Report to the Secretary of State for Communities and Local Government

The Planning Inspectorate
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Inquiry held on 2-26 June 2009

Land at North East Sector, Crawley

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

prevented the Council from granting planning permission without special

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

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

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

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

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

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

1.12 The Council submits that the question of whether or not Bureau Veritas had a conflict of interest has no bearing on the Secretary of State's decision. It is, in essence, a matter between Bureau Veritas and its clients. As far as the appearance of bias is concerned, the relevant principles are to be found in the decision of the House of Lords in

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

2.3 South of the appeal site, across Crawley Avenue, is the Pound Hill residential neighbourhood, with Crawley town cent

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

3.4 The area to either side of the Gatwick Stream would be landscaped for use as parkland an

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

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

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

3.9 A new bus service would be provided link

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

Crawley Borough Core Strategy

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

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

4.8 Policy G2 and the Proposals Map identify land to be safeguarded from development which would be incompatible with the expansion of Gatwick airport to accommodate the construction of an additional wide-spaced runway (if required by national policy) and the associated increase in facilities. The

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

National planning policy

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

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

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

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

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

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

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

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

Sites with planning permission 966
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THE CASE FOR THE APPELLANTS

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

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

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

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

6.3 With a second runway at Gatwick, the appeal scheme would be in NEC A and B for aircraft noise (Annex 1 to PPG24). There is nothing in the definitions of these categories which suggests that those living on the appeal site would (given the noise insulation in the new dwellings) be subjected to unacceptable noise levels or thereby no longer enjoy satisfactory living conditions. PPG24 itself implies that the 72 dB(A) co6. 0 10.98 494.2TT3gifpib(erEd9

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

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

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

Average mode contours and directional split of Gatwick's operations

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

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

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

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

Sustainable development in the UK

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

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

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

The 57 dB(A) contour

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

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

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

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

Heathrow

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

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

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

6.36 The Council referred to the statement in the January 2009 announcement about the imposition of a restriction in air transport movements (ATMs) at Heathrow until it is clear that the size of the 57 dB(A) contour will not extend beyond the area identified in the ATWP. But this does not raise anything material for the purposes of this inquiry. The policy in the ATWP is for two

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

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

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

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

Alleged prejudice to independent mixed mode operations

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

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

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

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

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

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

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

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

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

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

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

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

Capacity of Gatwick with two runways operated in segregated mode

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

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

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

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

(c) By way of illustration, if the reduction were of the order of 8%, this would result in annual PATMs of 471,040. This results in a throughput of about 77.7 mppa if a passenger load of 165 is assumed. -5(of)]TJ00ro

The effect on the proposed primary school

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

6.58 O4 gs-Invironment

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

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

6.72 Even if these submissions are not accepted, there are many reasons why Local Plan policy GD17 should be accorded no weight at all in the determination of this appeal. Firstly,

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

Compliance with PPG24

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

6.77 Even if PPG24 required an assessmen(4 assessP.273 0amrig)-6(gfir0338gr1r)heef4(i)

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

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

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

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

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

Crawley Borough Council's housing requirements and supply

6.87

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

6.95 The appellants' reasoning is supported by an analysis of the manner in which policy H2(viii) arose. The Panel's Report[74] confirms that the pre-2006 backlog was not part of the figures in emerging policy H1. This is also evident from the Secretary of State's Proposed Changes[75] where it is

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

6.104

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

The longer term in Crawley

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

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

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

6.112 The Council introduced three speculative and embryonicpated3orily nh6(at)-nim5(sa

(a) Pease Pottage. The land to the south of the M23 (located in Mid Sussex District) is within the AONB, which creates a very strong presumption against residential development. As for the land to the north of the M23, this was

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

The Gatwick sub-region's housing requirements and supply

The relevance of the housing land supply

6.119 Furthermore, as Crawley is entirely within the Gatwick sub-region, on the Council's interpretation there will be no circumstances where a shortfall in Crawley can be met in another part of the sub-region or in any non-sub-region part of the other districts. It is impossible to see why this should be the case for a shortfall in Crawley (the regional hub), but not for (say) a

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

6.124 Even setting these points to one side, the timescale at West of Horsham cannot reasonably anticipate completions in the period to 2013. The steps that will be required before completions can be delivered are as follows: (a) submission of new (inevitably ES) planning applications, which are not envisaged before the autumn at the earliest, (b) determination of those

is only Phase Three which offers meaningful returns.[91] There are many technical and environmental infrastructure matters to be resolved before the developer can be reasonably certain that it will be able to secure the profits

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

Haywards Heath

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

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

Town Centre redevelopments

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

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

Reigate and Banstead District

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

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

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

Conclusion on Gatwick sub-region

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

Affordable Housing

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

6.143 The SHMA[101] assesses a current need of 2,565 affordable dwellings in Crawley alone (of which 854 are required for those in "dire need"). Those

6.148

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

Sustainability of the North East Sector

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

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

Other Development Control issues

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

Conditions

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

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

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

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

(iii) The question is, therefore, whether the Secretary of State was correct to go further and reject a negatively worded "scheme" condition addressing the needs of the development in accordance with the

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

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

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

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

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

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

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

made, because the House of Lords in *Grampian* has made clear that

Capacity in the South East

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

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

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

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

International Civil Aviation Organisation balanced approach to noise

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

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

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

7.15 Mr Titterington sought to demonstrate that “about” 80 mppa could be achieved at Gatwick airport with two runways operated in segregated mode. That mode offers the potential for all departures to be from the northern of

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

Gatwick Airport Master Plan

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

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

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

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

57 dB(A) noise contour

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

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

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

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

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

7.26 Turning to the number of people that would be affected, 13,200 would live

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

PPG24: Noise

Main objectives

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

Annex 1

7.33 There are three distinct noise sources identified in Annex 1: road, rail and air. Each has different boundary values, as described in the second table in Annex 1. As a result of the elevated nature of aircraft noise, noise barriers which can afford protection from land based sources offer nonW brnW.98 76.2w

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

Annex 3 paragraph 8

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

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

The primary school

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

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

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

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

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

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

7.52 At the previous inquiry, the appellants argued that there wa

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

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

Relationship between policy GD17 and PPG24

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

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

Relationship between policy GD17 and RSS policy NRM10

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

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

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

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

7.67 The policy context for the consideration of the appeal has changed since the 2007 decision. Since the inquiry in 2006, there is a Core Strategy which safeguards land needed for a second runway at Gatwick and identifies the North East Sector for development subject to the implications of that safeguarded option. The Structure Plan has fallen away. The regional context too has changed fundamentally. RSS policy T9 and its supporting co137 3 TD[(ck and)ionaudg8nged funs1(ls chan eg)-5on -0.0009 Tc 0 Tw 10.98 040 heh( )ee

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

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

PPS3 and the five year supply

7.72

7.80 The Council believes that the reference to the backlog is a monitoring tool to ensure that when a district seeks to make provision for the final RSS figures in their LDFs they do not spread any backlog from 2006 over the period to

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

7.85

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

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

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

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

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

Approach to the assessment of deliverability

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

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

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

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

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

Ifield Community College

7.97 The appellants advance two observations which, in their view, prevent the site from coming forward in the five year period. The first amounts to

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

Telford Place/Haslett Avenue

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

7.100 In 2006, the appellants did not allow for any completions at Telford Place to 2012. It was then argued that the site was neither suitable nor available. Loss of car parking, loss of employment land and alleged land ownership issues were said to prevent the site from coming forward. The development of Telford Place was then associated with a larger redevelopment scheme including a new county library, which has now been built on the corner of Haslett Avenue. Thus, the appellants were wrong to suggest in 2006 that there was a fundamental loss of car parking issue which would prevent the new library coming for whfdul9T.5(entdfitherc.5(euo,]TJ0.00in)-6)]TJo,]TJ n9eGsues

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

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

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

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

Windfalls

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

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

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

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

Affordable housing

7.125 Setting aside delivery issues, the provision of 760 units of affordable housing complies with RSS policies H3 and GAT3(iv), and Core Strategy policy H5. The weight to be given to that policy compliance is a matter ultimately for the Secretary of State. The Council accepts that this policy compliance is important, but submits that the provision of affordable housing does not amount to another materi2001 Tcidedaionsing 5t a3 tpeight comits thousing

