assessment

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provisions should have general application in relation to matters not so specified. Regulation 62(1) does not say that the assessment provisions apply only in relation to the matters so specified, which is in effect the meaning which Lord Banner sought to extract from it.

56 It is clear that the protective purpose of the Habitats Regulations and the precautionary principle would be defeated, rather than promoted and respected, if the Regulations are read as precluding any opportunity for an appropriate assessment to be carried out at a later stage in a multi-stage planning process, such as that in issue in the present proceedings, where the planning authority has for any reason (eg by oversight, misinterpretation of the law or being ignorant of relevant science or misunderstanding that science) failed to carry one out at the stage of assessing whether to grant outline planning permission. Therefore, in a case involving a potential impact on a European site where the Habitats Regulations have effect, application of a normal purposive approach to their interpretation and having regard to the precautionary principle leads to the conclusion that regulation 63 would apply to a decision to give reserved matters approval or to discharge conditions attached to such an approval where that would result in authorisation for the project to proceed. Giving the words of regulation 63 their ordinary and natural meaning in the context in which they appear leads to this result.

57 This conclusion on the interpretation of the Habitats Regulations accords with the reasoning in *No Adastral New Town*, *Wingfield* and *Swire* [2015] Env LR 28, which on this point I would endorse, in agreement with the Court of Appeal ([2024] PTSR 2000, para 78). I leave aside the distinct question raised in those cases whether there is an obligation to conduct an appropriate assessment under the Habitats Regulations at the earliest opportunity. That question does not arise in this appeal and we did not hear submissions on it, since the Natural England advice constituted new scientific information which was not available to be taken into account when outline planning permission was granted in 2015. The Council and the inspector took that advice into account at the first opportunity in the multi-stage planning process followed in this case.

58 Lord Banner sought to draw support for his submission under Issue 1 from aids to interpretation which might have been relevant if the Habitats Regulations were ambiguous in some relevant respect. It is not necessary to go into this because the Regulations are not ambiguous. They are clear in their effect.

59 The Court of Appeal rightly reached their conclusion on Issue 1 by following normal domestic principles of interpretation: [2024] PTSR 2000, paras 66–97. As they observed (para 97) it was unnecessary for the judge to refer to the principles of interpretation in EU law because the Habitats Regulations are to be construed as having the meaning he gave them simply by applying the conventional approach to statutory interpretation in domestic law, which includes the purposive approach. Despite this, the Court of Appeal discussed the effect of the Withdrawal Act in obiter dicta in some detail (paras 37–53). It is not necessary for this court to deal with this part of their judgment; nor did we receive submissions which would assist us to do so. The points made in the judgments of the CJEU and the domestic courts referred to above are relevant because they serve to emphasise the purposes

promoted by the Habitats Directive and the Habitats Regulations, which are already clear from the terms and context of those instruments.

Issue 2: Outline planning permission, reserved matters approval, discharge of conditions and national policy

60 Although I would dismiss the appeal in relation to Issue 1, I would allow it in relation to Issue 2. In my view the judge and the Court of Appeal erred in giving a statement of policy (in paragraph 181 of the NPPF) the same status and force as a legal rule set out in legislation (in regulation 63 of the Habitats Regulations) in respect of the decision in this case whether to discharge the conditions attached to the reserved matters approval in relation to an outline planning permission. They failed to take into account the nature of the rights conferred on the appellant by the grant of such permission.

61 National planning policy bearing on a relevant factor in respect of a proposed development is plainly a "material consideration" within the meaning of section 70(2)(c) of the TCPA 1990 (see para 20 above) and section 38(6) of the 2004 Act in relation to a decision whether to grant planning permission (including outline planning permission) at the start of the planning process: *Elsick Development Co Ltd v Aberdeen City and Shire Strategic Development Planning Authority* [2017] PTSR 1413, para 53. At that stage a developer is asking the planning authority to exercise its discretion to grant permission to proceed with a development and has acquired no right to do so. Therefore, having regard to the national policy in paragraph 181 of the NPPF, Mr Richard Moules KC, who presented the submissions of the respondent Secretary of State on Issue 2, correctly submits that the impact on a Ramsar site can be a material consideration when deciding whether to grant planning permission. Similarly, national planning policy is a "material consideration" within the meaning of section 92(6) of the TCPA 1990 to which regard should be had when a planning authority considers whether to exercise its powers under section 92(4) or (5) to adjust the conditions attached to an outline planning permission setting the timeframe within which certain steps should be taken to operate the multi-stage planning process under that permission.

62 However, when planning permission is granted there is a fundamental change in the legal position, in that it creates rights under the planning legislation for the developer to develop land in accordance with the permission. Those rights are not made defeasible depending on government policy. That is true both in respect of a grant of full planning permission and in respect of a grant of outline planning permission (which, as observed above, is itself a grant of planning permission, albeit one subject to conditions). Rights given by the planning legislation cannot be overridden or diluted by general policies laid down by central government, whether in the form of the NPPF or otherwise: *R (Wright) v Forest of Dean District Council* [2019] 1 WLR 6562, para 42.

63 The Court of Appeal, [2024] PTSR 2000, para 108, correctly noted as a point of principle that government policy could not alter the application of legislation, referring to the habitats legislation. However, the importance of this principle in the present case is in relation to the operation of the planning legislation, which the Court of Appeal did not consider in this part of their judgment.

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64 Where an application for full planning permission is approved by a local planning authority they "grant planning permission" (section 70(1)(a)), which means that they give legal permission for the development referred to in the application to proceed. This has the effect of conferring a right on the developer, for the purposes of the planning legislation, to develop its land in accordance with the permission which has been given. Assuming that this permission is not set aside in legal proceedings brought to challenge it on the grounds of some legal flaw, that right is not defeasible. The developer may proceed with the development within the time allowed under section 91 of the TCPA 1990 without fear of enforcement action being taken against it. If the planning authority has a change of mind and wishes to revoke or modify the permission, it has to pay compensation: section 107 of the TCPA 1990.

65 This scheme reflects the basic nature of the planning regime, which combines action by private landowners in developing their land with public regulation through the planning system to encourage them to do that in particular ways in the public interest and provides for enforcement controls if they proceed with development without permission. If landowners are to be incentivised to proceed with developments which are encouraged by the planning regime through development plans and local and central government policies, they need assurance that the costs they incur in carrying out a development will not be lost. The grant of planning permission gives them that assurance. Once granted, a developer knows where it stands and that it can incur costs to proceed with the development within the timetable set by the legislation without fear that they may be lost by reason of a change of position by the regulating authority. So, for example, if planning permission has been granted after completion of all relevant checking processes it would not then be open to the planning authority to revoke the permission (without payment of compensation) because of a change in government policy or a change in scientific advice, such as that set out in the Natural England advice. The grant of planning permission locks in the right of the developer to proceed with the development for which permission has been given.

66 Turning to a grant of outline planning permission, which is a form of planning permission, the analysis is the same, with due allowance for the fact that the permission granted is conditional in various ways. The conditions specify in binding legal form the particular areas where the developer will need to satisfy the planning authority of certain matters before the development can proceed, and in this way they allow the developer to know where it stands in calculating whether it can safely incur costs in carrying the project forward. The stipulated conditions delimit the extent of the risk the developer takes in doing so. The extent of the conditionality of the permission which has been granted is determined by a fair and objective reading of the conditions imposed, by asking what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the planning consent as a whole: *DB Symmetry Ltd v Swindon Borough Council* [2023] PTSR 160, para 66. Except to the extent that the permission is made conditional according to the terms on which it is granted under section 70(1) of the TCPA 1990, it is a grant of full permission to proceed with the development. The imposition of a condition that, say, the planning authority has to agree a scheme for tree protection (condition 3 in the outline planning permission in the present case)

is confined to consideration of matters fairly related to that subject matter; it does not import a general power for the planning authority to refuse to give approval for a perfectly acceptable tree protection scheme in order to further some other purpose or policy objective. And where approval for reserved matters in an outline planning permission is given subject to further conditions (which I will call sub-conditions), those sub-conditions have to fall within the ambit of the reserved matters as defined by the conditions set out in the outline permission. The planning Acts contain no general power to revoke or modify the conditions set out in the outline permission, unless compensation is paid pursuant to section 107 of the TCPA 1990.

67 Lord Morris of Borth-y-Gest referred to these points in *Kingsway Investments (Kent) Ltd v Kent County Council* [1971] AC 72, 96, where he explained that if outline planning permission is granted subject to approval of reserved matters "the applicant clearly knows that that permission is conditional and that it will be of no use to him until he is able to submit details" in respect of those matters which are acceptable to the planning authority, and said "it must, of course, be assumed that the authority will act in good faith. They must not misuse their functions so as indirectly and without paying compensation to achieve what would amount to a revocation or modification of a permission already given". This is simply another way of saying that once outline planning permission is granted subject to defined conditions, the planning authority is bound by those conditions and has to act properly in accordance with them when deciding whether to give approval as required under them. As Lionel Read QC, sitting as a High Court judge, stated in *Camden London Borough Council v Secretary of State for the Environment* [1993] JPL 466, 470, the power of a planning authority under a planning condition to refuse approval in respect of a project for which outline planning permission has been given is limited by the terms of that condition, and the planning authority has to determine an application for approval of a reserved matter "within the terms of the condition".

68 In line with this approach, Mummery LJ's analysis in *Redrow Homes Ltd v First Secretary of State* [2005] JPL 502, paras 22–30, on the question whether approval for reserved matters should be given was rightly directed to the construction of the condition included in the outline planning permission, unaffected by planning considerations of a general nature applicable at the time when such approval was sought. As he pointed out (para 27), if there has been a substantial change in relation to the general planning context by the time such approval is sought, that may "afford grounds for invoking appropriate procedures for the revocation or modification of [the outline planning permission]", which might lead to a right of compensation for the developer; but that does not affect the construction of the condition set out in the planning permission nor the obligation of the planning authority to honour that condition according to its terms.

69 Where an outline planning permission has been granted it is not open to a planning authority to revisit matters which have been approved in principle at the outline stage; and some element of development must be acceptable on the site within the ambit of the outline permission: see *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1054, para 17 and *Swire* [2022] JPL 1026, para 11. Where an outline permission reserves matters for the

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A subsequent approval of a local planning authority, the extent to which the authority can withhold approval is restricted to what has been expressed to be so reserved and it is not permitted to go back on points of principle which it has accepted by granting permission: see *Shemara Ltd v Luton Corpn* (1967) 18 P & CR 520, 524, per Diplock LJ (sitting as a judge of the High Court); *Lewis Thirkwell v Secretary of State for the Environment* (1978) JPL 844, 847; *Proberun Ltd v Secretary of State for the Environment* (1990)
B 61 P & CR 77, 85 (per Glidewell LJ); *R v Newbury District Council, Ex p Chieveley Parish Council* [1999] PLCR 51, 64 (per Pill LJ); and *Redrow Homes* [2005] JPL 502, paras 22–30. In the present case, however, the Council and the inspector relied on the policy in paragraph 181 of the NPPF and the new scientific advice given by Natural England to revisit matters which had been approved at the outline stage and did so in a way which could
C potentially eliminate the possibility of any development taking place within the ambit of the outline permission which had been granted, if approval were withheld because of a negative view formed in the course of carrying out the appropriate assessment.

70 Therefore, it was not open to the Council or the inspector in the present case to use the fact that the outline planning permission was granted subject
D to conditions requiring approval to be given by the planning authority for certain matters, and that such approval had not been given outright but subject to sub-conditions within the ambit of the main conditions set out in the outline permission, as a basis to say that, before those sub-conditions were discharged so that the development could proceed, some additional measures to promote a different objective (ie the protection of the Ramsar site) should be taken. The planning legislation gave them no power to do
E that, unlike the position in relation to a European site, where the Habitats Regulations apply. National policy and new scientific advice of the kind in issue in this case do not confer such a power, because the operation of the conditions set out in the outline planning permission (and hence of the sub-conditions set out in the reserved matters approval) is determined by the interpretation of the conditions set out in the outline permission; and they
F allow no reference to such an objective. (By contrast, a planning authority would be entitled, and may be required, to have regard to a national or local policy directed to the substance of the condition in question, eg, taking the example of condition 3, a policy on the best way to ensure that trees are protected.)

71 Mr Moules relied on the judgment of Timothy Corner KC (sitting as a Deputy High Court Judge) in *R (Whiteside) v Croydon London Borough*
G *Council* [2023] EWHC 3289 (Admin) in support of his submission that it is permissible for a planning authority considering whether to grant approval for reserved matters under a condition in a planning permission to have regard to a wider range of considerations than is indicated by construction of the condition itself. However, that case was concerned with a distinct issue, very different from that which arises in this appeal.

H **72** So far as is relevant, the planning permission which was granted for residential development in that case included two conditions (condition 14, requiring the residential units to be accessible to a particular standard, and condition 18, requiring approval of a plan for finished land levels). Such a plan was submitted by the developer and approved by the planning authority, which discharged condition 18. But the plan was not consistent

with ensuring that the accessibility requirement in condition 14 was fully met. The judge held that this feature of the case was a relevant matter which should have been taken into account when considering the discharge of condition 18 according to the test of whether the application to discharge was "satisfactory": paras 50 and 55–56 (in the event, the judicial review to challenge the discharge failed because, if this had been taken into account, the result would have been the same). The judge distinguished, and did not question, authority which held that a condition reserving a particular matter could not be used to refuse a scheme for reasons which had nothing to do with that matter (which is to say, the present case), and emphasised that the planning authority was "dealing with the planning permission as a whole", meaning that it was a relevant consideration that the whole permission should be operated in a coherent way which gave due effect to each part of it. The planning authority could not undermine a condition on which the permission it had granted was predicated by ignoring it. That approach is unsurprising but has no relevance to the determination of this appeal. The case cannot bear the weight which Mr Moules sought to place on it.

Conclusion

73 For the reasons given above I consider that the Court of Appeal was correct in its interpretation of the Habitats Regulations and that the appeal in relation to Issue 1 should be dismissed. However, I would allow the appeal in relation to Issue 2.

Appeal allowed in part.

SUSANNE ROOK, Barrister

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SECTION B – PLANS

INTRODUCTION

1. This is Section B, Plans, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and Writtle College Limited) ("ARU").
2. This Section contains:

    1) HM Land Registry Title - Plan – ARU Writtle;

    2) ARU Writtle – Plan A – Equine Facility;

    3) ARU Writtle – Plan B – Buildings in the Equine Facility;

    4) ARU Writtle – Plan C – Overlay of Plots upon the Equine Facility.

HM Land Registry
Official copy of title plan

Title number **EX768800**
Ordnance Survey map reference **TL6707SW**
Scale **1:5000** reduced from 1:2500
Administrative area **Essex: Chelmsford**

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AA37872

AA37871

EX931962

EX950408

See Enlargement

Enlargement
Scale 1:1250

This official copy issued on 30 October 2024 shows the state of this title plan on 19 September 2023 at 11:52:45.
It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.

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208000 207500 207000 206500 206000

Vicarage Road
Coral Cottage
Allotments
Green Lane
Hoe Street
Reed's Spring
A1060
Roxwell Road
Gravelly Lane
Fitzpatrick Farm
Sturgeons Farm
Cow Watering Lane
Victoria Road
Allotments
Tower Road
Ongar Road

Legend

- Ownership

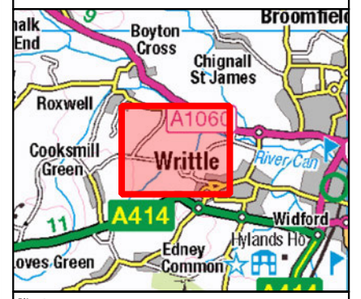
Current Route

- Current OH Line Route
- Current Pylon Locations

Route Alterations Proposed

- Route A
- Route B

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OS 0100031673



Client

Writtle College

Title: Norwich to Tilbury Overhead Line Proposed Routes and Suggested Alterations Plan 1 of 2

ADAS RURAL

Scale: 1:7,500

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Revision: 1

Page Size: A3

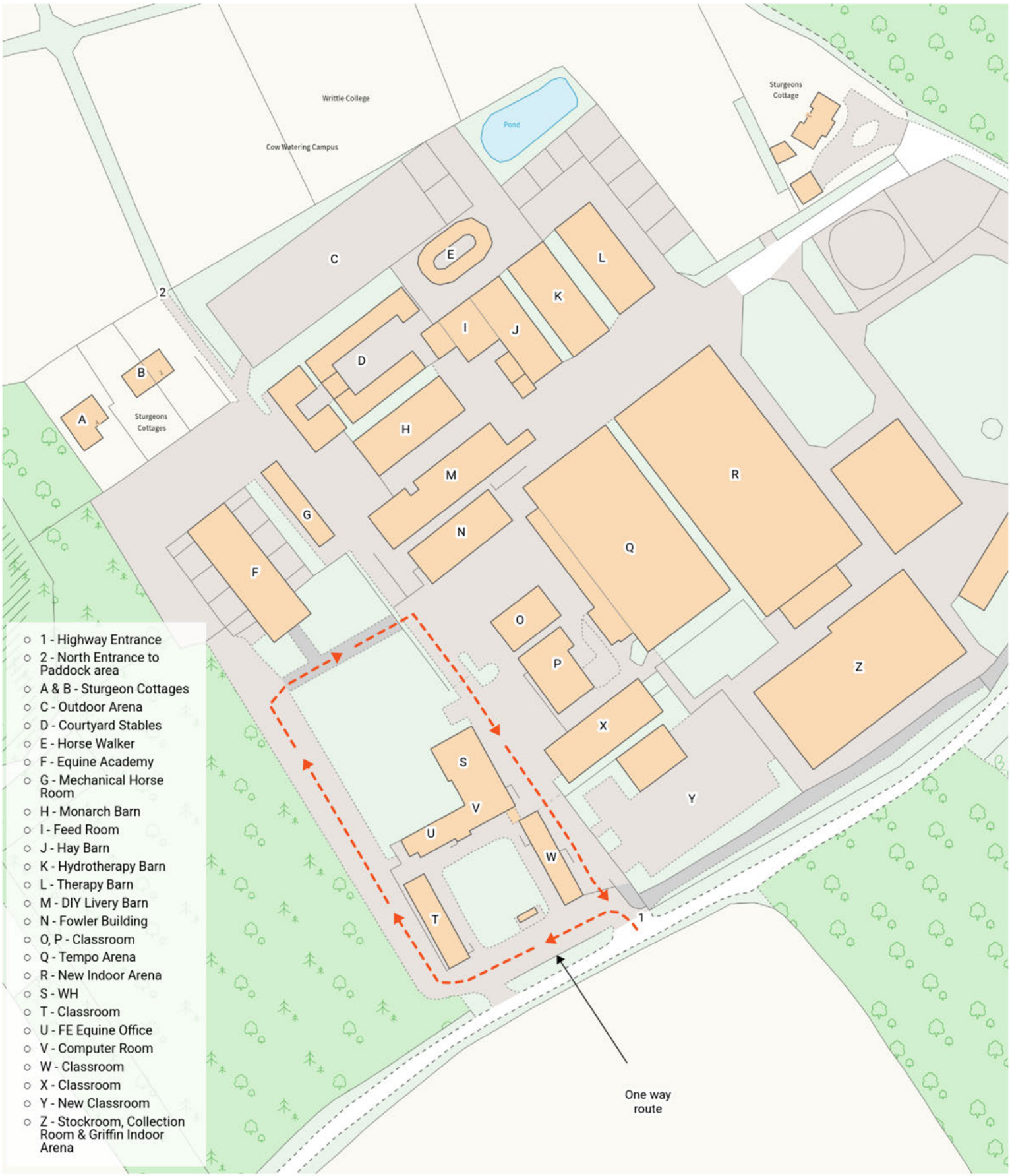
Date: 08/07/24

Drawing Ref: Writtle.qpkg

savills

ARU Writtle

Land App



- 1 - Highway Entrance
- 2 - North Entrance to Paddock area
- A & B - Sturgeon Cottages
- C - Outdoor Arena
- D - Courtyard Stables
- E - Horse Walker
- F - Equine Academy
- G - Mechanical Horse Room
- H - Monarch Barn
- I - Feed Room
- J - Hay Barn
- K - Hydrotherapy Barn
- L - Therapy Barn
- M - DIY Livery Barn
- N - Fowler Building
- O, P - Classroom
- Q - Tempo Arena
- R - New Indoor Arena
- S - WH
- T - Classroom
- U - FE Equine Office
- V - Computer Room
- W - Classroom
- X - Classroom
- Y - New Classroom
- Z - Stockroom, Collection Room & Griffin Indoor Arena

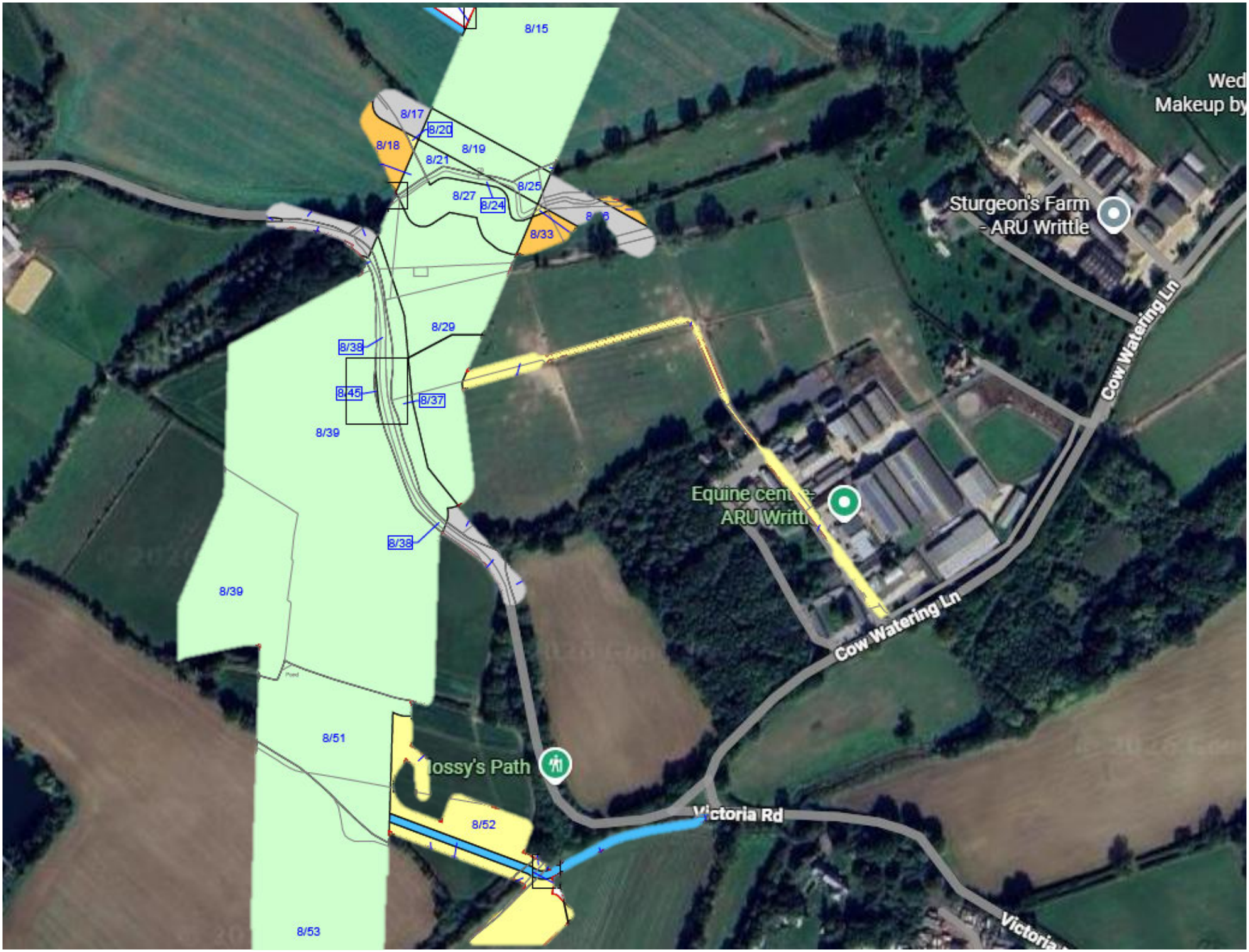
Produced on Land App, Feb 23, 2026.

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8/53
Sturgeon's Farm
- ARU Writtle
Cow Watering Ln
Cow Watering Ln
Victoria Rd

SECTION C – FACTS

INTRODUCTION

1. This is Section C, Facts, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU").

FACTS

2. National Grid ("NGET") has applied for authorisation for a development consent order ("DCO") by which to construct a nationally significant infrastructure project ("NSIP") within the scope of section 14(1)(b) of the Planning Act 2008 ("PA 2008")– the installation of an electric line above ground – between Norwich and Tilbury inside the "Order Limits".

3. NGET has made an application for its DCO in *Rochdale* Envelope form – i.e. in outline. Article 1(1) of the draft DCO defines the phrase: "Order Limits" to mean: "the limits shown on the works plans within which the authorised development may be carried out"; and "Limits of Deviation".

4. The Notes to certain plans state as follows:

   a) Note 1 to the Works Plans (dated August 2025, For Submission) states: (Emphasis added)

      These plans show the Order Limits and potential location for the works. Due to the need for future flexibility, National Grid will be applying for Order Limits and Limits of Deviation within its Development Consent Order, within which any final alignments would lie.

   b) Note 1 to the Traffic Regulation Order Plans for Section F states: (Emphasis added)

      These plans show the Order Limits and potential location for the works. Due to the need for future flexibility, National Grid will be applying for Order Limits and Limits of Deviation within its Development Consent Order, within which any final alignment would lie.

   c) Note 1 to the Traffic Regulation Order Plans for Section F states: (Emphasis added)

      These plans show the Order Limits and potential location for the works. Due to the need for future flexibility, National Grid will be applying for Order Limits and Limits of Deviation within its Development Consent Order, within which any final alignment would lie.

   d) Note 1 to the Land Plans for Section F states: (Emphasis added)

      For additional detail on the plan suites, please refer to the Guide to Plans (document reference 2.0), located in the Volume 2 of the DCO application.

5. By contrast, the Land Plans that identify the extent of land purportedly required for the Works Plans does not carry the said Note(s) 1.

6. The draft DCO envisages wide powers, attaching to the extent of the land outlined in red that overlaps with the Writtle College campus, under Articles of the DCO including 3(1)-(8), 4(1)-(2), 17 (Access to works), 21 (Protective Works), 22 (Surveys), 24 (Compulsory acquisition of land), 25 (Compulsory Acquisition of rights), 27 (Temporary Use of Land), 29 (Temporary use of land for maintaining the authorised development), 38 (Extinguishment and suspension of private rights), 39-40, (power to override easements and other rights, and statutory authority to override easements and other rights), 48 (defence to statutory nuisance), 49 (Traffic regulation), and 56 (Safeguarding).

7. In particular, Article 3 includes:

   1) Subject to the provisions of this Order (including the Requirements) National Grid is granted development consent for the authorised development set out in Schedule 1 (authorised development).

   2) National Grid may—

      a) install and keep installed the authorised development;

      b) remove or replace any electric line including pylons or poles that may require removal as part of the authorised development…

   4) National Grid may operate and use the authorised development (excluding the UKPN Works) as part of the high-voltage electricity transmission system in England and Wales.

8. And Article 4 includes: (Emphasis added)

   1) National Grid may at any time maintain the authorised development (excluding the UKPN Works), except to the extent that this Order, or an agreement made under this Order, provides otherwise.

9. The authorisation relates to Schedule 1, and in particular in relation to ARU and ARU Writtle Campus, to Works No. 17 (Route TB), and the wide scope of the Associated Development including paragraph (u): (Emphasis added)

   u) such other works, including scaffolding, working sites storage areas, and works of demolition (which includes but is not limited to demolition of residential properties), as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially different environmental effects from those identified in the environmental statement.

10. Article 1(1) also defines further documents including:

a) *"outline code of construction practice" means the document of that description (together with its appendices) (document 7.2) certified by the Secretary of State as the outline code of construction practice for the purposes of this Order under article 60 (certification of documents);*

b) *"outline construction traffic management plan" means the document of that description (together with its appendices) (document 7.3) (certification of documents);*

c) *"outline landscape and ecological management plan" means the document of that description (together with its appendices) (document 7.4) certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order under article 60 (certification of documents); and*

d) *"outline public rights of way management plan" the document of that description (together with its appendices) (document 7.6) certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order under article 60 (certification of documents).*

11. Within Schedule 3, Requirements, paragraph 1(1) defines:

"HGV" means lorries over 3.5 tonnes maximum gross weight but excluding abnormal indivisible loads; …

"start-up and close down activities" means—

a) *arrival and departure of workforce and staff at site and movement to and from places of work;*

b) *general refuelling of plant;*

c) *site inspections and safety checks;*

d) *site meetings inspections and walkovers;*

e) *site clean-up (site housekeeping that does not require the use of plant);*

f) *general site maintenance; and*

g) *low key maintenance and safety checking of plant and machinery.*

12. Draft DCO Requirement 4 provides:

(1) No stage of the authorised development may commence until, for that stage, the following plans as relevant to that stage have been submitted to and approved by the relevant planning authority (in consultation with Natural England in the case of the landscape and ecological management plan) or other discharging authority as may be appropriate to the relevant plan concerned. The relevant plans are—

a) *code of construction practice (which must be substantially in accordance with the outline code of construction practice);*

b) *construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan);*

c) landscape and ecological management plan (which must be substantially in accordance with the outline landscape and ecological management plan);

d) public rights of way management plan (which must be substantially in accordance with the outline public rights of way management plan);

(2) All construction works for each stage of the authorised development must be carried out in accordance with the approved plans referred to in paragraph (1), unless otherwise agreed with the relevant planning authority or other discharging authority as may be appropriate to the relevant plan concerned.

(3) For the avoidance of doubt, all pre-commencement operations must be carried out in accordance with the outline code of construction practice, the outline construction traffic management plan, the outline landscape and ecological management plan and the outline public rights of way management plan unless otherwise agreed with the relevant planning authority or other discharging authority as may be appropriate to the relevant plan concerned.

13. Draft Requirement 7 provides for Construction Hours:

1) Subject to sub-paragraphs (2) to (5) work may only take place between the hours of 07.00 and 19.00 Monday to Friday and 07.00 and 17.00 on Saturdays, Sundays, bank holidays and other public holidays (the core working hours), unless otherwise approved by the relevant planning authority.

(2) No percussive piling works may take place outside of the hours of 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, unless otherwise approved by the relevant planning authority.

(3) Subject to sub-paragraphs (4) and (5), no HGV deliveries may be made to site outside of the hours of 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, unless otherwise approved by the relevant highway authority.

(4) The following operations may take place outside the core working hours and, as the case may be, the hours referred to in sub-paragraph (3)—

a) trenchless crossing operations including beneath highways, railway lines, woodlands, nature reserves, Sites of Special Scientific Interest or watercourses;

b) the installation and removal of conductors, pilot wires and associated protective netting (included but not limited to) across highways, railway lines or watercourses;

c) the jointing of underground cables;

d) the continuation of any work activity commenced during the core working hours to a point where they can securely and or safely be paused;

e) any highway works requested by the highway authority to be undertaken on a Saturday or Sunday or outside the core working hours;

f) the testing or commissioning of any electrical plant installed as part of the authorised development including undertaking of any identified corrective activities;

g) the completion of works delayed or held up by severe weather conditions which disrupted or interrupted normal construction activities;

h) activity necessary in the instance of an emergency where there is a risk to persons or property;

i) security monitoring;

j) non-intrusive surveys;

k) intrusive surveys;

l) oil processing of transformers or reactors in substation sites;

m) delivery to the transmission works of abnormal indivisible loads and any highway works requested by the highway authority to be undertaken outside the core working hours; and

n) mechanical and electrical installation works within buildings once erected and enclosed.

(5) The core working hours exclude start up and close down activities up to 1 hour either side of the core working hours.

(6) The severe weather conditions referred to in sub-paragraph (4)(g) means any weather which prevents work from taking place during the core working hours referred to in sub-paragraph (1) and, as the case may be, the hours referred to in sub-paragraph (3) by reason of physical incapacity (whether for reasons of visibility, ground conditions, power availability, site access or otherwise) or being contrary to safe working practices.

14. Requirement 10 provides for "Reinstatement Schemes": (Emphasis added)

(1) Subject to sub-paragraphs (2) and (3), any land within the Order limits which is used temporarily for construction is to be reinstated to a condition suitable for its former use, or such condition as the relevant planning authority may approve, within 21 months of completion of the construction of the stage of authorised development for which it was required, or such further time as may be approved by the relevant planning authority.

(2) The requirement to reinstate the land to a condition suitable for its former use does <u>not</u> apply to land above or within 10 metres of underground cables installed as part of the authorised development.

(3) The requirement to reinstate the land to a condition suitable for its former use is <u>subject to</u> the provisions of article 27 (temporary use of land by National Grid), article 28 (temporary use of land by UKPN) and article 29 (temporary use of land for maintaining the authorised development).

15. Article 27 of the draft DCO provides:

1) National Grid may, in connection with the carrying out of the authorised development—

a) enter on and take temporary possession of—

i) so much of the land specified in column (1) of Schedule 11 (land of which temporary possession may be taken) to exercise the powers described in the book of reference for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

b) remove or alter any electric line, electrical plant, electronic telecommunications apparatus, buildings, structures, pylons, apparatus, equipment, vegetation or any other thing from that land;

c) construct temporary or permanent works (including the provision of means of access, drainage, security fencing, storage areas structures, scaffolding, protective measures and buildings) on that land; and

d) in relation to temporary possession of land taken under sub-paragraph (a)(i) construct any works specified in relation to that land in column (2) of Schedule 11 or any other mitigation works and in relation to temporary possession of land taken under sub-paragraph (a)(ii) construct any of the authorised development or any other mitigation works

2) Not less than 14 days before entering on and taking temporary possession of land under this article, National Grid must serve notice of the intended entry on the owners and occupiers of the land.

3) …

4) …

5) Before giving up possession of land of which only temporary possession has been taken under paragraph (1)(a)(i), unless otherwise agreed with the owners of the land, National Grid must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but National Grid is not required to—

a) replace a building, structure, apparatus, equipment, electric line, electrical plant or pylon removed under this article;

b) restore the land on which any works or mitigation works have been carried out under paragraph (1)(d);

c) remove any foundations below 1.2 metres which had been placed in that land to support pylons and electric lines constructed upon those foundations;

d) remove any permanent work including pylons, electric lines, underground electric line, or other permanent services, constructed or installed on, over, under or in that land as part of the authorised development;

e) remove any ground-strengthening works (being either works listed in Schedule 10 of this order or other works to provide safe and stable ground conditions) which have been placed in that land to facilitate construction of the authorised development;

f) remove or reposition any apparatus belonging to statutory undertakers;

g) remove any drainage works; or

h) restore ground levels adjusted as part of the authorised development.

6) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, National Grid must either acquire the land or the interest on, over, or in the land in accordance with the provisions of paragraph (3)(b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but National Grid is <u>not</u> required to—

a) replace a building, structure, apparatus, equipment, electric line, electrical plant or pylon removed under this article;

b) restore the land on which any mitigation works have been carried out under paragraph (1)(d);

c) remove any foundations below 1.2 metres which had been placed in that land to support pylons and electric lines constructed upon those foundations;

d) remove any permanent work including pylons, electric lines, underground electric line, or other permanent services, constructed or installed on, over, under or in that land as part of the authorised development;

e) remove any ground-strengthening works (being works to provide safe and stable ground conditions) which have been placed in that land to facilitate construction of the authorised development;

f) remove or reposition any apparatus belonging to statutory undertakers;

g) remove any drainage works; or

h) restore ground levels adjusted as part of the authorised development.

7) National Grid must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

16. Article 29 of the draft DCO provides for a particular and initial maintenance period but not for longer term maintenance contemplated by Article 4. See above.

Location of Pylons

17. The Draft DCO is proposed in the "*Rochdale* Envelope" form, that is, in outline only and inside a notional enclosed space the centre-line of the Order Limits which is identified on the Works Plans. The terms of the draft DCO enable the pylons and overhead cable line to be situated anywhere inside of the scope of the red line. Consequently, the notional location of any given pylon is not fixed and a pylon may be situated anywhere inside of the area outlined in red on the Works Plans. Consequently, the line of the overhead cable can also be situated anywhere inside of the area outlined in red.

Project Timescale

18. The draft DCO is accompanied by an Environmental Statement that includes, in Document 6.4, Chapter 4 – Project Description. In the context of the outline nature of the authorisation sought for the NSIP, and also where a contractor has not actually been appointed yet (as at Deadline 1, 26th February 2026) nor a contract let, Image 4.1 shows a (merely) "Indicative Construction Programme" that asserts that Section 8 of the NSIP will be constructed between April 2027 and November 2031. That is, over a period of 4 years.

The Relationship of the Proposed Overhead Line with the land of ARU Writtle Campus

19. ARU and its ARU Writtle Campus appear in **Section F** of the pylon route, **Sheet 8**, of the various Land Plans, Works Plans, and Traffic Regulation Plans.

20. ARU has prepared three diagrammatic plans to enable understanding by the Examining Authority and the Secretary of State of the real issues that National Grid has created for itself by the superimposition of the red outlined area of the Order Limits over the third party freehold land of a Further and Higher Education Provider based on horses: 90 horses and 400 plus students at that Facility.

21. **ARU Plan A Ownership**, shows in outline the landownership of ARU shaded blue, the cluster of buildings on that campus to the South end of the blue-shaded area and a series of orthogonal paddock fields to the North of the buildings. The Plan also shows the illustrative line of "Current Overhead Line Route" and "Current Pylon Locations" that (as at 8th July 2024) formed the basis for the line of the pylon route "TB" coloured magenta that is shown inside of the area outlined in red on Section F, Sheet 8, of the Works Plans. The key to the Works Plans identifies the area outlined in red as "the Order Limits" (see Article 1(1) of the Draft DCO above).

22. **ARU Plan B, Facility Buildings**, shows the layout and disposition of the buildings at the ARU Writtle Campus Equine Facility, the existing access routes within the Facility, the sole route to the paddocks to the North of the buildings and the existing "one way route" from the highway entrance to the Facility by which internal traffic in the Facility is regulated.

23. The Facility buildings are identified by letter and a key that describes each building. The numbers "1" and "2" describe, respectively, the locations of the access route: a) entrance from the highway of Cow Watering Land; b) connection to the paddocks to the North of the Facility buildings. Plan B also shows the one way route that operates from "1" to ensure safe traversing of the narrow part of the access within the Facility.

24. **ARU Plan C, Overlay**, shows in diagrammatic form, a simple comparison of the Land Plan of Section F, Sheet 8, with the situation of Writtle College the proposal or desire by National Grid for a 'dog-leg' or inverted L-shaped red outlined area (coloured yellow on the Land Plan) extending Eastwards of the Route TB and then Southwards bisecting the operational campus of Writtle College before then connecting to the highway at the Campus entrance. The Plans show in their legend that the area coloured yellow by which National Grid desire a *permanent* right of vehicle access to entitle them, in perpetuity, to drive vehicles back and forth through Writtle College to construct the pylon line and also to maintain the pylon line.

25. **ARU Plan C** shows the Plots of land of ARU that are envisaged to be developed:

a) Plot 8/47 –- Compulsory acquisition of rights - Overhead line and underground cable system;

b) Plot 8/37 – Light Green: Class 2 - Compulsory acquisition of rights - Overhead line;

c) Plot 8/29 – Light Green: Class 2 - Compulsory acquisition of rights - Overhead line;

d) Plot 8/27 – Light Green: Class 2 - Compulsory acquisition of rights - Overhead line;

e) Plot 8/24 – Light Green: Class 2 - Compulsory acquisition of rights - Overhead line;

f) Plot 8/25 – Light Green: Class 2 - Compulsory acquisition of rights - Overhead line;

g) Plot 8/33 – Orange: Class 3 - Compulsory acquisition of rights – Underground cable system;

h) Plot 8/32 – Yellow: Temporary Use;

i) Plot 8/26 – Grey: Class 4 - Compulsory acquisition of rights - Overhead line and underground cable system;

j) Plot 8/30 – Orange: Class 3 - Compulsory acquisition of rights – Underground cable system;

k) Plot 8/42 – Yellow: Temporary Use.

26. It can be seen from **ARU Plan C** that:

a) the Light Green coloured plots overlay parts of the paddocks in which horses are kept;

b) the Grey coloured plots overlays part of two paddocks in which horses are kept; and

c) the Yellow coloured Plot 8/42 overlays: i) apparently parts of two paddocks; ii) the access route between the paddocks along which horses of the 90 strong herd are led between paddocks; iii) the access route between the highway of Cow Watering Lane and the paddocks on the North side of the Facility buildings along which horses of the 90 strong herd are led; iv) the access route within the Facility building complex along which some 400 students and up to 90 horses traverse as part of their daily education routine at the Facility.

27. When **ARU Plans B** and **C** are compared, it can be seen that the yellow coloured part of the red outlined area of the Order Limits inside of the Facility will be: a) overlayed the central corridor access route within the Facility; b) directly adjacent to Building B; Outdoor Arena C; Building D (Courtyard Stables); Building H (Monarch Barn); Buildings M-P that include the Livery Barn (M) and Classrooms (O and P); Buildings X, Y and W (Classrooms), and educational Buildings V and S; c) link to all other Buildings in the Facility; and d) overlaps

the ”one way route” by which all incoming traffic is required to turn left (West) and move around Buildings W, T, U, V and S before emerging near to Building N (Fowler Building).

National Grid “Design Development”

28. Document 5.15, Design Development Report, says this: (Emphasis added)

> ***9.3 West of Writtle***
>
> *9.3.1 Feedback in this area restated the preference for alignments routed to the east of Chelmsford (the reasons why these continue to be less preferred are set out at Paragraph 9.2.3 and not repeated) as well as also restating the preference for routes more directly crossing the Edney Common area. More localised alignment changes were proposed including alignments passing to the west of the gas compressor site on Roxwell Road and localised adjustments around Writtle College. The perceived impact of the alignment crossing a site used every four years for an international Scout Jamboree was also raised for the site utilising farmland to east and west of pylons TB158 to TB161. [see Figure 9.4]*
>
> *9.3.2 Alternative routes to avoid or reduce the potential interaction with the site currently used for the Scout Jamboree have been considered and are shown on Figure 9.4. An alternative arrangement would be to restrict the timing of construction works so that there was no potential for coincidence of construction with this event and for some restrictions to be placed on activities under the alignment once constructed. With other restrictions due to the crossing of a gas pipeline, feedback has indicated that the organisers consider that the event would not be sustainable…*
>
> *9.3.3 … Through direct engagement National Grid is exploring opportunities to restrict local construction activities so as not to restrict the scheduled 2028 Jamboree proceeding on the site and is also exploring opportunities to support the relocation of the event to an alternative site…*
>
> *9.3.5 Localised adjustments to the alignment around Writtle have been considered but no change has been made due to the restrictions imposed by infrastructure constraints (various pipelines) which prevent a change or because a change would lead to a transfer of effects for example resolving perceived impacts on a view from one property but at the consequence of effects transferring to the view from another residential property…*

29. As at Deadline 1, 26th February 2026, the evidence shows that National Grid is able to “directly engage” with the Scout organisation, in relation to an event that occurs once every four years, in respect of seeking to accommodate a “jamboree” by ensuring the *timing* of its construction practices. By contrast, notwithstanding that ARU provides education at national level to a national and also international student cohort on an *continuous* basis, there is no evidence that National Grid is directly engaging with ARU in respect of the potential alteration of construction timing and any related access it desires over ARU land.

Construction and Traffic

30. The NSIP is envisaged to be constructed using numerous vehicles whose number and type remain inchoate pending contractual engagement of the unspecified main contractor.

31. Section F, Sheet 8 of the Traffic Regulation Order Plans, shows the extent of the Order Limits and, within the highway to the West of the ARU Writtle Campus, proposes Traffic "TR-F-026" whose Southernmost point is at a location West of the the ARU Writtle Campus.

32. Document 6.4, Environmental Statement, Chapter 4 – Project Description includes as follows in relation to construction: temporary construction access and haul roads:

4.8.13 Construction traffic would use the Strategic Road Network (SRN)14 and Major Road Network (MRN)15 to access the Project. From the MRN and SRN, construction traffic would be routed along a PAR to a site access point (or bellmouth). From these site access points; traffic would be routed off the public highway along haul roads to access the construction works.

4.8.21 As part of the Project, the following are anticipated to be required:
- *Approximately 278 site access points*
- *Approximately 51 site crossover points*
- *Approximately 44 combined site access points and site crossover points….*

4.8.40 Temporary crossings would be required over watercourses, streams, and field ditches to maintain the haul roads along the alignment; these would likely consist of temporary bridges or culverts. Further detail is included in Appendix 4.2: Watercourse Crossing Details (document reference 6.4.A2).

33. In respect of "Overhead Line", Chapter 4 includes as follows:

4.8.42 The working areas around each new pylon would be cleared of vegetation and fenced appropriately. Access to each pylon location would be installed. Temporary appropriate technology / material would be required adjacent to each new pylon location, on which to place plant such as cranes and piling rigs. The stone working areas would typically be 60 m x 60 m (or 70 m x 70 m for angle/terminal/low-height suspension structures and 80 m x 80 m for low-height tension structures). Materials would be brought to site on HGVs and would include the steelwork for the pylons and the conductors (i.e. cabling) wrapped around large drums.
4.8.43 The base of the pylons would involve the excavation of the soil. Piling (which may include percussive) would be required at some pylon locations, subject to the ground conditions. A sample series of ground investigation has been completed (the remaining ground investigation would be undertaken by the Main Works Contractor(s) before detailed design) which would inform the foundation designs. The assessment assumes as a worst-case that percussive piling would be required at each pylon foundation.
4.8.44 Different foundation types can be used for lattice pylons, such as pad and column, vertical tube piles or bored mini-pile foundations, depending on the local ground conditions. The type of foundation to be used is typically identified during the detailed design stage by the Main Works Contractor(s) following intrusive ground investigation surveys.

Standard Pad and Column Foundations

4.8.45 For lattice suspension pylons, pad and column foundations are typically used. For tension, low height lattice pylons and terminal pylons, larger and deeper pad and column foundations are required. These are shown on the Design and Layout Plans (document reference 2.6.2).

4.8.46 The following works would be required to install foundations:

- *Excavations are required for each pylon leg*
- *Foundation formwork (mould) is then inserted, cast, and filled with concrete*
- *The concrete is left to harden (set)*
- *The excavated hole is backfilled to ground level*
- *The foundation formwork would be removed and any remaining sub-soil subject its make up would be distributed on site or removed from site.*

Piled Foundations – Tube or Bored Mini-Pile

4.8.47 In areas with poorer ground conditions that are unsuitable for pad and column foundations, vertical steel tube pile foundations or bored mini-pile foundations can be used. These are connected by a pile cap at or below ground level.

4.8.48 Using a piling hammer supported by a piling rig, steel tube piles are driven into the ground. A maximum transportable length of up to 15 m is driven at a time, and if longer piles are required, additional sections are welded together before continuing the drive.

Pylon Assembly and Erection

4.8.49 Following the installation of working areas and the appropriate foundations, pylon steelwork can be assembled, and the pylons can be erected.

4.8.50 Lattice pylons comprise many separate steel members. These are delivered to site in bundles by HGV. The steelwork for the pylons would be bolted together on the ground (see Image 4.5) and each pylon would be assembled in sections beginning with each of the four steelwork legs being fastened to the stubs (each of the four concrete foundation legs as described above). The pylon would be erected using a mobile crane to lift the assembled steelwork into position (see Image 4.6).

4.8.51 Overhead Line Craftpersons help guide the sections into place and bolt the pylon together. The insulators would be fastened to the pylons in preparation for installing the aluminium conductors. The conductors would typically be installed in sections between tension pylons, where the overhead line changes direction. A bowtie shaped pulling site would be established, for tension/angle pylons, at one end of the section with the conductors running out from a tensioning site at the other end of the section, to keep the wires off the ground. Pilot wires would be used to pull conductors between pylons. Additional fittings, such as spacers (to prevent the conductors from touching each other) and dampers (to prevent oscillations in the overhead line), would then be fitted to the conductors. An earth wire would run along the top of the pylons and contain optical fibres to allow transmission of data around the system.

4.8.52 Helicopters are proposed to be used to support the construction of a limited suite of activities where their use offers the opportunity to reduce the number of vehicle movements and shorten the duration of an activity. Helicopters are proposed to support overhead line stringing by installing the pilot cable (the pulling bond, which is used to pull the conductors onto the pylons). Efficiencies (time and vehicle movements) could be achieved by the helicopter being able to install the main heavy-duty bond on a single flight, whereas more traditional methods require an initial lightweight bond to be installed to pull through two or three progressively stronger bonds. This method would take a day or two to install the six bonds required compared with potentially a number of weeks for more traditional methods. Helicopters are not proposed to be used for other aspects of pylon construction owing to the proximity of residential properties and the

number of roads to be crossed. It is assumed that helicopters would use existing airfields/helipads as their operational base (including for refuelling and parking between tasks). Variation from this by an appointed helicopter operator would be subject to a separate agreement to temporarily use land and be required to satisfy relevant planning and pollution control requirements.

34. Chapter 4 also provides for Watercourse Crossings:

4.8.81 The haul road requires the crossing of multiple ditches, drains and watercourses. The method of crossing a watercourse would depend on several factors. For example, large or important watercourses, main rivers and all Water Framework Directive status waterbodies require clear span bridges. Smaller watercourses and ordinary watercourses would use culverts. Watercourse crossings would largely be temporary and would be removed (and land reinstated) after the construction works.

Culverts

4.8.87 For smaller and ordinary watercourses, culverts would typically be used for haul road crossings. The conditions of the watercourse, such as its size, depth, ecological properties and strength and volume of flow, would determine the components (i.e. twin wall pipes or box culverts) to be used. The most common method would be circular culvert installation, with box culverts used for large ditches or small watercourses. Appendix 4.2: Watercourse Crossing Details (document reference 6.4.A2) identifies watercourses that would be crossed with a culvert. This appendix forms the basis of the assessment in the ES (Volume 6 of the DCO application). Typical drawings for culvert crossings are included in the Design and Layout Plans (document reference 2.6.2).

35. Chapter 4 also provides for "Operation (and Maintenance)":

4.10.2 Operational and maintenance activity would require a limited workforce. During operation (and maintenance), National Grid would require infrequent access to ensure the operational Project is appropriately surveyed, assessed, and maintained. Access would typically be made by foot, 4x4 or tractor and trailer.

4.10.3 Additionally, National Grid often uses helicopters to survey and monitor the network, as large distances can be covered without requiring access to the land surrounding the transmission infrastructure…

4.10.4 National Grid also has a fleet of drones, which allows inspections of parts of the transmission network that are more difficult or costly to reach…

4.10.6 The typical lifespan of an overhead line would be at least 40 years, depending on use and location. Over this time, the overhead line and CSE compounds would be subject to regular inspection from the ground (on foot or using a small van/4x4 vehicle) or by helicopter to check for visible faults or signs of wear in line with existing maintenance requirements at any point in time. The inspections would confirm when refurbishment is required and indicate if plant/tree growth or development were at risk of affecting safety clearances…

4.10.10 The refurbishment works would require temporary access tracks, small compounds and, potentially, scaffolding to protect roads and other features during the work. Vans would be used to carry workers in and out of site and trucks would be used to bring new materials and equipment to site and remove old equipment. Once the Project has been constructed and commissioned, including the temporary installation of access roads and installation of scaffolding to protect roads, railways and footpaths would be required as necessary (like the initial construction requirements).

36. Chapter 4 further affirms there to be no specific plans for decommissioning:

> *4.11.1 Paragraph 4.3.5 of NPS EN-1 (DESNZ, 2024a) states that the ES should cover the effects arising from decommissioning of a project. There are currently no specific plans to decommission the Project. It is expected that the transmission of electricity would continue for as long as there is a business case for doing so and that any decommissioning activity would occur decades into the future. To date, relatively few transmission projects have been decommissioned since the main expansion of such infrastructure in the 1950s and 1960s. The cables and pylons for overhead transmission lines are replaced periodically, ordinarily under National Grid's permitted development rights.*
>
> *4.11.2 The pylons comprise open, lattice structures which can be easily dismantled. It is expected that proposals for decommissioning would be subject to separate consenting procedures, including environmental assessment of the proposed activities, and taking account of the baseline as it exists at the time of decommissioning…*
>
> *4.11.3 Decommissioning has been scoped out of the ES (Volume 6 of the DCO application), as per the EIA Scoping Opinion (document reference 6.20)…*

37. Document 6.16, Environmental Statement, Chapter 16 – Traffic and Transport considers the Traffic and Transport circumstances. Paragraphs 16.7.24 to 16.7.39 make reference to "Horse-Rider Amenity" but with no reference at all to ARU and its Equine Unit. Paragraphs 16.7.40-16.7.46 consider "Road Safety" and without any reference to ARU and its Equine Unit.

38. Document 6.16, Environmental Statement, Chapter 16 – Traffic and Transport has resulted in Document 7.3, "Outline Construction Traffic Management Plan", that includes as follows:

> *1.3.3 As well as the permanent infrastructure, land would also be required temporarily for construction activities including, for example, working areas for construction equipment and machinery, site offices, welfare, storage and temporary construction access …*
>
> ***2.2 Construction Schedule***
>
> *2.2.1 In common with other Nationally Significant Infrastructure Projects, the detailed construction programme will be subject to change from factors such as procurement, system access requirements (outages), resource and material availability, weather and ground conditions.*
>
> *2.2.2 The construction schedule is presented in the Outline CoCP (document reference 7.2) and as outlined within the ES Chapter 4: Project Description (document reference 6.4).*
>
> *2.2.3 Should consent be granted in 2027, it is anticipated that construction of the Project would commence in 2027, likely starting with site clearance activities, the installation of temporary construction compounds and access roads. It is expected the main construction works would continue through to 2031 (four years) (with only demobilisation and snagging works in 2031), although it is proposed that energisation of the Project would be in 2030.*

39. Document 7.3, "Outline Construction Traffic Management Plan", includes, in respect of Working Hours:

2.3.1 It is assumed that the core working hours for construction (as set out within the requirements of the dDCO (document reference 3.1)) would be:

- *Mondays to Fridays: 07:00 –19:00*
- *Saturdays, Sundays, and Bank Holidays: 07:00 –17:00*

2.3.2 Percussive piling and deliveries by Heavy Good Vehicles (HGV), unless otherwise agreed with the relevant LHA, will be limited to:

- *Mondays to Fridays: 07:00 –19:00*
- *Saturdays: 07:00 –17:00…*

Heavy Goods Vehicle Timings

2.3.6 It is proposed that Heavy Goods Vehicles (HGVs), not associated with the operations detailed above which could occur outside of core working hours, would not be permitted to arrive at site before 07:00 or depart after 19:00 (Monday to Friday) or before 07:00 or after 17:00 (Saturday, Sunday and Bank Holidays). However, this would mean that HGVs could be travelling to or from the site outside of the working hours. Any HGVs which are projected to arrive on site prior to 07:00 would be required to park at an appropriate lorry park, services or other designated overnight parking locations until they can complete their journey within the appropriate restrictions. These locations would be agreed with the relevant highway authorities (LHA) prior to the commencement of construction and would be communicated to drivers within their delivery instructions …

40. Further:

2.4.6 Article 49 of the draft Development Consent Order (DCO) (document reference 3.1) allows National Grid and its Main Works Contractor(s) to introduce TROs for the purposes specified in Schedule 13 or to any other extent that is expedient or necessary, with the consent of the traffic authority, for the purposes of the authorised development or for purposes ancillary to the construction or maintenance of the authorised development.

41. Table 5.1 provides "Anticipated vehicles per par" and includes in relation to TB 165-TB 167, Par H29-A1-A22:

Road Access: A414

Pylon Numbers: TB162-165 and 166-168

Standard Vehicles: HGV/LGV

Most Onerous Anticipated AIL/Special Order Vehicles: Large Mobile Crane (250 tonne).

42. Document 7.3, "Outline Construction Traffic Management Plan", includes consideration of "Other Construction Vehicles": (Emphasis added)

5.3.17 A range of other construction vehicles will be required on the Project that will use the public highway network. <u>The majority of construction materials will be transported to the construction sites by HGVs</u>. This will include LGVs, including vans, to deliver smaller items and the workers to the site. It will also include <u>other HGVs, such as low-loader units used to deliver larger items such as excavators, construction mats, and welfare units</u>.

5.3.18 In accordance with measure GG24 in the Outline CoCP (document reference 7.2), plant and construction vehicles (not including construction worker private vehicles) will conform to relevant applicable standards for the vehicle type which are defined in the Outline CoCP (document reference 7.2)…

5.4.8 Secondary Access Routes will be considered for specific movements of light vehicles (cars and vans) only moving between adjacent haul road sections, where the haul road is not continuous due to a river, main road, railway or other obstruction…

HGV Deliveries

5.4.11 HGV movements will normally take place during the core working hours, and it is anticipated that construction LGV/HGV/AIL vehicles will be scheduled to arrive throughout the core working hours. Where required, vehicle movements for certain time-critical activities (those detailed in section 2.3) may take place outside of the core working hours. HGV deliveries for activities not listed in section 2.3 are to take place across the core working hours, with deliveries managed by the Main Works Contractor to avoid concentration of movements in any particular hour, and provide a consistent level of movements throughout the core working hours.

5.4.12 The Main Works Contractor will be responsible for monitoring and managing compliance with this strategy, particularly during road network peak periods.

5.4.13 As detailed in the Outline Construction Worker Travel Plan (Appendix B), construction worker LGV vehicles are to arrive outside the normal highway network peak periods (i.e., 08:00-09:00 and 17:00-18:00 Monday to Friday). It is assumed that admin and office workers will arrive on site within these peak hours.

5.4.14 The number of HGV movements has been calculated and assessed using a comprehensive trip generation and distribution approach which is summarised within Section 6.2 of the Transport Assessment (document reference 7.11).

5.4.15 These movements have been determined against the draft construction programme and will be therefore subject to change upon finalisation of the construction programme by the Main Works Contractor.

43. "Site Access Points" are also described:

5.5.1 Site access points have been assessed based on site-specific constraints and highway safety considerations. The locations of the site access points on the public highway are generally close to the underground cabling and overhead line construction corridors. The most suitable location for the site access point, and access to the haul roads, has been determined with consideration of road geometry, junction visibility and other site-specific constraints. Locations have, where appropriate, been chosen to minimise the impact on trees and hedgerows. Existing land/field accesses have been used where they are considered to be suitable locations as determined by the above assessment criteria. When forming site access points, connectivity for active travel users (footways and cycleways) will be preserved, where safe and practicable.

5.5.2 The site access points layouts are designed to allow for two-way HGV movements to occur; that is, an HGV can enter the junction while a second HGV is waiting to exit the bellmouth.

5.5.3 Site access points have also been assessed through a swept path analysis for the largest vehicle associated with the haul road (i.e. a crane or alternative AIL). These vehicles require the full bellmouth area to make the manoeuvre. This (infrequent) operation will take place with the appropriate traffic management, which will be agreed with the appropriate the relevant LHA and/or National Highways, in place.

44. It is evident that Document 7.3, "Outline Construction Traffic Management Plan", includes only one reference to "horse", in paragraph 4.9.33, there is a reference to a "Permanent Feature" being: (Emphasis added)

    TN-B011 permanent site access point off High Horse Lane to the CSE compound

45. Document 7.3, "Outline Construction Traffic Management Plan" includes no express consideration nor provision in respect of "horse" or "horses" nor the management of risks from construction vehicles and maintenance vehicles to horses and pedestrians. Document 7.3 has a gap in its coverage in respect of equine traffic.

46. Further, the "Indicative Highway Mitigation Plans" for Section F do not actually cover ARU Writtle Campus nor TB165-167.

47. Furthermore, the scope of the Outline Code of Construction Practice includes no express provision by which to ensure the statutory safeguarding of children at the Facility from construction and/or maintenance vehicle drivers and passengers passing through the establishment of the ARU Writtle Campus.

48. The scope of Requirement 4 (Construction Management Plans) cannot be relied on to ensure protection of horse or pedestrian traffic in the ARU Writtle Campus inside of the extent of the "Order Limits" envisaged to be superimposed over the land of ARU; nor for the statutory safeguarding of children at that establishment.

Community Facilities

49. In the foregoing context, Document 6.15, Environmental Statement, Chapter 15 – Socio-economics, Recreation and Tourism purports to identify and assess the affects of the proposals on ARU as follows.

50. In paragraphs 15.5.23 et seq. "Community Facilities" are addressed in this way:

    Community Facilities

    15.5.23 Community facilities are assets that serve community purposes. These include nurseries, schools, libraries, hospitals, surgeries, pharmacies, community centres, sports halls, swimming pools and places of worship. Other assets which may serve community purposes (such as public houses and private sports clubs) are considered elsewhere in this chapter under the Business, Recreation and Tourism Assets heading.

    15.5.24 Table 15.14 provides details of the community facilities identified within the Local Study Area (Order Limits). The location of the community facilities identified is shown in Figure 15.2: Community Facilities, Business, Recreation and Tourism Assets (document reference 6.15.F2)

51. The Environmental Statement, Table 15.14 considers the "Equine Centre" at "Writtle University College" as "High Sensitivity" and states:

Equestrian site associated with Writtle University College which operates Monday to Friday. The University provides equine related courses such as Equestrian Enterprise Management.

52. Table 15.21 considers "Residual construction effect on community facilities": (Emphasis added)

    Equine Centre – Writtle University College (Section F): High (sensitivity); Residual Construction Effect:

    There would be temporary acquisition of land from three parcels of equestrian fields from the equine centre during the construction phase for temporary third-party work (i.e. UK Power Networks (UKPN) 11 kV diversion). There would also be a temporary acquisition of the access road to the equine centre to enable temporary construction access between Cow Watering Lane and the construction area of the proposed pylons and overhead lines. Taking into account mitigation measures set out in the Outline CoCP (document reference 7.2) and Outline CTMP (document reference 7.3), access to the operational buildings themselves would be maintained during construction. Access to the remainder of the site (i.e. a further five equestrian fields) would also be maintained during construction. Therefore, a minor temporary loss of elements of the site, with adequate provision for accessibility, is anticipated during construction, resulting in a low adverse impact. The residual construction effect would be ***temporary, short-term, minor adverse and not significant****.*

53. Table 15.27, "Residual operation (and maintenance) effect on community facilities" includes: (Emphasis added)

    Equine Centre – Writtle University College (Section F): High (sensitivity); Residual Operational (and Maintenance) Effects:

    The equestrian fields would be reinstated to their preconstruction status. No land take or access disruption is anticipated during the operation (and maintenance) phase and therefore, no change to baseline conditions is anticipated.

    Therefore, the residual effect would be permanent, long term, neutral and not significant during operation (and maintenance).

54. The EIA of National Grid is evidently flawed and contains important and relevant actual gaps in its baseline evidence relating to the ARU Writtle Campus and its actual operation. These flaws result in the unlawful underscoring of the effects of the proposals on the ARU Writtle Campus. See **Section D**, the witness statements of ARU.

SECTION D – WITNESS STATEMENTS

INTRODUCTION

1. This is Section D, Witness Statements, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark of the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU").

2. This Section contains:

    1) Philip Grant, Principal, Anglia Ruskin University;

    2) Professor Roderick Watkins, Vice Chancellor, Anglia Ruskin University;

    3) Joanne Wareham, Assistant Principal Safeguarding and Inclusion for Anglia Ruskin University;

    4) James Rolfe, Chief Operating Officer for Anglia Ruskin University Writtle;

    5) Liz Craig, Strategic Estates Manager, Estates & Facilities Services, Anglia Ruskin University Writtle;

    6) Mark Saunders, Head of Health & Safety, Anglia Ruskin University Writtle;

    7) Daniel Cook, Head of Equine Resources, Anglia Ruskin University Writtle;

    8) Isabella Taylor, Student at Anglia Ruskin University Writtle;

    9) Jane Kenny, Savills.

APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

Philip Grant, MSc, BHSII, Principal and Chief Accounting Officer, Writtle College Limited.

On behalf:
Interested Party Reference Numbers: NTOT-AFP2247 and F1201D06F

1. BACKGROUND AND QUALIFICATION

1.1 My name is Philip Grant.

1.2 I am the College Principal and Chief Accounting Officer for Writtle College Limited ("Writtle College") a wholly owned subsidiary of Anglia Ruskin University ("ARU"). I have 30 years' experience in Further Education and am a Land based specialist with a national profile in the Equine industry. I was appointed by the Governing Body and took up post 1st May 2025.

1.3 As Writtle College's Chief Accounting Officer I am directly accountable to Writtle College's Board and Parliament to ensure the correct use of public funds and deployment of the educational character of Writtle College.

1.4 This includes the safeguarding of 1200 Further Education students and 800 Higher Education students, in excess of 200 staff and numerous horses and farm animals. Of these, 90 horses and some 500 students are educated at the Equine Facility on Cow Watering Lane as part of the ARU Writtle Campus.

1.5 The ARU Writtle Campus is the only campus within ARU's portfolio that runs Further Education courses (post 16, Adults and apprenticeships) and specialist land-based programmes. Due to the high risk nature of the curriculum delivery, which often entails working closely with horses, cattle, farm machinery and chainsaws as part of their curriculum. Health and Safety for the aforementioned numbers of students and staff is paramount.

1.6 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.7 There is now produced and shown to me a bundle of true copy documents marked "Exhibit PG1". All reference to documents in this statement are to Exhibit PG1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit PG1 in the format PG1/[x].

2. INTRODUCTION & SUMMARY

2.1 This witness statement describes the impact of the proposed development by National Grid under The Norwich To Tilbury Electric Line Above Ground Development Consent Order (the DCO) during the construction phase and the operation phase including the operation of a new proposed access road *through* the Equine Facility of ARU Writtle Campus as shown indicatively on ARU Writtle Plan C in relation to ARU's Writtle campus - **PG1/1**.

2.2 Both Further Education (FE) and Higher Education (HE) are delivered at the ARU Writtle Campus. ARU is not a merely local or even a regional education provider but instead has a National reputation for being a leader in the educational space. Many students are from the local, regional, national and the international space and are attracted to the ARU Writtle Campus due to its high quality curriculum offer, the unique rural campus at the ARU Writtle College including the Equine Facility and the superb teaching experience students receive.

2.3 Courses range from and include specialist courses in Agriculture, Agricultural Engineering, Animal Sciences, Horticulture, Sports Sciences, Canine Sciences and countryside management and conservation. The ARU Writtle Campus, including the Equine Facility, is a peaceful sanctuary for all animals and students. It is also a haven for wildlife.

2.4 Many of the Further Education students who attend the courses run by Writtle College at the ARU Writtle Campus have low esteem and have poor prior experiences of academia. Many 16 year olds transition to the ARU Writtle Campus and are transformed through their time at the Campus enabling them to progress on to Higher Education courses and into employment pathways of their choice.

2.5 A significant proportion – namely 11% of the Further Education students who attend the courses run by Writtle College at the ARU Writtle Campus - have an Education Health and Care Plan (EHCP) or declared learning need which predispose them to additional support, additional time for studies and quieter environments to learn; this is a high

proportion as many other post-16 colleges in the Chelmsford region have only 3 or 4% of its students with an EHCP.

2.6 The ARU Writtle Campus operates 365 days of the year with a working Farm, Equine Facility centre and student accommodation. The ARU Writtle Campus' main period for teaching is centred around the academic year September through to July but staff, students and residential students will be on Campus throughout the year and commercial events take place around the year. The ARU Writtle Campus is a busy and vibrant learning environment.

2.7 Courses are funded through the Department for Education and is bound by the Further and Higher Education Act 1992, Keeping Children Safe in Education (DfE), Ofsted and Social Care Common inspection Framework.

2.8 Writtle College is an important factor in the land-based economy for the South East England and following its merger with ARU in 2024 is in a rapid recovery phase. Parent and student confidence features highly in this space.

3. THE PROPOSED ACCESS ROUTE

3.1 It is clear from the Works Plans, Section 8, Sheet 8, and from the ARU Writtle Plan C Overlay (**PG1/1)**, that the proposed construction access and maintenance route is envisaged to run directly *through* the centre of the Equine Facility notwithstanding the Facility is subject to statutory requirements to safeguard children, health and safety legislation requirements, and that the same route is used day to day by approximately 500 students and 90 horses. Due to the actual close proximity of students, horses, and associated safeguarding and health and safety requirements, in essence the National Grid proposal would render the Facility unsafe for continued operation. As a result, we would be forced to close the Equine Facility during construction works and the potential for periodic maintenance works over 40 years would be a significant and adverse impediment to operation of the Facility.

3.2 Such a closure would have significant and adverse reputational and financial consequences for both Writtle College and ARU, in addition to causing resulting substantial harm to the wider land-based economy in East Anglia.

4. ASSOCIATED IMPACTS

4.1 Writtle College is funded also by the Government - the Department for Education (DfE) - and is a funded educational institution delivering specialist land-based education and training that directly supports the economic development priorities of East Anglia. These programmes form part of Writtle College's statutory and contractual obligations under the Education and Skills Funding Agency (ESFA) funding agreements and are subject to oversight by both DfE and Ofsted.

4.2 The proposed access route by National Grid which is planned to pass *through* the centre of the operational Equine Facility, presents material and unavoidable conflicts with Writtle College and ARU's legal duties in relation to **safeguarding, health and safety, and the provision of a suitable educational environment**. These are set out in more detail in the statements of Daniel Cook, Mark Saunders and Joanne Wareham.

4.3 Under the **Health and Safety at Work etc. Act 1974**, Writtle College must ensure, so far as reasonably practicable, the health, safety, and welfare of its students, staff, and visitors. The introduction of a public route through an environment involving large animals, heavy machinery, and practical teaching activities would create foreseeable and unmanaged risks. These risks cannot be mitigated without fundamentally undermining the functioning of the facility. Writtle College would be in breach of this duty when the proposed access way is constructed and operated, which would have serious legal consequences for Writtle College and ARU.

5. Further, Writtle College has statutory safeguarding duties also under **Keeping Children Safe in Education (DfE)** and the broader **Education Act 2002**, which require a secure, controlled, and appropriately supervised learning environment. A through-route overlapping with areas used day to day by young people, including minors, directly compromises these obligations, significantly and adversely so. Writtle College would be in breach of this duty when the proposed access way is established, potentially further constructed, and then operated, which again would have serious legal consequences for ARU and Writtle College.

6. The Equine Facility and farm are essential components of Writtle College's DfE-funded specialist curriculum. By way of example, together, these facilities generate **over 50% of Writtle College's total revenue**, forming the financial foundation of the institution's continued viability. Loss of access to, or operational control over, any part of these facilities would result in the **immediate cessation** of multiple land-based programmes, placing the College in potential breach of ESFA funding agreements and rendering these courses undeliverable to the required regulatory standards.

7. Financially, the enforced closure of the Equine and farm programmes would constitute a significant and unrecoverable loss of income. In turn, this would threaten the Writtle College's long-term sustainability and would place a substantial number of specialist national and international staff at risk, as their continued employment is tied directly to the viability of these programme areas. This area is a large area where only one curriculum activity can be delivered. Due to the unavoidable closure of this programme if the proposed development proceeds, it would be a huge loss for the College, losing 50% of Writtle College's total revenue culminating in a real risk of the closure of the college in its entirety.

8. The broader consequence extends beyond the institution itself and into the regional economy. Writtle College plays a critical regional role in supplying trained graduates to the land-based industries that underpin the East Anglian economy. Removal of these specialist courses would therefore have a significant and **material adverse impact** on

the local and regional workforce pipeline, with implications for agricultural, equine, and land-management employers across the whole of that wide geographical area.

9. For these reasons, the proposed construction and maintenance route is incompatible with Writtle College and ARU's statutory duties, its regulatory obligations, and its financial sustainability. Approval of the route as currently designed would lead unavoidably to the closure of key educational facilities and cause significant harm to both the institution and the wider land-based economy.

9.1 Writtle College has statutory safeguarding obligations under the statutory guidance of *Keeping Children Safe in Education* (DfE) and the *Education Act 2002*, which require it to maintain a secure, *controlled*, and *fully supervised* environment for all learners, including those under 18. The introduction of contractors operating on or passing through the equine centre - an area where minors routinely move between stables, classrooms, and practical teaching spaces - creates unacceptable safeguarding risks. Construction personnel and vehicle movements cannot be safely managed within an active educational environment that involves children working in close proximity to large animals and heavy equipment. The presence of third-party contractors, who are neither DBS-checked nor trained in Writtle College's safeguarding protocols, inside the Equine Facility would compromise *controlled* access arrangements and undermine Writtle College's legal duty to prevent unsupervised or inappropriate contact between minors and non-vetted adults. In practice, these risks cannot be mitigated *without* removing students from the Equine Facility site entirely, which would make the delivery of DfE-funded land-based programmes impossible during the period of construction access being in place and of the resulting use of the route for construction and afterwards for maintenance for some 40 years.

9.2 Presently, in early 2026, Writtle College itself is in a state of fragile recovery, following several years of organisational turbulence that ultimately necessitated its merger with ARU. Writtle College has undergone a period of significant recovery and stabilisation. The appointment of a new Principal has been instrumental in restoring confidence across the institution, providing clear leadership, strengthening governance, and re-establishing strategic focus on high-quality land-based education. This renewed direction has contributed to an improved Ofsted outcome, signalling external validation of Writtle College's progress and reinforcing parental trust in the safety, quality, and reliability of its provision. Financial performance has also strengthened, with year-on-year improvements resulting from enhanced enrolment, improved operational efficiencies, and increased employer engagement.

9.3 The recovery of Writtle College is now positively influencing the wider land-based sector, providing skilled graduates, supporting industry partnerships, and reaffirming Writtle College's essential role in the regional, national and international workforce pipeline.

9.4 It is my opinion that the disruption or enforced closure of the Equine Facility and farm as a result of the proposed construction access *through* the Facility would result in severe and quantifiable financial consequences for the institution. These facilities underpin more than half of Writtle College's revenue base, and their loss would therefore remove income streams valued in the **tens of millions of pounds**, directly threatening Writtle College's operational stability and long-term financial viability. The financial impact is set out in more detail in the statement of James Rolfe and I support this statement, facts and figures set out therein.

9.5 The wider socio-economic implications would be substantially greater: the cessation of specialist land-based training would diminish the regional skills pipeline, adversely affecting agricultural, equine, veterinary, and land-management industries. When combined with the associated loss of employment for specialist academic and technical staff, the broader financial and social impact on the local and regional economy would extend into the **hundreds of millions**, affecting employers, supply chains, apprenticeships, and associated rural businesses. Such an outcome would undermine both regional development priorities and national objectives for growth in the land-based sector.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

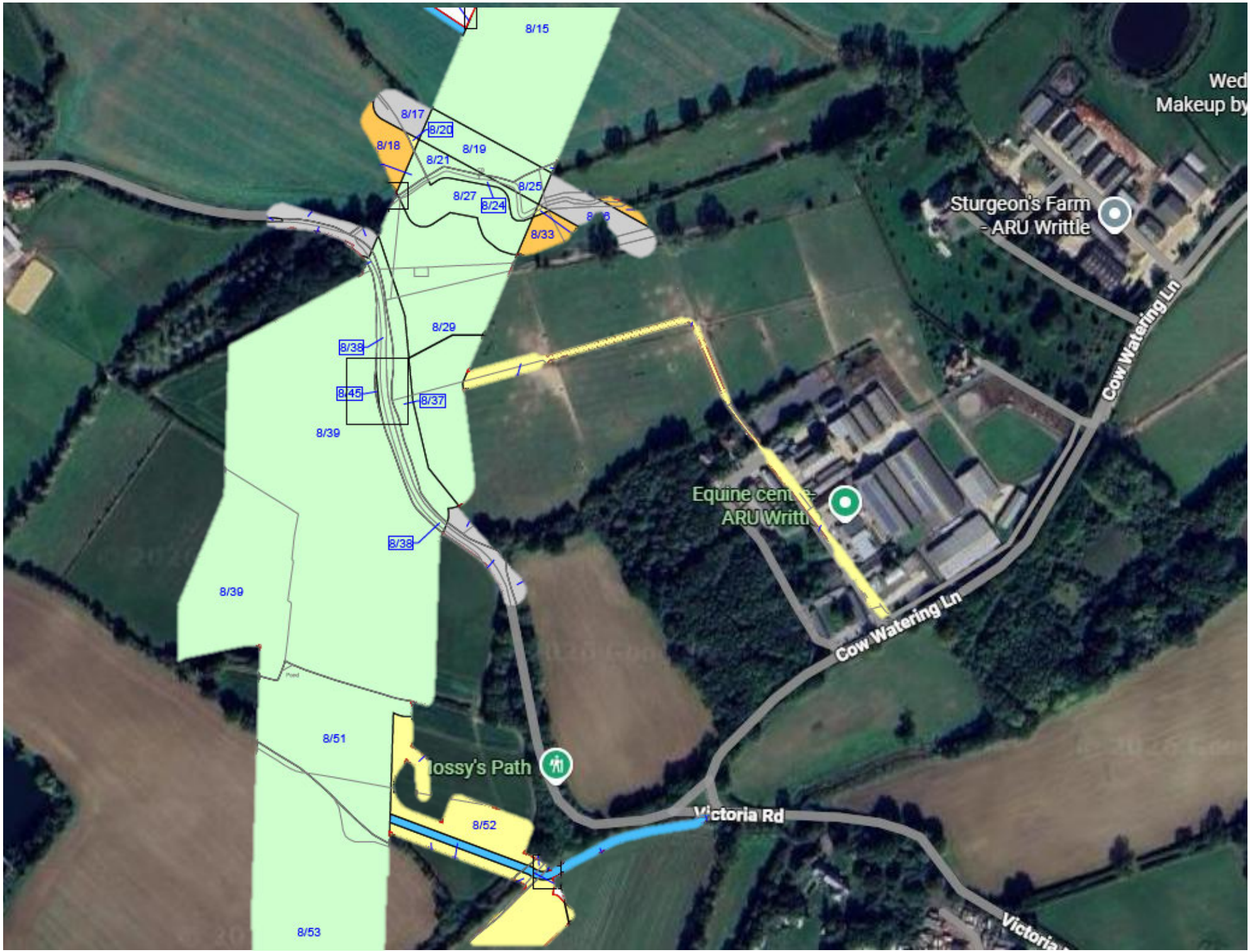
I believe that the facts stated in this Witness Statement are true.

Signed 

PHILIP GRANT

Dated 26 February 2026

EXHIBIT PG1/1


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- ARU Writtle
Cow Watering Ln
Cow Watering Ln
Victoria Rd

APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

PROFESSOR RODERICK WATKINS

On behalf:
Interested Party Reference Number: [redacted] and [redacted]

1. BACKGROUND AND QUALIFICATION

1.1 My name is Professor Roderick Watkins.

1.2 I am the Vice Chancellor and Chief Executive of Anglia Ruskin University ("**ARU**"), a role I have held since 2019.

1.3 My role requires me to have strategic oversight for ARU in all matters, including academic and operational. I also hold a number of directorships relevant to my role, including for Writtle College Limited ("**Writtle College**"), a wholly owned subsidiary of ARU.