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

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

THE CASE FOR GATWICK AIRPORT LIMITED

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

Introduction

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

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

[172] R/CD109 paragraphs 31-32

8.3 In fact the appellants' own case has confirmed that this conclusion remains valid today. Mr Charles' evidence showed how the noise impact of the operation of a two-runway airport on housing development in the North East Sector would be very materially reduced if the airport were to be restricted to segregated mode operations, with arrivals only on the (new) southern runway. Mr Titterington's evidence showed that segregated mode operations are bound to deliver a significantly lo

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

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

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

8.9 He also commented at paragraph 26 in his judgement:

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

8.10 It is important to recognise that these remarks do not form any part of the reasoning for the decision. Further, the judge appears to have)7(dgei1(y paTJ6.022xaTJlike)7 paTJi1(y vaTJe-0.005(my02(no)-5-5(d)-ove)-6i1.2d

Policy considerations

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

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

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

8.19 Current national policy is for two new runways to be constructed in the South East - a third runway at Heathrow and second runway at Stansted. The only fallback option identified in policy if either of these does not come forward is a second runway at Gatwick. It is also clear from references to the 'strong case on its own merits' for a second runway at Gatwick that, possibly in any event but certainly in circumstances where the additional runways at Heathrow and Stansted do proceed but do not deliver as much additional capacity as was anticipated, it would then also be possible that a second runway at Gatwick would be required. CD11.8

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

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

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

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

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

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

8.25

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

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

The implications of the appeal development for a possible second runway

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

Noise considerations

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

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

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

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

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

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

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

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

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

8.34 That business case will critically depend on the capacity of a two-runway airport, and on the flexibility with which it will be possible to operate and

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

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

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

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

8.44 Night flights are a further potential issue. The existing noise abatement objective for Gatwick[203]

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

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

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

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

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

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

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

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

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

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

8.55 A final point to note is that, if Mr Titterington's estimates of annual runway capacity were correct,[213] the ERCD noise contours for both mixed and segregated mode operations would be wrong. ERCD have in fact (as requested by the appellants) assumed the same number of annual ATMs (486,000) for both modes of operation. More significantly, the forecast contours for mixed mode operations, which are agreed, will have assumed significantly too few ATMs, with the result that the contours underestimate to some (unknown) degree the likely noise impacts of this scenario. Thus, the

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

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

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

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

WRITTEN REPRESENTATIONS

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

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

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

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

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

9.5 It is inevitable that, as a result of EU procurement directives and the decision of the European Court of Justice in the case of Auroux v Roanne,[219] the “scheme” conditions for certain elements of the required provision, such as education, will lead to financial payments being made. If the Secretary of State does not accept that "scheme" conditions are acceptable in this particular case, and is not prepared to grant permission with such conditions,

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

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

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

that has not been possible because it would require the agreement of the

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

CONCLUSIONS

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

(i) because of the agreement preventing the construction of a second

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

11.13 There was much debate about the applicability of CBLP policy GD17. This Borough-wide noise policy is based on the advice in PPG24 and broadly seeks to apply the noise exposure categories (NECs) of that advice to residential and other noise sensitive development. However, it goes significantly beyond the requirements of PPG24 by stating that major noise sensitive development in areas subject to aircraft noise exceeding 60 dBrNdeba.0001 Tc -0.0017 Tw T‡(and

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

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

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

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

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

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

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

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

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

[221] Although the NECs are designed to apply to the assessment of new dwellings close to

consider extending its noise insulation to households in the new 57 dB(A) contour who, as a result of the third

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

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

11.33 The final matter is the consideration of other residential developments recently approved in close proximity to airports, including at Crawley a scheme for 176 units at Apple Tree Farm, Ifield. It is appropriate to draw a distinction in scale between these schemes, which are for no more than 400 houses, and the development of a major new neighbourhood. Indeed, in relation to Apple Tree Farm that distinction was highlighted by the previous Inspector and accepted by the Secretary of State. But it is also pertinent that some of the schemes cited by the appellants, including Apple Tree Farm, involve some development in the 66-69 dB(A) noise contour range, thereby

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

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

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

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

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

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

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

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

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

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

Extent to which North East Sector would prejudice a second runway

Safeguarding

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

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

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

Implications for airport capacity

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

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

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

Numbers affected by aircraft noise

11.53 Based on the ERCD 0308 forecasts,[224] 13,200 people would be subject to noise above 57 dB(A) in 2030 as a result of the mixed mode operation of a second wide-spaced runway at Gatwick. This is an increase of 7,300 people compared with the number that would be affected by the maximum use of the existing runway. With the additi

11.61 Taken overall, these figures suggest that the capacity of the South East airports by 2030 may be well below that anticipated in the ATWP. For this

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

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

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

Windfall allowance

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

11.82 Nevertheless, because a wo The CoTf-0.000aq19 sy incclueat6(d)-n Ps or plnly in rela

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

11.85 While the downturn in the housing market is perhaps the main reason for the current lack of progress with this site, there are two other factors which could further hinder delivery. One is the high proportion of flats in the approved scheme: this is the sector of the market that has been hit hardest by the

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

11.95 Whichever methodology is used to calculate the five year requirement, I conclude that an up-to-date five year supply of deliverable sites has not been demonstrated. Consequently the presumption in paragraph 71 of PPS3 that applications for housing should be considered favourably (subject to the other policies in PPS3 and the considerations in paragraph 69) applies in this case.

11.96 The Council contends that the five year supply calculation fails to give the full picture in Crawley. I accept that no contribution has been included from a number of large sites that have outline planning permission or are otherwise identified as potential sources of supply, but that is generally because they do not satisfy the deliverability test of PPS3. Whilst in part this may be due to the current economic downturn, it is vital to ensure that a deliverable land supply is in place when the upturn happens, as the recent letter from the CLG Chief Planner makes clear. Indeed in the early period of recovery, when some fragility in the market is likely to remain, it is all the more important that a full complement of sites is available so that developers have a good choice of opportunities to pursue and are not constrained by a shortage of supply. ***[6.86, 7.89, 7.92]***

11.97

significant proportion of the estimated 800 dwellings will be delivered by 2017/18. The position at Dorsten Square is unclear. If it is assumed that about half the delivery from these two sites would occur by 2017/18, which to my mind is reasonable given that both the residential and retail sectors have been significantly affected by the downturn, the 10 year shortfall would increase by about 500 dwellings. Although some provision is likely to come forward on smaller brownfield sites during this period, the interim SHLAA gives little confidence that substantial inroads into the shortfall will be made from this source. ***[6.110]***

11.100 The longer term analysis is inevitably rather sketchy given the focus in this appeal on the five year supply position. Nevertheless, it does serve to demonstrate that there is no obvious panacea in the offing which, in the absence of the North East Sector, would resolve the land supply shortage in Crawley. The Council rightly points out that the Core Strategy, which overtly acknowledges the lack of a medium term housing land supply, was only found sound on the understanding that an urgent review would take place to address this matter. But the first stage of this review, the recently published Housing Topic Paper, explicitly states that it will be exceptionally challenging to meet the requirement within the Borough boundary if the North East Sector, the Council's preferred option, does not proceed. ***[6.113]***

11.101 The other potential option is to meet Crawley's housing needs outside the

maximum delivery as a result of the time it takes to bring other developers on board, I believe that the contribution from this site by March 2013 is likely to be about 250 dwellings. ***[6.129-30, 7.111]***

West of Horsham

11.109 Another of the major locations identified in the RSS, West of Horsham is effectively two separate sites of 1,000 dwellings each, divided by the A24. The Masterplan SPD published in October 2008 proposed access via a grade separated junction on the A24, though this precise form of junction is not specified by Horsham Core Strategy policy CP7. In recent months the developer of the land to the east of the A24, Berkeley Homes, has advised Horsham Council that the scheme is not viable in the current economic climate. The Council has accepted in principle a reduced infrastructure package and negotiations are on-going. One of Berkeley's main proposals is to replace the grade separated junction with a left in/ left out junction on the A24, which has implications for achieving the comprehensive development sought by policy CP7. Although the principle of independent access has been accepted by the local highway authority, the detailed technical work necessary to justify the changed junction design is yet to be completed. ***[6.121-2, 7.113-4]***