1.4 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.5 There is now produced and shown to me a bundle of true copy documents marked "Exhibit RW1". All reference to documents in this statement are to Exhibit RW1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit RW1 in the format RW1/[x].

2. INTRODUCTION

2.1 This witness statement describes the impact of the proposed development by National Grid under the proposed National Grid (Norwich To Tilbury) Order, envisaged to authorise the construction and operation of an Electric Line Above Ground without detail and described by means of parameters and powers. I am advised by our legal team that

this would be achieved by means of a statutory instrument ("SI") called a 'Development Consent Order' (the "**DCO**"), during both the construction phase and the operation phases, including the operation phase of a new proposed access road through the ARU Writtle Campus. The DCO would result in the permanent (as in, perpetual) entitlement in favour of National Grid ("NGET") and others authorised under that DCO to pass through the ARU Writtle Campus. My evidence should be read with the other witness statements and evidence submitted by ARU.

2.2 At **RW1/1** and **RW1/2** I exhibit the HM Land Registry Title Register (backdated) and Title Plan for the ARU Writtle Campus.

2.3 I am advised by our legal team that the DCO envisages wide powers, attaching to the extent of the land outlined in red that overlaps with the ARU Writtle Campus, under Articles of the DCO including 3(1)-(8), 4(1)-(2), 17 (Access to works), 21 (Protective Works), 22 (Surveys), 24 (Compulsory acquisition of land), 25 (Compulsory Acquisition of rights), 27 (Temporary Use of Land), 29 (Temporary use of land for maintaining the authorised development), 38 (Extinguishment and suspension of private rights), 39-40, (power to override easements and other rights, and statutory authority to override easements and other rights), 48 (defence to statutory nuisance), 49 (Traffic regulation), and 56 (Safeguarding). The authorisation relates to Schedule 1, and in particular in relation to ARU, Writtle College and the ARU Writtle Campus, to Works No. 17 ("Route TB"), and the wide scope of the Associated Development including paragraph (u). ARU, Writtle College and the ARU Writtle Campus appear in Section F of the pylon route, Sheet 8 of the various Land Plans, Works Plans, and Traffic Regulation Plans ("Plans").

2.4 I understand from our legal team that a simple comparison of the Plans with the situation of the ARU Writtle Campus demonstrates the proposal or desire by National Grid for a 'dog-leg' or inverted L-shaped red outlined area extending Eastwards of the Route TB and then Southwards *through* and bisecting the operational campus of the ARU Writtle Campus before then connecting to the highway at the ARU Writtle Campus entrance. The Plans show that area coloured yellow by which National Grid desire a *permanent* right of vehicle access to entitle them in perpetuity to drive vehicles back and forth through the ARU Writtle Campus.

3. EDUCATIONAL IMPACTS RESULTING FROM THE POWERS UNDER THE DCO

3.1 ARU is not a mere local or regional education provider. ARU is a nationally important and internationally renowned education provider. ARU is proud to be a leader in education, both nationally and internationally, and encompasses Writtle College as part of its campus and education offer and services. Nationally, ARU was named Times Higher Education "University of the Year 2023" and ARU is one of the 20% of universities in the country to be awarded a gold rating in the Teaching Excellence Framework. Internationally, our world-leading research has resulted in us being awarded the Queen's Anniversary Prize for outstanding research work that delivers real public benefit. ARU

was also named University of the Year at the 2023 UK Social Mobility Awards, reflecting our longstanding commitment to widening participation and delivering opportunity at scale for students from the UK and across the world.

3.2 The research of ARU has a demonstrable global footprint. In the Research Excellence Framework 2021 we submitted in 16 subject areas; all 16 included research rated world-leading (4★), and nine achieved world-leading impact. Our four faculties and specialist research institutes span scientific, technical, health, social science and creative disciplines, delivering research that addresses real-world challenges and makes a tangible difference to the communities and industries we serve. We are also the largest regional provider of Nursing, Midwifery, Health and Social Care students, and a national leader in degree apprenticeships, working with hundreds of employers across the country to support workforce development.

3.3 In February 2024, Anglia Ruskin University merged with Writtle University College resulting in the ARU Writtle Campus not as a locally or regionally significant institution but as a nationally significant centre for land-based education, operating as a distinctive, co-located Higher Education ("**HE**") and Further Education ("**FE**") environment, on a single rural estate as one of a small number of such land-based campuses in the UK. Set within a rural estate of approximately 150-hectares with specialist land-based teaching facilities, our ARU Writtle Campus brings together university and college students, both UK and international, in one integrated learning environment. All but uniquely, this co-located HE and FE ecosystem enables students from a wide range of backgrounds to develop specialist land-based, environmental, animal and agricultural skills that are both regionally and nationally in demand. It strengthens critical workforce pipelines nationwide across food production, environmental sustainability, animal science and land management. The scale, breadth and applied nature of provision at ARU Writtle Campus mean that the Campus plays a strategic national role in training the next generation of land-based professionals. It is therefore wrong, as I am advised by my legal team to be the case, for the Environmental Impact Statement, Figure 15.2, Socio-Economic, page 37 of 45, to describe the ARU Writtle Campus in its legend as a "school"; in Table 15.14 of Document 6.15: Environmental Statement Chapter 15 – Socio-economics (August 2025), paragraph 15.5.23, Community Facilities, or to attribute ARU (or within it, Writtle College) as a "school" and I am advised by our legal team that in paragraph 15.5.24 it appears to misstate in Table 15.14 Writtle College as such a type of local "Community Facility" . It is also wrong, as I am advised by our legal team, for Table 15.14 to assert that Writtle College is "associated" with "Writtle University College". In fact, Writtle College is part and parcel of ARU and has been so for over a year in 2024 before the DCO Application was made in August 2025. By contrast, I understand that Figure 15.2 singles out the nearby "Essex International Jamboree" location to the North of the ARU Writtle Campus but fails to identify the international nature of Writtle College as part of ARU and nor have the likely significant effects of the NGET proposals over ARU's land been assessed against the correct baseline information of fact, namely that ARU is a

national and internationally important education provider and so too is its Equine Facility for the reasons given above and below.

3.4 ARU is proud of its highly diverse student body, with over 34,000 students from approximately 185 different countries. We deliver HE courses, both undergraduate ("**UG**") and post-graduate ("**PG**") to students aged 18+ across our various campuses across the East of England, including at the Equine Facility at our ARU Writtle Campus. Writtle College delivers FE courses to adults and young people aged 16-18 at the ARU Writtle Campus. In addition, at our ARU Writtle Campus we offer a range of short courses to the public to support with CPD and leisure activities and hobbies, such as a short course in horse grooming as accredited by The British Horse Society.

3.5 Given that we have *minors* in our student population at the ARU Writtle Campus, we take our statutory safeguarding responsibilities very seriously, as is detailed further in the witness statement for Joanne Wareham, Assistant Principal Safeguarding & Inclusion.

3.6 The Equine Unit at our Writtle campus is one of the leading providers of equine education in the whole of the UK, offering seventeen courses to approximately 500 students. We provide hands-on learning experiences using our extensive equine facilities (including three large indoor riding arenas, four therapy barns, a floodlit ménage, water treadmill and solarium and a mechanical horse), taught by industry experts. Our ARU Writtle Campus also benefits from strong links with industry partners, including leading studs and associations including the International Association of Animal Behaviour Consultants (IAABC) and the Register of Animal Musculoskeletal Practitioners (RAMP). We are also accredited by the British Horse Society (BHS) as a training facility, livery yard, and examination centre. In addition, we are accredited by the National Equine Welfare Council (NEWC) and by Chelmsford City Council under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (hiring out horses).

3.7 The paucity of information that has been provided by the National Grid to date, coupled with the absence of any evidence of a contract or detail for the content of the DCO and its outline nature means that we are not able to determine the extent of the impact that this would have on our business in light of the merely illustrative Project Programme which I am advised by our legal team is as per Image 4.1, at page 38 of Document 6.4, Project Description. Nevertheless, I am clear that its impact on the ARU Writtle Campus would be demonstrably adverse and significantly so in terms of its practical damage to our course provision, actual risks to our students, staff and animals, foreseeable potential breaches of our statutory regulatory and legal requirements. Moreover, it would have significant financial impact on our business that would have the practical consequence of reducing the courses that we can offer to students and so resulting in significant harm to the provision of education by ARU and Writtle College at the ARU Writtle Campus. The following are the key reasons why the access route cannot pass through the ARU Writtle Campus as proposed by National Grid.

4. IMPACTS/ISSUES DURING CONSTRUCTION

4.1 Issues that would be caused during the construction phase:

4.1.1 Risks in terms of our ability to run our courses in their current form. Key reasons include:

4.1.1.1 As the witness statement of Elizabeth Craig describes in more detail, were National Grid to be authorised in perpetuity to utilise the route outlined in red for construction access and for maintenance access, ARU and Writtle College will have no option other than to suspend teaching and then to cancel courses, resulting in significant financial impact, not simply during the (merely illustrated) period of construction but for the entire academic year as we would not be able to *commence* courses during that academic and *subsequent* years pending conclusion of the works that National Grid desires access to and from. Such access provisions as proposed would also significantly disrupt courses that have already commenced, resulting in significant practical and financial impact, as would the practical damage to our reputation. Indeed, ARU and Writtle College do not have other equine facilities available to which to relocate the current operation elsewhere on the ARU Writtle Campus and nor is there an alternative safe, separate route on our landholding available to offer to nor by National Grid. Due to the suspension of courses each side of the construction period we would also run the very real risk of losing its current staff as they will move elsewhere and students will be forced to go to other HE and FE providers. ARU would therefore lose its standing in this area of education, and it would take a very considerable time to rebuild the stature of the courses currently offered.

4.1.1.2 As is explained in more detail in the witness statement of Daniel Cook, hands-on assessments and clinical exams cannot be delivered safely under the National Grid's current plans which are devoid of detail, of content, and of any development agreement or contract evidencing by whom the Route TB will be built and when nor how the Route would be operated and maintained. ARU is therefore left guessing by National Grid's proposals as applied for in August 2025. This means that unless the National Grid's desired outline plans are amended to exclude the L-shaped are outlined in red from ARU's land, our educational delivery and related activities would be placed at significant risk as outlined

above, including at risk of regulatory non-compliance with external third parties bodies such as our regulator, the Office for Students ("**OfS**") and the Department for Education ("**DfE**").

4.1.2 Risks to our students in terms of safeguarding, health and safety and student experience are real and profound, as described in more detail in the witness statements from our student Isabella Taylor and from Joanne Wareham and Mark Saunders, as well as risks to our 90 horses. Key reasons include:

4.1.2.1 As described in more detail in Joanne Wareham's witness statement, external contractor access by National Grid vehicles, plant machinery, or maintenance teams actually *through* the ARU Writtle College campus would significantly disrupt established student movement routes, increase traffic in an area where students work closely with horses, and introduce unfamiliar adults and heavy equipment into what is currently a controlled learning space. This disruption presents a safety hazard to our students as well as to our animals (as detailed further in the witness statements of Daniel Cook and Isabella Taylor). In summary, National Grid access to this specialist area would not simply be an 'operational inconvenience' (as I am advised by my legal team appears to be inferred by Table 15.14, Table 15.21, and Table 15.27 of Chapter 15 of the Environmental Statement as implied by its assertion that there would be no "minor adverse and not significant [effect]"), but would significantly adversely compromise the controlled, therapeutic learning environment required to meet the statutory obligations set out in students' EHCPs and our safeguarding duties under *Keeping Children Safe in Education* and result in a demonstrably significant adverse effect on ARU, Writtle College and the ARU Writtle Campus.

4.1.2.2 As described in more detail in Philip Grant's witness statement, due to the high risk nature of the curriculum delivery, which often entails working closely with horses, cattle, farm machinery and chainsaws as part of their curriculum, health and safety for the students and staff is paramount. Further, due to the nature of the courses and animals used, and due to the vulnerable nature of many of our students, any operational or construction works *inside* the Equine Facility site or farm on our ARU Writtle Campus would have a devastating effect on the health and safety and wellbeing of our students and consequently would significantly impact their student and their learning experience.

This in turn would have an impact on parent and industry confidence which is vital during the recovery phase following our merger. As has been described above, the proposal for the area outlined in red over the ARU Writtle Campus of ARU would be significantly adverse and result in a demonstrable significant effect on ARU and the ARU Writtle Campus.

4.1.2.3 As described in more detail in Elizabeth Craig's statement, providing horses with a calm environment in a field of grass is vital for their wellbeing otherwise they become stressed and in this event foreseeably become difficult to handle which in turn could cause health and safety issues (including the risk of injuries to students, lecturers and the horses themselves). In addition, the chances of a collision with our students, staff or animals are increased significantly if construction and operational maintenance vehicles are actually travelling through our site. As has been described above, the proposal for the area outlined in red over the ARU Writtle Campus of ARU would be significantly adverse and would result in a demonstrably significant adverse effect on ARU, Writtle College and the ARU Writtle Campus.

4.1.3 The National Grid's DCO proposal to include the area outlined in red for access through the ARU Writtle Campus would result in ARU and Writtle College being at risk of materially breaching legislation including:

4.1.3.1 The Health and Safety at Work etc Act 1974, duty to ensure so far as is reasonably practicable the safety of employees, students, contractors and visitors, as detailed in Mark Saunders' witness statement; and

4.1.3.2 Animal Welfare Act 2006 and the DEFRA Code of Practice for horses, ponies, donkeys and their hybrids, and we would not be able to adhere to relevant professional standards, such as British Horse Society best practice, as detailed in Daniel Cook's witness statement.

4.1.4 The impact on our campus and facilities is as more detailed in Elizabeth Craig's Witness Statement. The existence of an access road as currently proposed would bisect our landholding, which would in turn preclude or render unfeasible future redevelopment of that area. Whilst there is an existing road and track leading in part to the area which National Grid is seeking to access, it appears there has been no regard taken to date by National Grid, in its Environmental Statement or at all, as to our ability to continue to *safely* deliver teaching on this campus, nor on the perpetual

impact this will have on our land holding at the ARU Writtle Campus as a permanent access in favour of National Grid (and third party beneficiaries).

4.1.5 The financial impact on our business would be significant, as per the statement from James Rolfe.

5. IMPACTS/ISSUES DURING OPERATION

5.1 Regarding issues that would be caused during the operation phases:

5.1.1 All of the issues as detailed above would remain live issues *in perpetuity* during the operation phases as I understand the DCO would continue to authorise National Grid (and third parties under the DCO) to be able to access *through* our operational site and without any notice to us for maintenance purposes. Therefore, National Grid's desired rights in perpetuity means that these significant risks and resulting practical and financial losses would remain for us in perpetuity.

6. CONCLUSION

6.1 In light of all of the issues above, if National Grid's proposed development plans were to authorised in their current form then we would have no choice but to seek to cease operation of our equine provision at the ARU Writtle Campus, to consider whether it was feasible to relocate the Equine Centre elsewhere which would require detailed consideration as to whether that would be possible for all of the reasons set out above. The result would be significant disruption to our education course delivery, students, staff and animals, resulting in practical, reputational and financial damage to our business that is likely to amount to tens of millions.

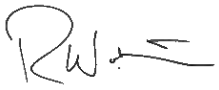
6.2 In summary, our ARU Writtle Campus is a most rare, co-located HE and FE land-based campus serving students from across the UK and internationally, with a curriculum and research portfolio dependent on live animals, working landscapes and predictable outdoor environments. National Grid's proposal for the operation of a new proposed access road through our ARU Writtle Campus would inhibit and constrain our ability to protect our students, staff and animals, as well as to maintain required safe and predictable learning environments and to sustain applied research and knowledge exchange both the construction phase and the operation phases. We urge the Secretary of State to consider the full implications of the current route for mere access and maintenance are recognised, and that every reasonable step is taken to protect the nationally significant educational and research ecosystem of ARU and Writtle College by ceasing the proposal for the provision inside of the red outlined area of the land to which

the DCO would relate in perpetuity of a new proposed but ultimately *merely convenient* access road through our ARU Writtle Campus by National Grid.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.



Signed ……

Professor Roderick Watkins

Dated 26.2.2026……..

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EXHIBIT RW1/1

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Applications are pending in HM Land Registry, which have not been completed against this title.

Official copy of register of title

Title number EX768800 | Edition date 15.03.2024

- This official copy shows the entries on the register of title on 01 JUL 2025 at 14:31:44.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 25 Feb 2026.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Peterborough Office.

A: Property Register

This register describes the land and estate comprised in the title.

ESSEX : CHELMSFORD

1 (06.06.2006) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Writtle University College, Lordship Road, Writtle, Chelmsford (CM1 3RR).

NOTE: The land tinted green on the title plan is not included in this title.

2 (06.06.2006) The mines beds and quarries of coal and ironstone and other metals and minerals (other than gravel) and mineral oil within and under the lands hereby conveyed other than the land edged and numbered 3 and 4 in blue together with ancillary powers of working are excepted with provision for compensation in the event of damage caused thereby.

3 (06.06.2006) The Conveyance dated 29 September 1936 referred to in the Charges Register contains the following provision:-

"Together with the fences on the east and west sides thereof".

NOTE: The above provision refers to the land tinted pink on the title plan.

4 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 28 Lawford lane dated 11 August 1999 made between (1) Writtle Agricultural College (Transferor) and (2) Alistair Paul Carden and Jane Elizabeth Collins (Transferees).

NOTE: Copy filed under EX624557.

5 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 21 Lordship Road dated 26 November 1999 made between (1) Writtle Agricultural College Higher Education Corporation (Transferor) and (2) Deborah Ann Wicks and Paul David Parkinson (Transferees).

NOTE: Copy filed under EX632162.

6 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 41 Back Road dated 14 January 2000 made between (1) Writtle Agricultural College Higher

A: Property Register continued

Education Corporation (Transferor) and (2) Kenneth Hoyle and Dawn Irene Hoyle (Transferees).

NOTE: Copy filed.

7 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 39 Back Road dated 25 February 2000 made between (1) Writtle Agricultural College Higher Education Corporation (Transferor) and (2) Timothy Charles Whitaker and Claire Louise Whitaker (Transferees).

NOTE: Copy filed under EX639742.

8 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 19 Lordship Road dated 19 January 2001 made between (1) Writtle Agricultural College Higher Education Corporation (Transferor) and (2) Andrew Donald Haslock and Melanie Campbell Haslock (Transferees).

NOTE: Copy filed under EX669557.

9 (06.06.2006) The land has the benefit of the rights reserved but is subject to the rights granted by a Transfer of Orchard House, Cow Watering Lane dated 8 November 2001 made between (1) Writtle Agricultural College Education Corporation and (2) John Maxwell Turner and Margot Anne Turner.

NOTE: Copy filed under EX673434.

10 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of 80 Victoria Road dated 30 November 2001 made between (1) Writtle Agricultural College Higher Education Corporation (Transferor) and (2) Dafydd Wyn Morgan (Transferee).

NOTE: Copy filed under EX675438.

11 (06.06.2006) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of land forming of part of 34 Mayfield Road dated 11 October 2002 made between (1) Writtle Agricultural College Higher Education Corporation (Transferor) and (2) John Thomas Clark and Margaret Louise Clark (Transferees).

NOTE: Copy filed.

12 (01.10.2007) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

13 (01.10.2007) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged and numbered EX802162 in green on the title plan and other land dated 27 April 2007 made between (1) Writtle Agricultural College and (2) Philip Lionel Thorpe-Apps and Angela Irene Thorpe-Apps.

NOTE: Copy filed under EX802162.

14 (04.08.2008) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land of the land edged and numbered EX818957 in green on the title plan dated 10 July 2008 made between (1) Writtle Agricultural College and (2) John Ivor Gardner and Gail Marie Gardner.

NOTE: Copy filed under EX818957.

15 (04.02.2011) The land has the benefit of the rights reserved by a Transfer of the land edged and numbered EX861726 in green on the title plan dated 12 January 2011 made between (1) Writtle Agricultural College and (2) Ross Andrew Stonehouse and Emma Jayne Stonehouse.

NOTE: Copy filed under EX861726.

16 (04.02.2011) The Transfer dated 12 January 2011 referred to above contains a provision as to boundary structures.

A: Property Register continued

17 (09.09.2011) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer which included the land edged and numbered EX869970 in green on the title plan dated 31 May 2011 made between (1) Writtle Agricultural College and (2) Stuart James Gray and Rachel Edith Gray.

NOTE: Copy filed under EX869970.

18 (11.04.2012) The title plan extent has been amended to include land adjoining 19 Lordship Road so far as it affects the land in this title.

19 (26.04.2012) The title plan extent has been amended to exclude land adjoining 80 Back Road so far as it affects the land in this title.

20 (01.04.2014) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

21 (21.12.2016) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered EX947769 in green on the title plan dated 15 December 2016 made between (1) Writtle Agricultural College and (2) Stephen Hilary Underwood and Nicola Jane Underwood but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under EX947769.

22 (16.01.2017) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered EX948888 in green on the title plan dated 15 December 2016 made between (1) Writtle Agricultural College and (2) John Michael MacNamara and Emma Clare MacNamara but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under EX948888.

23 (15.02.2017) The land has the benefit of any legal easements reserved by the Transfer dated 7 February 2017 referred to in the Charges Register but is subject to any rights that are granted by the said deed and affect the registered land.

24 (18.12.2017) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered EX964306 in green on the title plan dated 1 December 2017 made between (1) Writtle Agricultural College and (2) Barry John Clayden and Katharine Joy Clayden but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under EX964306.

25 (07.08.2019) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA831 in green on the title plan dated 30 July 2019 made between (1) Writtle University College and (2) Dr Angela Margaret Murphy-Thomas and Alwyn Daniel Thomas.

NOTE: Copy filed under AA831.

26 (18.08.2020) The land has the benefit of any legal easements reserved by the Transfer dated 4 August 2020 referred to in the Charges Register but is subject to any rights that are granted in the said deed and affect the registered land.

27 (12.02.2021) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA22683 in green on the title plan dated 30 July 2019 made between (1) Writtle University College and (2) John Michael MacNamara and Emma Clare MacNamara.

NOTE: Copy filed under AA22683.

28 (27.01.2022) The land has the benefit of any legal easements reserved by a Transfer of 1 Lordship Cottages dated 22 June 2021 made between (1) Writtle University College and (2) Paul John Tuckey and Victoria Anderson but is subject to any rights that are granted in the said deed and affect the registered land.

A: Property Register continued

NOTE: Copy filed under AA37780.

29 (28.01.2022) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA37871 in green on the title plan dated 19 August 2021 made between (1) Writtle University College and (2) Thatchers Farm Limited but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE:-Copy filed under AA37871.

30 (28.01.2022) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA37872 in green on the title plan dated 24 January 2020 made between (1) Writtle University College and (2) Thatchers Farm Limited but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE:-Copy filed under AA37872.

31 (11.04.2022) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA41015 in green on the title plan dated 5 September 2019 made between (1) Writtle University College and (2) Margaret Ann Vitorino.

NOTE: Copy filed under AA41015.

32 (28.06.2022) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA44205 in green on the title plan dated 23 June 2022 made between (1) Writtle University College and (2) Kathryn Mary Leech.

NOTE: Copy filed under AA44205.

33 (28.07.2022) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA45487 in green on the title plan dated 18 June 2021 made between (1) Writtle University College and (2) James Ernest Bailey but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA45487.

34 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62427 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Stephen John Dix and Julie Mary Baker but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62427.

35 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62428 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Anthony Neville Fry and Jennifer Marjorie Fry but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62428.

36 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62429 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Matthew Selt and Jessica Jane Selt but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62429.

37 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62430 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Mark Daniel Jones and Emma Louise Jones but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62430.

A: Property Register continued

38 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62431 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Daniel Paul Attwood and Catherine Ann Attwood but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62431.

39 (19.09.2023) The land has the benefit of any legal easements reserved by a Transfer of the land edged and numbered AA62432 in green on the title plan dated 8 August 2023 made between (1) Writtle University College and (2) Lyndsay Margaret Waring but is subject to any rights that are granted by the said deed and affect the registered land.

NOTE: Copy filed under AA62432.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (05.03.2024) PROPRIETOR: ANGLIA RUSKIN UNIVERSITY HIGHER EDUCATION CORPORATION of A R U, Bishop Hall Lane, Chelmsford CM1 1SQ.

2 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured yellow on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above Baroness Platt referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989457 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 12 April 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

3 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured brown on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above Northumberland Labs referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989460 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 12 April 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

4 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured maroon on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof of R90 Indoor Tempo Arena referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989461 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 21 July 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

5 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured maroon on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above R91 Large Indoor Area referred to in the Charges Register by the proprietor of

B: Proprietorship Register continued

the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989463 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 21 July 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

6 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured brown on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above Science Building referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989468 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 12 April 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

7 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured blue on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above Sturgeons Farm, Cow Watering Lane referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989479 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 12 April 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

8 (13.01.2022) RESTRICTION: No disposition of the registered estate in the land coloured green on the Further Supplemental Plan attached to the Deed of Variation dated 13 January 2022 of the Airspace extending vertically 5 metres above the portion of the roof above Titchmarsh 1 and Titchmarsh 2, Cow Watering Lane referred to in the Charges Register by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number EX989484 or their conveyancer that the provisions of clause 5.4 of the lease thereof dated 12 April 2017 referred to in the Schedule of Notices of Leases (as varied by the Deed of Variation thereof dated 13 January 2022 referred to in the Charges Register) have been complied with or that they do not apply to the disposition.

9 (21.09.2022) RESTRICTION: No disposition of the part of the registered estate edged red on the plan to the RX1 by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge reistered before the entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of clause 4.2(b) of a Promotion and Option Agreement dated 28 July 2022 made between (1) Writtle University College, (2) Endurance Estates Land Promotion (Writtle) Limited and (3) Endurance Estates Land Promotion Limited have been complied with or that they do not apply to the disposition.

NOTE: Copy RX1 and plan filed under EX607883.

10 (05.03.2024) The value as at 5 March 2024 for the land in this title and EX781273, EX607883 and EX555755 was stated to be over £1,000,000.

11 (05.03.2024) A transfer of the land in this title and other land dated 29 February 2024 contains positive and/or indemnity covenants.

NOTE: Copy filed under EX555755.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 (06.06.2006) A Conveyance of the land tinted mauve on the title plan and other land dated 28 March 1923 made between (1) The Writtle Brewery Company Limited (Vendor) and (2) George Knowles (Purchaser) contains the following covenants:-

"And the Purchaser for himself his heirs executors administrators and assigns that he the Purchaser will not at any future time permit the premises hereby conveyed or any building now or hereafter to be erected thereon to be used as a Licensed Public House or club in which any intoxicating liquor shall be supplied to members or their guests or in any way for the manufacture or for the sale of wines beers spirits or any intoxicating liquors to be sold by retail for consumption either on or off the premises"

2 (06.06.2006) By a Conveyance of the land in this title and other land dated 29 September 1936 made between (1) George Knowles Of Lordships Writtle In The County Of Essex Farmer (Vendor) and (2) The County Council Of The Administritive County Of Essex (Purchaser) the land was conveyed subject as follows:-

"subject (a) as to the property first hereinbefore conveyed to the right of the Chelmsford Rural District to enter upon the field Number 829 on the said plan to open the ground for the purposes of their drain and manhole as shown by a red line on the said plan".

NOTE 1: The land in this title forms part of the property first hereinbefore conveyed referred to above.

NOTE 2: Field number 829 referred to above is tinted yellow on the title plan.

NOTE 3: The red line showing the drain referred to above is shown by a blue broken line and the position of the manhole has been reproduced in blue on the title plan.

3 (06.06.2006) The land is subject to the rights granted by a Deed of Grant dated 20 April 1971 made between (1) The County Council Of Essex and (2) The Gas Council.

NOTE: Copy filed.

4 (06.06.2006) The land is subject to the rights granted by a Deed of Grant dated 3 February 1984 made between (1) Essex County Council and (2) Essex Water Company.

NOTE: Copy filed

5 (06.06.2006) The land is subject to the rights granted by a Deed of Grant dated 29 April 2002 made between (1) Writtle Agricultural College Higher Education Corporation and (2) Norman Donald Print.

NOTE: Copy filed under EX682656.

6 (06.06.2006) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

7 (15.02.2017) A Transfer of the land edged and numbered EX950408 in green on the title plan dated 7 February 2017 made between (1) Writtle Agricultural College Higher Education Corporation and (2) R W Crawford Agricultural Machinery Limited contains restrictive covenants by the Transferor.

NOTE: Copy filed under EX950408.

8 (19.12.2017) The land is subject to any rights that are granted by a Transfer of the land edged and numbered EX964329 in green on the title plan dated 11 December 2017 made between (1) Writtle Agricultural College and (2) Stonebond Properties Limited and affect the registered land.

NOTE: Copy filed under EX964329.

9 (15.05.2019) The lease of airspace at Baroness Platt, Writtle University dated 12 April 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

C: Charges Register continued

10 (15.05.2019) The lease of airspace at Northumberland Labs, Writtle University College dated 12 April 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

11 (15.05.2019) The lease of airspace at R90 Indoor Tempo Arena, Writtle University College dated 21 July 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

12 (15.05.2019) The lease of airspace at R91 Large Indoor Arena, Writtle University College dated 21 July 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

13 (15.05.2019) The lease of airspace at Science Building, Writtle University College dated 12 April 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

14 (15.05.2019) The lease of airspace at Sturgeons Farm, Cow Watering Lane dated 12 April 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

15 (15.05.2019) The lease of airspace at Titchmarsh 1 and Titchmarsh 2, Cow Watering Lane dated 12 April 2017 made between (1) Writtle University College and (2) Green Nation Energy Limited referred to in the schedule of leases hereto contains restrictive covenants by the landlord.

16 (18.08.2020) A Transfer of the land edged and numbered AA16084 in green on the title plan dated 4 August 2020 made between (1) Writtle University College and (2) R W Crawford Agricultural Machinery Limited contains restrictive covenants by the transferor.

NOTE: Copy filed under AA16084.

17 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof of Baroness Platt dated 12 April 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

18 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof of Northumberland Labs dated 12 April 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

19 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof of R90 Indoor Tempo Arena dated 21 July 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

20 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof of the R91 Large Indoor Arena dated 21 July 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

21 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle

C: Charges Register continued

University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof of Science Building dated 12 April 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

22 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above buildings at Sturgeons Farm dated 12 April 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

23 (01.02.2021) By a Deed dated 29 January 2021 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease of the airspace above the roof at Titchmarsh 1 and Titchmarsh 2 dated 12 April 2017 referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed.

24 (24.05.2021) By a Deed dated 2 October 2020 made between (1) Writtle University College and (2) Wilkin and Sons Limited the terms of the lease dated 26 September 2011 of Tea Rooms referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX871704.

25 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 12 April 2017 of Airspace extending vertically 5 metres above the portion of the roof of Baroness Platt referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

26 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 12 April 2017 of Airspace extending vertically 5 metres above the portion of the roof of Northumberland Labs referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

27 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 21 July 2017 of Airspace extending vertically 5 metres above the portion of the roof of R90 Indoor Tempo Arena referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

28 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 21 July 2017 of Airspace extending vertically 5 metres above the portion of the roof of R91 Large Indoor Arena referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

29 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 12 April 2017 of Airspace extending vertically 5 metres above the portion of the roof of Science Building referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

30 (13.01.2022) (By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 12 April 2017 of Airspace extending vertically 5 metres above the portion of the roof of Sturgeons Farm, Cow Watering Lane referred to in the schedule of leases hereto were varied.

C: Charges Register continued

NOTE: Copy Deed filed under EX768800.

31 (13.01.2022) By a Deed dated 13 January 2022 made between (1) Writtle University College and (2) Stellar Sixth (Green Nation) Partnership the terms of the lease dated 12 April 2017 of Airspace extending vertically 5 metres above the portion of the roof of Titchmarsh 1 and Titchmarsh 2, Cow Watering Lane referred to in the schedule of leases hereto were varied.

NOTE: Copy Deed filed under EX768800.

Schedule of notices of leases

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
1	06.06.2006 edged and numbered 1 in mauve	14 Fox Burrows Lane	20.04.2001 50 years from 20 April 2001	EX663190
2	31.10.2011 Edged and numbered 3 in mauve (NSE)	Tea Rooms, Writtle College	26.09.2011 from and including 26/9/2011 ending and including 25/9/2021	EX871704

NOTE 1: The Lease dated 26 September 2011 referred to above has been determined as the land part shown edged and lettered X in green on the title plan

NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 2 October 2020

3	15.05.2019 Edged and Numbered 4 in mauve (Part of)	Airspace extending vertically 5 metres above the portion of the roof of Baroness Platt as more particularly described in the lease	12.04.2017 25 years and 6 months commencing on 12 April 2017	EX989457

NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants

NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021

NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022.

4	15.05.2019 Edged and numbered 5 in mauve (part of)	Airspace extending vertically 5 metres above the portion of the roof of Northumberland Labs as more particularly described in the lease	12.04.2017 25 years and 6 months commencing on 12 April 2017	EX989460

NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants

NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021

NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022

5	15.05.2019 Edged and numbered 6 in mauve (part of)	Airspace above the roof of R90 Indoor Tempo Arena	21.07.2017 25 years and 6 months from 21 July 2017	EX989461

Schedule of notices of leases continued

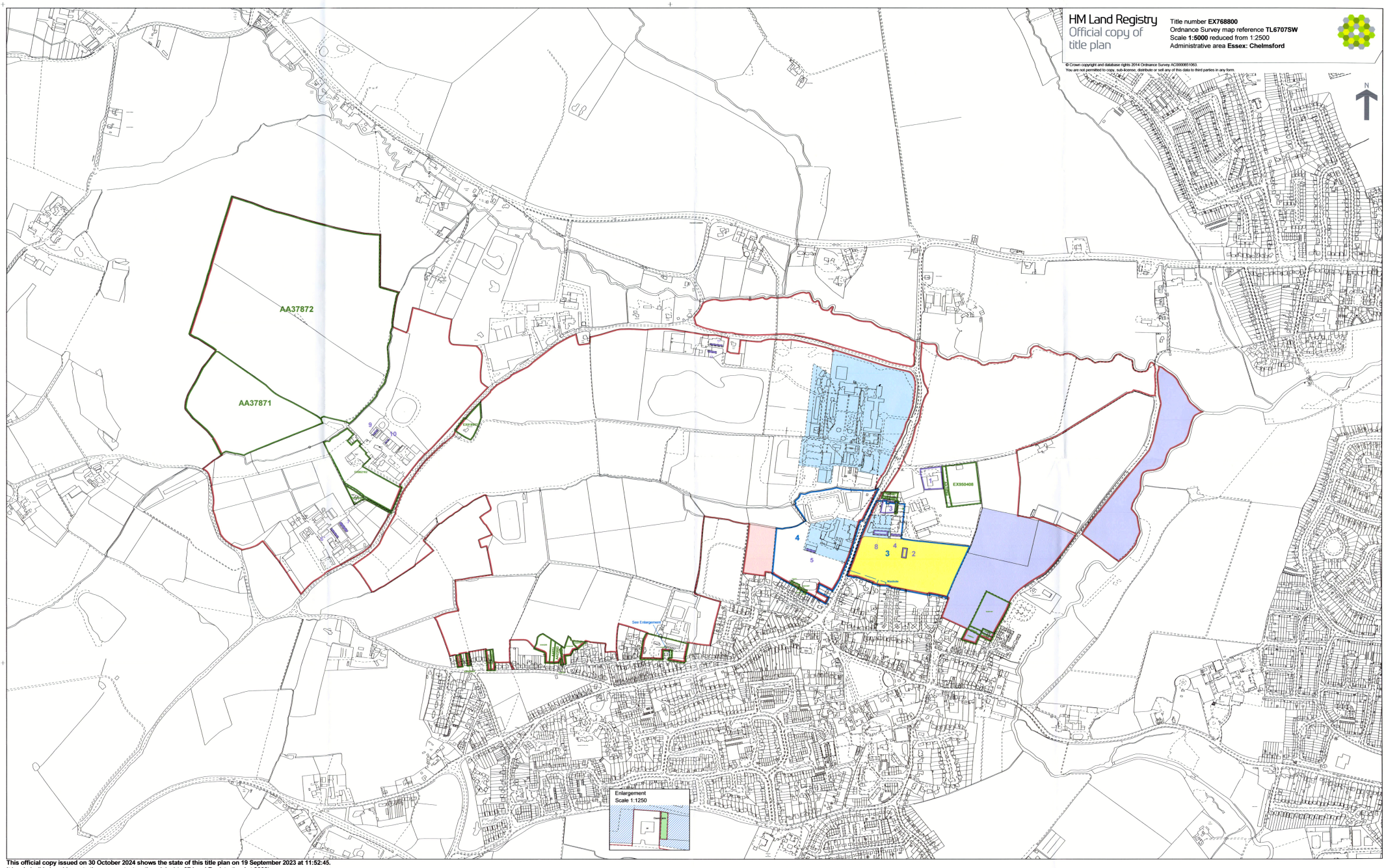
	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
	NOTE 1: See entry in the Charges Register relating to the landlords restrictive covenants NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021 NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022			
6	15.05.2019 Edged and numbered 7 in mauve (part of)	airspace extending vertically 5 metres above the portion of the roof of R91 Large Indoor Arena, Cow Watering Lane	21.07.2017 25 years and 6 months commencing on 21 July 2017	EX989463
	NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021 NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022			
7	15.05.2019 Edged and numbered 8 in mauve (part of)	airspace extending vertically 5 metres above the portion of the roof of Science Building, Writtle University College	12.04.2017 25 years and 6 months commencing on 12 April 2017	EX989468
	NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021 NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022			
8	15.05.2019 Edged and numbered 9 and 10 in mauve	airspace extending vertically 5 metres above the portion of the roof of buildings at Sturgeons Farm, Cow Watering Lane	12.04.2017 25 years and 6 months commencing on 12 April 2017	EX989479
	NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021 NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022			
9	15.05.2019 Edged and numbered 11 and 12 in mauve	Airspace extending vertically 5 metres above the portion of the roof of Titchmarsh 1 and Titchmarsh 2, Cow Watering Lane as more particularly described in the lease	12.04.2017 25 years and 6 months commencing on 12 April 2017	EX989484
	NOTE 1: See entry in the Charges Register relating to landlord's restrictive covenants NOTE 2: See entry in the Charges Register relating to a Deed of Variation dated 29 January 2021 NOTE 3: See entry in the Charges Register relating to a Deed of Variation dated 13 January 2022			
10	15.03.2024 Edged and	Telemetry Outstation, Writtle College	28.02.2024 21 years from	AA68861

Schedule of notices of leases continued

Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
numbered 2 in mauve		and including 16 November 2021 to and including 15 November 2042	

End of register

EXHIBIT RW1/2



This official copy issued on 30 October 2024 shows the state of this title plan on 19 September 2023 at 11:52:45.
It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

JOANNE WAREHAM

On behalf:
Interested Party Reference Numbers: NTOT-AFP2247 and F1201D06F

1. BACKGROUND AND QUALIFICATION

1.1 My name is Joanne Wareham.

1.2 I am Assistant Principal Safeguarding & Inclusion (DSL) for Anglia Ruskin University ("**ARU**") at Writtle College. My role involves strategic and operational leadership to ensure the safety, wellbeing and inclusion of all students. I oversee safeguarding practice, statutory compliance and lead on child protections cases. I also act as the key liaison with external agencies. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.3 There is now produced and shown to me a bundle of true copy documents marked "Exhibit JW1". All reference to documents in this statement are to Exhibit JW1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit JW1 in the format JW1/[x].

2. IMPACTS FROM THE DCO ON SAFEGUARDING

2.1 We are proud to be an inclusive educational establishment, delivering Higher Education ("**HE**") courses to students aged 18+ across our various campuses, including at our ARU Writtle Campus. Writtle College Limited ("**Writtle College**"), a wholly owned subsidiary of ARU, also delivers Further Education ("**FE**") courses (i.e. to students aged 16 to 18) at the ARU Writtle Campus alongside Higher Education delivered by ARU also at the Equine Facility. That Facility is an establishment for the purposes of the Safeguarding

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Vulnerable Groups Act 2006 and a college for the purposes of Further and Higher Education Act 1992. Colleges and their staff are an important part of the wider safeguarding system for children. Safeguarding and promoting the welfare of children is everyone's responsibility. The plan attached at **JW1/1** shows, shaded blue, the extent of the land of ARU that is subject to the statutory safeguarding requirements. It can be seen from that Plan that National Grid propose to site overhead cables over that blue shaded area, and propose in some way to construct those cables (and potentially pylons) via an access *through* the blue shaded area from the highway at Cow Watering Lane.

2.2 We are proud of our strong track record for safeguarding in dealing with young and vulnerable people. This was reflected in our positive Ofsted outcome in 2025 which recognised the effectiveness of our safeguarding culture and practice. In addition, a recent Single Central Record audit conducted by KPM provided further assurance regarding our compliance and safer recruitment processes.

2.3 In line with the Safeguarding Vulnerable Groups Act 2006, and pursuant to section 175 of the Education Act 2002 (as amended), "Keeping Children Safe in Education" is statutory guidance that places obligations on Writtle College, as a provider of further education courses to children as part of ARU's education function, to safeguard children from harm by third parties. To ensure that we can maintain our high safeguarding standards, we have strict policies in place. This includes that we require any staff member, visitor or contractor who comes on site to our ARU Writtle Campus to carry out works on our behalf must first have an enhanced Disclosure and Barring Service (DBS) check in place; in the absence of that they are not permitted to be on our site without being escorted by a member of our staff who has an enhanced DBS check in place. Accordingly, in order that we can comply with our safeguarding requirements, we would not be able to permit the contractors for National Grid onto our ARU Writtle Campus without them having enhanced DBS checks in place for all of their contractors.

2.4 The proposed access arrangements for National Grid to the equine provision on the ARU Writtle Campus present a significant safeguarding and student wellbeing risk in themselves and are a very real concern. The Equine Facility area of the Campus supports a high proportion of young people with additional and often also those with complex needs, including those young people with Social, Emotional and Mental Health (SEMH) needs and students with Education, Health and Care Plans (EHCPs).

2.5 SEMH refers to identified difficulties that affect a young person's emotional regulation, resilience, behaviour and ability to manage social situations safely and effectively. This is considered when we accept a student and if we can manage need and predicted day to day changes.

2.6 EHCPs are statutory plans issued by a local authority which set out a student's assessed special educational needs and the provision required to meet them. Many of our students in this provision have "declared needs", meaning their additional needs are formally

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recorded and recognised through SEND processes. Examples include autism spectrum condition, anxiety disorders, trauma-related needs, ADHD, sensory processing difficulties, moderate learning difficulties, and speech and language needs.

2.7 The learning environment at the ARU Writtle Campus of the Equine Facility is carefully risk-assessed and structured to provide predictable routines, safe movement, and regulated access points to ensure both physical and emotional safety. External contractor access by National Grid vehicles, plant machinery, or over some 40 years access through the Facility for maintenance teams would disrupt established student movement routes, increase traffic in an area where students work physically closely with horses, and introduce unfamiliar adults, unfamiliar vehicles (whether large or small) and heavy equipment into what is currently a controlled learning space across the whole Facility.

2.8 Such foreseeable disruption described above presents a safety hazard: there is a herd of 90 horses at the Equine Facility and horses are highly sensitive to noise and sudden movement, to unexpected mechanical noise, to vibration, and to overhead cable works during construction or maintenance phases and these circumstances are likely to startle the animals, increasing the risk of actual injury to students. In addition, many of our vulnerable learners experience heightened sensory sensitivity and anxiety: construction noise, visual disruption from overhead pylon activity, and unpredictable site access are likely to significantly dysregulate students, trigger distress, and negatively impact their attendance, their engagement and their behaviour. For students with SEMH needs in particular, increased anxiety and perceived lack of safety can also lead to escalation, to their withdrawal, and to crisis behaviours, directly undermining both safeguarding arrangements and educational progress in relation to our students.

2.9 In addition, the potential use by National Grid of drones over the land of the Equine Facility presents safeguarding concerns and real issues for Writtle College, and by extension ARU, also. I understand that National Grid has evidenced in paragraph 4.10.4 of the Project Description (Document 6.4): "*National Grid also has a fleet of drones, which allows inspections of parts of the transmission network that are more difficult or costly to reach*" and so could choose to use its drones with recordings by which to view its installed cables if these were to be situated over the Equine Facility. These drones could capture images of our students: children. The solution to avoiding important and relevant safeguarding issues resulting from photography or videoing of children in this respect would be to exclude the overhead cable lines from traversing Facility land by ensuring they pass farther to the West, over third party land and over which drones could fly.

3. CONCLUSION

3.1 In summary, National Grid's proposed construction access route, and maintenance route over 40 years, *through* the Equine Facility of our Writtle Campus would not simply be an operational inconvenience but would materially and significantly adversely compromise the controlled, therapeutic learning environment required to meet the statutory

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obligations set out in students' EHCPs and our safeguarding duties under "Keeping Children Safe in Education". The impact would be both physical (increased risk around animals and vehicle movement) and psychological (heightened anxiety, sensory overload, and emotional dysregulation), significantly affecting student wellbeing and safety. I note that the National Grid Environmental Statement includes no assessment of the foregoing likely significant adverse effect on the functioning of our Writtle Campus.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed [redacted]

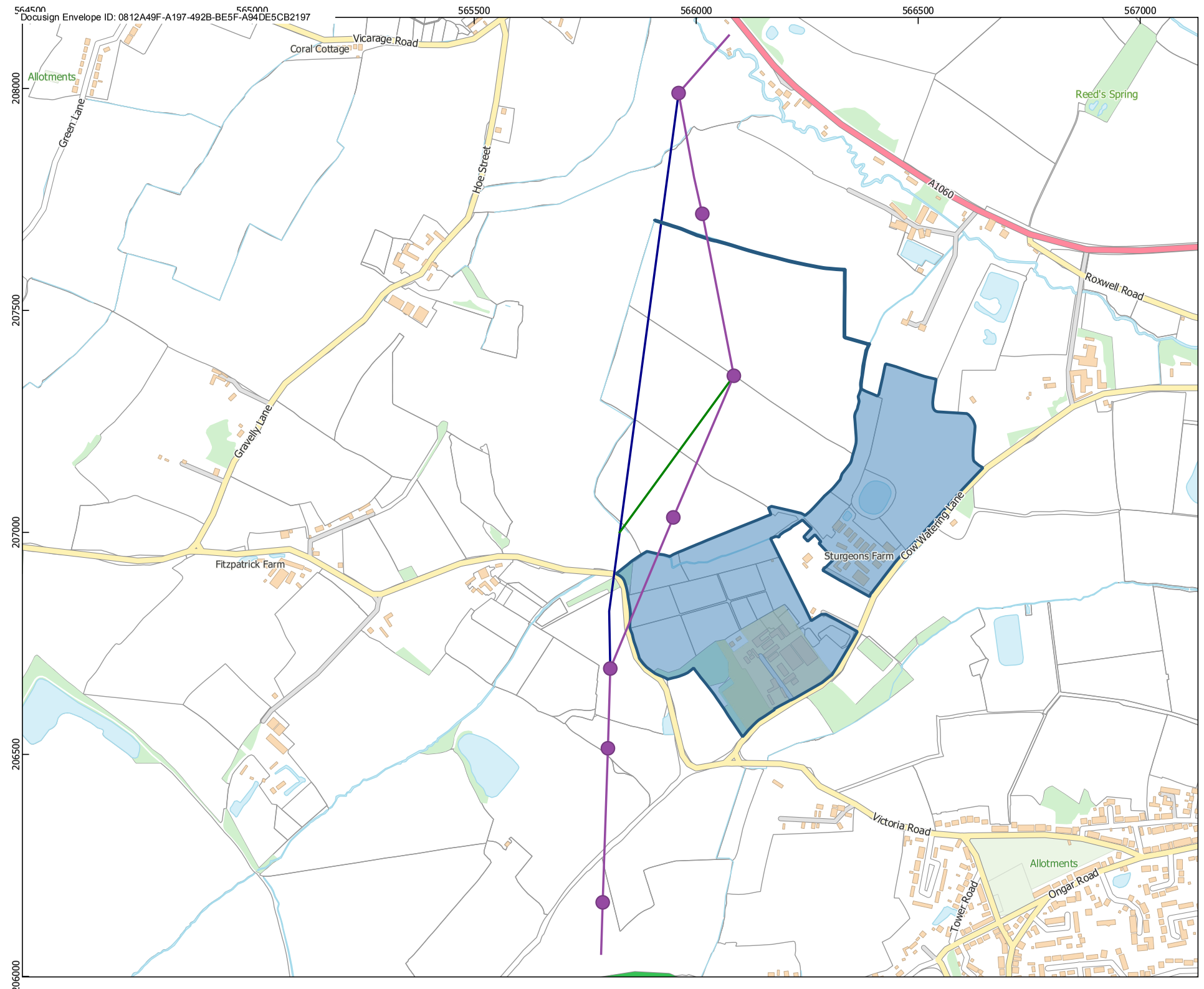
Joanne Wareham

Dated 25-02-2026 ……..

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EXHIBIT JW1/1

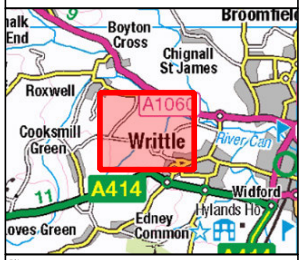
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Legend

- Ownership
- Current Route
- Current OH Line Route
- Current Pylon Locations
- Route Alterations Proposed
- Route A
- Route B

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OS 0100031673



Client

Writtle College

Title: Norwich to Tilbury Overhead Line Proposed Routes and Suggested Alterations Plan 1 of 2

ADAS RURAL

Scale: 1:7,500

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Revision: 1

Page Size: A3

Date: 08/07/24

Drawing Ref: Writtle.qpkg

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

JAMES ROLFE

On behalf:
Interested Party Reference Numbers: [redacted] and [redacted]

1. BACKGROUND AND QUALIFICATIONS

1.1 My name is James Rolfe.

1.2 I am Chief Operating Officer for Anglia Ruskin University ("**ARU**"), a role I have held since October 2018. My background prior to joining ARU has included significant experience in the Civil Service, including ten years in Whitehall, and in local government, including as Assistant Director of Adult Social Services at Norfolk County Council, before becoming Executive Director of Resources at the London Borough of Enfield and Managing Director of Housing Gateway Limited. I am also a Fellow of the Chartered Institute of Management Accountants and a member of the Chartered Institute of Public Finance and Accountancy. My witness statement is to be read with the witness statements of my colleagues.

1.3 My role at ARU means that I am responsible for the day-to-day operations covering a wide range of issues, including our landholdings. My background means that I am aware of the significant operational impact of the National Grid's plans and the significant financial detriment it would have on our business.

1.4 This witness statement describes the potential reputational and financial impacts that would result from the proposed development by National Grid under The Norwich To Tilbury Electric Line Above Ground Development Consent Order ("the DCO") during both the construction phase and the operation phases including the operation of a new proposed perpetual vehicle access right on the road actually through the Equine Facility of the ARU Writtle Campus within the extent of the land outlined in red (and coloured yellow) proposed to be authorised by the DCO for the development. The DCO is

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summarised in the witness statement of ARU's Vice Chancellor, Professor Roderick Watkins.

1.5 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

2. FINANCIAL IMPACTS FROM THE DCO

2.1 Whilst the information that has been provided to date from the National Grid means that we are not able to determine fully the impact on our business, as explained in the executive summary of the written representations we submitted in November 2025, it is clear that: the superimposition of a perpetual vehicular access right in favour of National Grid (and other third parties under the DCO) would result in: a) significant practical consequences for ARU and the ARU Writtle Campus that would result in financial consequences if National Grid's plans of a new proposed access road through the ARU Writtle Campus were to go ahead in their current form; resulting from b) significant closure of the campus or the relocation of the horses; due to the development/accessway for the reasons set out below.

2.2 It would be extremely difficult if not impossible to undertake effective teaching, stabling and veterinary care activities at the ARU Writtle Campus during the construction phase simultaneously with an active construction access *through* the same internal access route used by horses and students at the Equine Facility. This would have significant financial implications for us – in terms of reduced UK and international student numbers (at both FE and HE levels), fewer horses in our livery stables – plus the ongoing impact on recruitment for the future. Who, after all, would want to study equine-related courses on land that is partly a building site, as the two do not sit together.

2.3 The ARU Writtle Campus has a strong, long-standing national and international reputation for horse breeding and education, and the impact of the construction works on that would be significant too.

2.4 I include evidence of financial matters not as a compulsory purchase compensation evidence but as evidence of the very real practical consequences of the proposal by National Grid to <u>have</u> and maintain <u>perpetually</u> a vehicular access route *through* an operational educational facility: the financial evidence evidences the very real significance of the adverse result of that access on the practical operation of the Equine Facility of the ARU Writtle Campus.

2.5 The following table quantifies the financial impacts which are explained in more detail below:

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Cost / Impact Category	Year 1 – Low Case (£)	Year 1 – High Case (£)	3-Year Total – Low Case (£)	3-Year Total – High Case (£)
Equine recurring costs (stabling + vets)	360,000	360,000	1,080,000	To be determined
Additional salary impact	200,000	500,000	600,000	1,500,000
Commercial income loss	140,000	140,000	420,000	420,000
Horse procurement (one-off)	360,000	480,000	360,000	480,000
Fee reimbursement – max exposure (500 students)	2,252,200	4,504,400	To be determined	To be determined
Tuition + international income at risk (3 years)	250,500	250,500	751,500	751,500
Accommodation and catering	800,000	800,000	To be determined	To be determined
Site relocation & new centre build (CapEx)	20,000,000	To be determined	20,000,000	To be determined
Total (including all above)	**24,362,700**	**To be determined**	**To be determined**	**To be determined**

The key points from the table as above are as follows:

(a) Year 1 totals combine operating costs, one-off horse procurement, maximum fee reimbursement exposure, and relocation/new build capital expenditure.

(b) 3-year totals incorporate recurring operating costs, one-off items, and a minimum estimate of tuition and international income at risk.

2.6 The likely impact on our operational costs and commercial income loss are as follows, using the headings as per the above table:

(a) Equine Recurring Costs (stabling + vets) **-** The disruption and any interim arrangements generate substantial recurring equine-related costs:

(i) Stabling and associated horse management are estimated at approximately £20,000 per month.

(ii) Veterinary care is estimated at around £10,000 per month, driven by higher stress levels, increased

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injury/illness risk, and greater management complexity. The potential impact on animal welfare – represented by additional veterinary fees – would of course be substantial as well.

Combined, these equate to approximately £30,000 per month, or £360,000 per year, in recurring equine operational costs. These costs are reflected in the "Equine recurring costs (stabling + vets)" line in the financial summary, above.

(b) Additional salary impact –These costs would arise in the event that we are required to secure additional support from agency staff to maintain safe and effective operations during the construction phase, which would carry a significant premium as a result of being agency staff. Further cost implications would occur if we were to be unable to redeploy existing staff efficiently as a result of disruption to normal teaching and yard activities during the operation phases. Together, these factors represent a substantial potential financial impact directly attributable to the proposed access and construction arrangements.

(c) Commercial Income loss - Disruption will adversely affect commercial operations, including external bookings such as clinics, competitions, and training days, meaning:

(i) Annual commercial income loss is estimated at approximately £140,000 per year. This is particularly impactful, as the equine centre team has worked hard to build a customer base over recent years, and has grown this income significantly. Such income – and the relationships that underpin them - would almost certainly take time to rebuild after a period of interruption caused by the construction works.

(ii) In addition, there is likely to be longer-term damage to relationships with external partners, sponsors, and repeat clients.

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(d) Horse procurement (one off) - The loan horse scheme is a critical component of the current operating model; it involves:

(i) Local members of the equestrian community loaning their horses to the university for use in teaching.

(ii) The university covers the full upkeep costs of each horse for the duration of the loan agreement.

(iii) This approach avoids the capital cost of purchasing the horses outright.

There are presently 30 loan horses in the scheme. There is a planned loan horse herd size of 40 horses in 2026/27 to support expected teaching demand. Each horse has an estimated purchase value of approximately £12,000.

If the loan horse scheme cannot be sustained (for example, due to inadequate turnout or welfare concerns) then ARU would need to replace loan horses with owned horses, resulting in a substantial one-off capital outlay by:

(i) Replacing the current 30 loan horses, which would require approximately £360,000 in horse procurement costs (30 × £12,000).

(ii) Moving to a fully owned herd, matching the planned loan horse herd size of 40 horses, which would require approximately £480,000 (40 × £12,000).

These amounts form the low- and high-case assumptions in the “Horse procurement (one-off)” line of the financial summary, above.

(e) Loss of tuition fees and accommodation fees – How much notice we would be given by National Grid before their proposed accessway became operational would dictate whether we could stop running courses before they commence for new students. In terms of our maximum exposure (currently circa 500 students) and Tuition + international income at risk (3 years), the income at risk to ARU as a manifestation of course reduction is as follows:

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(i) Potential tuition fee losses are estimated to exceed £750,000 per affected cohort over 3–4 years, due to students potentially transferring, withdrawing, or not progressing and the deterrent effects on future recruitment.

(ii) International student fee income in related subject areas is also at risk, with current estimates exceeding £1,000,000 over a three-year period if disruption and related reputational impacts are not mitigated.

(iii) Fees may have to be reimbursed to students/their sponsors by way of compensation if we were unable to teach the course for that year then the maximum fee reimbursement exposure would be £4,504,400.

(iv) We currently have approximately 130 equine students in our student accommodation. Based on an average rental income this would mean that, unless non-equine students used our student accommodation, our annual losses would be in the region of £700k of rental income plus more than £100k in catering package income.

(f) Site relocation & new centre - This would need to be fully costed but could realistically amount to tens of millions of pounds.

3. STRATEGIC IMPORTANCE OF PRACTICAL EQUINE PROVISION

3.1 Students choose to study with us at the ARU Writtle Campus *because* we offer hands-on, practice-based equine education which is vital to supplement the classroom-based learning. Our informal but well-recognised positioning – “Science into Practice” – is central to ARU’s brand and market differentiation. The equine unit and associated facilities at the ARU Writtle campus are the critical enabler of this offer: they allow us to teach, practise and assess real clinical and practical skills with live horses at scale, with 60+ students from larger cohorts being taught or assessed at any one time and upwards of 250+ people on site at our Equine Centre at any one time.

3.2 Any sustained reduction in access to appropriate horses, facilities, or supervised practical time as a result of National Grid’s proposal therefore undermines the basis on which key programmes are professionally accredited, as well as our market advantage over

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non-specialist providers and the primary reason students choose to study with us at our Writtle campus over competitor institutions.

4. RISK TO ACCREDITED CLINICAL AND PROFESSIONAL HE PROGRAMMES

4.1 A substantial proportion of our HE students are working towards professional or clinical accreditation, for example as per our following courses:

4.1.1 Veterinary physiotherapy.

4.1.2 Equine sports therapy.

4.1.3 Equine behaviour and related professional roles.

4.2 For such accredited programmes, professional bodies accredit our programmes because we demonstrably teach the required practical and clinical skills, provide repeated, structured opportunities for students to practise those skills and assess and sign off competence via clinical examinations or equivalent practical assessments.

4.3 Successful completion of these accredited programmes is the route by which graduates gain eligibility for professional membership, as well as the right to practise under specific professional titles (e.g. veterinary physiotherapist). The core value proposition to these students is therefore that if they enrol on this programme then they will gain the clinical skills and accredited status needed for them to practise professionally.

4.4 If National Grid's plans go ahead with the access route inside of the red outlined area superimposed over the land of ARU and the ARU Writtle Campus, then this would result in: material and significant loss of practical teaching time; inability to offer sufficient, progressive hands-on practice on appropriate horses; and compromised ability to run robust clinical examinations and competence assessments.

4.5 The result of this would be significant for the reasons as follows:

4.5.1 Accreditation risk: Professional bodies may question whether we can still meet their standards. This can lead to additional conditions, temporary suspension, or full withdrawal of accreditation.

4.5.2 Demand and recruitment risk: Applicants are unlikely to enrol on a programme that cannot credibly deliver the clinical training necessary for professional practice. In addition, word-of-mouth among applicants, alumni, and employers can rapidly damage the programme's reputation. Further this presents a risk to income and retention because current students may transfer or withdraw if they believe their professional outcomes are jeopardised. This would directly drive tuition income loss (for context, tuition

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losses are already modelled at >£750k per affected cohort, with >£1m international income at risk across three years).

4.6 In sum, no reliable, high-quality practical and clinical opportunities means that there would be no viable accredited programmes and therefore ARU would have no sustainable fee income on these routes.

5. RISK TO VOCATIONAL AND FE PROVISION

5.1 Beyond the clinically focused HE programmes, our FE and some additional HE courses are explicitly vocational. Students enrol because they want to work with horses and view the ARU Writtle Campus as a specialist equine institution. Their expectations centre on: daily, meaningful hands-on time with horses; building employable practical skills in handling, management, training, and welfare; and, translating classroom learning into real-world practice.

5.2 We differentiate ourselves from our competitors not by offering more theory, but by integrating theory with extensive, structured practical experience on a working equine unit. If we can no longer provide sufficient, high-quality practical exposure then:

5.2.1 The student experience will not match what is marketed or expected.

5.2.2 Engagement, satisfaction, and progression are likely to fall, as the practical element is central to motivation on these awards.

5.2.3 Students who specifically want to work with horses will choose other colleges with functioning equine units – and there are alternatives in the market, although many of them are not local to the eastern region.

5.3 The strategic consequences of National Grid's proposals on the provision of education by ARU manifested as an impact on the education business would be as follows:

5.3.1 Erosion of our FE and vocational equine footprint, as cohorts decline and awards become less viable.

5.3.2 Weakening of the FE-to-HE pipeline into our specialist equine HE programmes.

5.3.3 Loss of our niche as a practice-focused equine education provider in the region and nationally.

5.4 Again, the logic is clear: no credible, sustained practical equine offer equates to the absence of a compelling vocational proposition, which would result in the gradual loss of FE and related HE students to our competitors and the potential closure of the ARU Writtle Campus.

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6. COMBINED STRATEGIC, FINANCIAL AND REPUTATIONAL IMPLICATIONS

6.1 The accreditation and “Science into Practice” risks are deeply intertwined, for the following reasons:

6.1.1 Accreditation depends on robust, demonstrable practical and clinical capacity.

6.1.2 Our market position and reputation are built on delivering exactly that capacity, consistently over time.

6.1.3 Once external stakeholders perceive that we cannot reliably offer this – whether professional bodies, employers, students, parents, or agents – recovery is slow, uncertain, and costly.

6.2 The likely outcomes of unmitigated disruption of National Grid’s proposed perpetual vehicular access rights through the ARU Writtle Campus include:

6.2.1 Medium-term decline in recruitment to high-value accredited programmes and vocational equine routes.

6.2.2 Loss of tuition and commercial income well beyond the already modelled minimums.

6.2.3 Damage to employer and industry trust, weakening placements, graduate outcomes, and advisory input.

6.2.4 Increased scrutiny from accreditors and regulators, with associated direct and indirect costs.

6.3 While capital and operational cost estimates (including potential relocation and rebuild) are substantial, the more intractable risk is strategic as once accreditation is lost or confidence in our “Science into Practice” claim is materially eroded, the portfolio and reputation are difficult to rebuild, even if facilities are later restored.

6.4 In sum, the single most important strategic risk is not only the direct cost of disruption but the potential loss of our core value proposition:

6.4.1 For HE: accredited, practice-rich routes into professional equine and veterinary roles.

6.4.2 For FE and vocational learners: genuine, daily “Science into Practice” experience with horses.

6.5 If we cannot reliably deliver these, we risk a structural decline in equine enrolments, accreditation status, and reputation that will outlast any temporary facilities issue.

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7. REPUTATIONAL DAMAGE

7.1 As detailed above, if we are no longer able to offer for a period our current courses as a result of the National Grid's access rights through the ARU Writtle Campus then this will clearly damage our reputation with our existing and potential students and our standing within the sector generally. Further, ARU is known as, and we advertise ourselves to be, a *rural* college and this is the reason why some of our students have chosen to study at our ARU Writtle Campus. However, if the National Grid's plans were consented to include the perpetual vehicle access rights through the ARU Writtle Campus, then I do not consider that we could remain a rural college going forward because third parties (i.e. National Grid and its anticipated contractors for National Grid) not associated with nor regulated by ARU, being able to access our site during both the construction phase and any maintenance periods in perpetuity for every day of the year from 7am to 7pm on weekdays and from 7am to 5pm on weekends.

7.2 As well as the financial implications as outlined above, this clearly presents ARU with significant safeguarding concerns, not least because for example in relation to maintenance period, in addition to the proposed maintenance access and the foreseeable traversing of the Equine Facility by third party vehicles over a 40 year period,

7.3 I understand that National Grid has evidenced in paragraph 4.10.4 of the Project Description (Document 6.4): "*National Grid also has a fleet of drones, which allows inspections of parts of the transmission network that are more difficult or costly to reach*" and so could choose to use its drones with recordings by which to view its installed cables if these were to be situated over the Equine Facility because these drones could capture images of our students. Our safeguarding concerns are as detailed further in the witness statement for Joanne Wareham.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed ..[redacted]

James Rolfe

Dated 26-02-2026

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC FOR A DEVELOPMENT CONSENT ORDER PURSUANT TO SECTION 37 PLANNING ACT 2008 FOR THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

Elizabeth Jane Craig, MRICS, BSc (Hons) Estate Management

On behalf of Interested Party Reference Numbers: NTOT-AFP2247 and F1201D06F

1. BACKGROUND AND QUALIFICATION

1.1 My name is Elizabeth Jane Craig.

1.2 I am a qualified Chartered Surveyor with over 36 years of property experience, latterly specialising in general estate management within the Higher Education ("HE") and Further Education ("FE") sectors.

1.3 In my current role as Strategic Estates Manager for Anglia Ruskin University ("ARU"), a position I have held since 1st July 2015, I am responsible for Masterplanning which sets out future redevelopment opportunities, potential acquisitions and disposals. I am also responsible for dealing with day-to-day property management issues which arise. The ARU Writtle Campus is one of four campuses that I am responsible for (including Cambridge, Chelmsford and Peterborough). I work closely with the ARU Projects, Asset Management, and Facilities Management teams assisting in property matters to enable them to deliver their services.

1.4 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.5 There is now produced and shown to me a bundle of true copy documents marked "Exhibit LJC1". All reference to documents in this statement are to Exhibit LJC1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit LJC1 in the format LJC1/[x].

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2. INTRODUCTION & SUMMARY

2.1 This witness statement describes the impact of the proposed development by National Grid under The Norwich To Tilbury Electric Line Above Ground Development Consent Order ("the DCO") over the ARU Writtle Campus inside of the extent of the red outlined area of the plans specified in the DCO and in relation to which a number of wide ranging powers will apply in perpetuity for the benefit of National Grid and its third party beneficiaries, during both the construction and the operation phases including the operation of a new proposed access road through the ARU Writtle campus.

2.2 As has been also summarily described by the Vice Chancellor in his Witness Statement, the DCO envisages wide powers, attaching to the extent of the land outlined in red that overlaps with the ARU Writtle Campus, under Articles of the DCO including 3(1)-(8), 4(1)-(2), 17 (Access to works), 21 (Protective Works), 22 (Surveys), 24 (Compulsory acquisition of land), 25 (Compulsory Acquisition of rights), 27 (Temporary Use of Land), 29 (Temporary use of land for maintaining the authorised development), 38 (Extinguishment and suspension of private rights), 39-40, (power to override easements and other rights, and statutory authority to override easements and other rights), 48 (defence to statutory nuisance), 49 (Traffic regulation), and 56 (Safeguarding). The authorisation relates to Schedule 1, and in particular in relation to the ARU Writtle Campus, to Works No. 17 ("Route TB"), and the wide scope of the Associated Development including paragraph (u). The ARU Writtle Campus appears in Section F of the pylon route, Sheet 8, of the various Land Plans, Works Plans, and Traffic Regulation Plans ("the Plans").

2.3 A simple comparison of the Plans with the situation of ARU Writtle Campus demonstrates the proposal or desire by National Grid for a 'dog-leg' or inverted L-shaped red outlined area extending East of the Route TB and then Southwards bisecting the operational campus of ARU Writtle Campus before then connecting to the highway at the campus entrance. The Plans show that same outlined area as coloured yellow by which National Grid desire a *permanent* right of vehicle access to entitle them in perpetuity to drive vehicles back and forth through ARU Writtle Campus.

2.4 The ARU Writtle Campus as a whole is unique in the ARU portfolio because, in addition to HE students, it *also* delivers FE to under 18-year-olds. The equine facility, also known as the Cow Watering Lane campus, which will be directly affected by the DCO, also delivers teaching to students from as young as 16 years of age who are studying equine related topics.

2.5 The equine facility has had a significant amount of investment over the last few years, improving and expanding the facilities which has enabled the number of courses and

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hence student recruitment to steadily grow; it is therefore a very important contributor to the ARU Writtle portfolio and hence revenue stream.

2.6 In addition to recent investment in upgrading the tracks leading to the paddocks, further investment is planned at the equine facility this year by way of the provision of new teaching accommodation and general refurbishment of student social areas in order to improve the student experience.

3. THE PROPOSED ACCESS ROUTE

3.1 The proposed National Grid access route as shown in **LJC1/1** runs through the middle of the campus buildings (stables, teaching accommodation, student social areas etc.) and through the centre of the paddocks to the North along the track currently used to move horses to and from their grassing paddocks and eventually through one of our paddocks itself which is bounded by a lane to the west.

4. ASSOCIATED ESTATES AND PROPERTY MANAGEMENT IMPACTS

4.1 The proposed access road for (potential) pylon and for overhead cable construction and ongoing maintenance, as currently proposed by National Grid, from an estate management perspective, is not good practice and is most surprising. It is a very poor or flawed construction and operational access design. The envisaged route for construction and maintenance vehicles bisects in perpetuity a landholding which will preclude safe functioning of horse and pedestrian traffic during construction, will significantly disrupt the same during maintenance, and also render unfeasible future redevelopment of that area by ARU as the ARU Writtle campus further develops over time in line with its thriving operation. The existing road and track in the campus leads westwards in part to the area which National Grid are seeking to access, but it appears National Grid has paid scant, if any, real regard to the actual situation of the existing route that is used daily by a horse herd and approximately 500 students during teaching at the campus. No real regard has been taken by National Grid as to the impact of its envisaged construction and maintenance proposals will have on ARU's land holding nor, most importantly, its ability to continue to safely deliver teaching on this campus.

4.2 At the ARU Writtle Campus, both FE and HE students are taught and it is therefore subject to the requirements of the Safeguarding Vulnerable Groups Act 2006. Under section 5 of that Act, regulated activities are subject to statutory requirements at establishments. ARU is an establishment. Due to that fact that we deliver teaching to FE students, we have strict safeguarding policies that must be adhered to by all contractors who work on the ARU Writtle Campus as a whole. These safeguarding policies also extend to all ARU staff (academic and professional services). National Grid's red outlined access route envisages passage to and from the construction site through the establishment by numerous construction vehicles and their drivers and passengers, and by periodic maintenance vehicles and their drivers and passengers.

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4.3 Since ARU merged with Writtle University College in February 2024, all ARU staff who regularly visit the ARU Writtle Campus must obtain an advanced Disclosure and Barring Service (DBS) check before being able to move freely around the campus unaccompanied. All ARU contractors, whether for one off projects or regular maintenance and facility management contracts must also obtain an advanced DBS check before they are permitted to work anywhere on the ARU Writtle Campus. Any visitors to the ARU Writtle Campus must always be accompanied by a member of staff (this includes comfort breaks). National Grid, their contractors and anyone else working for them will also have to adhere to these strict procedures should they need to enter or pass through any part of the equine facility or the wider campus. For the avoidance of doubt the requirement to hold an advanced DBS certificate will include any person in a construction or maintenance vehicle passing through the establishment from the highway.

4.4 In addition to the DBS requirement all contractors are required to undergo an induction and then be issued with a permit to work (this is standard practice across all ARU campuses). This ensures that they meet our strict health and safety policies in areas such as working at height, hot works etc.

4.5 The equine facility, forms part of a much larger estate which extends in total to approximately 150ha (371 acres). The equine facility has traditional teaching accommodation and car parking predominantly located at the front of the site (adjacent to the road) with equine related accommodation and paddocks to the rear (menages, specialist teaching areas, stabling, exercise equipment etc.). The paddocks used for the purposes of turning out the horses (this is when horses are allowed to graze freely when not stabled or in work) extends to approximately 8.1ha (20 acres) used for the Top Yard horses (planned route behind the residence houses) and approximately 8.1ha (20 acres) for the Bottom Yard horses over Cow Watering Lane – see the plans at **Exhibits LJC1/2 and LJC1/3**. Providing horses with a calm environment in a field of grass is vital for their wellbeing otherwise they can become stressed and if this happens they can become difficult to handle, which in turn could cause H&S issues (injuries to both students, lecturers and the horses themselves).

4.6 There are entrance and exit points leading directly from and to the highway at Cow Watering Lane and we operate a *one-way system* through the equine facility to safely manage movements of horse boxes, horse trailers and cars within and around this teaching facility. The one way system is there because the distance between the buildings are *insufficient to accommodate two2 way traffic safely* – see the Witness Statement of Daniel Cook for further details]

4.7 The yellow accessway route, as shown on the plan at **Exhibit LC1/1**, being proposed by National Grid during construction and for future maintenance purposes seeks to utilise one of the main routes through the very heart of the ARU Writtle Campus including the

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horse paddocks beyond. Any inbound construction and maintenance traffic will therefore be going also against the flow of the traffic coming in the opposite direction. The resultant significant H&S issues that will arise with construction traffic passing over this proposed yellow accessway route due to the presence of horses and students moving around the equine facility cannot be ignored; there is a significant danger that collisions will occur. Two-way traffic flow is impossible at the site over the yellow accessway route. The proposed yellow accessway route is directly through the middle of the equine facility, notably between teaching buildings, staff offices, horse stabling, outdoor arena, and staff residential dwellings. These transit areas are heavily populated by horses and students who frequently move around this teaching facility from one location to another. Therefore the chances of a collision between a half-ton horse and a vehicle, or a student pedestrian and a vehicle are increased significantly by construction and by maintenance vehicles travelling through the site. In addition, horses will be frightened with large or noisy machinery moving around which will likely lead to accidents and injury to both horse, students and academic staff. See Daniel Cook's Witness Statement further details.

4.8 The prospect of having National Grid's contractors accessing through our land through a live teaching facility containing circa 500 students and 90 horses is not feasible on health and safety, nor on safeguarding grounds, for the reasons outlined above.

4.9 Were National Grid to be authorised by the Secretary of State to use the red outlined area extending eastwards from the pylon Route TB over the ARU Writtle Campus, for access for construction and maintenance vehicles, ARU will have no option other than to suspend teaching and to cancel courses for the academic year. This will have a financial impact not simply during the period of construction but for the entire academic year, as we will be unable to commence courses during that academic year and in subsequent years pending conclusion of all construction activity. It will also disrupt courses that have already commenced, so the financial impact will be significant and will damage ARU's reputation and educational provision. ARU does not have other equine facilities available to which to simply relocate the current operation elsewhere on the ARU Writtle campus, nor is there an alternative safe, separate route on the ARU Writtle Campus available for National Grid.

4.10 Due to the suspension of courses *each side of the illustrative construction period,* ARU will run the real risk of losing its current staff as they will move elsewhere and students will be forced to go to other HE and FE providers. As a consequence, ARU will therefore lose its standing in this area of education, and it will take a considerable time to rebuild the stature of the courses currently offered.

5. MEETINGS WITH NATIONAL GRID AND FISHER GERMAN

5.1 Jane Kenny (Director at Savills) John Iveson (Director of Estates and Facilities at ARU) Daniel Cook (Head of Equine at ARU) and myself attended a meeting on 24 July 2025 with a graduate surveyor from Fisher German and an engineer. We walked the proposed

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route (as it had done previously with National Grid on 19th June 2024, as detailed in the witness statement of Jane Kenny) and inspected the working corridor with the National Grid's representatives and explained the operational constraints and presented feasible alternative solutions. No amendments to the proposals were made following this meeting.

5.2 A further meeting on 11th December 2025 with a representative from Fisher German (Matthew Johnson), as attended by Jane Kenny (Director at Savills), Michelle Lawlor-Perkins (Head of Legal for ARU) and myself. We had been advised that Mr Johnson was fully briefed about the concerns raised at the previous on-site meetings. Unfortunately, it became clear at the beginning of this meeting that this was not the case as he had not visited the site and he was under the evident impression that the buildings on site were merely farm buildings as opposed to a functioning educational facility. I consider that the vehicular construction and maintenance access route has therefore been included in, and remains included in, the DCO red outlined area, as a demonstrable mistake by Fisher German and/or National Grid. It is inexplicable why National Grid and Fisher German were under the evident false impression that the ARU Writtle Campus was merely a cluster of farm buildings like an agricultural yard through which they could run construction and maintenance vehicles without issue from numerous horse and pedestrian traffic; following two on-site meetings, I'm at a loss at to why both organisations maintain this false fact impression.

5.3 I think there is a fundamental design flaw in the National Grid design and construction process. The National Grid's choice to situate a construction and maintenance access route through a live FE and HE facility – under the mistaken impression that the buildings were merely a collection of agricultural farm buildings - instead of simply accessing the proposed pylon route from the closer and more direct route through the edge of fields to the west of the equine facility remains bizarre and ill-thought through by National Grid.

6. DEVELOPMENT OF THE WRITTLE CAMPUS AND IMPACTS FROM THE PROPOSED DEVELOPMENT ON THIS

6.1 Having a permanent access way in favour of National Grid and its beneficiaries through the centre of our equine facility is also likely to result in issues in the future in the event of redevelopment or reconfiguration of the site, leading to practical operational problems as we would have to permanently retain this third party right of access as part of the statutory instrument DCO and its embodied plans identify that access route in perpetuity for maintenance access. There is a current project underway which will replace the old classrooms shown marked 'O' and 'P' on the plan at **Exhibit LJC1/3** which have reached the end of their economic life; the new classroom facilities will increase teaching capacity to meet increased demand due to growth in student numbers and these will be located on a currently vacant site shown marked 'Y' on the plan at **Exhibit LJC1/3** which will lead to increased pedestrian movement by students and staff directly adjacent to the proposed

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access route which will increase H&S conflicts with proposed construction and maintenance traffic.

6.2 From an estate management perspective, the presence of a permanent third party right of way over a growing education facility would seriously impact the ability to have unfettered future redevelopment options for the provision of FE and HE at local, regional and national level. Teaching pedagogies change over time and it cannot be said that we would not in future reconfigure or remodel the layout and buildings of this equine facility – the presence of this accessway would result in our being unable to develop the site in the way to maximise and optimise education provision and leading to a compromised layout.

7. ALTERNATIVES/SOLUTIONS

7.1 Whilst we have other land on the ARU Writtle Campus, that other land is not paddock land but is agricultural land which is farmed for the purposes of other courses offered and would also not be suitable for conversion to paddocks in the short term due to the length of time it would take to establish proper grazing.