11.110 The consequences for the development on the west side of the A24, to be carried out by Countryside Properties, are unclear. Whilst it is reasonable to speculate that each scheme should be capable of separate implementation, it is not known whether Countryside faces similar viability issues, nor how Horsham Council would react if it did. The Council has given assurances that there are no constraints or potential ransom issues to delay the development of these sites, but nonetheless considerable uncertainty remains about the final form the development will take. ***[7.114]***

11.111 These prospective changes to the development will inevitably affect the delivery of West of Horsham. Until the final outcome of the re-appraisal is known, the timing cannot be predicted with confidence. Crawley Council accepts that this disruption is likely to delay the scheme by about a year, with completions not now anticipated until 2011/12; the appellants forecast no completions in the period to 2012/13. With the need for new outline applications once the details have been finalised, to be accompanied by fresh negotiations on the S106, and then followed by detailed consents and other necessary agreements, I think the Council is being overly optimistic. But given the importance that Horsham Council attaches to this scheme, I also think that some completions within the five year period are likely. I estimate that a start could reasonably be anticipated in early 2011, with completions emerging from 2012 onwards. On this basis I consider that the most likely outcome is the delivery of about 300 dwellings by March 2013. ***[6.124, 7.115]***

Windfall allowance

11.112 Horsham Core Strategy policy CP4 includes an allowance of about 105 dwellings pa for unidentified windfall sites. The Core Strategy was prepared when PPG3 was in force and the examination Inspectors found no fault with the inclusion of windfalls. The matter was reviewed when the Site Specific Allocations of Land DPD was examined, by which time PPS3 existed and was taken into account. Based on evidence that the annual average contribution from unidentified windfall sites exceeded 280 over the five years to 2006,

with further permissions granted since April 2006 likely to add over 200 dwellings, the examination Inspectors concluded that robust evidence of genuine local circumstances did exist at Horsham, and therefore that windfalls should be taken into account. ***[6.131, 7.117]***

11.113

Crawley BC five year requirement

Council	RSS Requirement to 2013	Supply	Shortfall
Crawley	1,478	1,093	385
Horsham	3,936	2,053	1,883
Mid Sussex	5,146	3,067	2,079
Reigate & Banstead	767	497	270
Total for sub-region	11,327	6,710	4,617

The Homes and Communities Agency has recently confirmed that it remains supportive of the proposal and would work with the other parties to facilitate early delivery of the new neighbourhood. Crawley BC stated in evidence that the authority would not be "awkward" in these negotiations. Whilst it is true that no equalisation agreement exists, there is no reason to suppose that this would unduly delay the scheme. Indeed, with Beazer Homes owning almost all the land required for Phase 1, there would seem to be no obstacle to a timely commencement even if negotiations do become protracted. ***[6.148, 7.84]***

11.126 There is no evidence of how the current downturn might affect the viability of the development. The inquiry was told that a recent appraisal had been carried out and that viability was confirmed, but that assertion could not be tested. However the portents are encouraging. With Beazer Homes owning mo43 Tm[(w(With)-6(5 -08 b.ssi)-5(nfe)-5(d,3pt)1( )-5(ever r vh5Tiver-0.002-5(nfirt

11.136 Such minor changes as have been made to the 2006 conditions are generally aimed at increasing their precision. For example, the "scheme" conditions which require facilities to be provided at the local centre and community centre specify the nature of the provision, give an indication of their scale and location, and tie the implementation to a particular point in the phasing programme. Furthermore, it seems to me that the level of precision is commensurate with the fact that this is an outline application for a major development that would be implemented in phases by means of a series of reserved matters approvals. Essentially, outline planning permission would establish the broad principles and parameters of the development, with the details to follow. For those matters not covered by the reserved matters process, such as the provision of affordable housing or off-site community facilities/ infrastructure, I consider that the conditions give sufficient clarity and precision about the purpose of the "scheme" and what it is required to deliver.

11.137 A number of the agreed conditions include the phrase "unless otherwise approved in writing by the local planning authority". The Courts have held generally that the introduction of a provision for informally amending a condition means that the condition is imprecise and therefore contrary to the legal tests. It also deprives the public of the right to be consulted on any changes. Consequently this phrase has been deleted from these conditions (except from conditions 21 and 22, where it is appropriate that the Council has the ability to permit occupation in cases where the release of a Certificate is awaited). A further concern is the inclusion in certain highway conditions of the word "broadly" in the phrase "broadly in accordance with drawing number……." . This is a somewhat vague term which, arguably, lacks precision. As many of the highway works drawings were revised prior to this inquiry to give greater clarity, it is appropriate to remove the word "broadly" from these conditions. Subject to these minor amendments, I am satisfied that the conditions meet the precision test.

11.138

timing of the development, or a particular stage of it, is delayed until a particular precondition has been met. As to the point about taxation, it is not clear to me why any payment subsequently made as a result of a scheme, which would be voluntary and would be specifically tailored to mitigate a particular adverse impact of the development (which, if not mitigated, would be likely to lead to a refusal of planning permission), would be categorized as taxation. ***[6.137, 9.4]***

wide-spaced runway to be operated in mixed mode (or any other mode). ***[11.48]***

11.144 The sole concern is the wider issue of noise on the surrounding residential communities. The basic aim of the ATWP is to limit and where possible reduce the number of people significantly affected by aircraft noise. "Significantly affected" is not defined in the ATWP, though it is reasonable to assume that it relates to the 57 dB(A) level which is regarded as marking the approximate onset of significant community annoyance. Assuming the mixed mode operation of a wide-spaced runway, as envisaged in the ATWP, the appeal scheme would increase the number of people experiencing noise above this level by about 4,300. Because of the location of the appeal site at the south-eastern end of the second runway, most of these people would experience this level noise for 27% of the time on average, or roughly two days a week. ***[11.10, 11.22, 11.26]***

11.145 Patently the appeal proposal is contrary to the noise objective of the ATWP. Yet it is inevitable that the provision of a new runway in the South East will lead to an increase in the numbers significantly affected by noise. At Heathrow the SERAS study (on which the ATWP was based) forecast that the third runway would result in an additional 54,000 people experiencing noise above 57 dB(A); the comparable figure for a second runway at Gatwick, including the 4,300 on the appeal site, would be 11,600. Moreover this latter figure is appreciably less than was assumed for Gatwick in the ATWP, where an increase (without the North East Sector) of about 15,000 people within the 57 dB(A) contour was forecast. Whilst these comparisons do not justify the imposition of significant noise on 4,300 people who would not be exposed to such noise if the appeal scheme was not built, they do provide an instructive context. ***[11.54-5]***

11.146 It is important to recognise that the operation of a wide-spaced runway in mixed mode is likely to be a worst-case scenario for residents of the proposed development. If the airport was operated in segregated mode with all landings on the southern runway (in my view the only realistic option for segregation), the number of people experiencing noise above 57 dB(A) as a result of the appeal scheme would be about 2,250. It must be appreciated that such a method of operation would have adverse noise consequences for the rural communities to the north-west and north-east of the airport, though the limited evidence available suggests that both the rise in noise levels and the number of people affected would be relatively small, particularly in comparison with the impacts to the south of the airport. ***[11.43-4]***

11.147 If the appeal scheme is built and a second runway at Gatwick comes to fruition, there would undoubtedly be pressure from residents of the North East Sector (and others in Ifield and Langley Green) for the runway to be operated in segregated mode, given the substantial benefits in noise reduction to them. This would have significant consequences for the airport operator in terms of reduced capacity, perhaps reducing throughput by around 15%. There is also likely to be pressure for a closer spaced runway, with even less noise impact on the communities south of the airport, though this would reduce airport capacity by a much greater amount. The outcome

consideration to be weighed in the balance, thereby adding to the complexity of the process. ***[11.51, 11.56]***

Matter (iv) - High quality design and compliance with PPS1

11.148 There has been no material alteration to the design of the proposal since the last inquiry. Although an up-dated Design Statement was submitted in May 2009, this merely reflects the minor changes to the masterplan that were tabled at the 2006 inquiry. Together these documents provide a suitable framework for the creation of a high quality, coherent environment that has a distinct sense of place. To ensure that the broad principles espoused in the Design Statement are worked up in greater detail and consistently applied across each phase of the development, a new condition (No 2) requires a detailed design and access statement to be prepared for each of the four phases. This and the other conditions would ensure the delivery of a high quality design. ***[3.1]***

11.149 A re-appraisal has taken place in light of the objectives of limiting carbon dioxide emissions and promoting decentralised and renewable or low carbon energy sought by the Planning and Climate Change supplement to PPS1. In terms of energy supply, a new condition (No 23) requires at least 10% to be secured from decentralised, renewable or low carbon sources across the whole site, thereby meeting the target of RSS policy NRM11. As to limiting carbon dioxide emissions, conditions 21 and 22 require all dwellings to be constructed to at least Code Level 3 of the Code for Sustainable Homes, and all non-residential buildings to achieve a BREEAM “very good” rating.