7.2 ARU respectfully request that this proposed access route – between the Westernmost edge of the pylon Route TB to the highway at Cow Watering Land - is removed completely by the Secretary of State and that (if actually needed at all) an alternative solution is found by NGET; for example, by coming directly off the adjacent highway owned lane. It should also be noted that the current HVC route passes over part of our paddocks which will necessitate that a significant proportion of these paddocks will be rendered unusable during the whole of the (illustrative) construction programme due to the adverse effects that construction noise will have on horses; alternative fields will therefore need to be provided throughout.

8. CONCLUSION

8.1 In conclusion, it is my professional opinion that the proposed access route is unworkable due the obvious conflicts that will arise between construction and maintenance traffic moving through a working livestock campus delivering FE and HE courses to numerous students, which necessitates the handling and movement of horses on a daily basis around our equine facility. This will undoubtedly lead to significant Health & Safety issues which should not be inflicted on us as a result of National Grid and their representatives, Fisher German, failing to take into account the reality of operating a working livestock campus, despite our best efforts to point out the numerous issues their proposals will present us with.

8.2 An additional important consideration will be managing National Grid's access by their contractors in terms of administration to ensure all contractors passing through the ARU Writtle Campus meet our strict safeguarding policies, contractor induction, and the

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subsequent issuing of permits. If access is required in an emergency I am concerned that they will not follow our procedures thus rendering our safeguarding policies null and void. As set out above, an advanced DBS check issued for the purpose must be held by any person accessing the ARU Writtle Campus and any visitor will need to be escorted by personnel through the site. This would apply to any of National Grid's workforce its employees and all contractors.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed [redacted]

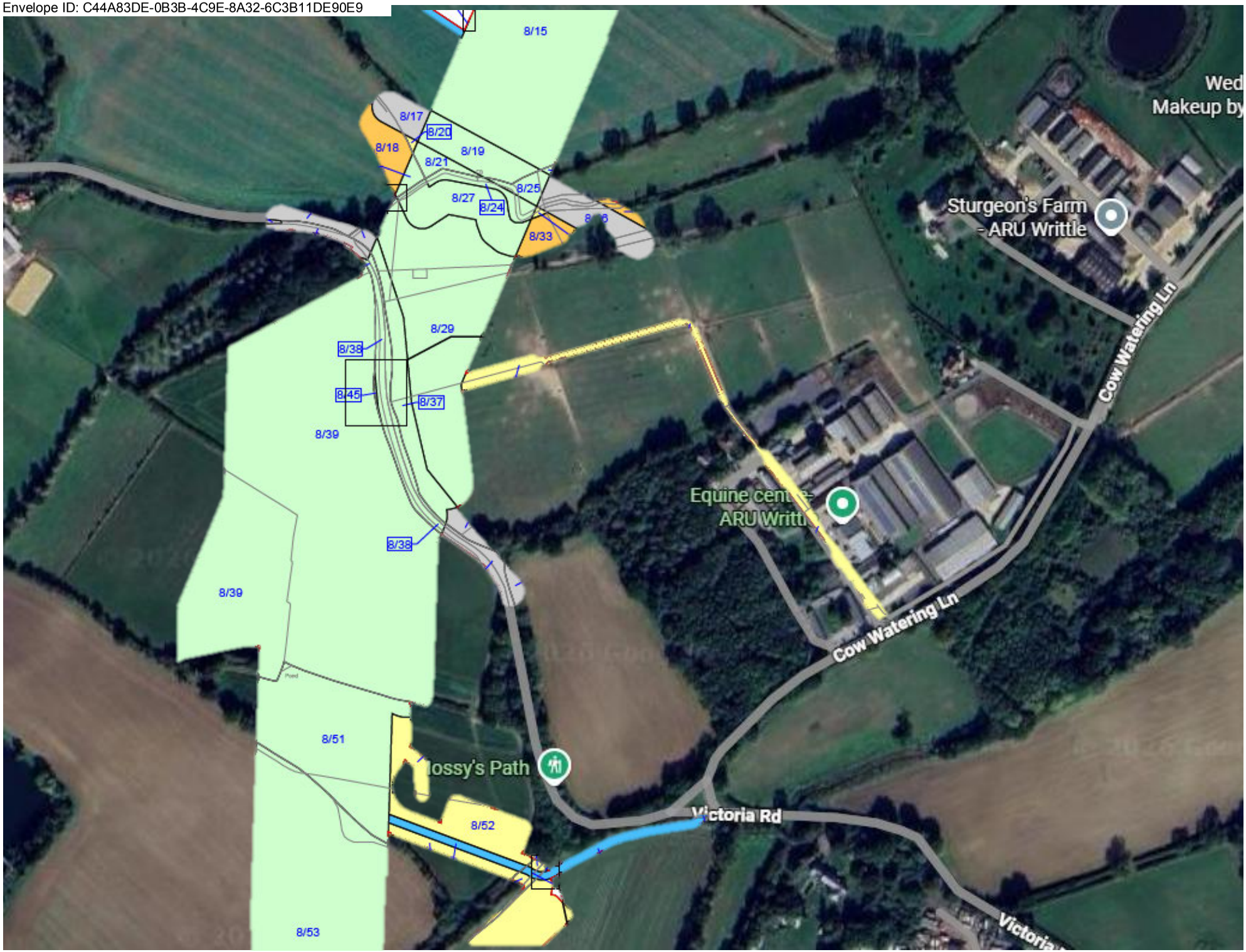
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EXHIBIT LJC1/1

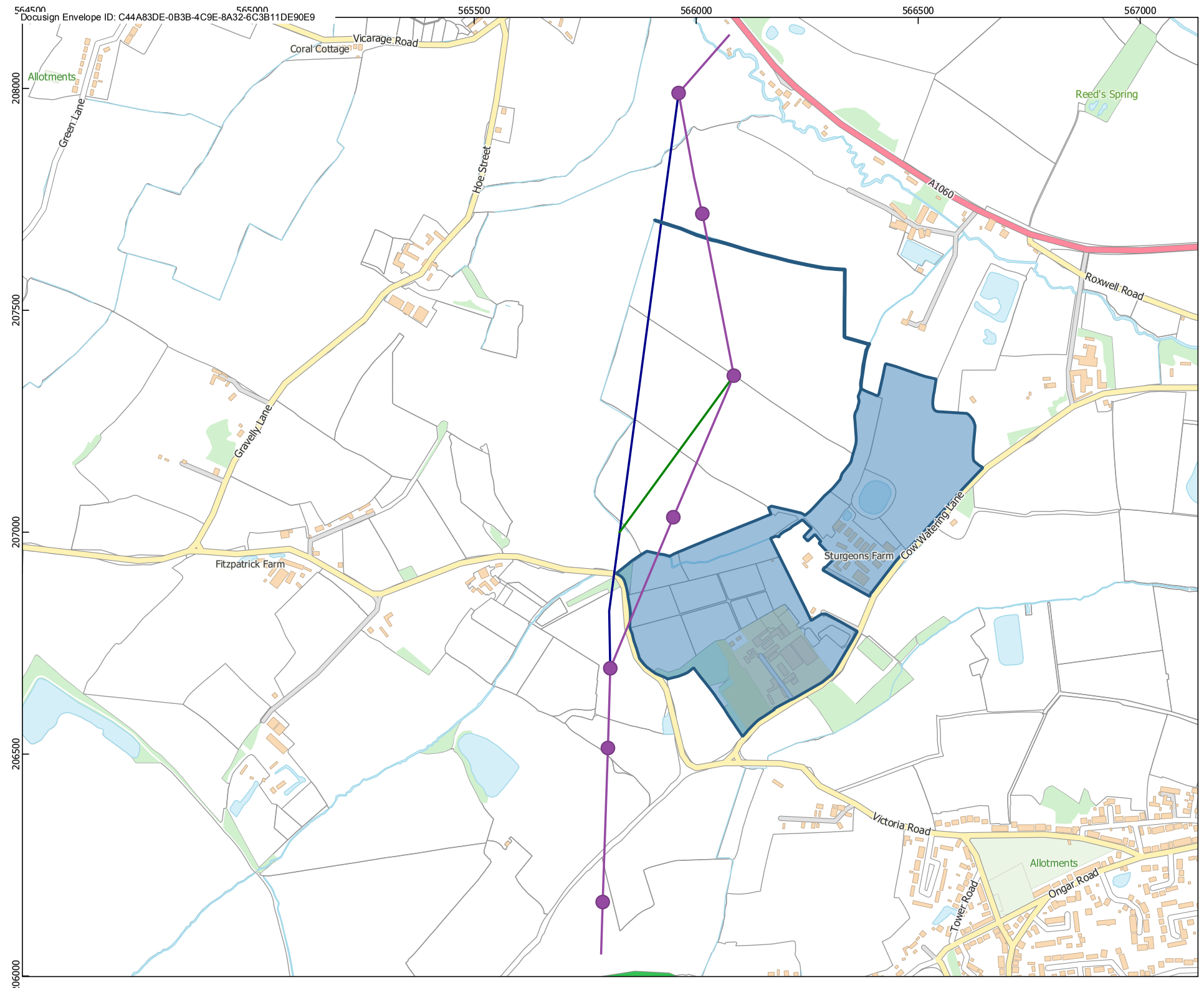
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EXHIBIT LJC1/2

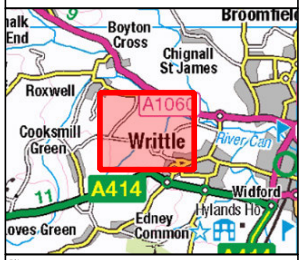
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Legend

- Ownership
- Current Route
- Current OH Line Route
- Current Pylon Locations
- Route Alterations Proposed
- Route A
- Route B

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OS 0100031673



Client

Writtle College

Title: Norwich to Tilbury Overhead Line Proposed Routes and Suggested Alterations Plan 1 of 2

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Revision: 1

Page Size: A3

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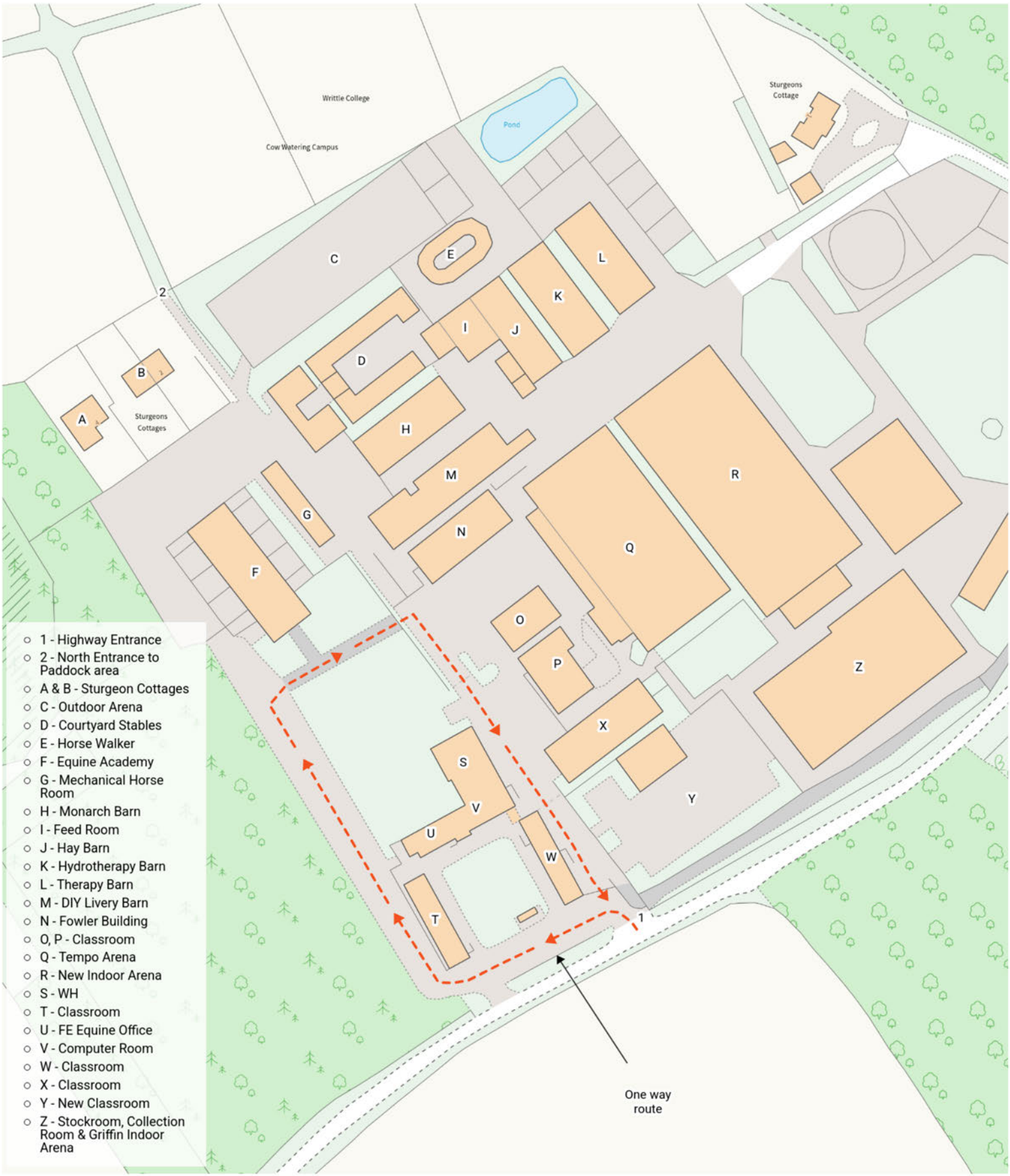
EXHIBIT LJC1/3

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savills

ARU Writtle

Land App



- 1 - Highway Entrance
- 2 - North Entrance to Paddock area
- A & B - Sturgeon Cottages
- C - Outdoor Arena
- D - Courtyard Stables
- E - Horse Walker
- F - Equine Academy
- G - Mechanical Horse Room
- H - Monarch Barn
- I - Feed Room
- J - Hay Barn
- K - Hydrotherapy Barn
- L - Therapy Barn
- M - DIY Livery Barn
- N - Fowler Building
- O, P - Classroom
- Q - Tempo Arena
- R - New Indoor Arena
- S - WH
- T - Classroom
- U - FE Equine Office
- V - Computer Room
- W - Classroom
- X - Classroom
- Y - New Classroom
- Z - Stockroom, Collection Room & Griffin Indoor Arena

Produced on Land App, Feb 23, 2026.

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC FOR A DEVELOPMENT CONSENT ORDER PURSUANT TO SECTION 37 PLANNING ACT 2008 FOR THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

MARK SAUNDERS CMIOSH

On behalf of Interested Party Reference Number: [redacted] and [redacted]

1. **BACKGROUND AND QUALIFICATION**

1.1 My name is Mark Saunders

1.2 I am the Health and Safety Lead for Anglia Ruskin University ("ARU"), I have been a Health and Safety professional for 20 years and currently hold Chartered member status for IOSH. I have been at ARU for three and a half years.

1.3 My work as Health and Safety Lead for ARU takes me across our campus portfolio which includes Cambridge, Chelmsford, Peterborough and at Writtle. Since the merger I have been involved in multiple infrastructure projects that have taken place across the ARU Writtle Campus. I have two full time members of my team based at ARU Writtle Campus and will often be onsite at the ARU Writtle Campus. I am largely familiar with the majority of the ARU Writtle Campus' H&S challenges, projects and issues. I am the lead advisor for Estates, which puts me directly in front of the more serious challenges facing H&S at the ARU Writtle Campus. There is a half-termly ARU Writtle Campus H&S Group meeting, which is held on campus, I provide updates and assurance papers for the Audit Risk and Compliance and University Health & Safety committee as well as local faculty meetings which all have Writtle H&S inputs / outputs. My witness statement is to be read together with those of my colleagues.

1.4 The facts and matter set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

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1.5 There is now produced and shown to me a bundle of true copy documents marked "Exhibit MS1". All reference to documents in this statement are to Exhibit MS1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit MS1 in the format MS1/[x].

2. HEALTH AND SAFETY REGULATIONS

2.1 In the context of the DCO and its impact on the ARU Writtle Campus, the health and safety regulations and legislation that will need to be carefully considered include, but are not limited to, the following**:**

2.1.1 Health and Safety at Work etc Act 1974, which includes a duty to ensure, *so far as is reasonably practicable*, the safety of employees, students, contractors and visitors.

2.1.2 Management of Health and Safety at Work regulations 1999 – which includes requirements for suitable and sufficient risk assessment – the proposed environment would create risk conditions that ARU cannot mitigate internally.

2.1.3 Animal Welfare Act 2006 – which includes a duty to prevent pain, suffering and distress – prolonged stabling and noise exposure would compromise best practice welfare standards.

2.2 As an equine centre for education we are audited annually by the British Horse Society and Chelmsford City Council to ensure adequate animal welfare on campus.

3. THE PROPOSED ACCESS ROUTE

3.1 The plan at exhibit **MS1/1** shows a route coloured yellow contended by NGET to be used by construction vehicles and their passengers for construction of above ground electrical cables (between two pylons on third party land), and for maintenance vehicles and their passengers in perpetuity. As a site visit reveals and as is obvious to any person at the ARU Writtle Campus Equine Facility, the proposed route is used by students and horses in equal measure, the route will pass adjacent to the *Watering Hole* (student café), *tack centre* and *livery centre*. Students are often encouraged to walk this route to collect tack for their riding practical sessions in the morning. The proposed route then passes directly by the livery centre / yard before reaching the access track for the turnout fields (horses are walked by students along these access routes). In my opinion as an expert in Health and Safety, the proposed route for construction, site and maintenance traffic is inherently dangerous and will compromise safety of staff, students and horses by adding third party construction vehicles and their passengers and also maintenance vehicles and their passengers to the mix of existing horse and pedestrian traffic in the relatively constrained environment of the buildings and fence lines at ARU Writtle Campus, Equine Facility.

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3.2 The existing access road to the equine centre is narrow in both directions, both staff and students rely on these routes to gain access to various areas across the equine centre, simultaneously including the riding and leading of horses on the same route. To propose a route of vehicle access directly through the centre of the ARU Writtle campus for construction traffic poses a myriad of risks to all site users including students, staff and visitors, as well as to such construction traffic itself from the weight and potential impact of half-ton horses.

3.3 Construction vehicles (dumpers, telehandlers, concrete supply vehicles) have large front and rear blind spots. These vehicles often have a slow braking response and limited manoeuvrability. Within equine centres, riders often walk with horses on *rope* leads – making rapid retreat from an oncoming site vehicle extremely challenging. All traffic passing through the area will pose risks to equine centre users (including vans and ATVs etc.), the higher risk being posed by heavy plant and machinery.

4. ASSOCIATED HEALTH AND SAFETY IMPACTS

4.1 The plan at **MS1/2** (ARU Writtle Plan B) details the campus' one-way system, which clearly would be unworkable with National Grid's proposed access route.

4.2 Based on my knowledge and considerable experience of health and safety issues, and the campus generally, the following are the key considerations as to why the route cannot realistically pass through the ARU Writtle Campus:

4.2.1 Animal Welfare Risks – The proposed access route by National Grid creates unacceptable animal welfare hazards which includes: spooking and flight responses triggered by cranes, scaffolding supply trucks, piling rigs and high intensity noise. Horses are highly reactive to unfamiliar machinery, this greatly increases the risk of rearing, bolting and collisions with people or structures. Electromagnetic field exposure may also alter behaviour or produce anxiety responses in certain horses. While research is varied, behavioural disturbance is well-documented in livestock who are placed under transmission lines.

4.2.2 Heavy construction vehicles generate irregular mechanical noise, air brakes releasing, reversing alarms, engines revving and sudden movements or vibrations which would adversely affect animal behaviour.

4.2.3 Risks to student staff and safety (including Under 18s) – at the ARU Writtle Campus, in addition to the Higher Education courses provided by ARU, Further Education is also provided by Writtle College Limited for students aged under 18. Therefore, ARU has a statutory duty to safeguard and promote the welfare of children under the Children Act 2004. This duty includes all students aged between 14 and 18. Further Education colleges

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also have a duty to protect vulnerable adults who may study on the premises. The proposed route introduces significant “foreseeable risks” to people across the site, including groups of riders, student pedestrians, visiting school children. For example, I have concerns about what would happen if a lorry rounded a corner and could not stop in time. Vehicle deliveries often straddle road and pathways outside construction work areas. Fire Assembly points would also be compromised by contractor vehicle movements and parking.

4.2.4 Collision and Interface Risks with Machinery – Heavy construction vehicles moving through narrow internal equine centre access ways will create collision hazards for riders, handlers and pedestrians / visitors. Both Construction and normal vehicle blind spots also pose acute risks to under 18 (FE) cohorts who are enrolled on courses. This would apply to any construction vehicles whatever their size.

4.2.5 Compromised Emergency Evacuation for the Equine Centre – Heavy vehicles blocking or traversing established evacuation routes from stables, teaching blocks and arenas would risk preventing safe egress during fire alarms, horse incidents or medical emergencies. As detailed by Daniel Cook in his Witness Statement, these routes would be used for evacuation purposes, there is no additional space to park or indeed manoeuvre heavy construction vehicles or ATV, vans etc.

4.2.6 Noise, Vibration and startle hazards – High noise and vibration levels will disrupt practical sessions and increase accident likelihood during horse handling, riding and loading / unloading exercises.

4.2.7 Risks to students with declared complex needs (SEND) – Elevated sensory loads (noise, chaotic movement) will create unsafe learning conditions for many learners who rely on predictable, low-stimulus environments. Students will expect to learn in an authentic environment, free of external noise, vibration, dust and fumes which would be regularly emitted from site construction traffic and plant / machinery.

4.2.8 Safeguarding Implications (contractor site access) – Staff capacity to supervise students diminishes when they are simultaneously managing heightened equine risk conditions. All contractors would be required to undergo enhanced DBS checks; this would apply to sub-contractors and other suppliers indirectly involved with the project who would require access to site. These checks or verification processes often incur long lead times to establish verification, sub-contractors cannot simply be drafted in to deploy services, they must have enhanced DBS to enable them to work onsite, this is a legal requirement for the ARU Writtle Campus.

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4.2.9 Compromised Traffic Safety on narrow approach roads – Cow Watering Lane and parts of Victoria Road are single track, adding heavy construction plant or any additional traffic to these areas would create higher collision risk with student vehicles, equine trailers, cyclists and pedestrians. Access would also be compromised for emergency services and agricultural operations servicing Sturgeons Farm (ARU).

4.2.10 Environmental Hazards from the ground disturbance – Dust, debris, vibration and ground disturbance will adversely affect livestock and students across the wider campus estate, this would include disturbance to wildlife habitats across the land-based campus.

4.2.11 Compromised public realm access / Campus Experience – Students and visitors may be forced to navigate unsafe shared spaces with plant and machinery, undermining ARU's duty to maintain a safe campus environment. In my opinion, the proposal would not be manageable, by signage, speed limits or similar so I consider that the ability to manage student, staff and visitor safety would be completely compromised.

4.3 These are not risks that can simply be "managed away" within normal equine centre operations – they represent a fundamental incompatibility between a high-risk infrastructure project and an equine education environment. This is not just a term-time issue either, the campus operates on a year-round basis as the horses have to be cared for and exercised throughout the year.

4.4 By way of an example as to what might occur: A large dumper truck releases its brakes as it passes by the arena. Two horses in a nearby lesson spook violently. One bolts, the student rider is unseated and suffers a fractured wrist. Horses can perceive heavy vehicles as threats, even in experienced riding schools. There are pedestrian routes located across the equine centre.

4.5 I would say that from a Health & Safety perspective, ARU could not lawfully run high-risk equine sessions within an environment with increased, unmanaged hazards.

4.6 In my expert opinion, to authorise the extent of the red outlined area coloured yellow over the ARU Writtle Campus would be to create a dangerous state of affairs.

5. PROPOSED SOLUTIONS: A WAY FORWARD FROM A HEALTH AND SAFETY PERSPECTIVE

5.1 Ultimately the appropriate solution from a H&S perspective is for the proposed access route for construction vehicles to be removed from the scheme entirely. I understand that alternative timings of such use and alternative routes are being proposed by ARU away from the campus and in my view this is the only way that the health and safety of the

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campus can be properly protected and ensured to not result in the creation of a dangerous state of affairs. Regrettably, as at Deadline 1 (26th February 2026), NGET has failed to engage at all with exploring alternatives to their proposed creation of that dangerous state of affairs.

6. CONCLUSION

6.1 In my professional opinion, it is obvious that the proposed route (coloured yellow) by National Grid is incompatible with the safe running of the equine centre at the ARU Writtle Campus and by referencing a simple hierarchy of control model, it should be self-evident to NGET itself that its proposed construction and maintenance route should be moved to an alternative site nearby to remove the hazard and the risk. We are not just talking about students, staff and visitors, these traffic movements would adversely affect the behaviour of largely reactive animals who are being led by young learners in a tightly controlled educational environment. The likelihood of most serious and harmful horse-vehicle conflicts / collisions would inevitably increase based on the proposed route which encompasses both student riding / leading activities, to and from yard, livery and turnout locations, together with the potential for life threatening situations to occur.

6.2 In summary, the high-risk element is clear and unwavering. From a holistic perspective covering all the aforementioned points in relation to safeguarding, management of contractors, adding high levels of noise, vibration, dust and fumes generated from plant and equipment traversing the proposed route would create an unsafe environment that would not be fit for equine teaching activities, adversely affecting the health, safety and wellbeing of ARU staff, students and animals.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed [redacted]

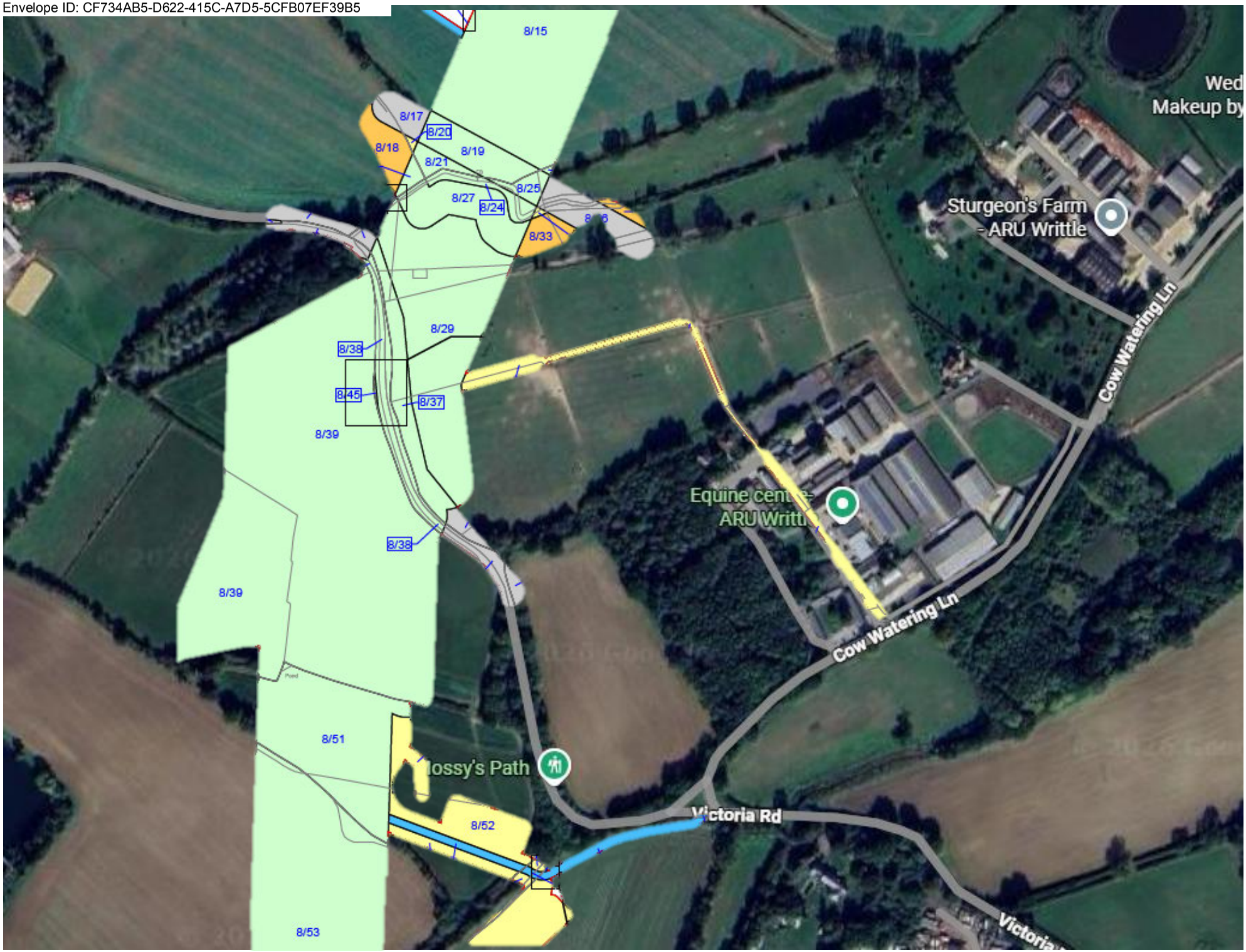
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EXHIBIT MS1/1

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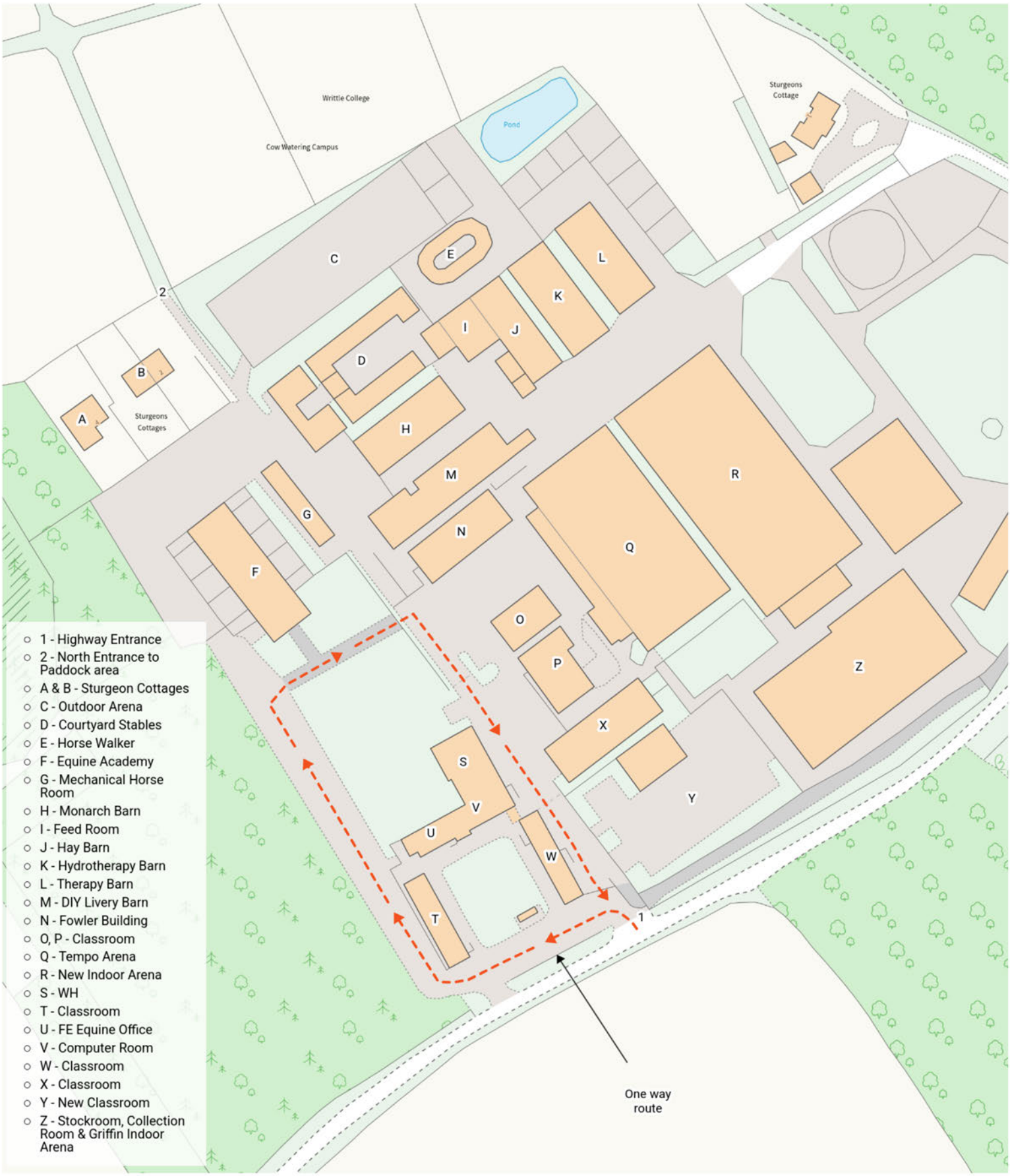
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savills

ARU Writtle

Land App



- 1 - Highway Entrance
- 2 - North Entrance to Paddock area
- A & B - Sturgeon Cottages
- C - Outdoor Arena
- D - Courtyard Stables
- E - Horse Walker
- F - Equine Academy
- G - Mechanical Horse Room
- H - Monarch Barn
- I - Feed Room
- J - Hay Barn
- K - Hydrotherapy Barn
- L - Therapy Barn
- M - DIY Livery Barn
- N - Fowler Building
- O, P - Classroom
- Q - Tempo Arena
- R - New Indoor Arena
- S - WH
- T - Classroom
- U - FE Equine Office
- V - Computer Room
- W - Classroom
- X - Classroom
- Y - New Classroom
- Z - Stockroom, Collection Room & Griffin Indoor Arena

Produced on Land App, Feb 23, 2026.
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50 m
Scale 1:1250 (at A4)

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

DANIEL COOK

On behalf:
Interested Party Reference Number: [redacted] and [redacted]

1. BACKGROUND AND QUALIFICATION

1.1 My name is Daniel Cook.

1.2 I am the Head of Equine Resources at Anglia Ruskin University ("**ARU**"). I have 25 years' professional experience managing large equine operations across the UK and internationally. Throughout that time, I have been responsible for the day-to-day and strategic management of substantial equine operations, complex multi-user equine facilities, and equine teaching and training operations.

1.3 In my role, I am directly responsible for the safe operation of the Equine Unit at the ARU Writtle Campus, for the welfare of the horses kept there, and for ensuring the safe delivery of equine teaching and assessment to our students, together with the provision of an excellent, practice-based student experience.

1.4 My role as Head of Equine Resources carries full oversight and operational responsibility for the entire campus at Cow Watering Lane where the ARU Writtle Campus (as part of the ARU portfolio) is situated, ensuring that on that site the horses, students, staff and visitors there are managed safely and appropriately, and that all activities comply with applicable welfare, health and safety and regulatory requirements and in-line with ARU and Writtle College Limited's ("**Writtle College**") policies.

1.5 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief. The photographs in this Witness

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Statement were taken by me and show the very real physical challenges and horse/vehicle conflict that would likely result from the National Grid proposal to use the existing access route inside of the Equine Facility at the ARU Writtle Campus for construction-related vehicle traffic and for maintenance access in perpetuity.

1.6 There is now produced and shown to me a bundle of true copy documents marked "Exhibit DC1". All references to documents in this statement are to Exhibit DC1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit DC1 in the format DC1/[x]

2. ARU'S FURTHER AND HIGHER EDUCATION EQUINE PROVISION AND IMPACT OF THE DCO PROPOSALS

2.1 It is important to understand that, in fact, ARU delivers *both* Further Education ("FE") *and* Higher Education ("HE") in equine subjects at the ARU Writtle Campus. At present, we have approximately 500 equine students (across *both* FE and HE education provision) enrolled on programmes including equine management, equine science, equine performance and rehabilitation, veterinary physiotherapy and related land-based and animal courses, all of whom are educated at the Equine Facility.

2.2 Equine teaching at the Equine Facility takes place intensively between 09:00 and 16:00**,** Monday to Friday, across *both* FE and HE programmes. In addition, we regularly deliver MSc and other postgraduate equine teaching at weekends, making the Equine Unit a seven-day teaching facility during much of the academic year. Teaching, practical work and commercial operations also continue during university holidays, when live horses remain on site and require daily handling, exercise and care. As a result, live horses and the wider equine campus are in educational use for the majority of daylight hours, six to seven days per week, throughout term time and much of the holiday periods.

2.3 These programmes are fundamentally practical and skills-based, based as they are on horses. They depend on safe, reliable, hands-on access to our herd of approximately 90 horses at the ARU Writtle Campus, to specialist equine teaching facilities, and to a calm, predictable environment in which we can conduct practical classes, assessments and clinical examinations.

2.4 The National Grid proposed DCO proposes to encompass part of the ARU Writtle Campus inside a red outline area of "Order Limits" (coloured yellow on the Land Plans, Section F, Sheet 8, and shown on the ARU Writtle Plan C in diagrammatic form) inside of which the proposed DCO powers, including as to wide-ranging access, will apply both during construction and in perpetuity in relation to operation and maintenance of pylons (if situated on ARU land) and overhead cables, or overhead cables only oversailing ARU land at the Equine Facility.

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2.5 Drawing on my 25 years of managing large equine operations such as that at the ARU Writtle Campus, I am clear that if construction access is permitted *through* the core of this Facility, ARU and Writtle College will not be able to deliver a significant proportion of its equine teaching and assessment safely or to the required academic and professional standards for the duration of the works. The impact would fall directly on hundreds of FE and HE students currently enrolled and also on future cohorts.

2.6 I am equally clear that the same impact would occur in relation to the operation and maintenance envisaged because of its peripatetic and ad hoc nature that would cause significant disruption due to its variable or apparently random occurrence going forwards.

3. ARU AND ARU WRITTLE WITHIN THE WIDER UNIVERSITY

3.1 It is important to understand that ARU is a *multi-campus* university with its main sites in Cambridge, Chelmsford, Peterborough and in Writtle. There is also ARU London, which is not owned by ARU but is a partnership arrangement. “Writtle University College” became *part* of ARU as “Writtle College Limited” in February 2024, bringing into the *university* provision of higher education a long-established specialist land-based and equine campus at the Equine Facility.

3.2 The ARU Writtle Campus is the only ARU campus delivering *this scale and breadth* of equine provision. ARU Writtle is central to ARU’s regional and *national* role in equine and animal sciences. Damage by reason of significant disruption for a construction period and future variable disruption to the equine operation at Writtle is not a marginal, localised issue but strikes at a core part of ARU’s and Writtle College’s academic portfolio and identity by directly impacting on the actual functionality of ARU Writtle.

4. PHYSICAL LAYOUT OF ARU WRITTLE AND EQUINE FACILITIES

4.1 The ARU Writtle Campus at Cow Watering Lane extends over approximately 150 hectares and comprises teaching buildings, laboratories, student accommodation, stables, arenas, grazing paddocks, turnout fields and internal roads and tracks.

4.2 The Equine Facility, which is the focus of this evidence, operates as a “campus within a campus”, housing around 90 horses and supporting the daily movement of large numbers of students and staff in, through, and around the equine facilities as part of the wider ARU Writtle Campus.

4.3 Outside of teaching times, for example, during weekends and vacations, the Equine Facility and its associated facilities are also regularly hired out to equestrians from the local and wider community for training, clinics, competitions and other equestrian activities. This wider community use typically occurs during evenings, weekends and vacation periods, ensuring that the facilities are well utilised throughout the year. It also currently generates an estimated £35,000 per year in hire income, which makes a

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significant contribution to the financial sustainability of the Equine Unit and supports ongoing investment in facilities that are used by both students and external users. This activity also strengthens the ARU Writtle Campus' role as a *regional* equestrian hub, fostering strong links with local riders, coaches, clubs and organisations who depend on safe, high-quality equine facilities for their events and training.