11.150 The Council believes that a higher target should be set for dwellings, thereby

Matter (v) - Housing and compliance with PPS3

11.152 The foregoing analysis has shown that there is not an up-to-date five year supply of deliverable sites in Crawley or the Gatwick sub-region. Nor does it seem that the land supply position is a short-term problem that will be resolved imminently. Historically in Crawley there was a substantial under-provision in the first half of the decade as the supply that was anticipated from the North East Sector did not materialise. Looking to the future, without the North East Sector the medium term land supply position is, in the Council's words, exceptionally challenging. And whilst the collaborative working with neighbouring authorities (on which the Council places such faith) shows signs of producing some results, the opportunities around Crawley are so limited, and the shortages in the wider sub-region are so substantial, that there can be little confidence that Crawley's future needs will easily be met outside the Borough. ***[11.94-102]***

11.153 Where a five year supply cannot be demonstrated, PPS3 advises that planning applications for housing should be considered favourably subject to (in particular) the considerations of PPS3 paragraph 69. I have concluded that the first of these, achieving high quality housing, would be met. As to housing mix, the development proposes a wide range of housing with a high proportion of accommodation for families. It would also provide 40% affordable housing, the full quota sought by development plan policy, at a time when many other schemes are unable to deliver this proportion because they are not viable in the prevailing economic conditions. Accordingly there no reason to doubt that the scheme is highly suited to meet the demands of the Crawley housing market. ***[6.142, 6.146]***

11.154 The third criterion of paragraph 69 is the suitability of the site for housing. The only question mark here is the future noise climate as a result of a possible second runway at Gatwick airport, which is addressed separately. In all other respects the site is eminently suitable, for the reasons given elsewhere. The final criterion is the effective and efficient use of land. With regard to density, an overall density of 41 dph is proposed; for an extensive neighbourhood which includes a sizeable proportion whi5(wil)]TJuheve ofa wity oit w

measures including enhanced footpath and cycleway linkages and the provision of a bus service to the town centre, employment estates, Gatwick and Three Bridges railway station. Travel plans and information packs would promote the use of non-car modes of transport, with annual reviews helping to ensure that they remain effective over time. The provision within the site of shops, a primary school, health centre, library, community centre and recreation facilities should reduce the need to travel. Furthermore, siting a large housing development close to the major sub-regional employment locations should help to reduce the current very high levels of in-commuting. Levels of parking provision would be controlled in accordance with the Council's current policy. Overall, therefore, the proposed development would do much to promote sustainable transport choices and is fully compliant with PPG13. ***[3.5-9]***

Matter (vii) - Noise and PPG24

11.157 The site is subject to noise from a number of existing sources, but in all cases it either occurs at levels that are acceptable or measures would be taken to mitigate it successfully. The only concern is the future possibility of noise from a wide-spaced second runway at Gatwick airport. If such a runway was to operate in mixed mode, most of the site would be subject to aircraft noise between 57 dB(A) and 66 dB(A), equivalent to NEC B. At this level, Annex 1 of PPG24 advises that noise should be taken into account and, where appropriate, an adequate level of protection against noise should be secured. The appeal scheme proposes that all noise sensitive development (dwellings, primary school and education/community facilities) would be built with sound insulation such that an acceptable internal noise environment would be achieved, thereby potentially satisfying the NEC B stipulation. ***[11.22]***

11.158 Detailed guidance on noise from aircraft is in Annex 3 of PPG24, which refers to the NECs but also states that 60 dB(A) should be regarded as the desirable upper limit for major new noise sensitive development. About 60% of the population of the appeal scheme would experience noise above this level. Therefore, despite the noise level that an individual would experience being potentially acceptable, PPG24 advises that it is not desirable to expose large numbers of people to this level of noise. Moreover, reading Annex 3 and Annex 1 together, PPG24 does not say that planning permission should not normally be granted for the appeal proposal - that would only apply to development, whether major or not, in NEC C (66 – 69 dB(A)). In short, PPG24 advises that because of the large scale of the proposal, the noise level experienced by 60% of the population would be above the desirable limit, and for the noisier parts of the site it would be close to the limits of acceptability, but the development would not necessarily be unacceptable. ***[11.25]***

11.159 If a second runway was to be operated in segregated mode with all landings on the southern runway (which, in my view, is by far the most likely option for segregated mode), it appears that approximately 15-20% of the population would experience noise above the 60 dB(A) level. Whether the scale of development above this threshold would be "major" in Annex 3 terms is debatable. With the great majority of dwellings being at the lower end of the NEC B range, it would be difficult to sustain an objection on PPG24 grounds. ***[11.41]***

Matter (viii) - Conditions

11.160 The recommended conditions are attached at Annex A, together with reasons for their imposition. Apart from No 21, all are agreed between the appellants and the Council. As indicated above, I consider that No 21 in the appellants' wording is acceptable and would achieve a level of energy efficiency in the dwellings that complies with current policy. I am satisfied that these conditions meet the six tests of Circular 11/95. ***[10.2-4]***

11.161 GAL suggested three additional conditions. The first, relating to aerodrome safeguarding, is covered by other legislation and is therefore unnecessary. The other two would essentially advise potential occupiers of the development about the possibility of noise from a second runway at Gatwick. I agree with the Council and the appellants that these are unnecessary, as the issues raised do not justify the refusal of planning permission if the conditions are not imposed. It is also questionable whether they are reasonable, for if planning permission is granted, that decision will have been taken on the basis that the noise environment is acceptable. As to the condition seeking a statutory notice, I was not made aware of any legislative provision enabling such a notice to be made, so the enforceability of this condition is unclear. Consequently I recommend that the GAL conditions are not added to the list. ***[6.159-60, 8.57-8, 10.5-6]***

Matter (ix) - Other planning considerations

Planning obligations

11.162 For the reasons explained previously, no planning obligations have been submitted. Instead, the provision of the services and infrastructure that is necessary to mitigate the impacts of the development is proposed to be secured by planning conditions. The acceptability of this means of delivery is a matter of law for the Secretary of State. My own view, on the basis of the Joint Legal Opinion (which I accept may be a partial rather than a balanced resume of relevant case law) and the other evidence before me, is that the proposed negative conditions are acceptable and do not conflict with paragraph 83 of Circular 11/95. ***[10.1]***

Environmental Impact Assessment

11.163 Regulation 21(2) of the 1999 EIA Regulations requires a description of the main mitigation measures proposed to avoid, reduce and offset the major adverse effects of the development. The most important of these are summarised below, based partly on a document prepared by the main parties.[228]

11.164 Water quality issues would be addressed through the installation of sustainable drainage systems and measures to prevent contamination of Gatwick Stream, associated tributaries and ponds. A scheme of remediation would mitigate any contamination found on the site of the former abattoir. Based on the principles in the Design Statement, the layout and design would seek to retain the main hedgerows, trees and w 1 Tf0.0i(ldr2dith)-6( ) thee

the landscape management plan. As for ecology and nature conservation, measures in a biodiversity management plan would minimise the adverse effects on bats, birds, amphibians

supply of housing land in Crawley brings about the PPS3 paragraph 71 invocation to "consider favourably planning applications for housing". When set in the context of a sub-regional five year land supply position which shows even greater shortfalls than exist at Crawley, with little prospect of redressing the situation in the medium term either in Crawley or nearby in surrounding Districts, the housing need argument becomes even stronger. The fact that 40% of the housing would be affordable to those who cannot otherwise access the market is a further important factor to be weighed in the balance, notwithstanding that this is the level required by policy, because many schemes are currently unable to deliver affordable housing at this level.