4.4 The ARU Writtle Campus also hosts regular on-site equestrian competitions, typically monthly, using the Equine Unit's arenas and associated facilities. These events provide valuable opportunities for both our students and local equestrians to participate in organised competition across a range of disciplines, developing their skills in a familiar, professionally managed environment. For students, these competitions form an important and related extension of their practice-based learning, allowing them to gain experience in competition preparation, horse management, riding under pressure and event organisation. For the wider equestrian community, they offer accessible, well-run local fixtures and further strengthen the ARU Writtle Campus' role as a regional equestrian hub for the community, reinforcing our relationships with riders, coaches and clubs who rely on safe, high-quality venues for their competitive activity.

5. OPERATION AND STATUS OF ARU WRITTLE'S EQUINE PROVISION

5.1 As I have referred to above, the Equine Facility operates as a large, professional-standard equine centre that delivers *both* FE and HE teaching, supports research and provides commercial livery services and it is in fact wrong to misstate it as a "school" in the sense of a facility solely for sixth form education. It is recognised within the sector of FE and HE as a high-quality, practice-led equine facility and is integral to the reputation of ARU and Writtle College in equine and animal science.

5.2 The scale of the Facility — approximately 90 horses, approximately 500 current equine students and intensive, timetabled practical use from 09:00 to 16:00 on weekdays plus regular weekend MSc teaching—means that the Equine Facility at the ARU Writtle Campus is in near-constant educational use. This is not a marginal or occasional 'yard' for a few horses; it is a core teaching and research infrastructure facility that underpins a significant part of the educational function and mission of ARU and Writtle College.

6. THE EQUINE FACILITY – CENTRALITY, ROUTINES, RESEARCH, COMPETITIONS, PARTNERS

6.1 The Equine Facility is essential to almost *all* equine programmes. It is impossible to deliver our equine curriculum without the *safe*, *continuous* operation of this Facility. The Facility forms the heart of the equine educational provision. Approximately 90 horses are accommodated in stabling blocks across the Facility site. The herd of horses comprises university-owned teaching horses, horses kept on commercial livery, horses engaged in specific research and rehabilitation programmes, and horses on loan to the university.

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6.2 The typical daily routine at the Equine Facility begins early with feeding, mucking out and health checks. Throughout the day, horses are moved through the Facility between buildings comprises of stables, indoor and outdoor arenas, lunge pens, paddocks and clinical or research areas. These movements occur repeatedly inside the Unit and along the internal roads and tracks including the highway of Cow Watering Lane itself, often with students—many of them at FE level or in early stages of HE programmes—leading horses under supervision. In any given teaching day between 09:00 and 16:00, multiple groups of students and horses are moving along these routes in both directions as part of scheduled practical sessions and assessments.

6.3 The ARU Writtle Campus provides not merely a 'riding school' or 'horse-care school' but research is also conducted on campus in equine biomechanics and performance, equine welfare and behaviour, rehabilitation and veterinary physiotherapy, and nutrition and management. Many of these projects rely on stable, long-term access to a well-characterised herd of sufficient size to yield statistically meaningful and welfare-robust data for such higher education research. Serious disturbance to housing, turnout and routines, or the forced relocation and fragmentation of the herd, would compromise existing projects and significantly impair our capacity to undertake future research.

6.4 The Equine Facility also prepares horses and riders for competitions, including inter-university equestrian events and regional competitions in disciplines such as dressage and show jumping. Systematic, consistent training in our arenas and fields is essential for safe and fair participation. Construction traffic and works in and around these facilities would disrupt or, for significant periods, prevent such preparation.

6.5 The ARU Writtle Campus is integrated with wider horse-related functions and partners with veterinary practices, physiotherapists, farriers, feed and equipment suppliers and professional equestrian organisations. These partners support placements, co-deliver teaching and research, and employ our graduates. These partners expect the ARU Writtle Campus to operate a safe, professionally managed equine yard. The type of construction access proposed risks damaging that confidence and jeopardising these relationships and the related revenue streams, as detailed further in the witness statement of James Rolfe.

7. DIRECT EFFECTS OF POWERLINES AND PYLONS DURING CONSTRUCTION AND OPERATION

7.1 The proposed construction access would run *through* or immediately adjacent to core equine areas and the above ground electrical lines are proposed to traverse the Western paddock part of the Equine Facility. During construction, vehicles (including heavy goods vehicles) and plant would use the area outlined in red shown on the various plans forming part of the proposed DCO as an access road from the highway of Cow Watering Lane to and from the Western part of the fields to the North East part of the Facility, and in

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consequence, the internal roads covered by that red outlined area of the Unit that currently function would be simultaneously shared also by the existing use by horses and pedestrians of the same route for the purposes of the ongoing functioning of the Facility.

7.2 The outline nature of the DCO means that the placement of pylons on the paddock areas cannot be excluded from the Equine Facility land, nor therefore can there construction on the paddock areas. Groundworks, pylon bases and laydown areas would disturb and, in parts, destroy existing grazing paddocks and turnout fields for the horse herd. Considerable noise and visual disturbance from machinery would be experienced by horses and by students directly within the equine yard and surrounding fields.

7.3 Once operational, the presence of either overhead pylons and lines or lines only above or adjacent to equine paddocks and routes, combined with a perpetual temporary access *route* through the Facility for maintenance, would permanently constrain the Facility's operation and how ARU and Writtle College can function, manage and develop the Equine Facility. The environment in which horses and students work would be irreversibly and adversely altered, both physically and in terms of heightened vehicle/horse or vehicle/person collision risk.

8. GROWTH POTENTIAL PUT AT RISK; CURRENT THRIVING OPERATIONS

8.1 At present, the Equine Facility is a thriving part of the ARU Writtle Campus. We support currently around 500 equine students. Student recruitment is strong, student retention is high, and student feedback consistently emphasises the particular value of extensive, high-quality, hands-on work with horses on a dedicated equine campus.

8.2 Our livery operation is currently at a strong level also, with 26 livery horses on site and an annual livery income of approximately £55,000 that manifests that strength. This income is an important part of the financial model that supports the staffing and maintenance of high-quality equine facilities used by both students and commercial clients.

8.3 Our strategic plan identifies equine and animal provision at the ARU Writtle Campus as a growth area. Any access route that cuts through the equine functional heart of the campus – as is currently proposed by the red outlined area that extends between the Cow Watering Lane highway, actually *through* the heart of the Facility, before turning West towards the proposed pylon line - with associated risks to horses and students and visitors and related constraints, will directly undermine this planned growth. It will make the campus less attractive to prospective students and staff, reduce confidence among industry partners and livery clients, and limit our ability to expand or reconfigure facilities in line with educational and welfare best practice.

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9. DIRECT OPERATIONAL DISRUPTION FROM THE PROPOSED CONSTRUCTION ACCESS

9.1 The proposed access route by National Grid appears to have taken no account at all of the horse herd and pedestrian traffic using daily the Facility, nor of the physical constraints of the route itself, and proposes to overlay a construction vehicle route through such horse and pedestrian traffic. This seems to me to be significantly flawed construction planning to introduce construction traffic into a location simultaneously heavily trafficked by animals and pedestrians. It is an accident(s) waiting to happen. Construction access through the Facility will cause severe and unavoidable operational disruption. The internal roads and tracks which National Grid proposes to use— including principally Cow Watering Lane highway—are the *very same routes* by which horses are moved from stables to fields *throughout the day*.

9.2 It is not practically possible to identify any realistic internal alternative route that can safely carry the required volume of horse and student movements if these principal routes are encumbered by regular construction traffic. Any attempt to divert 90 horses and hundreds of students onto narrower, less suitable tracks would simply displace and heighten the safety risks.

9.3 I note that National Grid has sought to address alternatives in its Environmental Statement for the relocation of the 4 yearly international scout jamboree held to the North of the Facility but has not applied itself to addressing alternatives for its desired construction and operational access it proposes through the Unit. ARU has not itself been able to identify a realistic internal alternative that can *safely* carry the required volume of horse and student movements if these principal routes are encumbered by regular construction vehicles and HGVs and plant. Any attempt to divert 90 horses and hundreds of students onto *narrower, less suitable* routes would simply shift the risk and *heighten* the safety risks.

9.4 National Grid has provided to date in February 2026 no construction programme beyond a merely illustrative Gantt chart in its Project Description part of its Environmental Statement and appears to have no development agreement nor any contract let in relation to the actual construction of its pylon line. The so-called “Outline Construction Code of Practice” ultimately distils down to open ended vague phrases that on a clear reading of their language leave as much as possible open-ended for a main contractor to decide as and when one is engaged and contracted. Therefore, it remains impossible to identify the actual periods, the actual construction vehicles envisaged to use the internal parts of the Unit or to use Cow Watering Lane highway. By contrast, it is actually known that during normal teaching hours (09:00–16:00, Monday to Friday) the equine routes in the Unit and also along Cow Watering Lane are in almost *continuous* educational use for horse herd and student pedestrian traffic. If construction and heavy construction traffic is introduced, ARU will be forced to cancel or dramatically curtail many

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practical further and higher education classes and assessments, to close certain arenas and paddock access points for safety, and to constantly seek to reschedule turnout and handling to avoid vehicle movements. This disruption would inevitably diminish the quality and quantity of practical teaching available to circa 500 equine students.

9.5 Nor is it any answer to assert, as National Grid does in its Socio-Economic Chapter of its Environmental Statement, that the envisaged disruption would only be "temporary" – because National Grid has failed to assess the very significant impact of its construction process and related access use on the function over an academic year or years on the ARU Writtle Campus, and the resulting effect on a series of cohorts in a series of academic years of ARU's student education, both FE and HE.

9.6 The proposed route is not a short-term, one-off construction access. It is intended to operate as a permanent access corridor for National Grid, including for future inspection, maintenance, repair and replacement activities. As a result, the associated safety risks, operational disruption and loss of teaching capacity would not be confined to the construction phase but would persist for the lifetime of the asset. This ongoing encumbrance is incompatible with the safe, efficient and educationally effective operation of a large equine teaching facility.

10. IMPORTANCE OF THE EQUINE FACILITY

10.1 The Equine Unit is not only a specialist facility; it is a *cornerstone* of the ARU Writtle Campus. It underpins a substantial proportion of FE and HE teaching on campus, supports a large and growing equine student body, facilitates key research and generates significant commercial income and engagement through livery and events.

10.2 If the Equine Unit is compromised, the ARU Writtle Campus loses one of its defining strengths. The harm would not be limited to individual horses or modules; it would affect the viability of entire programmes, the attractiveness of the campus to prospective and current students, and our ability to meet our commitments to partners and regulators.

11. WHY AN ACCESS ROUTE THROUGH THE FACILITY WOULD BE A SIGNIFICANT ADVERSE EFFECT AND REAL CONCERN

11.1 I have referred above to the DCO that proposes in its terms to apply to an area outlined in red shown in a number of plans forming part of the envisaged statutory instrument legislation, and that that red-outlined area would be superimposed directly onto the functioning accessways inside of the Equine Unit. This is a surprising choice for a construction (and operation) access, particularly given that it remains feasible to provide construction access directly from the highway to the West of the Unit, over fields and a shorter and more direct route. The choice to actually choose the most disruptive route possible through a busy operational unit seems to me both perverse and ill-thought through, if even thought about by National Grid at all.

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11.2 The proposed access route chosen by National Grid is of profound concern because it envisages running through the *daily working environment of 90 horses and hundreds of students*. Horses live in stable blocks on the Top Yard *immediately adjacent* to the internal roads of the Equine Facility. Horses are routinely led by students along these roads *between* stables, arenas, turnout fields and clinical facilities. The proposed construction route would pass directly in front of and alongside stable blocks, cross or pass directly by field and arena gateways and intersect the main transit lines along which horses and students move. The envisaged introduction by National Grid of vehicular construction traffic and of operational maintenance traffic is demonstrably bizarre, a flawed design choice, and all the more so when it can be seen from the plans that there exists a potential and feasible direct route from the highway of Cow Watering Lane Northwards to the location of the envisaged pylon route situated East of the highway crossing the fields.

11.3 It will be evident to the Secretary of State, or should be evident to National Grid but appears not to be, that a *single* passing lorry, van or ATV, or large piece of plant, in close proximity to a single led horse presents an immediate and serious collision risk. An injury to a horse or a pedestrian is a significant effect and is likely in the situation proposed by National Grid inside and on the highway immediately adjacent to the Unit. When one multiplies up the risk to a single horse and single pedestrian leader to up to 90 horses and 500 or so students, the range of risks to horses and pedestrians is demonstrably evident and manifestly significant also. Even well-handled horses can shy or jump sideways when confronted with unfamiliar noise or movement that vehicles generate; if there is nowhere safe for the student to step aside, the horse may collide with the vehicle, the handler, field fencing or other horses. In my 25 years of managing large equine operations across varied environments, I have seen how quickly and unpredictably such situations can develop, even in well-run yards. These scenarios are foreseeable and frequent if construction access is allowed through the Facility.

11.4 Emergency evacuation routes from the equine yard, for example in the event of fire or structural failure, rely on moving horses quickly out of stables and arenas *along internal roads* of the Equine Unit and the highway such as Cow Watering Lane to open paddocks and fields that are specifically designated as evacuation areas. The proposed construction access route (and operational maintenance route) *through* the Unit would use these same internal roads and pass through or alongside these designated fields, meaning that, in an emergency, our primary evacuation routes and safe holding areas for horses would be partially obstructed or compromised by construction traffic and works, and so too (randomly) during maintenance in the operational period of the pylons and their overhead lines.

11.5 As a result, any emergency situation would be made significantly *more* dangerous. Combining panicked horses and heavy vehicles on shared escape routes is, in my professional view, completely unacceptable from a safety perspective. It remains to me

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bizarre that National Grid would begin to contemplate superimposing its desired construction and maintenance route *through* a heavily trafficked horse and pedestrian site, not least when there remains a feasible alternative to pass from the highway over fields West of the Unit for construction purposes and to retain a field edge route for maintenance purposes in the same location.

12. GRAZING PADDOCKS, STOCKING DENSITY AND INABILITY TO RE-HOUSE 90 HORSES ON SITE

12.1 Our grazing paddocks and turnout fields at the Equine Facility are carefully planned to provide appropriate space, rotation and grouping for around 90 horses. A common density benchmark in equine management is in the region of one to 1.5 acres (approximately 0.4–0.6 hectares) *per horse* for grazing, depending on soil and pasture quality. Paddocks are also allocated according to the needs of specific groups for horse functions (for example, for mares, geldings, horses with restricted grazing, horses in rehabilitation), meaning that horses cannot simply be mixed arbitrarily inside the same paddock area.

12.2 The construction of pylons on the paddock area in the West of the Facility and associated construction access will disturb and damage several paddocks and fields through excavation, vehicle tracks and temporary works, rendering them unsafe or unsuitable for grazing by horses. It is not a feasible option to ‘compress’ 90 horses into the remaining paddocks or gate them into markedly smaller areas. Consequently, it remains wrong in fact for the Environmental Statement Socio-Economic Chapter to assert that the temporary nature of the construction works would result in a *minor* adverse and result in *no* significant effect. It would not. To compress horse densities as would result from the National Grid proposals would push stocking densities below acceptable criteria for horse husbandry, would rapidly degrade pasture, would increase both aggression and injuries between horses and fall below recognised welfare standards. This would result in a significant adverse effect on the horse herd of the ARU Writtle Campus, on the equine heart of its FE and HE education provision, and on that education provision to students.

13. LIVERY AND ITS IMPORTANCE; PROFESSIONAL VISITORS

13.1 The ARU Writtle Campus currently provides also livery in the Yard at the Equine Facility for 26 horses (in addition to the herd of 90 horses referred to above), generating an annual income of approximately £55,000. Student Livery involves ARU providing stabling, turnout, feeding (depending on the type of livery) and access to facilities for student owned horses.

13.2 This livery income is a material contribution to the Equine Facility’s budget and helps fund staff, maintenance and facility improvements that benefit all users, including our circa 500 equine students. Livery horses broaden the teaching herd, offering a wider range of case types and management scenarios for students to learn from.

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13.3 Livery owners and their horses also bring onto campus a stream of professionals - veterinary surgeons, physiotherapists, chiropractors, farriers, saddle fitters and nutritionists - who require predictable, safe access to horses and yards. These visitors are known to the Yard, attend by prior arrangement, and are required to comply with established campus access, parking and vehicle-movement rules, ensuring their work is integrated safely with daily horse and student activity. Their services depend on being able to reach horses and yards safely and reliably. If, as I anticipate would occur, vehicular use of the desired construction access *through* the Facility makes the site feel unsafe or significantly disrupts access, many livery owners are likely to withdraw their horses, threatening this income, diminishing the range of horses available for teaching and damaging the reputation of ARU and Writtle College within the equine community. This is evidently an adverse effect, and one that is not considered expressly by the Environmental Statement.

14. UNACCEPTABLE SAFETY HAZARD; HORSE-FRIENDLY CAMPUS LAYOUT

14.1 The Equine Facility and surrounding campus are intentionally managed, intentionally organised, and intentionally function as a horse-friendly and pedestrian-dominated environment. Existing vehicle speeds are very low, use of heavy vehicles is very rare, and the few drivers using internal roads in the Facility are accustomed as they drive to seeing horses and pedestrians regularly and to accommodating horses and pedestrians at very close quarters.

14.2 Introducing routine construction-related vehicles and HGV and plant movements along the same routes that are used throughout the day by students leading horses will, in my professional opinion, create an unacceptable safety hazard for horses and for pedestrian students. This should be obvious to National Grid but appears to not be as nowhere in its Environmental Statement does it refer to horse/pedestrian/construction vehicle risk at the Equine Unit. The size, blind spots and braking distances of such vehicles, combined with the potential for a half-tonne horse to move suddenly in the internal roads of the Unit or into the carriageway of the highway immediately adjacent to the Unit, make serious collision or crushing incidents a realistic and a foreseeable risk. This too is a significant adverse effect.

14.3 Drawing on my own 25 years of experience in large-scale equine yard management, including on sites where traffic and horses must be carefully integrated, I am firmly of the view that no combination of signage, marshalling, speed limits or time-tabling can remove the *fundamental incompatibility* between regular construction and heavy construction traffic and the very high volume of novice-handled horse movements that occur daily at this teaching yard. It is for this reason that National Grid's preference to use the access routes inside of the Equine Facility for its construction traffic, instead of a direct route over the edge of a field to the West of the Unit, remains bizarre and ill-thought through. It is as

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if National Grid is trying to make its construction and operation process fundamentally more difficult (and so costly) instead of easier (and also more cheaply).

15. TURNOUT FIELDS, PROLONGED STABLING AND WELFARE IMPACTS

15.1 It will be recognised that the ARU Writtle Campus is licensed and accredited as a professional equine establishment.

15.2 The Equine Facility operates as a British Horse Society (BHS) approved training centre and livery yard, is accredited by the National Equine Welfare Council (NEWC), and is licensed by Chelmsford City Council under the Hiring of Horses legislation. These approvals place clear and enforceable existing statutory obligations on us to meet and maintain recognised welfare standards, including the provision of regular turnout, appropriate social contact, and the proactive management of stress and behavioural wellbeing. Our horses must be able also to graze and move freely in paddocks as part of their normal management, and we are required to minimise avoidable stressors such as noise, sudden disturbance, confinement, or unsafe proximity to vehicles and construction activity.

15.3 Prolonged restriction of turnout, or sustained increase in stress levels arising from construction works or changes to access and grazing, would not only be detrimental to equine welfare but could place us in breach of these regulatory and accreditation standards on which our licences and professional standing depend. The envisaged use of the internal access roads in the Unit for construction and maintenance vehicle traffic remains avoidable because National Grid could feasibly access for those same purposes the field to the west of the Unit that offers a shorter and direct route also along the field edge to the desired location below a pylon line or to a pylon and its overhead line.

15.4 Turnout fields are paddocks where horses are released for free movement, grazing and social interaction. Regular turnout is central to equine welfare: it supports physical health (musculoskeletal, respiratory and digestive), enables normal social and exploratory behaviour and reduces stress.

15.5 If construction works and access roads remove or significantly curtail key turnout fields, many of our 90 horses would be forced into prolonged stabling beyond what is acceptable practice. Prolonged stabling is well documented as leading to increased horse stress and adverse behaviour stereotypes such as weaving, crib-biting and box-walking, and to a higher incidence of colic, gastric ulcers, respiratory conditions, stiffness and joint problems.

15.6 These welfare impacts not only breach best practice and, potentially, our statutory obligations under the Animal Welfare Act 2006, and the DEFRA Code of Practice for horses, but also make the horses more reactive and difficult to handle. This, in turn, such reactive behaviours and difficulties raises physical risks for students and staff handling

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these half-ton animals and undermines the reliability and educational value of practical and clinical work.

16. FIELD GROUND CONDITION CHANGES AND RESTORATION AFTER CONSTRUCTION

16.1 Pylon and overhead line installation involves heavy machinery, excavation of foundations, laydown areas and temporary access tracks. My experience from comparable projects evidences that these activities leave the soil of such fields compacted, rutted, uneven and poorly drained, with damaged or non-existent pasture. The proposed Code of Construction Practice makes no provision whatsoever for the restoration of the field groundscape to the necessary pre-existing status for horses and refers merely to a photographic (ie a visual) record being required.

16.2 In this respect, horses require relatively even, firm but forgiving footing. Compacted and uneven ground results in hardened groundscape and that has unevenness for horse hoofs, thereby significantly increasing the risk of slips and soft tissue injuries such as tendon and ligament damage. Even if reinstatement is attempted through basic levelling and reseeding, it can take at least one full growing season, and often longer, for the ground and sward to recover to a standard suitable for regular turnout and ridden work. It can be seen that the resulting effect of such restoration – if not immediately done – would be to impact on the teaching of an academic year subsequently and so a cohort of 500 students. As has been described above, this would be a significant adverse effect of the National Grid proposals on the ongoing function of the ARU Writtle Campus.

16.3 Whilst mechanical de-compaction and careful reseeding can help, they cannot more immediately restore soil structure and turf quality. In practical terms, this means that disruption to our turnout and grazing capacity would continue well beyond the nominal end of construction, prolonging the period during which our ability to manage and teach with 90 horses is compromised. Instead, careful manual decompaction of the fields used by National Grid and their careful hand reseeding would be necessary to avoid impacting on the teaching of such students in a given academic year or years at the ARU Writtle Campus.

17. EDUCATIONAL DISRUPTION – HANDS-ON ASSESSMENTS AND CLINICAL EXAMS

17.1 Hands-on assessments and clinical examinations in our equine and veterinary-related programmes involve students handling horses, assessing movement and conformation, conducting clinical examinations (for example, auscultation, palpation, limb examinations) and carrying out interventions such as bandaging or physiotherapy techniques.

17.2 These assessments must be conducted in a reasonably calm and controlled environment to ensure safety and to allow genuine evaluation of student competence. Construction

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noise, the sudden appearance or movement of construction vehicles, HGVs or plant and the general disturbance associated with major works near the equine yard will make horses more tense and reactive and will distract students.

17.3 Under such conditions, many of our practical assessments cannot safely or validly be delivered on the Unit's site. With circa 500 equine students, this presents a systemic problem. Relocating these assessments off-site at scale would be logistically complex, extremely costly and, in many cases, simply not feasible. This too would result in a significant adverse effect on the operation and function of the ARU Writtle Campus.

18. STATUTORY AND PROFESSIONAL DUTIES OF CARE

18.1 ARU and Writtle College are bound by general health and safety legislation and owe a duty of care to all students, staff, visitors and to its contractors. We are also subject to animal welfare legislation, including the Animal Welfare Act 2006 and the DEFRA Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids, and are expected to adhere to relevant professional standards (for example, British Horse Society best practice where applicable).

18.2 These statutory duties require that ARU and Writtle College take reasonable steps to avoid foreseeable risks of harm and ensure that the horses under our care have a suitable environment and the opportunity to express normal behaviours. In my professional judgement, based on 25 years of managing large equine establishments, the proposed DCO terms and the extent of the red outlined area of the DCO proposed to be superimposed over the Equine Facility of the ARU Writtle Campus, to result under that secondary legislation of a statutory instrument, to enable National Grid and its third party contractors to knowingly allow construction vehicles and heavy construction traffic to share space with the intense level of equine and pedestrian activity that occurs daily at the ARU Writtle Campus, and accepting prolonged loss of turnout and grazing, would be demonstrably incompatible with these duties and cause ARU and Writtle College to breach its statutory obligations.

19. SAFETY IMPLICATIONS AND ADDITIONAL MANAGEMENT BURDENS

19.1 The proposed construction access would in effect turn our internal and integrated one-way system from a low-speed campus access route into a construction haul road. This road is the main access for student and staff accessing the Facility, for parking also, and runs directly alongside teaching classrooms; frequent heavy vehicle movements, noise and vibration at this location would seriously undermine our ability to deliver teaching and would materially damage the student learning environment. I attach a plan at **DC1/1** showing the campus and the one-way system.

19.2 Critically, the *same* route is routinely used by ridden horses hacking to and from off-site bridleways. Placing construction traffic onto this shared route would put heavy vehicles

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into direct conflict with horses, pedestrians and parked vehicles, and is, in my professional view, wholly incompatible with the safe operation of the campus and the safety of students, staff, visitors and horses.

19.3 Overall, the introduction of construction and heavy construction and maintenance vehicle traffic into the ARU Writtle equine campus would demonstrably and materially increase the risk of serious injury to students, staff and horses. Evidently, National Grid's proposed construction and maintenance routes through the Facility would compromise both normal day-to-day safety and emergency evacuation, raise the likelihood of handling incidents and significantly increase the potential severity of any collision. As has been described above, this would be a significant adverse effect of the National Grid proposals on the ongoing function of the ARU Writtle Campus.

19.4 If, despite these concerns, access were imposed, ARU would be forced to adopt extensive additional management measures: re-timing turnout and practical classes to avoid vehicle movements, increasing staff supervision, installing temporary fencing and devising complex one-way systems for horse movements which would not be practical or safe. These measures would carry substantial recurrent cost and complexity and still would not reduce risk to the level that exists now. The significant adverse effects would remain.

20. EQUINE BEHAVIOUR AROUND VEHICLES; USE OF VICTORIA ROAD AND COW WATERING LANE HIGHWAYS

20.1 I have referred above to the functioning of the Equine Facility internal roads and also the use by the Facility of the immediately adjacent highway of Cow Watering Lane in relation to horses.

20.2 Horses, as prey animals, are highly sensitive to noise, movement and changes in their environment. While many of our horses are familiar with light farm and campus traffic, that is also relatively slow moving and a usual sight for horses to experience, horses are not habituated to frequent, close-proximity encounters with construction vehicles, HGVs, cranes or major plant and such vehicles that produce unexpected clanking sounds or to vehicle beeping alarms. Even a well-desensitised horse can react unpredictably to the noise of a reversing alarm, the sudden hiss of air brakes or the unfamiliar silhouette and vibration of a large construction vehicle.

20.3 Cow Watering Lane is a primary route used by the Equine Facility staff and students to lead horses between stables, arenas and paddocks. From 09:00 to 16:00 on weekdays these routes, including Cow Watering Lane, are in *constant* use by groups of students and horses. As country roads, the roads currently carry only low volumes of slow-moving, familiar traffic, and that itself is used to the presence of horses and pedestrians on the Lane. Increasing traffic substantially - particularly in the form of construction vehicles, HGVs and plant - fundamentally changes the traffic character of these routes and

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significantly heightens the likelihood of serious horse–vehicle conflicts and resultant damage to both horses and vehicles.

20.4 Standard construction traffic Codes of Practice are designed primarily for interactions with conventional road users—drivers, cyclists and pedestrians. They do not and cannot adequately account for the behaviour of large, reactive animals led at close quarters by novice handlers within a teaching environment. Measures such as speed limits, signage, mirrors and driver briefings, while helpful, do not address the core incompatibility between regular heavy vehicle movements and this level of equine activity. The proposed Outline Code of Practice contains no wording to mitigate the risks referred to above. As has been described above, the proposals would thus result in a significant adverse effect of the National Grid proposals on the ongoing function of the ARU Writtle Campus.

21. BEHAVIOURAL CHANGE DUE TO NOISE AND EMF; EVIDENCE

21.1 The Environmental Statement refers to noise and electro-magnetic fields and makes a passing reference to the effects of these on *agricultural* animals but no reference to animals forming part of a national education provision such as at the ARU Writtle Campus.

21.2 In my many years of experience, horses' behaviour and stress levels can be significantly affected by noise, visual stimuli and changes in their environment. Construction traffic contemplated by National Grid would introduce a range of intermittent but often loud noises - engines under load, reversing alarms, impact tools, piling or drilling, and raised voices - which can provoke startle or flight responses. The sudden appearance of tall plant or new structures, particularly near paddock boundaries and arenas, may cause sustained unease or evasive behaviour in some horses.

21.3 In operation, overhead lines can emit low buzzing, crackling or hissing sounds, particularly in damp or wet conditions, and pylons are highly visible, unnatural structures. Although the empirical *research base* on the specific effects of electromagnetic fields (EMFs) from overhead lines on horses is limited and not conclusive, what is beyond doubt in my own experience is that significant changes in the sensory environment, such as constant new noises and visual intrusions, can alter behaviour and increase stress for horses. It is not correct to say, therefore, that there would be *no* effect from EMFs on the 90 horses from the change in the electromagnetic environment below the proposed overhead electrical lines envisaged above the paddocks in the Western part of the Facility.

21.4 In a teaching and research environment *dependent* on routine, predictability and low baseline stress for both horses and students, this additional permanent source of disturbance engenders high unpredictability in horse responses to EMF and makes them difficult to practically manage.

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22. ALTERNATIVES TO RE-HOUSING AND POSSIBLE SOLUTIONS

22.1 Whilst the Environmental Statement has excluded any real consideration of alternatives in relation to the desired use of the Equine Facility to accommodate construction and operational through-traffic, and it has not considered at all relocating the envisaged construction access route to the West of the Facility, ARU has considered alternatives and the functioning of the Unit demonstrates the real need to relocate the envisaged access to the West of the Facility with direct access from the highway instead of through the Unit building core itself. One theoretical alternative would be to re-house our 90 horses and, effectively, move a substantial part of our equine teaching off site for the duration of construction. In practice, with circa 500 current equine students and a herd of this size, this is not a realistic or proportionate solution. Finding equivalent off-site stabling, turnout and teaching facilities within manageable distance of the campus, and with the necessary capacity and quality, would be exceptionally difficult and extremely costly. It would fracture the herd, disrupt research, undermine livery contracts and fundamentally degrade the student experience for at all cohorts. I therefore do not consider this to be a realistic or proportionate mitigation option and would rule it out.

22.2 Even if such relocation were theoretically possible, it would introduce its own welfare risks during transport and acclimatisation and would still not address the long-term operational and planning constraints created by a perpetual access easement through our equine land.

22.3 In my professional opinion, based on 25 years of managing large equine operations in different contexts, the only effective way to avoid the severe safety, welfare, educational and commercial impacts I have described is to remove the proposed construction and maintenance access route through the ARU Writtle Campus' Equine Facility entirely and to secure alternative access that does not traverse the core equine campus.

22.4 For the reasons set out above, it is demonstrably clear that authorising the superimposition under a statutory instrument of a construction and maintenance access through ARU Writtle Campus' Equine Facility is incompatible with the safe discharge of ARU and Writtle College's educational and welfare duties, threatens the practical feasibility and viability of a thriving and growing equine operation serving approximately 500 students, and carries risks to people and animals that cannot be reduced to an acceptable level. The access route through the Equine Facility should therefore be removed from the DCO proposal.

22.5 As has been described above, as currently formulated, the National Grid proposals, including to extend a red outlined area Eastwards from the route of the pylon line through the Equine Facility building core, would result in a likely, indeed a certain, significant adverse effect on the ongoing function of the ARU Writtle Campus.

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23. PHOTOGRAPHIC EVIDENCE OF STUDENT/HORSE MOVEMENT ALONG PLANNED ACCESS ROUTE

23.1 At **DC1/2**, I exhibit photographic evidence showing student and horse movement along the route that is envisaged for use by National Grid for its proposed access route. As can clearly be seen from those photographs, there is at places, next to no room for more than two horses to pass, let alone a horse and a construction vehicle. The proposed construction access route of National Grid would have a significant adverse impact on the day-to-day function of the ARU Writtle Campus' Equine Facility.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed: [redacted]

[redacted]

Head of Equine Resources, Anglia Ruskin University

Dated: 26-02-2026

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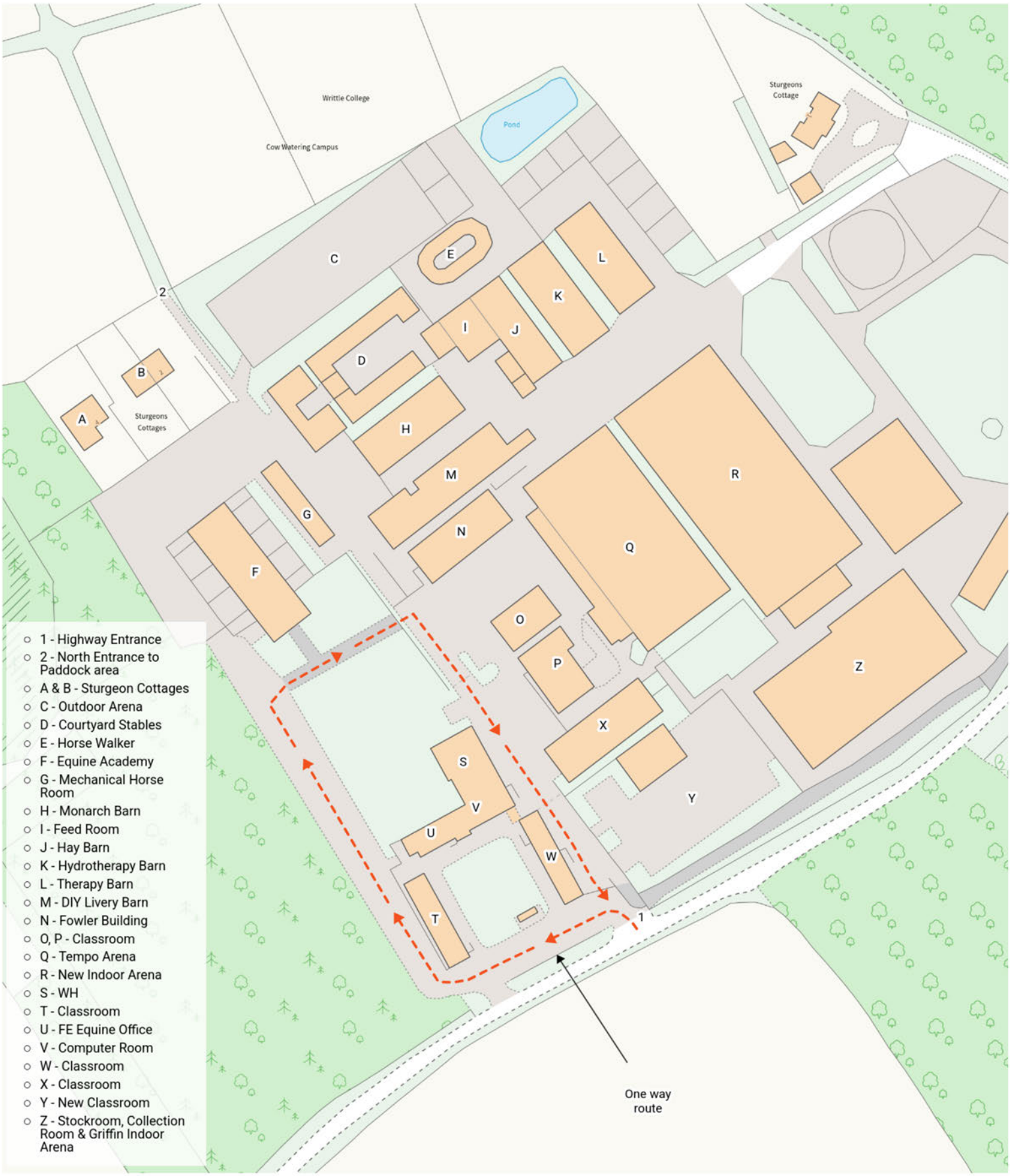
EXHIBIT DC1/1

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savills

ARU Writtle

Land App



- 1 - Highway Entrance
- 2 - North Entrance to Paddock area
- A & B - Sturgeon Cottages
- C - Outdoor Arena
- D - Courtyard Stables
- E - Horse Walker
- F - Equine Academy
- G - Mechanical Horse Room
- H - Monarch Barn
- I - Feed Room
- J - Hay Barn
- K - Hydrotherapy Barn
- L - Therapy Barn
- M - DIY Livery Barn
- N - Fowler Building
- O, P - Classroom
- Q - Tempo Arena
- R - New Indoor Arena
- S - WH
- T - Classroom
- U - FE Equine Office
- V - Computer Room
- W - Classroom
- X - Classroom
- Y - New Classroom
- Z - Stockroom, Collection Room & Griffin Indoor Arena

Produced on Land App, Feb 23, 2026.

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50 m

Scale 1:1250 (at A4)

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EXHIBIT DC1/2

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(Planned access route showing students exciting the Watering Hole (cafeteria)

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(Planned access route showing students carrying tack following ridden practical session)

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(Planned access route showing livery students carrying out yard duties)

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(Planned access route showing students arriving for morning yard duties)

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(Planned access route showing students conducting yard duties)



(Planned access route showing students walking horses to turnout fields)

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(Planned access route showing students walking horses to Outdoor Arena for ridden practical session)

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(Planned access route showing student hand walking a horse currently on box rest/under going rehabilitation)

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(Planned access route showing student riding practical in Outdoor Arena)



(Planned access route showing horses coming in from turnout fields to be prepared for practical teaching)

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(Planned access route showing horses coming in from turnout fields to be prepared for practical teaching)

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(Planned access route showing horses coming in from turnout fields to be prepared for practical teaching)

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(Planned access route showing 10m proximity to DIY Student Livery Barn housing 12 horses)

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(Planned access route showing 20m proximity to Monarch Stables housing 13 horses)

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

ISABELLA TAYLOR (STUDENT)

On behalf:
Interested Party Reference Number: [redacted] and [redacted]

1. BACKGROUND

1.1 My name is Isabella Taylor.

1.2 I am currently a BSc Equine Performance third year student at Anglia Ruskin University ("ARU") and attend the ARU Writtle Campus.

1.3 My studies focus on equine welfare, behaviour, management, and performance, combining academic learning with regular practical horse handling and yard-based training.

1.4 I am also heavily involved in equine research projects at the ARU Writtle campus, which provides opportunities to develop practical research skills, observe horse behaviour in controlled conditions, and contribute to evidence-based equine management.

1.5 In addition to being a student, I also pay for livery at the ARU Writtle Campus. This gives me daily, direct experience of how the equine facilities operate and how environmental change can affect horse behaviour, health welfare, and the safety of those working with horses.

1.6 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.7 There is now produced and shown to me a bundle of true copy documents marked "Exhibit IT1". All references to documents in this statement are to Exhibit IT1 unless

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otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit IT1 in the format IT1/[x].

2. IMPACTS FROM THE DCO

2.1 This witness statement describes the impact of the proposed development by National Grid under The Norwich To Tilbury Electric Line Above Ground Development Consent Order (the DCO) during the construction phase and the operation phase including the operation of a new proposed access road through the ARU Writtle Campus as shown indicatively at **IT1/1**.

2.2 My view is that the proposed development has the potential to affect both my education and personal welfare as a student and horse owner. My studies depend on access to a safe, well-managed equine environment where horses are able to rest, move freely, and be handled safely.