11.174 The site has long been regarded as the best location for large scale development in or close to Crawley. It is in a highly sustainable location close to major employment opportunities at Gatwick and Crawley and not far from the town centre. The potential it offers for a significant reduction in in-commuting, coupled with a wide-ranging package of transport measures designed to promote sustainable transport choices, add further weight to the case on housing need. Taken together, the arguments in favour of the proposal are compelling.

11.175 Set against these factors in favour of the proposal is the potential impact of noise from a second runway at Gatwick and/or the extent to which the presence of an inhabited North East Sector would create pressure for a sub-optimal configuration or operation of that second runway, with a consequent lessening of airport capacity.

11.176 Gatwick is not the option that the Government prefers. Because of the recent decision that the third runway at Heathrow is acceptable in policy terms, at present it is unlikely that Gatwick will be required. But even if Gatwick is required, it is by no means certain that the second runway would produce the high levels of noise that would arise from a wide-spaced runway operated in mixed mode. It is possible that other modes of operation or runway configurations could be chosen which would have a lower overall noise impact, including across the North East Sector, though some options might increase noise levels in certain rural locations. Such alternatives would result in significant reductions in airport capacity, however. The capacity reduction might be in the order of 15% if a wide-spaced runway was operated in segregated mode, but would be much greater if a close-spaced runway was built.

11.177 If the appeal scheme is not built, there would still be a debate about the balance between environmental impacts and economic considerations at the time the second runway at Gatwick was being designed. Nevertheless, the existence of a developed North East Sector is an important consideration which would further complicate the process of option evaluation and the balance between competing interests.

11.178 Because the ATWP seeks to safeguard a wide-spaced runway operated in mixed mode, this is the option that must be assumed for the purpose of this analysis. In this circumstance, noise levels above 60 dB(A), which PPG24 says are undesirable for major development, would be endured by 60% of North East Sector residents for 27% of the time. Because sound insulation would provide an acceptable internal living environment, and an acceptable teaching environment inside the primary school, the undesirable noise would

be perceived by residents when in their gardens and the external spaces of the neighbourhood (including the primary school play areas). Similarly, although almost all the North East Sector residents would experience noise above the 57 dB(A) level which marks the onset of community annoyance, they too would endure this for two days a week on average, again when outside their homes or the school building. Even the highest levels of noise that would be experienced across the site would be below the level at which the Government advises that planning permission should not normally be

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mary Cook of Counsel assisted by Melissa Murphy of Counsel	Instructed by Legal Services, Crawley Borough Council

They called

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FOR THE APPELLANTS:

Peter Village QC assisted by Andrew Tabachnik of Counsel	Instructed by Macfarlanes LLP

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Mr J Woolf MA DipTP MRTPI	Director, Woolf Bond Planning

FOR GATWICK AIRPORT LIMITED:

Neil King QC	Instructed by Berwin Leighton Paisner LLP

He called

Mr T Lockwood MA BPhil MRTPI	Consultant to Gatwick Airport Limited

CD65	Draft South East Plan (March 2006)
CD67	Article 14 Direction dated 19 March 1999
CD69	Agreement dated 13 August 1979 between British Airports Authority and West Sussex County Council
CD71	Crawley Urban Housing Potential Study, August 2004
CD72	Statement of Common Ground – Housing Land Supply
CD72A	Completions on non-allocated sites 2003/04 - 2005/06
CD73	Crawley Borough Housing Strategy 2004-2008
CD74	Crawley Community Strategy 2003 to 2020
CD75	Crawley Housing Needs Assessment, 2004
CD77	Mid Sussex LDF Small Scale Housing Allocations, Submission Document, May 2006
CD79	Reigate and Banstead Housing Delivery Background Paper, May 2006
CD80	East Grinstead Strategic Development Area Action Plan, Pre-Submission Document, May 2006
CD83	Statement of Common Ground – Noise Matters
CD88	

CD131 Agreed note on location of proposed school relative to Gatwick flight paths
CD133 Statement of Common Ground – Planning Matters
CD134 Statement of Common Ground – Transport Matters
CD135 Working Paper No 1C – Public Transport
CD136 Working Paper No 2 – Pedestrian and Cycle Facilities
CD139 Revised County Parking Standards and Transport Contributions Methodology

EVIDENCE AND OTHER DOCUMENTS SUBMITTED TO PREVIOUS INQUIRY

R/CD66 Planning Inspector letter setting out the matters on which the Secretary of State wished to be informed in respect of the previous inquiry (25 October 2005) (previously INQ1)
R/CD67 Inspector's statement of issues, delivered on the opening of the previous inquiry (previously INQ3)
R/CD68 Inspector's note on evidence relating to housing need (previously INQ6)
R/CD69 Opening Submissions of Crawley Borough Council (previously CBC00/01)
R/CD70 Closing Submissions of Crawley Borough Council (previously CBC/00/12)
R/CD71 Mr Cox's proof of evidence (previously CBC01/1)
R/CD72 Mr Cox's supplementary proof of evidence (previously CBC01/2)
R/CD73

NEW CORE DOCUMENTS FOR RE-DETERMINED INQUIRY

R/CD1	European Council Directive 2002/30/EC: Noise Related Operating Restrictions
R/CD2	The Civil Aviation Act 2006
R/CD3	The Environmental Noise (England) Regulations 2006 (SI: 2006/2238)
R/CD4	The Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (SI: 2003/1742)
R/CD5	Planning and Climate Change – Supplement to PPS1 (December 2007)
R/CD6	PPS3: Housing (November 2006)
R/CD7	PPS12: Local Spatial Planning (June 2008)
R/CD8	PPS25: Development and Flood Risk (December 2006)
R/CD9	Air Transport White Paper Progress Report (December 2006)
R/CD10	Crawley Borough Local Development Framework Core Strategy (October 2008)
R/CD11	Crawley Borough Annual Monitoring Report 2007/08
R/CD12	Crawley Borough Local Development Scheme (December 2008)
R/CD13	Horsham District and Crawley Borough West of Bewbush Joint Area Action Plan: Submission Development Plan Document (May 2008)
R/CD14	Mid Sussex District Local Plan (May 2004)
R/CD15	Mid Sussex District Core Strategy: Pre-submission Document (January 2008)
R/CD16	Mid Sussex District Annual Monitoring Report 2007-08 (December 2008)
R/CD17	Mid Sussex adopted Local Development Scheme 2006
R/CD18	Mid Sussex revised Local Development Scheme 2008: not yet submitted to the Secretary of State
R/CD19	Mid Sussex Small Scale Housing Allocation Development Plan Document (April 2008)
R/CD20	Mid Sussex: Haywards Heath Town Centre Masterplan Supplementary Planning Document (June 2007)
R/CD21	Mid Sussex: Burgess Hill Town Centre Masterplan Supplementary Planning Document (November 2006)
R/CD22	Mid Sussex: East Grinstead Town Centre Masterplan Supplementary Planning Document (July 2006)
R/CD23	Reigate & Banstead Borough Annual Monitoring Report 2007-08
R/CD24	Reigate & Banstead Borough Core Strategy: Submission Document (2009)
R/CD25	Reigate & Banstead Borough Local Plan (April 2005)
R/CD26	Reigate & Banstead Local Development Scheme (March 2009)
R/CD27	Horsham District Core Strategy (February 2007)
R/CD28	Horsham District Council: West of Horsham Masterplan (October 2008)
R/CD29	Horsham District Local Development Scheme: 2007 Review (March 2007)
R/CD30	Horsham District Annual Monitoring Report 2007-08
R/CD31	Horsham District Si /P 0Specific Al 10.02 0 0 10.A8tA0 ÞÞ(l4 0 Tmocat)-4(i)2(on)-4(D)-4(

R/CD41

	Development Plan document (20 August 2007)
R/CD115	Costs decision of Mr Justice Collins – North East Sector, Crawley (July 2008)
R/CD116	Crawley Borough Council's Core Strategy Review Non Statutory Consultation Topic Papers (May 2009)
R/CD117	Crawley Borough Council's Strategic Housing Land Availability Assessment (May 2009)
R/CD118	Northern West Sussex's Strategic Market Assessment (May 2009)
R/CD119	*(not used)*
R/CD120	Extracts of Inspector's Report to the Secretaries of State: G1 Stansted Airport – conclusions (14 January 2008);
R/CD121	Judgment of Sir Thayne Forbes – G1 Stansted Airport (13 March 2009);
R/CD122	Manual for Streets, published by the Department for Communities and Local Government (March 2007);
R/CD123	Guidance on Transport Assessments, published by the Department for Communities and Local Government (March 2007)
R/CD124	Planning Inspectorate Procedural Guidance: Planning Appeals and Called-in Planning Applications, PINS 01/2009 (April 2009)
R/CD125	Secretary of State's letter: Crawley saved Local Plan Policies (26 September 2007)
R/CD126	Inspector's Report on the Examination into Horsham's Core Strategy Development Plan Document (5 January 2007)
R/CD127	Inspector's Report on the Examination into Mid Sussex's Small Scale Housing Allocations Development Plan Document (14 November 2007)
R/CD128	Inspector's Report on the Examination into the West of Bewbush Joint Area Action Plan Development Plan Document (9 April 2009)
R/CD129	Strategic Housing Land Availability Assessment Practice Guidance (July 2007)
R/CD130	Guidance on Housing Trajectories: Version 1, published by the Government Office for the South East (September 2005)
R/CD131	Regional Spatial Strategy and Local Development Framework: Core Output Indicators – Update 2/2008, published by the Department for Communities and Local Government (2008)
R/CD132	Demonstrating a 5 year supply of Deliverable Sites, published by the Department for Communities and Local Government
R/CD133	Horsham District Council 'Facilitating Appropriate Development': Draft Supplementary Planning Document (January 2009)
R/CD134	Horsham District Consultation Statement on the Land West of Horsham Masterplan Supplementary Planning Document (October 2008)
R/CD135	Horsham District: West Horsham Design Principles and Character Areas (April 2009)
R/CD136	A New Plan for London: Proposals for the Mayor's London Plan (April 2009)
R/CD137	The South East Plan: Regional Spatial Strategy for the South East of England (May 2009)
R/CD138	Housing Land Supply Statement of Common Ground (May 2009)
R/CD139	Planning Policy Statement of Common Ground (May 2009)
R/CD140	Crawley Borough Council Housing Strategy 2009-2013 (February 2009)
R/CD141	Building Bulletin 101: Ventilation of School Buildings (July 2006)
R/CD142	Crawley Core Strategy Examination-in-Public (NES representation) – Issue 7:

R/CD148	Local centre/school layout, drawing CSA/667/035 rev A (previously GWB2/6)
R/CD149	Letter dated 12 May 2009 from DCLG to Chief Planning Officers: Planning for Housing and Economic Recovery
R/CD150	Email from David Wilson (Thames Water) to David Boswell re: Sewage Treatment Works (1 June 2009)
R/CD151	Email from Lance Cooper (Thames Water) to David Boswell re: sewage treatment works (8 June 2009)
R/CD152	BAA letter to Paul Fairham: Revised Aerodrome Safeguarding Map – Gatwick Airport (30 November 2006)
R/CD153	South East Plan: extracts from Supporting Document (May 2009)
R/CD154	Extract of Crawley Borough Local Plan 1993;
R/CD155	Appeal Decision: 21, 25, 27 and 29 Tushmore Lane Crawley APP/Q3820/A/09/2096993 (12 June 2009)
R/CD156	Report: Update on Housing Issues for the Core Strategy
R/CD157	Development Management Report: Land West of Horsham (16 June 2009)
R/CD158	Housing Land Assessment Checklist published by DCLG (May 2009)
R/CD159	Letter from DCLG to Councillor Steve Jordan: Planning Policy Statement 3 (20 May 2009)
R/CD160	Statement of Common Ground between the Appellants and the Council relating to noise
R/CD161	West Sussex: table of gross and net dwelling completions by site origin 2006-07 (6 November 2007), published by West Sussex County Council
R/CD161A	Revised Crawley Borough Council Completions Table for the period 2006-2007
R/CD162	West Sussex: table of housing completions by tenure mid-2001 to 31 March 2008, published by West Sussex County Council
R/CD163	West Sussex: table of gross and net dwelling completions by site origin 2007-08 (3 October 2008) published by West Sussex County Council
R/CD163A	Revised Crawley Borough Council Completions Table for the period 2007-08
R/CD164	Position Statement by Crawley Borough Council: Examination Issue 2 – Housing (January 2007)
R/CD165	Minutes of Executive Committee for Crawley Borough Council regarding 'The Future Development of Air Transport in the UK: South East – A National Consultation, Second Edition' (27 June 2003)
R/CD166	Email from Paul Rowley to Steve Dennington re: West of Horsham DC Report (17 June 2009)
R/CD167	Secretary of State's Decision Letter: TRL Site, Crowthorne (dated 8 June 2009)
R/CD168	Inspector's Report: TRL Site, Crowthorne (16 March 2009)
R/CD169	Environment Agency plan: Map of Horsham, West Sussex (as at 18 June 2009)
R/CD170	Letter from Macfarlanes to Planning Inspectorate attaching an Opinion from Peter Village QC and Andrew Tabachnik relating to the use of conditions (14 May 2009)
R/CD171	Letter from Planning Inspectorate to Macfarlanes confirming receipt of Opinion (22 May 2009)
R/CD172	Skelton arguments on behalf of the Claimants (Section 288 challenge relating to North East Sector)
R/CD173	Skeleton arguments on

R/TWB/6/1 Proof of evidence of Mr Cobbold

R/TWB/7/1 Opening submissions of Appellants
R/TWB/7/2

PLANS

A1	Application plan (drawing 8010/07 Rev C), submitted with the application (CD45), 19 January 1998
B1	Revised Application Plan (Drawing CSA/667/025 Rev A), submitted under cover of Jones Day letter to the Planning Inspectorate of 19 June 2006
B2	Masterplan (Drawing CSA/667/020 Rev A), submitted under cover of Jones Day letter to the Planning Inspectorate of 19 June 2006
C1	Amended Masterplan (Drawing CSA/667/020 Rev D), submitted to the first inquiry
C2	Amended Masterplan (Drawing CSA/667/020 Rev F), submitted to this inquiry

The Plans referred to in the Conditions are D2-D5, D13, D21-D26, and the updated plans bound into the Addendum to the Transport Statement of Common Ground (R/CD179)

ANNEX A

CONDITIONS

1 The development hereby permitted shall not be carried out except in general accordance with the master plan drawing number CSA/667/020 Revision F ("the Masterplan") and the Design Statement dated July 2006 (as updated in May 2009).

REASON: To ensure a high quality design of development and that any development which is carried out reflects that which has been the subject of environmental impact assessment.

2 Prior to the submission of the first reserved matters application in respect of each phase of the development hereby permitted, a detailed design and access statement in respect of that phase shall have been submitted to and approved in writing by the local planning authority. Each detailed design and access statement shall demonstrate how the objectives of the Design Statement dated July 2006 will be met. Each phase of the development hereby permitted shall be carried out in accordance with the approved design and access statement in respect of that phase.

REASON: To ensure a high quality design of development.

3 The phasing of the development hereby permitted shall be in accordance with, and in the order shown on, drawing number CSA/667/013-4 Revision E ("the Phasing Plan").

REASON: To enable the local planning authority to control the development.

4 No more than 1900 dwellings shall be constructed on the site pursuant to this planning permission.

REASON: To accord with the planning application.

5 (i) Approval of the details of the siting, design and external appearance of any part of the residential development within each phase of the development hereby permitted and the landscaping associated with it (hereinafter called "the residential reserved matters") shall be obtained in writing from the local planning authority before that part of the residential development is commenced within that phase.

(ii) Approval of the details of the siting, design and external appearance of any part of the non-residential development within each phase of the development hereby permitted and the landscaping associated with it (hereinafter called "the non-residential reserved matters") shall be obtained in writing from the local planning authority before that part of the non-residential development is commenced within that phase.

(iii) The development shall not be carried out otherwise than in accordance with the approved details.

REASON: To enable the local planning authority to control the development and to comply with Section 92 of the Town and Country Planning Act 1990.