2.3 The proposal will result in environmental disturbance, reduced turnout (access to outdoor space and grazing), and increased stress in the horses. This may compromise both the welfare of the animals and the safety of practical teaching. As my own horse is kept on site and is sensitive to environmental change, I am concerned that ongoing disturbance could negatively affect its wellbeing and therefore my ability to continue my studies without concern for its health.

2.4 My studies currently combine academic learning with regular practical sessions involving horse handling, turnout, training observation, welfare monitoring, and research activity.

2.5 The yard operates on consistent routines designed to minimise stress and maintain safe handling conditions for students. Horses are able to rest between sessions and benefit from regular grazing and field turnout enabling the horses to graze freely when not stabled or working as well as stable management practices that support both physical health and behavioural wellbeing.

2.6 This stable environment is essential for effective teaching and safe student learning.

2.7 The facilities at the ARU Writtle Campus are central to my education and future career within the equine industry. They provide the practical experience, research opportunities, and professional skills required to progress into employment in the sector.

2.8 My involvement in research projects at the campus is particularly important for developing analytical and evidence-based skills that are highly valued in the equine industry.

2.9 Any reduction in access to horses, research activity, or safe practical training could affect my ability to complete my studies to the highest standard and prepare effectively for future employment.

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2.10 I am concerned that the development, construction works, and associated access routes could disrupt the operation of the yard, reduce turnout availability, and increase stress levels in the horses.

2.11 This could limit safe handling opportunities, reduce the suitability of horses for teaching or research, and affect the quality of practical learning for both myself and future students.

2.12 Over time, this may impact the reputation, effectiveness, and long-term viability of equine education at this site.

3. CONCLUSION

3.1 For the reasons outlined above, I believe the proposed development would have serious consequences for horse welfare, student safety, research opportunities, and the quality of equine education delivered at the ARU Writtle Campus.

3.2 As both a student and a livery customer, this environment is central to my education, my horse's welfare, and my future career. Any changes that compromise the safety, stability, or welfare standards of this facility risk affecting not only current students and horses, but the long-term future of equine education at this site.

3.3 I believe that the proposed route for the proposal is just not a suitable or viable option for the safety, welfare and optimal education for students and the welfare and safety of the horses. Therefore, I respectfully ask that these impacts are fully recognised and carefully weighed up before any decision is made.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed [redacted]

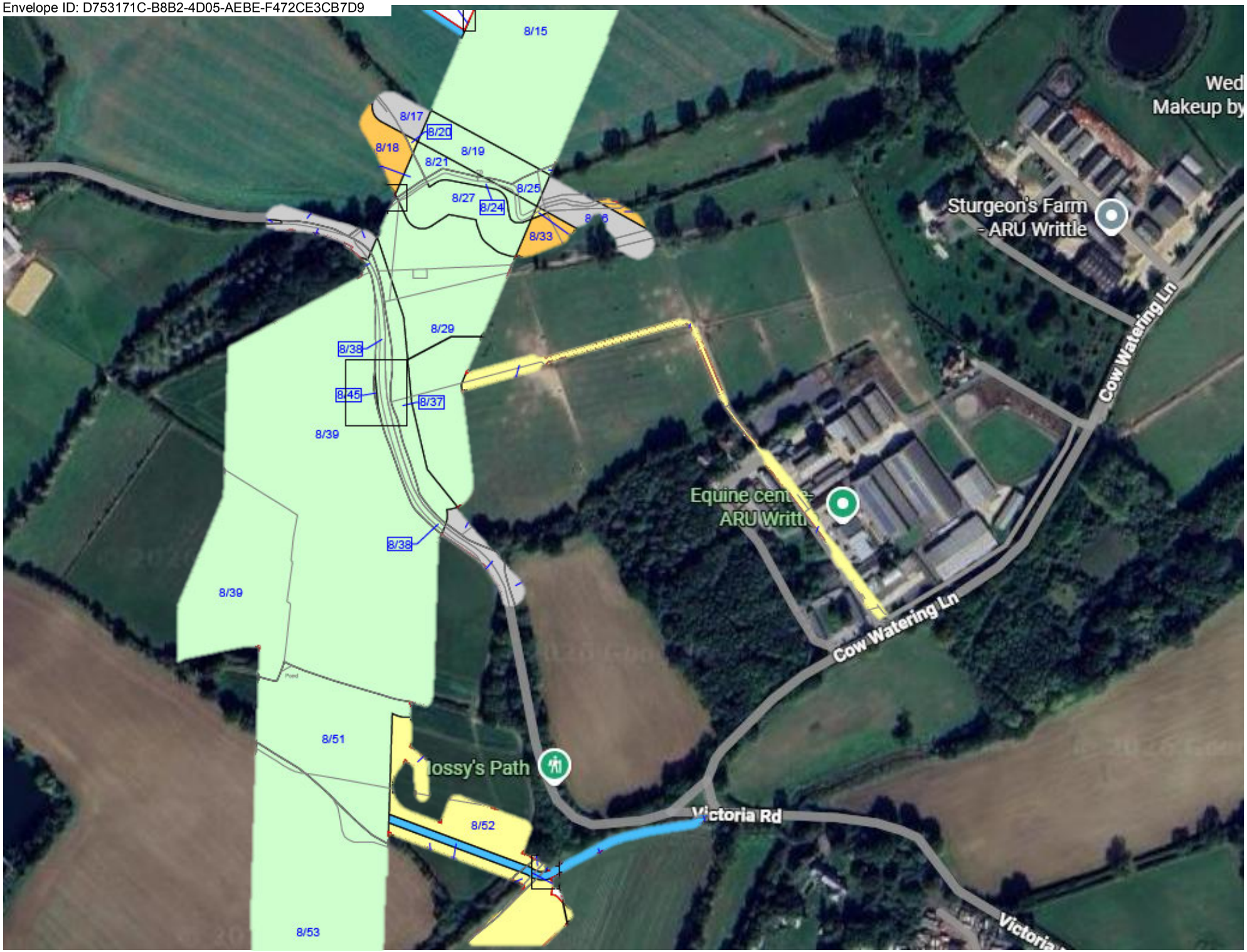
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Dated 26-02-2026

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EXHIBIT IT1/1

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APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC
FOR
A DEVELOPMENT CONSENT ORDER
PURSUANT TO SECTION 37 PLANNING ACT 2008
FOR
THE NORWICH TO TILBURY ELECTRIC LINE ABOVE GROUND

PLANNING INSPECTORATE REFERENCE: EN020027

WITNESS STATEMENT

Jane Kenny MRICS FAAV FALA

On behalf:
Interested Party Reference Number: [redacted] and [redacted]

1. BACKGROUND AND QUALIFICATION

1.1 My name is Jane Kenny MRICS FAAV FALA.

1.2 I am a qualified Chartered Rural Surveyor with in excess of 20 years of property experience

1.3 I am a Director at Savills, head of consultancy for the eastern region. I specialise in advising landowners affected by a range of different infrastructure projects from National Significant Infrastructure Projects to smaller local schemes. I have been advising Anglia Ruskin University (ARU) since 2023 in relation to the National Grid's Norwich-Tilbury Project.

1.4 The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

1.5 There is now produced and shown to me a bundle of true copy documents marked "Exhibit JK1". All references to documents in this statement are to Exhibit JK1 unless otherwise stated. References to tab numbers in this statement are to the respective tabs in Exhibit JK1 in the format JK1/[x].

2. OVERVIEW

2.1 Writtle College Limited is an equine training college based at the ARU Writtle Campus, an established educational facility comprising teaching classrooms, stabling complexes, training arenas, residential accommodation, service areas, and a network

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of fenced tracks and grazing paddocks. These facilities operate as an integrated environment used daily for equine handling, practical teaching, and student movement.

2.2 Horses, students, and staff circulate continuously throughout these areas. Many users are young or otherwise vulnerable, and the one-way circulation system at the ARU Writtle Campus has been specifically designed to minimise risk and ensure calm, predictable movement of horses. I attach a plan at **JK1/1** showing the one-way system.

3. DCO PROJECT PROPOSALS

3.1 The DCO envisages wide powers, attaching to the extent of the land outlined in red that overlaps with the ARU Writtle Campus, under Articles of the DCO including 3(1)-(8), 4(1)-(2), 17 (Access to works), 21 (Protective Works), 22 (Surveys), 24 (Compulsory acquisition of land), 25 (Compulsory Acquisition of rights), 27 (Temporary Use of Land), 29 (Temporary use of land for maintaining the authorised development), 38 (Extinguishment and suspension of private rights), 39-40, (power to override easements and other rights, and statutory authority to override easements and other rights), 48 (defence to statutory nuisance), 49 (Traffic regulation), and 56 (Safeguarding). The authorisation relates to Schedule 1, and in particular in relation to the ARU Writtle Campus, to Works No. 17 ("Route TB"), and the wide scope of the Associated Development including paragraph (u). The ARU Writtle Campus appears in Section F of the pylon route, Sheet 8, of the various Land Plans, Works Plans, and Traffic Regulation Plans ("the Plans").

3.2 A simple comparison of the Plans with the situation of the ARU Writtle Campus demonstrates the proposal or desire by National Grid for a 'dog-leg' or inverted L-shaped red outlined area extending Eastwards from the Route TB and then Southwards bisecting the operational ARU Writtle Campus before then connecting to the highway at the ARU Writtle Campus entrance. The Plans show that area coloured yellow by which National Grid desire a *permanent* right of vehicle access to entitle them in perpetuity to drive vehicles back and forth through the ARU Writtle Campus.

3.3 National Grid is seeking an access route, approximately 500 metres long, to the working corridor for construction purposes and operational and maintenance purposes post construction. They also are seeking to cross three grazing paddocks for horses with overhead lines for about 250 metres.

3.4 The proposed construction and maintenance access route enters the ARU Writtle Campus from Cow Watering Lane and immediately conflicts with the campus' established one-way internal access system. The initial (existing) total road width inside of the campus is approximately 10 metres, narrowing to *around 3.5 metres*

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within the first 40 metres from the highway at Cow Watering Lane. Although the *surface* of this section is tarmac, it was not designed for, nor is it suitable for, construction-type traffic and so is susceptible to deformation and destruction in places from construction traffic passing to and from over its surface.

3.5 The existing internal route then passes directly through the main staff and visitor car park, an area of intensive use bordered by teaching classrooms which is approximately 100 metres. It continues for approximately 50 m *between* two operational stable blocks used for stabling horses and in daily educational use. These stables generate constant horse movements to and from the stable blocks onto the internal access route, and being led by pedestrian students throughout the day. As the primary pedestrian access to the teaching facilities and a vital link between the stable yards and turnout fields, the route accommodates high footfall while also serving as an essential access point for supplier deliveries (including hay, bedding, and feed), tractors and trailers, and equine professionals such as vets and farriers. Vehicle movements occur several times a day, with all activity carefully planned and managed to prioritise the safety of both horses and students. The next 40 metres of the route runs adjacent to residential accommodation, and to the riding menage which is in daily use for teaching and training sessions by horses. The section of the internal campus route from the highway to this point encompasses the *highest* levels of pedestrian activity across the campus. As an essential link between the stable yards and the turnout fields, the route also provides critical access for staff, students, tractors, trailers, and horses. Vehicle movements occur multiple times per day, with all use carefully planned and managed to prioritise the safety of both horses and students—particularly during peak teaching periods in the outdoor arena, when the route is frequently in use between 8:00 am and 5:00 pm.

3.6 Further North and beyond the menage, the route proceeds along a narrow-fenced track leading to key grazing paddocks. This track has a maximum width of approximately 3.5 metres and is constrained by fixed fencing on both sides. Access is limited to small agricultural vehicles only. The surface of the track comprises thin hardcore topped with grass and is unsuitable for repeated or heavy construction traffic vehicular use.

3.7 Approximately 200 metres of the 500-metre route passes through the principal hub of the ARU Writtle Campus, where pedestrians, equine activities, and teaching sessions all take place *at the same time*, creating competing demands for space, even between horses and pedestrians and the very low levels of vehicle traffic using the internal route currently. Introducing additional construction-related vehicle movements into this area increases the likelihood of an actual conflict between vehicles, pedestrians, and horses, reduces safe manoeuvring space, and heightens the overall risk of accidents or near-miss incident, to a point where accidents would be more likely than not to occur. I consider this to be a significant adverse effect from

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the proposals of National Grid and yet one that can be readily avoided by the use of the edge of the fields further West of the ARU Writtle Campus, adjacent to the highway, for direct and closer access between the highway and the envisaged pylon route.

3.8 A further critical physical constraint exists in the geometry of a 90-degree turn Westwards within the fenced corridor to the immediate North of the buildings on the campus. It is clear that long vehicles cannot safely negotiate this turn without removing fencing (and so going outside of the extent of the DCO red outlined area) or entering grazing land (also outside of the DCO red outlined area) and that the width of the red outlined area of the DCO superimposed over the ARU Writtle Campus cannot accommodate the long construction vehicles carrying pylons or cable bails as identified in the traffic plan drawings of National Grid. Following this 90 degree turn, the route rejoins the same narrow track leading to the working corridor and Writtle Road.

3.9 The proposed construction and permanent maintenance access would introduce construction and maintenance vehicles into and though the most sensitive and heavily used (by pedestrians and horses) areas of the ARU Writtle Campus, including directly adjacent to classrooms, the principal car park, multiple stable blocks, residential accommodation, training arenas, and the grazing paddocks.

3.10 Given the unpredictable nature of equine behaviour, the presence of construction or large service vehicles represents a demonstrable and clear safety risk to horses, to pedestrians and to vehicle property (from horse collisions). This was illustrated dramatically by the actual bolting of 5 household cavalry horses on 24 April 2024 in Central London as a result of vehicle movements and noise. The horses bolted through central London, throwing of their riders, after being spooked by construction noise in Belgravia, injuring four people and causing widespread damage. The horses, including one covered in blood, galloped for miles, colliding with vehicles before being recovered by police in the East End.

3.11 The combination of constrained widths, unsuitable surfacing, fixed fencing, and the non-negotiable 90-degree turn renders the route physically incapable of safely accommodating long or heavy vehicles and also of safely accommodating construction vehicle traffic through the campus and the periodic passing of maintenance vehicles of also unidentified size and type envisaged to service pylons and/or overhead cables above fields.

4. IMPACTS OF THE PROPOSED OVERHEAD LINE (OHL)

4.1 The proposed Over Head Line envisaged across the North-West corner of the estate would remove approximately 7 acres of established grazing paddocks on a temporary

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and potentially permanent basis depending on the reaction of the horses with the construction noise and electromagnetic effects of an Over Head Line on horses. The loss of the grazing equates to 18% of the total grazing which the college manages in accordance with recognised equine welfare and pasture management standards for approximately 90 horses.

4.2 The removal of these paddocks inside of the red outlined area, along with restrictions created by the Over Head Line rights in favour of National Grid and its beneficiaries easement, would create a significant deficit in grazing provision and so result to compel an increase in horse density over the existing ARU Writtle Campus paddock areas. These fields form part of a critical rotational grazing system used daily for turnout. Loss of this land would undermine pasture condition, compromise equine welfare, and impede the ARU's ability to deliver essential teaching and training activities.

5. ENGAGEMENT WITH THE APPLICANT

5.1 Engagement between ARU and National Grid and their agents and advisors has been limited and has not led to the joined up understanding by these two parties of the actual situation nor the resolution of fundamental operational and safety concerns.

5.2 A meeting was held on 19 June 2024, attended by National Grid's Project Lead, Land Agent, and an engineer, along with ARU senior staff including James Rolfe (ARU's Chief Operating Officer) Christopher Nix (ARU's Estates Director), Dawn Taylor (Interim Director of Estates and Facilities) and myself.

5.3 We walked the entire proposed access route and demonstrated its proximity to classrooms, stables, residential accommodation, and the menage. We also proposed alternative access routes and OHL alignments intended to reduce operational harm. I attach a plan at **JK1/2** showing the alternative access proposals we have put forward.

5.4 No direct feedback was provided following this visit. ARU later became aware of the Applicant's response only when it appeared on the public consultation webpage, indicating that key operational and welfare concerns had not been understood or addressed. The public consultation webpage shows as follows:

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Ref no.	Summary of matters raised	National Grid's response
9-7.216	Criticism of National Grid's reasoning for retaining the original proposed route for the Project at Anglia Ruskin University (ARU) Writtle (previously known as Writtle Agricultural College) rather than changing the Project to follow one of the alternative routes suggested by the respondent at the 2023 Non[1]Statutory Consultation (e.g. as the impact of the Project on ARU Writtle outweighs the impact of an alternative route on residents and woodland; as the alternative routes would not impact residents and woodland much more than the original route) / Suggest that the Project is routed further west so that it does not oversail ARU Writtle and passes over arable land and woodland instead (plan provided by respondent, with two alternative routes) (e.g. to mitigate impact on education at the Equine Unit on Cow Watering Lane)	National Grid notes the respondent's feedback. We have reviewed multiple alternative alignments in this area, however no change is proposed as the alignment oversailing the furthest north-eastern corner of the university grounds is preferred when compared to a permanent loss of woodland and a transfer of effects to residential properties as well as a listed building to the west if the alignment was to continue directly north from TB164 (now TB166). With regards to vehicular access requirements for the construction of the proposed scaffold tower required for the stringing activities, the project proposes to temporarily close the eastern section of Cow Watering Lane to allow for two methods of construction; - Temporary closure for the duration of the stringing removing the need to the scaffold towers. - Temporary closure for a short period of time to unload scaffold into the adjacent fields, access into those fields will still be required in agreement with the landowner, however the number of people accessing the site would be reduced.

5.5 It demonstrates that the assessment failed to understand the issues and challenges ARU would experience as a result of the Project, and the consequential impacts that would flow. This stands in stark contrast to the alternative options of routing the OHL, where such effects would be significantly reduced or avoided. The failure to recognise and properly consider these operational and educational implications means that the decision-making process did not adequately account for the real and practical detriment the project would impose on the ARU and the ARU Writtle Campus, nor did it meaningfully weigh the viability and reduced-impact alternative.

5.6 National Grid contends that the alternative route would adversely affect residential properties. However, the closest residential property is approximately 300 metres from that alignment. While the alternative route would have affected a small area of woodland, an option to route the line to the west of the wood would have shifted the overhead line only around 130 metres closer to that property. The next nearest properties are more than 700 and 800 metres away, respectively.

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5.7 As illustrated in the alternative route plan at **JK1/2**, our proposed option would not have resulted in any material impact on residential amenity. We therefore do not understand or agree with National Grid's claim in this regard.

5.8 A follow-up meeting took place on 24 July 2025 with a graduate surveyor from Fisher German and an engineer. This was attended by John Iveson (ARU's Director of Estates and Facilities), Liz Craig (ARU's Strategic Estate Manager), Dan Cook (ARU's Head of Equine) and myself. ARU once again walked the proposed route and inspected the working corridor with the National Grid's representatives and explained the operational constraints and presented feasible alternative solutions.

5.9 No amendments to the proposals were made following this meeting.

5.10 Following submission of the DCO, at the end of September 2025, a further meeting was requested, specifically asking for a representative of National Grid with technical understanding and decision making authority to attend. Despite this request, no representative from National Grid was available.

5.11 Instead, a newly appointed Fisher German agent, who had never visited the site, attended alone via a virtual meeting on 11th December 2025. Liz Craig (ARU's Strategic Estates Manager), Michelle Lawlor-Perkins (ARU's Head of Legal) and myself attended the meeting. It quickly became apparent that this individual was unaware that the site was actually an equine educational facility, the engagement to date including representations by ARU, and did not appreciate the sensitivity of equine movements or the incompatibility of construction traffic with daily operations as an educational facility.

5.12 This meeting did result in the alternative access solutions previously presented being considered. See section 6 below.

5.13 Standardised Heads of Terms were issued to ARU on 24 October 2025 by Fisher German on behalf of the applicant seeking a voluntary agreement. Formal negotiations with Fisher German, National Grid's agent, did not commence until 23 January 2026, at which point a meeting was held with the agents to discuss the proposed terms in detail. Following this meeting, Fisher German advised that they would relay our comments and requirements to the applicant for consideration. Regrettably, to date, no further correspondence has been received.

6. ALTERNATIVE ACCESS OPTIONS

6.1 ARU proposed at the two site meetings and the meeting on 11th December 2025 two practicable and feasible alternative access and maintenance routes:

6.1.1 Option 1 – West of the ARU Writtle Campus shown blue on the plan. Access from the highway of Cow Watering Lane across arable land to the

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west of the college, entering along a corridor the campus grazing paddocks (so as to minimise reduction of paddock area) and reaching the working corridor.

6.1.2 Option 2 – A new direct access point from Writtle Road, see green dashed line on plan together with photograph.

6.2 Regrettably, National Grid (via a letter from Fisher German dated 20th January 2026) rejected both options for the following reasons:

6.2.1 the locations of the alternatives fell outside the DCO red-line boundary and those locations were not included in the DCO application.

6.2.2 (on the basis of the above, and so by then being merely academic) asserting that, notwithstanding the significant ground engineering being undertaken by National Grid along the pylon route between Norwich and Tilbury, National Gird considered that it was not able to infill temporarily a ditch between the Cow Watering Lane highway and the adjacent field to enable a temporary construction access nor provide a concrete culvert block to enable permanent maintenance access by means of that route.The photographs at **JK1/3** show there is no ditch.

6.2.3 Option 1 would require agreement with a third-party landowner with whom engagement had not been initiated (but ARU notes that the inclusion of the access route over the campus appears to have been on the mistaken premise that the ARU Writtle Campus was a farm and not a further and higher education facility heavily trafficked by horses and pedestrians).

6.3 Despite ARU's efforts, including site meetings, written submissions through the pre and statutory consultations, and the provision of workable alternative routing no changes have been put forward by National Grid at the date of this statement. This lack of engagement by National Grid is regrettable and inexplicable.

7. CONCLUSION

7.1 In my professional view, National Grid has not demonstrated that the specific temporary and permanent access they seek through the core operational areas of the ARU Writtle Campus is necessary, nor that it represents the least impactful or most proportionate solution available to them.

7.2 On the evidence provided by National Grid to date, it is not clear that the impact to ARU's operations at the ARU Writtle Campus has been properly balanced against the relatively modest practical challenges associated with using an alternative access outside the ARU Writtle Campus.

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7.3 Based on my experience advising landowners on a wide range of linear infrastructure projects, the barriers put forward by National Grid, red line boundary constraints, drainage features, or the need to engage with a third-party, are all matters that can readily be addressed where there is a genuine willingness to find a mutually acceptable solution. None of these issues constitute a technical or legal impediment. DCO red line amendments, landowner engagement, or minor engineering adjustments are all commonplace in the evolution of nationally significant schemes.

7.4 The alternatives proposed by ARU are workable, proportionate and materially safer and do not prevent National Grid from constructing or operating the proposed overhead line.

7.5 In my opinion, reaching a negotiated position is achievable, but only if National Grid properly acknowledges the magnitude of the impact on ARU and its ARU Writtle Campus.

7.6 If a negotiated alternative cannot be secured, it is my professional opinion that the Examining Authority should:

7.6.1 Give significant weight to the operational, welfare and safety risks associated with running construction and maintenance traffic through the centre of an equine college, particularly one serving young and vulnerable users and consequential losses.

7.6.2 Require National Grid to adopt an alternative access route, even if this requires modest amendments to the DCO boundary or engagement with additional landowners.

7.6.3 Refuse to endorse the current proposed access if National Grid is unable to demonstrate a genuine need.

7.7 The proposed access route is incompatible with the safe and effective operation of the equine training course at the ARU Writtle Campus. It introduces construction and maintenance vehicles into critical teaching, stabling, and student circulation areas and relies on narrow, unsuitable tracks with physical constraints that prevent safe use by construction traffic. Statutory safeguarding obligations on all passing through the campus also operate as a fundamental legal constraint as children require protection.

7.8 The proposed OHL results in the loss of essential grazing land required to maintain equine welfare and deliver core teaching functions.

7.9 Engagement from National Grid has been limited, inconsistent, incompetent and has failed to meaningfully address the concerns repeatedly raised by ARU.

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7.10 For these reasons, the proposed access arrangements and OHL configuration would have severe and unacceptable impacts on the safety, welfare, and operation of the ARU. The above would demonstrably result in a near certain and certainly highly likely significant adverse effect on the functioning of ARU and the ARU Writtle Campus over a considerable time, affecting education delivery to hundreds of third party students, as well as adversely affecting also the reputation and business of ARU locally, regionally, and nationally, as well as (as the evidence of the Vice Chancellor shows) internationally.

7.11 Nor has National Grid demonstrated any meaningful purpose or operational need for rejecting the alternative access routes proposed and choosing the surprising route through a heavily horse and pedestrian trafficked heart of the ARU Writtle Campus. The reasons asserted, relating to pre-fixed planning boundaries, the most minor ground conditions, and uninitiated third-party engagement, remain readily and practically soluble during the Examination Period by National Grid in the event that it chooses to apply its mind to a practical solution. By contrast, the very real risks posed by the requirements of the Project through the operational heart of an equine educational college are serious, unavoidable, and fundamentally incompatible with safe daily activity and the running of an educational facility.

7.12 National Grid's position is unevidenced, unsubstantiated, disproportionate and lacking justification for a need.

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I believe that the facts stated in this Witness Statement are true.

Signed [redacted]

[redacted]

Dated 25-02-2026 ……..

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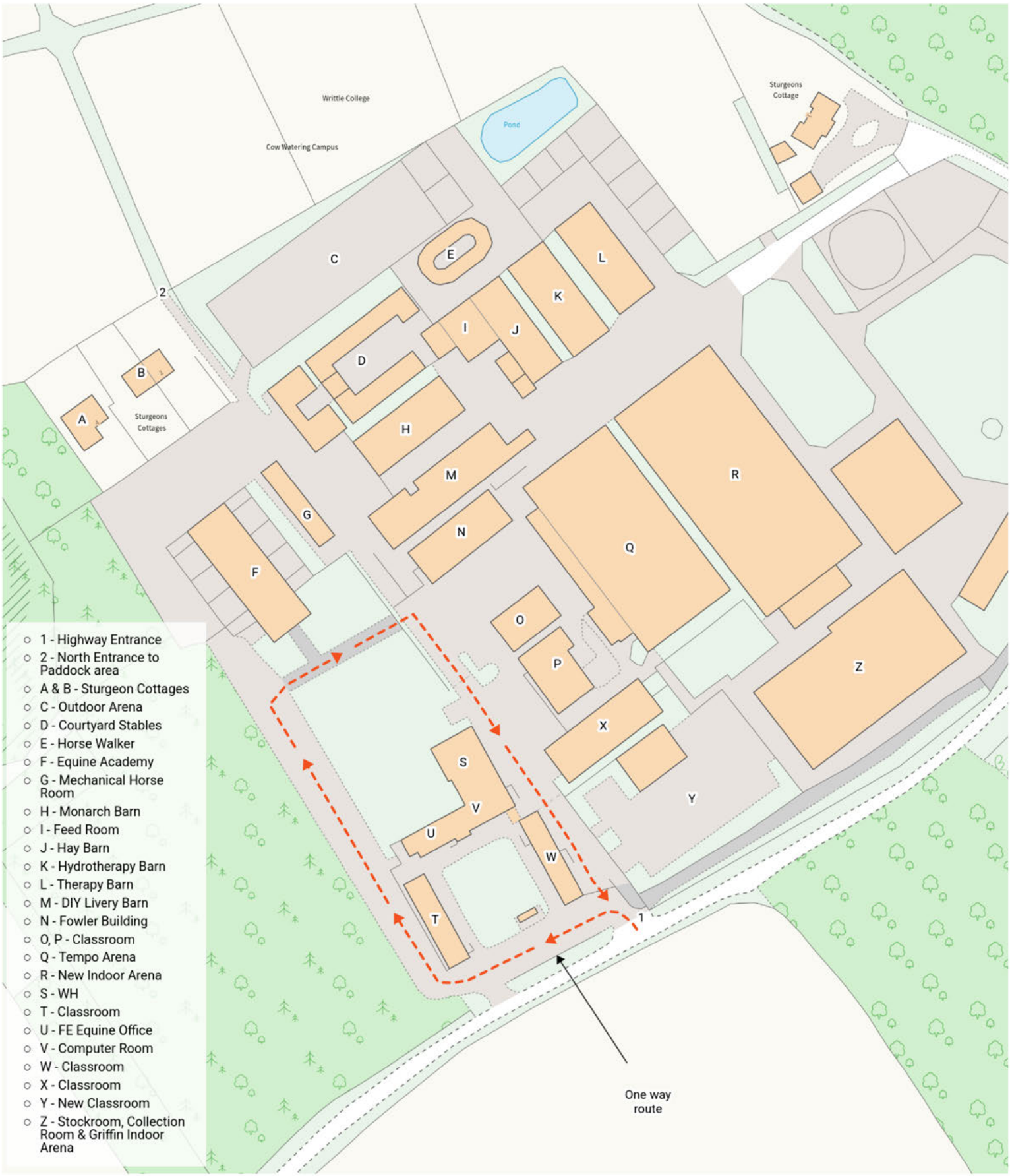
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savills

ARU Writtle

Land App



- 1 - Highway Entrance
- 2 - North Entrance to Paddock area
- A & B - Sturgeon Cottages
- C - Outdoor Arena
- D - Courtyard Stables
- E - Horse Walker
- F - Equine Academy
- G - Mechanical Horse Room
- H - Monarch Barn
- I - Feed Room
- J - Hay Barn
- K - Hydrotherapy Barn
- L - Therapy Barn
- M - DIY Livery Barn
- N - Fowler Building
- O, P - Classroom
- Q - Tempo Arena
- R - New Indoor Arena
- S - WH
- T - Classroom
- U - FE Equine Office
- V - Computer Room
- W - Classroom
- X - Classroom
- Y - New Classroom
- Z - Stockroom, Collection Room & Griffin Indoor Arena

Produced on Land App, Feb 23, 2026.
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50 m
Scale 1:1250 (at A4)

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SECTION E – BOOK OF REFERENCE AMENDMENTS

INTRODUCTION

1. This is Section E, Book of Reference Amendments, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU").

2. This Section is to be treated as a request for the following amendments to the Book of Reference (Document 4.3, AS-018 Revision B) by reference to plot numbers:

    1. **Plot F-8/9** –

        1.1 Add **Anglia Ruskin University**, Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 1,2, 3 & Part 3 person.

        1.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

    2. **Plot F-8/15** –

        2.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 1, 2, 3 & Part 3 person.

        2.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

    3. **Plot F-8/16** –

        3.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 2, 3 & Part 3 person.

        3.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

    4. **Plot F-8/17** –

        4.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 1, 2, 3 & Part 3 person.

4.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

5. **Plot F-8/19** –

5.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 2, 3 & Part 3 person.

5.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University**

6. **Plot F-8/20** –

6.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 2, 3 & Part 3 person.

6.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

7. **Plot F-8/21** –

7.1 Add **Anglia Ruskin University,** Bishop Hall Lane, Chelmsford, CM1 1SQ as a Category 2, 3 & Part 3 person.

7.2 **ARU Writtle** should be removed/amended as this is a campus name and its legal entity is **Anglia Ruskin University.**

8. **Plot F-8/23** –

8.1 Remove references to **Writtle University College** as this entity no longer exists.

8.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

9. **Plot F-8/24** –

9.1 Remove references to **Writtle University College** as this entity no longer exists.

9.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

10. **Plot F-8/25** –

10.1 Remove references to **Writtle University College** as this entity no longer exists.

10.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

11. **Plot F-8/26** –

11.1 Remove references to **Writtle University College** as this entity no longer exists.

11.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

12. **Plot F-8/27** –

12.1 Remove references to **Writtle University College** as this entity no longer exists.

12.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

13. **Plot F-8/29** –

13.1 Remove references to **Writtle University College** as this entity no longer exists.

13.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

14. **Plot F-8/30** –

14.1 Remove references to **Writtle University College** as this entity no longer exists.

14.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

15. **Plot F-8/32** –

15.1 Remove references to **Writtle University College** as this entity no longer exists.

15.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

16. **Plot F-8/33** –

16.1 Remove references to **Writtle University College** as this entity no longer exists.

16.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

17. **Plot F-8/36** –

17.1 Remove references to **Writtle University College** as this entity no longer exists.

17.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

18. **Plot F-8/37** –

18.1 Remove references to **Writtle University College** as this entity no longer exists.

18.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers

19. **Plot F-8/42** –

19.1 Remove references to **Writtle University College** as this entity no longer exists.

19.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers**.**

20. **Plot F-8/47**-

20.1 Remove references to **Writtle University College** as this entity no longer exists.

20.2 Replace **ARU Writtle** as this is a campus name and not it's legal entity, with **Writtle College Limited,** Anglia Ruskin University, Bishop Hall Lane, Chelmsford, CM1 1SQ and **Anglia Ruskin University** Bishop Hall Lane, Chelmsford, CM1 1SQ as Category 1 Occupiers.

SECTION F – LEGAL FRAMEWORK

INTRODUCTION

1. This is Section F, Legal Framework, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and of Writtle College Limited) ("ARU").

STATUTORY LAW

Health and Safety at Work Act 1974

2. The Health and Safety at Work Act 1974 provides for securing the health, safety and welfare of persons at work, for protecting others against risks to health or safety in connection with the activities of persons at work.

3. By section 2: (Emphasis added)

> *1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*
> *2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—*
> *a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;*
> *b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;*
> *c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;*
> *d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;*
> *e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.*
> *3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.…*

Education Act 2002

4. The Education Act 2002 regulates the provision of education. Section 175 requires the following:

> *3) The governing body of an institution within the further education sector shall make arrangements for ensuring that their functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution…*
>
> *3B) The Secretary of State may not—*
>
> *a) enter into an agreement with the proprietor of an institution in England for the provision of further education, unless the agreement requires the proprietor to comply with the safeguarding duties, or*
>
> *b) give financial assistance under section 14 to the proprietor of an institution in England for the provision of further education unless the assistance is given on terms requiring the proprietor to comply with the safeguarding duties,*
>
> *but this subsection does not restrict the Secretary of State's powers to enter into an agreement with, or give financial assistance to, an institution to which subsection (3) or (3A) applies.*
>
> *3C) "The safeguarding duties" are—*
>
> *a) a duty to make arrangements to ensure that the proprietor's functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution, and*
>
> *b) a duty to have regard to any guidance given from time to time by the Secretary of State in considering what arrangements are required.*
>
> *4) A person mentioned in any of subsections (1) to (3A) shall, in considering what arrangements are required to be made by them under that subsection, have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.*
>
> *5) In this section—*
>
> *"child" means a person under the age of eighteen;*
>
> *"governing body", in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13); …*

Statutory Guidance

5. The Department for Education has published statutory guidance entitled "Keeping children safe in education (2025)" (most recently) in September 2025:

> *This is statutory guidance from the Department for Education ('the Department') issued under Section 175 of the Education Act 2002 (as amended), the Education (Independent School Standards) Regulations 2014, the Non-Maintained Special Schools (England) Regulations 2015 and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended). Schools and colleges in England must have regard to it when carrying out their duties to safeguard and promote the welfare of children. For the purposes of this guidance children includes everyone under the age of 18…*
>
> *1. Schools and colleges and their staff are an important part of the wider safeguarding system for children. This system is described in the statutory guidance Working Together to Safeguard Children.*

2. *Safeguarding and promoting the welfare of children is everyone's responsibility. 'Children' includes everyone under the age of 18. Everyone who comes into contact with children and their families has a role to play. In order to fulfil this responsibility effectively, all practitioners should make sure their approach is child centred. This means that they should consider, at all times, what is in the best interests of the child.*

6. Paragraph 76 states:

76. Governing bodies and proprietors20 have a strategic leadership responsibility for their school or college's safeguarding arrangements and must ensure that they comply with their duties under legislation. They must have regard to this guidance, ensuring policies, procedures and training in their schools or colleges are effective and comply with the law at all times.[21] Headteachers and principals should ensure that the policies and procedures, adopted by their governing bodies and proprietors (particularly those concerning referrals of cases of suspected abuse and neglect), are understood, and followed by all staff.

7. Footnote 21 states:

Section 175 of the Education Act 2002 requires governing bodies of maintained schools and colleges, in relation to their functions relating to the conduct of the school or the institution to make arrangements for ensuring that such functions are exercised with a view to safeguarding and promoting the welfare of children who are either pupils at the school or are receiving education or training at the institution. The Education (Independent School Standards) Regulations 2014 apply a duty to proprietors of independent schools (which in the case of academies and free schools is the academy trust) to ensure that arrangements are made to safeguard and promote the welfare of children. The Non-Maintained Special Schools (England) Regulations 2015 oblige non-maintained special schools to comply with certain requirements as a condition of their approval and whilst approved by the Secretary of State. One condition of approval is that the proprietor must make arrangements for safeguarding and promoting the health, safety and welfare of pupils, which have regard to any guidance including where appropriate, the National Minimum Standards, about safeguarding and promoting the health, safety and welfare of pupils and, in the case of schools already approved, that these arrangements at the school with respect to these matters are in accordance with the approval given by the Secretary of State. The Apprenticeships, Skills, Children and Learning Act 2009 (as amended) requires 16-19 Academies, Special Post-16 institutions and Independent Training Providers to make arrangements to ensure that the proprietor's functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution. For colleges, non-maintained special schools and independent schools: the definition of 'children' applies to the statutory responsibilities for safeguarding and promoting the welfare of children i.e. those under 18.

8. Paragraph 94 further provides:

Governing bodies and proprietors should ensure they facilitate a whole school or college approach to safeguarding. This means involving everyone in the school or college, and ensuring that safeguarding, and child protection are at the forefront and underpin all relevant aspects of process and policy development. Ultimately, all systems, processes and policies should operate with the best interests of the child at their heart.

Safeguarding Vulnerable Groups Act 2006

9. The Safeguarding Vulnerable Groups Act 2006 provides for the protection of children and vulnerable adults. Section 5 provides for "Regulated Activity":

   1) A reference to regulated activity relating to children must be construed in accordance with Part 1 of Schedule 4.

   2) A reference to regulated activity relating to vulnerable adults must be construed in accordance with Part 2 of that Schedule…

10. Section 6 provides for Regulated Activity Providers:

   1) A reference to a regulated activity provider must be construed in accordance with this section.
   2) A person (P) is a regulated activity provider if–
      a) he is responsible for the management or control of regulated activity,
      b) if the regulated activity is carried out for the purposes of an organisation, his exercise of that responsibility is not subject to supervision or direction by any other person for those purposes, and
      c) he makes, or authorises the making of, arrangements (whether in connection with a contract of service or for services or otherwise) for another person to engage in that activity…

11. By section 7:

   1) An individual commits an offence if he–
      a) seeks to engage in regulated activity from which he is barred;
      b) offers to engage in regulated activity from which he is barred;
      c) engages in regulated activity from which he is barred…

12. By section 9:

   1) A person commits an offence if–
      a) he permits an individual (B) to engage in regulated activity from which B is barred,
      b) he knows or has reason to believe that B is barred from that activity, and
      c) B engages in the activity.
   2) A personnel supplier commits an offence if–
      a) he supplies an individual (B) to another (P),
      b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
      c) he knows or has reason to believe that B is barred from that activity.
   3) A person guilty of an offence under this section is liable–
      a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
      b) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court , or to a fine not exceeding the statutory maximum, or to both.
   4) It is a defence for a person charged with an offence under this section to prove–
      a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),

b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and

c) that the barred person engaged in the activity for no longer than was necessary for that purpose…

13. By section 18:

1) If an offence under section 9, or 38 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of–

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

b) a person purporting to act in such a capacity,

he (as well as the body) commits the offence.

2) If an offence under section 9, or 38 is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of–

a) a partner, or

b) a person purporting to act as a partner,

he (as well as the partnership) commits the offence….

14. By section 60:

1) In this Act –

"adult" means a person who has attained the age of 18; …

"child" means a person who has not attained the age of 18;…

"DBS" means the Disclosure and Barring Service established by section 87(1) of the Protection of Freedoms Act 2012;

"educational institution" includes any training provider (within the meaning of Part 3 of the Education Act 2005 (c. 18)), whether or not the training provider would otherwise be regarded as an institution; …

"vulnerable adult" [means any adult to whom an activity which is a regulated activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 is provided…

15. Within Schedule 4, Part 1 includes:

1) An activity is a regulated activity relating to children if–

a) it is mentioned in paragraph 2(1), and

b) except in the case of activities falling within sub-paragraph (1A) it is carried out frequently by the same person or the period condition is satisfied…

16. In Schedule, 4, Regulated Activity, paragraph 2:

1) The activities referred to in paragraph 1(1) are –

a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children;

b) any form of care for or supervision of children, unless the care or supervision is merely incidental to care for or supervision of persons who are not children;

c) any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to their physical, emotional or educational well-being;

d) …

e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children;

f) driving a vehicle which is being used only for the purpose of conveying children and any person supervising or caring for the children pursuant to arrangements made in prescribed circumstances…

Animal Welfare Act 2006

17. The Animal Welfare Act 2006 provides for the animal welfare. By section 1, the Act applies to a "a vertebrate other than man." By section 2, "An animal is a "protected animal" for the purposes of this Act if– a) it is of a kind which is commonly domesticated in the British Islands…".

18. By section 4:

1) A person commits an offence if–
a) an act of his, or a failure of his to act, causes an animal to suffer,
b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
c) the animal is a protected animal, and
d) the suffering is unnecessary.
2) …
3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include–
a) whether the suffering could reasonably have been avoided or reduced;
b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
c) whether the conduct which caused the suffering was for a legitimate purpose, such as–
i) the purpose of benefiting the animal, or
ii) the purpose of protecting a person, property or another animal;
d) whether the suffering was proportionate to the purpose of the conduct concerned;
e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person…

19. By section 9:

1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
2) For the purposes of this Act, an animal's needs shall be taken to include–
a) its need for a suitable environment,
b) …
c) its need to be able to exhibit normal behaviour patterns,
d) any need it has to be housed with, or apart from, other animals, and
e) its need to be protected from pain, suffering, injury and disease…
3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular–
a) any lawful purpose for which the animal is kept, and
b) any lawful activity undertaken in relation to the animal…

COMMON LAW

20. *In Kane v New Forest District Council* [2002] 1 WLR 312 at paragraphs 23 and 28, the Court of Appeal held that the decision of the local planning authority to authorise the creation of a "foreseeably dangerous" situation resulted in the Court of Appeal imposing liability for negligence on that decision maker in relation to the catastrophic injuries suffered by a pedestrian using a blind bend who as struck by a motor vehicle:

23. It seems to me far from clear on these authorities that a local planning authority would be immune from liability if they permitted (still less if they required) the construction of a foreseeably dangerous footpath or (which is perhaps the better way of putting the present case) if they failed when granting the planning permission (or requiring the work) to impose a condition forbidding the opening of the footpath to the public until the sightlines had been cleared…. Why would the planning process be "adversely affected" by making the defendants potentially liable to an action in negligence for failing to take this elementary precaution?...

28. Here, by contrast, the starting point must surely be that the defendants did create the source of danger. They it was who required this footpath to be constructed. I cannot accept that in these circumstances they were entitled to wash their hands of that danger and simply leave it to others to cure it by improving the sightlines… In short, the claimant seems to me to have not merely a "realistic" prospect of establishing a claim in negligence against the defendants here but a positively powerful case.

STATUTORY LAW

Town and Country Planning Act 1990

21. The Town and Country Planning Act 1990 regulates the "development" of land. By section 55:

1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land….

COMMON LAW

22. In *Kent County Council v Secretary of State for the Environment* (1977) 33 P&CR 70 at 76, the High Court held that the Secretary of State was entitled in law to grant up to as much of (or less than) the development as had been applied for:

In my judgment the correct approach to this matter is to ascertain the powers under section 29 of the Act by reference to the purposes of Part III , in which it appears. It seems to me that everything in Part III flows from and is consequential on the provision in section 23 that planning permission is required for the carrying out of any development of land;… It further seems to me that, as a matter of common sense, the determining authority can grant as much of the development applied for as they think should be permitted.

STATUTORY LAW

Planning Act 2008

23. The Planning Act 2008 (pa 2008)") regulates the development of land for "nationally significant infrastructure projects" ("NSIPs"). By section 235: (Emphasis added)

    1) In this Act – …
    "building" has the meaning given by section 336(1) of TCPA 1990; …
    "development" has the meaning given by section 32;
    "development consent" has the meaning given by section 31;…
    "electric line" has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act); …
    "land" includes buildings and monuments, and land covered with water, and in relation to Part 7 must be read in accordance with section 159;…
    "nationally significant infrastructure project" has the meaning given by Part 3;
    "national policy statement" has the meaning given by section 5(2); …
    2) A reference in this Act to a right over land includes a reference to a right to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

24. By section 159, Interpretation: land and rights over land: (Emphasis added)

    1) This section applies for the purposes of this Part [7].
    2) "Land" includes any interest in or right over land.
    3) Acquiring a right over land includes acquiring it by the creation of a new right as well as by the acquisition of an existing one.

25. Part 3 provides for nationally significant infrastructure projects. By section 14: (Emphasis added)

    1) In this Act "nationally significant infrastructure project" means a project which consists of any of the following— …
    a) the installation of an electric line above ground; …

26. Part 4 of the Planning Act 2008 provides for the Requirement for Development Consent.

27. By section 31: (Emphasis added)

    Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.

28. By section 32:

    1) In this Act (except in Part 11) "development" has the same meaning as it has in TCPA 1990. This is subject to subsections (2) and (3)….

29. Within Part 6, provision is made for the Deciding Applications for Order Granting Development Consent.

30. Within Chapter 5, Decisions on Applications, by section 103:

1) The Secretary of State has the function of deciding an application for an order granting development consent.

31. By section 104: (Emphasis added)

1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.
2) In deciding the application the Secretary of State must have regard to –
a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"), …
b) …
c) …
d) any other matters which the Secretary of State thinks are both important and relevant to [the Secretary of State's decision.
3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.
4) …
5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.
6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.
8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met…

32. By section 114:

1) When the Secretary of State has decided an application for an order granting development consent, the Secretary of State must either—
a) make an order granting development consent, or
b) refuse development consent…
2) The Secretary of State may by regulations make provision regulating the procedure to be followed if the Secretary of State proposes to make an order granting development consent on terms which are materially different from those proposed in the application.

33. Within Part 7, Orders Granting Development Consent, provision is made for the Content of Orders, for Compulsory Acquisition, and for Statutory Undertakers.

34. Within Chapter 1, by section 120: (Emphasis added)

1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

2) *The requirements may in particular include —*
   a) *requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development;*
   b) *requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a).*
3) *An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.*
4) *The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.*
5) *An order granting development consent may -*
   a) *apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;*
   b) *make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order;*
   c) *include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order;*
   d) *include incidental, consequential, supplementary, transitional or transitory provisions and savings.*
6) *In subsection (5) "statutory provision" means a provision of an Act or of an instrument made under an Act.*
7) *Subsections (3) to (6) are subject to subsection (8) and the following provisions of this Chapter…*

35. By section 122, Purpose for which compulsory acquisition may be authorised: (Emphasis added)

1) *An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*
2) *The condition is that the land—*
   a) *is required for the development to which the development consent relates,*
   b) *is required to facilitate or is incidental to that development, or*
   c) *is replacement land which is to be given in exchange for the order land under section 131 or 132.*
3) *The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.*

36. Schedule 5, paragraph 10 provides the following description for the purposes of section 120(4) and (3):

The protection of the property or interests of any person,

37. An example of the application of sections 120(3) and (3) of the PA 2008, and paragraph 10 of Schedule 5, is the Riverside Energy Park Order 2020/419 ("the Riverside DCO"). In the Riverside DCO, Schedule 10, Protective Provisions, Part 1 for the Protection of RRRL, provided to protect the business of RRRL, being defined in the DCO, Article 1(1) as "RRRL" means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference". RRRL operated a facility that

would be operating close by to the authorised development and the Provision provided to enable continued operation of the facility together with that development. See **Section G**.

COMMON LAW

The Correct Approach to Statutory Construction in the Compulsory Purchase Sphere

38. In *Chilton v Telford Development Corporation* [1987] 1 WLR 872, the Court of Appeal allowed an appeal in respect of the establishment of the correct "valuation date" for the assessment of compensation – after a compulsory purchase order had been made and confirmed. That Court held that *because* the Compulsory Purchase Act 1965 and the New Towns Act 1965 were statutes which deprived the citizen of property rights by the compulsory acquisition of land and *therefore* the *provisions* dealing with the calculation of compensation and interest *were intended by Parliament to protect the owner or occupier* who was being dispossessed, the statutory provisions in issue *were to be construed in favour of the owner or occupier*. In particular, the Court of Appeal held: (Emphasis added)

> *So one is left here with a provision which has on its face an open-ended power granted to the acquiring authority to act or not to act. It may at least be questioned whether that was entirely the intention of Parliament in enacting what are essentially provisions for the protection of an owner or occupier who is subjected to the necessary, but nevertheless draconian, powers of the acquiring authority to dispossess him of his title and occupation of his land.*
>
> *For my part, in approaching the construction of these statutory provisions I have two concepts in mind: first, to give to this part of the legislation, if it is open to do so, a purposive construction, bearing in mind the general considerations and need for these provisions. Secondly, to bear in mind that it is a statute which is **depriving the citizen of his rights in property and his title**, and the right to enjoy occupation of his lands, or perhaps somebody else's lands.*
>
> *So, looking at section 12 of the New Towns Act 1965 , and Schedule 6, I pose the question: What is the purpose of requiring the acquiring authority to give notice of not less than 14 days of an intention to enter on and take possession of the land? What it cannot cover, in my judgment, is a contingent intention, not formally adopted, and not in fact carrying with it the intention to act upon it within a reasonable time. Otherwise, the statute provides that the acquiring authority does not have to serve a notice of intention to enter in respect of the whole of the land, subject to the notice to treat, or of the compulsory purchase order itself as relates to the particular owner or occupier; and that they may serve, as and when necessary — which I would construe as meaning as and when they form the intention necessary to bring into effect the provisions of paragraph 4(1) of Schedule 6 — the intention to enter on and take physical possession thereof.*
>
> *… choosing between the two alternative approaches to this legislation, and I hope fairly recognising the lacuna which exists for practical purposes in the day-to-day carrying out of these exercises, I adopt the construction which is favourable to the owner and occupier of the land, because these sections, although incidentally dealing with calculation of compensation and interest, were primarily enacted for the protection of such a person…*

39. More recently, in *R(oao Sainsbury's Supermarkets Ltd) Wolverhampton City Council* [2011] 1 AC 437, the Supreme Court considered the correct approach to the construction of statutory terms relating to the development of land in circumstances of compulsory purchase for development immediately after a compulsory purchase order had been confirmed. The Supreme Court held: (Emphasis added)

1. This appeal is about compulsory acquisition of private property by local authorities under the Town and Country Planning Act 1990 in connection with the development or redevelopment of land. It raises for the first time, in the context of compulsory acquisition, a number of controversial issues which have arisen in the context of planning permission, including these: how far a local authority may go in finding a solution to problems caused by the deterioration of listed buildings; to what extent a local authority may take into account off-site benefits offered by a developer; and what offers (if any) made by a developer infringe the principle or policy that planning permissions may not be bought or sold…

8. CPOs made by a local authority under section 226 must be confirmed by the Secretary of State. If the owner of the land which is the subject of a CPO objects to the order, the Secretary of State will appoint an independent inspector to conduct a public inquiry. The inspector's report and recommendation will be considered by the Secretary of State when a decision whether or not to confirm the CPO is taken. Where land has been acquired by a local authority for planning purposes, the authority may dispose of the land to secure the best use of that or other land, or to secure the construction of buildings needed for the proper planning of the area: section 233(1) .

9. Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute: Rugby Joint Water Board v Shaw-Fox [1973] AC 202 , 214. The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose: see Taggart, "Expropriation, Public Purpose and the Constitution", in The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade , (1998) ed Forsyth & Hare, p 91.

10. In ***Prest*** *v Secretary of State for Wales (1982) 81 LGR 193 , 198 Lord Denning MR said:*

> *"I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is* ***expressly*** *authorised by Parliament and the public interest decisively so demands …"*

and Watkins LJ said, at pp 211–212:

> *"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."*

11. Recently, in the High Court of Australia, French CJ said in R & R Fazzolari Pty Ltd v Parramatta City Council [2009] HCA 12 , paras 40, 42, 43:

> *"40. Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These protections are not absolute but take the form of interpretative approaches where statutes are said to affect such rights."*
>
> *"42. The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called* ***a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights*** *…*
>
> *"43. The terminology of 'presumption' is linked to that of 'legislative intention'. As a practical matter it means that,* ***where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights****."*

40. In summary, that is: (Emphasis added)

> *"… where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights".*

41. Without detracting from the case, the approach in paragraph 11(42) and (43) can be described as the application of "*contra proferentum*" in the public law sphere against the acquiring authority and at all stages and all statutes in relation to the circumstances of the compulsory purchase.

The "draconian" nature of a compulsory purchase order

42. In *De Rothschild v Secretary of State for Transport* (1988) 57 P&CR 330, the Court of Appeal considered a challenge to a compulsory purchase order over land belonging to the appellants for the construction of a by-pass in which the objector had advanced four alternative route for the proposal. The Secretary of State held a public inquiry and confirmed the order made. The Court of Appeal held that no "special rules" applied to a statutory challenge when it was being considered *by the Court*, that the ordinary principles of law applicable to claims for judicial review applied, and dismissed the challenge. However, in doing so, the Court of Appeal considered *Prest* and held:

> *… Though all the judgments in Prest contained observations regarding onus, I, for my part, read them as doing no more than giving a warning that in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge on Wednesbury / Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits.*
>
> *…[i]t has to be recognised that the compulsory purchase of land involves a serious invasion of the private proprietary rights of citizens. As Purchas L.J. described them in Chilton v. Telford Development Corporation , [2] the powers of compulsory purchase of an acquiring authority are of a draconian nature. The power to dispossess a citizen of his land against his will is clearly not one to be exercised lightly and without good and sufficient cause…*
>
> *I have also already accepted that, given the draconian nature of such an order, no reasonable Secretary of State would be likely to confirm such an order in the absence of what he perceived to be a sufficient justification of his decision on its merits.*

The Correct Approach to Evidence in the consideration of a Compulsory Purchase Order.

43. In *Prest v Secretary of State for Wales* (1983) 266 EG 527, the Court of Appeal considered circumstances where land was sought "urgently" by a water authority for the construction of a new sewage plant: (Emphasis added)

The reason for this imminent seizure is to make a new sewage works for the neighbouring towns and villages. It is urgent. The existing sewage works are grossly over-loaded. It is anticipated – and hoped – that the district may be developed for industrial use. So that more facilities are needed for the disposal of sewage.

44. The Court of Appeal held that, when considering a compulsory purchase order, the Secretary of State must consider all relevant information and should not limit himself to those matters alone which have been dealt with by the inspector: the onus of showing that a compulsory purchase order has been *properly made* is on the authority seeking it. What does "properly made" mean? In particular, the Court of Appeal held: (Emphasis added)

These findings give rise to several points of law.

The use of compulsory purchase powers

*The first is fundamental. To what extent is the Secretary of State entitled to use compulsory powers to acquire the land of a private individual? It is clear that no Minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced — for or against compulsory acquisition then the decision — by whomsoever it is made — should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid, see Attorney-General v. De Keyser's Royal Hotel Ltd. (1920) A.C. 508 . If there is any **reasonable** doubt on the matter, the balance must be resolved in favour of the citizen. This principle was well applied by Mr. Justice Forbes in Brown v. Secretary of State for the Environment (1978) P. & C.R. 285 , where there were alternative sites available to the local authority, including one owned by them. He said (at page 291):*

> *"It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary … If, in fact, the acquiring authority is itself in possession of other suitable land other land that is wholly suitable for that purpose – then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose."*

45. "Reasonable" doubt does not mean "*Wednesbury*" reasonable doubt, as in, whether the acquiring authority considers there to be a "doubt". In law, "reasonable doubt" means the *existence of a doubt* based on the objective *evidence*. For an example of this legal concept in practice, and where a compulsory purchase was sought to be based on "draft" hydrological evidence. For an example of the application of that concept, see Highways England (M27 Southampton Junction 8 Improvement Scheme – M27 Junction 8 and Windover Roundabout)(Special Road) Compulsory Purchase Order 2021, Decision of the Secretary of State for Transport (8th June 2023).

46. In *R(oao Sainsbury's Supermarkets Ltd) Wolverhampton City Council* [2011] 1 AC 437, the Supreme Court affirmed *Prest v Secretary of State for Wales.* Consequently, *Prest* remains today in 2026 good law affirmed at the highest level.

SECONDARY LEGISLATION

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017/572

47. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 include as follows.

48. Regulation 3(1) includes: (Emphasis added)

> *"EIA" has the meaning given by regulation 5;…*
>
> *"environmental information" means the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development and of any associated development;*
>
> *"environmental statement" has the meaning given by regulation 14; …*

49. Regulation 4 provides: (Emphasis added)

> *1) This regulation applies to—*
> *a. applications for an order granting development consent for EIA development received by the Secretary of State; and*
> *b. subsequent applications for EIA development received by a relevant authority.*
> *2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless an EIA has been carried out in respect of that application.*

50. Regulation 5 provides: (Emphasis added)

> *1) The environmental impact assessment ("the EIA") is a process consisting of—*
> *a. the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant;*
> *b. the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other enactment in respect of EIA development; …*
> *2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—*
> *a. Population and human health;*
> *b. biodiversity, …*
> *…*
> *c. land, soil, water, air and climate;*
> *…*
> *d. the interaction between the factors referred to in sub-paragraphs (a) to (d).*

3) *The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects. …*

4) *…*

5) *The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate.*

COMMON LAW

"Rochdale"

51. In *R v Rochdale MBC, ex parte Milne* [2001] Env. L.R. 22, Sullivan J (as he then was) considered an outline application for planning permission that was subject to the EIA Regulations. He held:

> *84. The directive does not require environmental assessment of every industrial estate, or urban development project, only those "where Member States consider that their characteristics … require" assessment. In general terms, it is likely that assessment will be required for substantial projects of this kind. The test adopted in the assessment regulations is whether such a project "would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location", see the definition of Schedule 2 application in regulation 2(1).*
>
> *87. At pages 96G to 97H of Tew I mentioned the contrast between projects such as this and most of the other descriptions of development that are listed in annex II to the directive and repeated in Schedule 2 to the assessment regulations. The other projects are either industrial projects for particular processes, or "one off" infrastructure projects, such as the construction of roads, tramways, dams or pipelines, which will, by their very nature, have to be defined in considerable engineering detail at the outset….*
>
> *89. Since the "description of the project" required by Article 5(2) is a means to that end, in that it provides the starting point for the assessment process, there is no reason to believe that the directive was seeking to be unduly prescriptive as to what would amount to an appropriate description of a particular project. The requirement in Article 5(2) (see page 89C to E) to provide "information on the site, design and size of the project" is, and is intended to be, sufficiently flexible to accommodate the particular characteristics of the different types of project listed in annexes I and II (Schedules 1 and 2 to the assessment regulations). It may be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed.*
>
> *90. If a particular kind of project, such as an industrial estate development project (or perhaps an urban development project) is, by its very nature, not fixed at the outset, but is expected to evolve over a number of years depending on market demand, there is no reason why "a description of the project" for the purposes of the directive should not recognise that reality. What is important is that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of for flexibility. The assessment process may well be easier in the case of projects which are "fixed" in every detail from the outset, but the difficulty of assessing projects which do require a degree of flexibility is not a reason for frustrating their implementation. It is for the authority responsible for granting the development consent (in England the local planning authority or the Secretary of State) to decide whether the difficulties and uncertainties are such that* ***the proposed degree of flexibility*** *is not acceptable* ***in terms of its potential effect on the environment****….*

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

52. In *Smith v First Secretary of State* [2003] Env. L.R. 32, the Court of Appeal considered the legal scope of the *Rochdale* Envelope, the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199) and the Directive 85/337/EEC on environmental assessment (as amended) and from which the Regulations derived.

53. That Court held as follows, in particular, at paragraph 33 in respect of the express *terms* of the *constraints* for "mitigation", what the instant decision maker was required to consider, and also the requirement for the downstream decision maker to have relevant environmental objectives as part of its decision making process: (Emphasis added)

24. We have also been referred to the following decisions: R. v Rochdale Metropolitan Borough Council Ex p. Tew [1999] 3 P.L.R. 74 and R. v Rochdale Metropolitan Borough Council Ex p. Milne [2001] J.P.L. 470 decisions of Sullivan J.; R. v Cornwall County Council Ex p. Hardy [2001] Env. L.R. 26 a decision of Harrison J. which followed Sullivan J.'s approach in Tew and Milne ; R. (on the application of Barker) v London Borough of Bromley [2002] Env. L.R. 631 CA in which Sullivan J.'s approach in Milne and Tew was approved.

25. Principles which those authorities establish seem to me to be the following: First, where outline planning consent is being applied for (and Tew and Milne were cases concerned with outline planning consent, Milne being round two of a battle over the same development), it is at the outline consent stage that the planning authority must have sufficient details of the proposed development, sufficient details of any impact on the environment, and sufficient details of any mitigation to enable it to comply with its Art.4(2) obligation.

26. Second, the reason for that is that once outline planning consent has been given there is effectively no going back without (at the very least) the payment of compensation. As Sullivan J. said in Tew :

"Even if significant adverse impacts are identified at the reserved matters stage, and it is then realised that mitigation measures will be inadequate, the local planning authority is powerless to prevent the development from proceeding" [97F].

There will accordingly be no proper opportunity when the planning authority considers the matters reserved to reappraise the environmental issues. Indeed Barker held that the obligation under Art.4(2) is not an obligation on the planning authority at the consideration of the reserved issue stage.

27. Third, the planning authority or the Inspector will have failed to comply with Art.4(2) if they attempt to leave over questions which relate to the significance of the impact on the environment, and the effectiveness of any mitigation. This is so because the scheme of the regulations giving effect to the Directive is to allow the public to have an opportunity to debate the environmental issues, and because it is for those considering whether consent to the development should be given to consider the impact and mitigation after that opportunity has been given. As Harrison J. put it in Hardy :

… At the reserved matters stage there are not the same statutory requirements for publicity and consultation. The environmental statement does not stand alone. Representations made by consultees are an important part of the environmental information which must be considered by the local planning authority before granting planning permission. Moreover, it is clear from the comprehensive list of likely significant effects in para.2(c) of Sch.3 , and the reference to mitigation measures in para.2(d), that it is intended that in accordance with the objectives of the Directive, the information contained in the environmental statement should be both comprehensive and systematic, so that a decision to grant planning permission is taken 'in full knowledge' of the project's likely significant effects on the environment. If consideration of some of the environmental impacts and mitigation measures is effectively postponed until the reserved matters stage, the decision to grant planning permission would have been taken with only a partial rather than a 'full knowledge' of the likely significant effects of the project. That is not to suggest that full knowledge requires an environmental information statement to contain every conceivable scrap of environmental information about a particular project. The Directive and the Assessment Regulations require likely significant effects to be assessed. It will be for the local planning authority to decide whether a particular effect is significant, but a decision to defer a description of a likely significant adverse effect and any measures to avoid, reduce or remedy it to a later stage would not be in accordance with the terms in Sch.3 , would conflict with the public's right to make an input into the environmental information and would therefore conflict with the underlying purpose of the Directive."

28. Fourth, (and here as it seems to me one reaches the most difficult area) it is certainly possible consistent with the above principles to leave the final details of for example a landscaping scheme to be clarified either in the context of a reserved matter where outline planning consent has been granted, or by virtue of a condition where full planning consent is being given as in the instant case…

33. In my view it is a further important principle that when consideration is being given to the impact on the environment in the context of a planning decision, it is permissible for the decision maker to contemplate the likely decisions that others will take in relation to details where those others have the interests of the environment as one of their objectives. The decision maker is not however entitled to leave the assessment of likely impact to a future occasion ***simply*** *because he contemplates that the future decision maker will act competently.* ***Constraints must be placed*** *on the planning permission* ***within which*** *future details can be worked out, and* ***the decision maker must form a view about the likely details and their impact on the environment****.*

54. In *CG Fry & Son Limited v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35, the Supreme Court held that:

65… The grant of planning permission locks in the right of the developer to proceed with the development for which permission has been given.

55. By analogy but at national level, so too does the authorisation of the Secretary of State of a development consent order statutory instrument with Order Limits including Plot 8/42 "lock-in" perpetual use of that access route through the Equine Facility. Conversely, the inclusion of the draft Protective Provisions advanced by ARU and WCL result to ensure that the Order Limits automatically truncate to exclude Plot 8/42 shortly after installation of the pylons reference TB15 and TB166 and the cables between them.

CHRISTIAAN ZWART

39 Essex Chambers,

81, Chancery Lane,

London WC2A 1DD

26th February 2026

SECTION G – EXTRACT OF PROTECTIVE PROVISION FROM RIVERSIDE ENERGY PARK ORDER 2020/419

INTRODUCTION

1. This is Section G, Extract of Protective Provision from Riverside Energy Park Order 2020/419, to the Written Submission of "ARU Writtle" (being the collective trading name and trademark for the entities: Anglia Ruskin University and Writtle College Limited) ("ARU").

2. This Section contains the Extract of Protective Provision from Riverside Energy Park Order 2020/419 referred to in **Section F**.

Riverside Energy Park Order 2020/419
art. 2 Interpretation
Law In Force

Version 3 of 3

17 February 2023 - Present

Subjects
Energy; Planning

2.— Interpretation

(1) In this Order, unless otherwise stated—

"the 1961 Act" means the Land Compensation Act 1961;

"the 1965 Act" means the Compulsory Purchase Act 1965;

"the 1980 Act" means the Highways Act 1980;

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981;

"the 1984 Act" means the Road Traffic Regulation Act 1984;

"the 1990 Act" means the Town and Country Planning Act 1990;

"the 1991 Act" means the New Roads and Street Works Act 1991;

"the 2008 Act" means the Planning Act 2008;

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"access and public rights of way plans" means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order under article 40 (certification of plans etc.);

"address" includes any number or address used for the purposes of electronic transmission;

"AOD" means above ordnance datum;

"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that *"apparatus"* further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order which is development within the meaning of section 32 (meaning of *"development"*) of the 2008 Act;

"book of reference" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order under article 40 (certification of plans etc.);

"biodiversity units" means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off–setting metric);

"biodiversity off–setting scheme" means a scheme which will deliver biodiversity enhancements which must not be less than the off–setting value;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"CHP statement" means the document of that description referred to in Schedule 11

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certified by the Secretary of State as the CHP statement for the purposes of this Order under article 40 (certification of plans etc.);

"commence" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the pre–commencement works and the words *"commencement"* and *"commenced"* and other cognate expressions are to be construed accordingly;

"commissioning" means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and *"commission"* and other cognate expressions are to be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

[

"Cory group company" means any company that is a direct or indirect subsidiary of Cory Topco Limited (company number 11385842) including a direct or indirect subsidiary of Cory Environmental Holdings Limited;

][1]

"date of final commissioning" means the date on which the commissioning of the authorised development (or any part of the authorised development as the context requires) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 23 of Schedule 2 (requirements);

"Defra biodiversity off–setting metric" means the mechanism published by the Department for Environment, Food and Rural Affairs in 2012 to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;

"design principles" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the design principles for the purposes of this Order under

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article 40 (certification of plans etc.);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means provided it is in an electronic form;

"Environment Bank" means the Environment Bank Limited (company number 05944540) whose registered office is at Low Bramley Grange Farm, Bramley Grange Grewelthorpe, Ripon, North Yorkshire, HG4 3DN together with its successors;

"environmental statement" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order under article 40 (certification of plans etc.);

"flood risk activity" has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016;

"flood risk assessment" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

"footpath" and *"footway"* have the same meaning as in the 1980 Act;

"FRAPA drawings" means the drawings of that description referred to in Schedule 11 certified by the Secretary of State as the FRAPA drawings for the purposes of this Order;

"Greater London Authority" means the Greater London Authority, City Hall, The Queen's Walk, More London, London, SE1 2AA;

"highway" and *"highway authority"* have the same meaning as in the 1980 Act;

"land plans" means the plans of that description referred to in Schedule 11 certified by the

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Secretary of State as the land plans for the purposes of this Order;

"limits of deviation" means the limits of deviation shown for each numbered work on the works plans;

"London Power Networks" means London Power Networks PLC (company number 03929195) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP or a subsidiary of London Power Networks PLC;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and *"maintenance"* and *"maintaining"* are to be construed accordingly;

"MOL plan" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the MOL plan for the purposes of this Order;

"off–setting value" means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off–setting metric, measured in biodiversity units;

"operational period" means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1;

"Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development as shown on the land plans;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out;

"outline biodiversity and landscape mitigation strategy" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline biodiversity and landscape strategy for the purposes of this Order;

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"outline code of construction practice" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

"outline construction traffic management plan" means Appendix L of the transport assessment;

"outline drainage design strategy" means Appendix G of the flood risk assessment;

"outline lighting strategy" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

"outline operational worker travel plan" means Appendix M of the transport assessment;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981[2];

"pre–commencement land" means the land shown on the pre-commencement plan;

"pre–commencement plan" means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the pre–commencement plan for the purposes of this Order;

"pre–commencement works" means operations on the pre–commencement land only consisting of land preparation, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement;

"relevant planning authority" means the London Borough of Bexley and any successor to its functions in relation to land in its area, and Dartford Borough Council and any successor to its functions in relation to land in its area;

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"REP and RRRF Application Boundaries Plan" means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the REP and RRRF Application Boundaries Plan for the purposes of this Order;

"requirements" means those matters set out in Schedule 2 to this Order;

"Riverside Energy Park Limited" means the company of that name (company number 11536739) whose registered address is Level 5, 10 Dominion Street, London, England, EC2M 2EF;

"RRRF" means the Riverside Energy from Waste Facility known as Riverside Resource Recovery Facility located at Norman Road, Belvedere, Kent;

[

"RRRF 2021 condition" means a condition to the RRRF 2021 planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF 2021 planning permission;

"RRRF 2021 planning permission" means the planning permission deemed to be granted under the 1990 Act by the Secretary of State for the RRRF and dated 17th December 2021;

][3]

"RRRF condition" means a condition to the RRRF planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF planning permission;

"RRRF planning permission" means the planning permission granted under the 1990 Act by the relevant planning authority for the RRRF and given reference number 16/02167/FUL;

"RRRL" means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference;

"section 36 consent" means the consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the Electricity Act 1989 in

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respect of the RRRF as varied by the Secretary of State on 13 March 2015 under Section 36C (variation of consents under section 36) of that Act and given reference number GDBC/003/00001C–06;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the Communications Act 2003;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and "street" includes any part of a street;

"street authority" , in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"traffic authority" has the same meaning as in section 121A of the Road Traffic Regulation Act 1984;

"transport assessment" means the document of that description referred to in Schedule 11 certified by the Secretary of State as the transport assessment for the purposes of this Order;

"Transport for London" means the body corporate established under section 154 (establishment) of the Greater London Authority Act 1999 of 55 Broadway, London, SW1H 0BL and any successor to its functions in relation to streets within the London Borough of Bexley;

"undertaker" means Cory Environmental Holdings Limited (company number 05360864, whose registered office is at Level 5, 10 Dominion Street, London, England, EC2M 2EF) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

"watercourse" includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"works plans" means the plans of that description referred to in Schedule 11 certified by the

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Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works numbered in Schedule 1.

(6) References to *"Schedule"* are, unless otherwise stated, references to Schedules to this Order.

(7) The expression *"includes"* is to be construed without limitation.

(8) References to any statutory body include any body's successor in respect of functions which are relevant to this Order.

(9) References in this Order to *"part of the authorised development"* means all or part of any numbered work.

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Notes

1 Definition inserted by Riverside Energy Park (Correction) Order 2021/273 Sch.1 para.1 (March 10, 2021)

2 Section 7 was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to this section which are not relevant to this Order.

3 Definitions inserted by Riverside Energy Park (Amendment) Order 2023/165 art.3 (February 17, 2023)

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art. 3 Development consent granted by the Order

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Subjects
Energy; Planning

3.— Development consent granted by the Order

(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be constructed, operated and maintained within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In constructing and maintaining the authorised development the undertaker may deviate vertically from the levels of the authorised development to any extent downwards not exceeding two metres.

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Schedule 10 PROTECTIVE PROVISIONS
para. 1

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Subjects
Energy; Planning

1.

For the protection of RRRL as referred to in this part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and RRRL.

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Schedule 10 PROTECTIVE PROVISIONS
para. 2

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Subjects
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2.

In this part of this Schedule

"access road" means that part of the access road known as Norman Road between points C and D on the access and public rights of way plan;

"alternative apparatus" means alternative apparatus adequate to enable RRRL to fulfil its functions in a manner no less efficient than previously;

"apparatus" means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by RRRL and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 of this Order;

"functions" includes powers and duties;

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"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"internal street" means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

"plan" or *"plans"* include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"RRRL facility" means the energy from waste facility and associated infrastructure at Norman Road, Belvedere, Bexley, Kent;

"RRRL facility perimeter" means that part of the Order land identified as plots 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 on the land plans;

"RRRL land" means that part of the Order land in the freehold ownership of RRRL which, as at the date upon which this Order comes into force pursuant to Article 1, are those plots identified as being in the freehold ownership of RRRL in the book of reference but always excluding plots 02/43, 02/44, 02/47, 02/48, 02/49, and 02/51;

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3.

Upon the permanent stopping up of the access road pursuant to article 14 (permanent stopping up of streets), the undertaker must afford to RRRL the rights for RRRL and all persons authorised on its behalf to enter and pass and re-pass, on foot and/or with or without vehicles, plant and machinery, for all purposes in connection with its occupation and use of the RRRL facility.

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Subjects
Energy; Planning

4.

The undertaker must not install pipes for the offtake of waste heat from the authorised development without first giving RRRL the option to combine its pipes with any pipes for the offtake of waste heat from the authorised development. The undertaker must have regard to any consultation responses received from RRRL when finalising the location of pipes for the offtake of waste heat from the authorised development.

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Schedule 10 PROTECTIVE PROVISIONS
para. 5

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Subjects
Energy; Planning

5.

Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), RRRL is at liberty at all times to take all necessary access across any street used to access the RRRL facility and which has been temporarily stopped up under article 13 and/or any internal street and to execute and do all such works and things in, upon or under any such street used to access the RRRL facility that has been temporarily stopped up under article 13 and/or internal street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction is in that street used to access the RRRL facility and has been temporarily stopped up under article 13 or internal street.

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Schedule 10 PROTECTIVE PROVISIONS
para. 6

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Subjects
Energy; Planning

6.

Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within the RRRL land otherwise than by agreement.

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Schedule 10 PROTECTIVE PROVISIONS
para. 7

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Subjects
Energy; Planning

7.—

(1) If, in the exercise of the powers conferred by this Order, the undertaker:–

(a) acquires any interest in the RRRL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) requires that RRRL's apparatus within the RRRL land is relocated, diverted or removed,

any right of RRRL to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to RRRL for alternative apparatus and equivalent alternative apparatus has vested in RRRL and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and RRRL before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) If, for the purpose of executing any works in, on or under the RRRL land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL land, the undertaker must give to RRRL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed

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by the undertaker.

(3) The approval of RRRL under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to RRRL, RRRL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, RRRL is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), RRRL may specify such reasonable requirements that are necessary in the provision or construction of the alternative apparatus.

(5) In the event that RRRL issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, RRRL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, (acting reasonably) RRRL, after the grant to RRRL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(9) Where RRRL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant

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RRRL the necessary rights to provide or construct the alternative apparatus on that land and grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

Schedule 10 PROTECTIVE PROVISIONS > Part 1 FOR THE PROTECTION OF RRRL > para. 7

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Schedule 10 PROTECTIVE PROVISIONS
para. 8

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Subjects
Energy; Planning

8.—

(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(2) If the rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those rights are to be granted, are in the opinion of the arbitrator materially less favourable on the whole to RRRL than the rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to RRRL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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Schedule 10 PROTECTIVE PROVISIONS para. 9

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Subjects
Energy; Planning

9.—

(1) Not less than 28 days before starting the execution of any works in, on or under the RRRL land that may materially affect the operation of the RRRL facility, the undertaker must submit to RRRL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of RRRL under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to RRRL, RRRL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, RRRL is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by RRRL. Where RRRL reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to RRRL's reasonable satisfaction prior to the

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works described in sub-paragraph (1).

(5) In the event that RRRL issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to RRRL notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraphs (3) and (4) in so far as is reasonably practicable in the circumstances.

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Schedule 10 PROTECTIVE PROVISIONS para. 10

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Subjects
Energy; Planning

10.—

(1) Subject to the following provisions of this paragraph, the undertaker must repay to RRRL the reasonable expenses incurred by RRRL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL land or the provision or construction of any alternative apparatus which RRRL elects to carry out itself as referred to in paragraph 7(8).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule:–

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of

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agreement, is not determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to RRRL by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3):–

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 7(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to RRRL in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on RRRL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

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Schedule 10 PROTECTIVE PROVISIONS
para. 11

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Energy; Planning

11.

Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and RRRL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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Schedule 10 PROTECTIVE PROVISIONS para. 12

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Subjects
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12.

Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or RRRL requires the removal of apparatus or RRRL makes requirements for the protection or alteration of apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of RRRL's undertaking and RRRL shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

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Schedule 10 PROTECTIVE PROVISIONS
para. 13

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Subjects
Energy; Planning

13.

If in consequence of any agreement reached or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable RRRL to maintain or use the apparatus no less effectively than was possible before such obstruction.

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Schedule 10 PROTECTIVE PROVISIONS para. 14

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Subjects
Energy; Planning

14.—

(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of RRRL, or there is any interruption in any service provided, or in the supply of any goods, by RRRL, or RRRL becomes liable to pay any amount to any third party, the undertaker will:–

(a) bear and pay on demand the cost reasonably incurred by RRRL in making good such damage or restoring the supply; and

(b) indemnify RRRL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from RRRL, by reason or in consequence of any such damage or interruption or RRRL becoming liable to any third party as aforesaid other than arising from any default of RRRL.

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(2) The fact that any act or thing may have been done by RRRL on behalf of the undertaker or in accordance with a plan approved by RRRL or in accordance with any requirement of RRRL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless RRRL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of:–

(a) any damage or interruption to the extent that it is attributable to the neglect or default of RRRL, its officers, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by RRRL as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 14.

(4) RRRL must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) RRRL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, RRRL shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by RRRL.

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Schedule 10 PROTECTIVE PROVISIONS para. 15

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Subjects
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15.—

(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of any works carried out by RRRL pursuant to this Part of this Schedule or in consequence of the use, maintenance or failure of any part of the RRRL facility by or on behalf of RRRL or in consequence of any act or default of RRRL (or any person employed or authorised by him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by RRRL under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any part of the authorised development or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, RRRL will:–

(a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and

(b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

(2) The fact that any act or thing may have been done by the undertaker on behalf of RRRL or in accordance with a plan approved by the undertaker or in accordance with any

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requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse RRRL from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on RRRL in respect of any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents.

(4) The undertaker must give RRRL reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting RRRL and considering their representations.

(5) The undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by RRRL, the undertaker shall provide an explanation of how the claim has been minimised. RRRL shall only be liable under this paragraph 15 for claims reasonably incurred by the undertaker.

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