6 (i) Application for approval of the residential reserved matters and non-residential reserved matters in respect of phase 1 of the development hereby permitted (except the primary school as to which see (ii) below)

(v) contours for all landscaping areas, together with planting plans and schedules of plants, noting species, sizes and numbers/ densities, details of all trees, bushes and hedges which are to be retained and a written specification for the landscape works (including a programme for implementation, cultivation and other operations associated with plant and grass establishment); and

(vi) lighting to roads, footpaths and other public areas.

REASON: To enable the local planning authority to control the development.

9 The particulars submitted pursuant to condition 8(v) above shall include:

(i) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter (when measured over the bark at a point 1.5 metres above ground level) exceeding 75mm, identifying which trees are to be retained and the crown spread of each retained tree;

(ii) details of the species, diameter (when measured in accordance with (i) above), approximate height and an assessment of the health and stability of each retained tree;

(iii) details of any proposed topping or lopping of any retained tree; and

(iv) details of any proposed alterations in existing ground levels and of the position of any proposed excavation within the crown spread of any retained tree.

REASON: To ensure compliance with Policies GD5 and GD6 of the Crawley Borough Local Plan 2000.

10 Before each phase of the development hereby permitted is commenced a construction management plan in respect of that phase shall have been submitted to and approved in writing by the local planning authority. Each construction management plan shall include the following matters:

(i) provision for plant and stacks of materials;

(ii) details of vehicle wheel cleaning facilities to be provided;

(iii) provision for the temporary parking of vehicles and for the loading and unloading of vehicles; and

(iv) provision for the segregation and recycling of waste generated on the site during construction.

Construction of each phase of the development shall not be carried out otherwise than in accordance with each approved construction management plan.

REASON: To ensure the orderly construction of the development.

11 Before the development hereby permitted is commenced, details of the design of the central parkland and associated open space, as shown on the Masterplan, together with proposals for their future management (covering a period of no less than 15 years), long term design objectives and long term manaerm ahnt 8sp5(con)-ib

(v)

20 Before the development hereby permitted is commenced, a scheme to deal with any contamination associated with the former abattoir site shall have been submitted to and approved in writing by the local planning authority. The scheme shall supplement information contained within Chapter 16 of the Environmental Statement dated June 2006 and shall include an investigation and risk assessment to identify the extent of contamination and any proposed remediation measures. The development hereby permitted shall not be commenced until the approved scheme has been completed.

REASON: To ensure satisfactory land conditions and in accordance with Policy GD19 of the Crawley Borough Local Plan 2000.

21 No dwelling hereby permitted shall be occupied until a design assessment in respect of that dwelling has been submitted to and approved in writing by the local planning authority. The assessment shall demonstrate the basis upon which the dwelling shall achieve at least Level 3 of the Code for Sustainable Homes. Each dwelling shall be constructed in accordance with the approved design assessment which relates to that dwelling. Unless otherwise approved in writing by the local planning authority, no dwelling hereby permitted shall be occupied unless a final Code Certificate certifying that at least Code Level 3 has been achieved, in respect of that dwelling, has been submitted to the local planning authority.

REASON: To secure sustainable form of development.

22 Before the construction of any non-residential building hereby permitted is commenced a scheme for the inclusion of renewable energy technologies to achieve a “very good” rating pursuant to the Building Research Establishment Environmental Assessment Method, in respect of that building, shall have been submitted to and approved in writing by the local planning authority. Unless otherwise approved in writing by the local planning authority, no part of any non-residential building hereby permitted shall be occupied until a copy of a post-construction completion certificate, verifying that that building has achieved a “very good” rating, has been submitted to the local planning authority.

REASON: To secure sustainable form of development.

23 At least 10% of the energy supply of the development shall be secured from decentralised, renewable or low carbon energy sources (as described in the glossary of Planning Policy Statement 1: Planning and Climate Change (December79 Co(i)2(ng Poii6(e 9d) o)/1y)5(o6015 <MCID 6 >BDC BT/TT0 1 Tf-0.001

and proposals for the future management of open space and play space (including local areas of play, local equipped areas of play, playing fields and other sports pitches) in respect of that phase shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition each scheme shall be in accordance with the standards of the National Playing Fields Association. Each phase of the development shall not be carried out otherwise than in accordance with the approved scheme.

REASON: To secure an orderly and comprehensive form of development, and in accordance with Policies GD4 and RL19 of the Crawley Borough Local Plan 2000.

25 No more than 200 dwellings within the development hereby permitted shall be occupied until the playing fields within the school site, as shown on the Masterplan, have been laid out and are available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

26 No more than 280 dwellings within the development hereby permitted shall be occupied until the neighbourhood equipped area of play, as shown on the Masterplan, has been completed and is available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

27 No more than 1250 dwellings within the development hereby permitted shall be occupied until the playing fields (and any associated car parking and changing facilities) in the south west corner of the site, as shown on the Masterplan, have been laid out and are available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

28 Before commencement of construction of the local centre within the development hereby permitted, as shown on the Masterplan, a scheme identifying (a) the facilities to be provided within the local centre and (b)

No more than 1000 dwellings within the development hereby permitted shall be occupied until (1) at least 50% of the retail floorspace approved pursuant to (i) above and (2) each of the facilities listed at (ii) - (viii) (inclusive) above and (3) any other facilities included within the approved scheme, have been completed in accordance with the approved scheme. No more than 1500 dwellings within the development hereby permitted shall be occupied until all the retail floorspace approved pursuant to (i) above has been completed.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

29 Before commencement of construction of the community centre within phase 2 of the development hereby per

31 The development hereby permitted shall not be commenced until a scheme (including a programme for its implementation) for the provision of new fire and rescue infrastructure in accordance with the West Sussex County Council Capital Programme for Fire and Rescue Services in the period to 2016 has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.

REASON: To secure an enhancement in the fire and rescue infrastructure within the locality of the development.

32 Before the development hereby permitted is commenced, a scheme to secure the provision of primary school and secondary school places shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall accord with the Education Position Statement dated June 2009 and shall include the following details:

(i) the mechanism (including the timing and phasing of delivery) by which a two form entry (up to 420 places) primary school (and associated community facility/interview room) shall be provided on the school site;

(ii) the mechanism (including timing) by which the demand for no more than 100 secondary school places (being the maximum number of pupils arising out of the development hereby permitted net of those pupils who can be accommodated within existing secondary school provision) shall be met; and

(iii) the mechanism (including timing) by which the demand for up to 60 primary school places arising out of the development hereby permitted shall be met (including the provision of temporary accommodation if necessary) during the period before the primary school (as above) is completed and available for use.

The scheme shall be carried out as approved.

REASON: To secure satisfactory education provision for new pupils generated by the development hereby permitted.

33 The residential development hereby permitted shall not be located otherwise than within Noise Exposure Categories A and B, assessed (as at the date of determination by the local planning authority of the scheme submitted pursuant to condition 35 below) in accordance with Annex 1 to PPG24, and taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport as shown on ERCD 0308 figure 3.4 “London Gatwick Year 2030 - Noise contours with wide spaced par.26r1Td[(par.26r 1 (ce wwayon 4 (ity of twn on u-5(wf)]TJ5(r)1 Tw 0 (e)-5a.000

contours as may be published by the Civil Aviation Authority in respect of such second runway), (b) the operation of the London/Brighton railway line, (c) traffic on the A2011 and M23 and (where applicable) (d) mixed source noise. For the purposes of this condition the scheme shall include:

(i) a plan identifying the dwellings within that phase which require protection from noise;

(ii) the means by which the noise level within any (unoccupied) domestic living room or bedroom, with windows open, shall be no more than 35 dB(A) Leq 16hr (between 0700 and 2300) and no more than 30dB (A) Leq 8hr (between 2300 and 0700); and

(iii) the means by which the noise level within any (unoccupied) domestic bedroom, with windows open, shall not normally exceed 45 dB(A) LAFMax between 2300 and 0700.

Where the standards in (ii) and/or (iii) above cannot be achieved with windows open, the scheme must show how those standards will be met with windows shut and the means by which adequate ventilation will be provided. Each phase of the development shall be carried out in accordance with the approved scheme in respect of that phase. No dwelling hereby permitted shall be occupied until the approved scheme has been implemented in respect of that dwelling.

REASON: In the interests of residential amenity.

35 Before the commencement of construction of the primary school on the school site a scheme to protect the school against noise from the operation of London Gatwick Airport (taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport) shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall:

(i) include forecast LAeq30min levels for the school site, for peak hour aircraft movements on easterly departures in the period between 0900 and 1600, assuming the operation of a second wide-spaced mixed mode runway at London Gatwick Airport (as above);

(ii) specify the means by which the internal areas of the school will meet the internal noise standards set out in Building Bulletin 93 (or any subsequent document which revises or replaces it), taking the forecast levels in (i) above into account; and

(iii) include evidence of reasonable efforts to achieve a noise level of 50dB(A) Leq30min (taking the forecast levels in (i) above into account) in respect of an appropriately sized external teaching area, in particular as regards the siting and orientation of surrounding buildings and (if necessary) the provision of a canopy over part or all of the said external teaching area.

The school hereby permitted shall not be constructed otherwise than in accordance with the approved scheme.

REASON: In the interests of the amenity of the pupils and staff of the proposed school.

36 Before the commencement of construction of the local centre, community centre or health centre (as the case may be) hereby permitted, as identified

on the Masterplan, a scheme to protect the local centre, community centre and health centre (as the case may be) against noise from the M23 and from the operation of London Gatwick Airport (taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport) shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall include the means by which the noise level within the operative parts of the local centre, community centre and health centre (as the case may be) hereby permitted shall not exceed 40dBLAeq30min for peak hour aircraft movements on easterly departures. The local centre, community centre and health centre hereby permitted shall not be constructed otherwise than in accordance with the approved scheme.

REASON: In the interests of the amenity of the occupiers and users of the proposed local

REASON: To enable satisfactory provision for the parking and turning of vehicles within the development.

42 The area of land within the visibility splays, as approved pursuant to condition 5 above, shall be kept clear of any obstruction exceeding a height of 0.6m above the level of the nearest part of the highway. The visibility splays shall subsequently be retained at all times.

REASON: In the interests of highway safety.

43 The proposed all moves junction between the A2011 and Balcombe Road shall not open to traffic until the works to junction 10 of the M23, in accordance with drawing number 0560/SK/124D, have been completed.

REASON: In the interests of highway safety.

44 No dwelling within the development hereby permitted shall be occupied until the works to form the junction of Steers Lane and the proposed access road into the west of the site, in accordance with drawing number 0560/SK/121C, have been completed.

REASON: To provide a safe access into phase 1 of the development.

45 No more than 50 dwellings within the development hereby permitted shall be occupied until the following have been completed:

(i) works to the junction of Gatwick Road/Radford Road/James Watt Way in accordance with drawing number 0560/SK/112B;

(ii) works to the junction of Radford Road and Steers Lane in accordance with drawing number 0560/SK/116B;

(iii) works to a combined footway/cycleway on the approaches to, and across, the Radford Road railway bridge, together with the construction of traffic signals to enable the shuttle working of traffic across the bridge and the widening of the road embankments and carriageways on each side of the bridge, in accordance with drawing number 0560/SK/122D;

(iv) works to the junction of Balcombe Road and Steers Lane in accordance with drawing number 0560/SK/127B; and

(v) works to convert the existing traffic signal controlled pedestrian crossings, as situated on the southern and western approaches to the roundabout at the junction of Gatwick Road and Fleming Way, to toucan crossings in accordance with drawing number 0560/SK/131.

REASON: To provide traffic mitigation measures on the Steers Lane / Radford Road / Gatwick Road corridor and in the interests of highway safety.

46 Before the occupation of (1) any dwelling within that part of phase 2 of the development hereby permitted which is located to the west of Balcombe Road or (2) more than 300 dwellings within the development hereby permitted or (3) any dwelling within phase 3 of the development hereby permitted the following shall have been completed:

(i) works to the junction of Gatwick Road/Hazelwick Avenue/Crawley Avenue: Hazelwick Roundabout in accordance with drawing number 0560/SK/101B;

(ii) works to the junction of Crawley Avenue and Balcombe Road in accordance with drawing numbers 0560/SK/117C and 118D;

(iii) works to junction 10 of the M23 in accordance with drawing number 0560/SK/124D; and

(iv) the provision of street lighting in relation to the section of Crawley Avenue situated between the Hazelwick Roundabout in the west and junction 10 of the M23 in the east in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: To provide a safe access to that part of phase 2 situated to the west of Balcombe Road and to phase 3, and in the interests of highway safety.

47 No dwelling within that part of phase 2 of the development hereby permitted which is located to the east of Balcombe Road shall be occupied until the following have been completed:

(i) works to the junction of Balcombe Road and Heathy Farm in accordance with drawing number 0560/SK/119D;

(ii) works to the junction of Balcombe Road and Radford Road in accordance with drawing number 0560/SK/105E;

(iii) works to the junction of Balcombe Road and Antlands Lane in accordance with drawing number 0560/SK/107C; and

(iv) the provision of street lighting in relation to the section of Balcombe Road between Antlands Lane in the north and Crawley Avenue in the south in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: To provide a safe access to that part of phase 2 of the development situated to the east of Balcombe Road, and in the interests of highway safety.

48 No more than 300 dwellings within that part of phase 2 of the development hereby permitted which is located to the east of Balcombe Road shall be occupied until an emergency access from that part of phase 2 onto Balcombe Road has been constructed in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: In the interests of highway safety.

49 Before completion of the works to Balcombe Road pursuant to condition 47 above details of locations along Balcombe Road where future monitoring of traffic speeds will be carried out shall have been submitted to and approved in writing by the local planning authority. Traffic speeds shall be monitored along Balcombe Road in accordance with the approved details, every 3 months for a period of 2 years from the date of completion of the works to Balcombe Road pursuant to condition 47 above.

REASON: In the interests of highway safety.

50 Following completion of traffic speed monitoring along Balcombe Road pursuant to condition 49 above a report shall be submitted to and approved

REASON: To ensure that the development will be accessible by modes of transport other than a car.

54 Before the development hereby permitted is commenced a scheme for the following works shall have been submitted to and approved in writing by the local planning authority:

(i) a short length of combined footway/cycle way along the eastern side of Gatwick Road between Tinsley Lane in the south to the existing traffic signal controlled pedestrian crossing of Gatwick Road in the north, and the conversion of two existing signal controlled pedestrian crossings of Gatwick Road and Fleming Way to toucan crossings, in accordance with drawing number 0560/SK/131;

(ii) a combined footway/cycleway along the southern side of Radford Road between Gatwick Road in the west, to a point to the west of the existing public footpath to the east of the public house in the east, to be constructed in conjunction with the traffic signal controlled shuttle working of traffic flows across the railway bridge

Affordable housing shall be provided in accordance with the approved scheme. No more than 75% of the open market dwellings within any phase shall be constructed before the dwellings to be offered as social rented properties have been completed and handed over to the RSL or such other affordable housing provider as may have been approved pursuant to this condition. No more than 80% of the open market dwellings within each phase of the development shall be occupied until all affordable housing within that phase has been completed.

REASON: To secure the provision of affordable housing in accordance with Policy H5 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

64 None of the dwellings hereby permitted shall be sited within (1) 100m of the eastern boundary of the London and Brighton railway line, as shown on drawing number CSA/667/031, and (2) 40m from the western edge of the northbound carriageway of the M23.

REASON: To ensure a satisfactory living environment and to comply with Policy GD16 of the Crawley Borough Local Plan 2000.

65 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re enacting that Order with or without modification) no development within Classes A-C (inclusive) of Part 1 of Schedule 2 to that Order shall be carried out.

REASON: To protect the integrity of the development as permitted against potential noise effects, and to prevent the unconstrained extension/alteration of dwellings.

66 No works in respect of the construction of the development hereby permitted shall be undertaken at the following times:

(i) outside the hours of 0700 - 1800 on Mondays to Fridays (inclusive);

(ii) outside the hours of 0800 - 1300 on Saturdays;

(iii) on Sundays and on public holidays.

REASON: To safeguard the amenities of nearby residents in accordance with Policy GD34 of the Crawley Borough Local Plan 2000.

67 The local planning authority shall be provided with no less than 28 days' prior written notice of the projected occupation of:

(i) the first dwelling within the development hereby permitted;

(ii) the 50th dwelling within the development hereby permitted; and

(iii) every 100th dwelling within the development hereby permitted.

REASON: To enable the local planning authority to monitor compliance with this planning permission.