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12 March 2009

John Milverton
Persimmon Homes South West
Mallard Road
Sowton Trading Estate
Exeter
Devon, EX2 7LD

Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998

Dear Mr Milverton,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78: APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES (SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE, MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, C J Tipping MA (Cantab), who held a public local inquiry on 1, 2, 3 and 8 April 2008, which was then closed in writing on 22 April 2008, into the appeals:

   Appeal A: against the failure of Taunton Deane Borough Council (the Council) to give notice within the prescribed period of a decision on your application for outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

   Appeal B: against the failure of the Council to give notice within the prescribed period of a decision on your application for full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

2. A copy of the Secretary of State's letter of 22 October 2008 is enclosed with this letter and forms part of the decision in this case.

3. The Inspector recommended that Appeal A be allowed and planning permission granted, subject to conditions and a further undertaking being provided, and recommended that Appeal B be allowed subject to conditions. For the reasons set out in her letter of 22 October 2008, the Secretary of State indicated that she

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was minded to agree with the Inspector's recommendations, subject to further agreements and information as set out below.

Matters arising since the Secretary of State's letter of 22 October 2008

4. In her letter of 22 October 2008, the Secretary of State stated that she was minded to grant permission, subject to:

   - the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document;
   - the submission of a new s.106 Agreement to correct the errors and inconsistencies in the document;
   - the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources.

5. The Secretary of State received the following replies to that letter:

   - letter (via email) dated 12 November 2008 from Persimmon Homes South West;
   - letter dated 18 November from Judith Jackson, Legal Services Manager for Taunton Deane Borough Council;
   - letter dated 12 November 2008 from Clarke Wilmott including: an amended certified copy of the original s.106 Unilateral Undertaking dated 18 April 2008, an amended certified copy of the original s.106 Agreement dated 14 April 2008, and a certified copy of a Deed of Variation dated 12 November 2008.

6. The Secretary of State wrote to Persimmon Homes South West on 28 November 2008, seeking further information on the following matters:

   - the name of James Michael Nelson Hedderwick, which appears as a landowner on both the Unilateral Undertaking and the Agreement, is not included on the list of parties on the cover of the Deed of Variation, and has been struck through elsewhere in the document. Please confirm the reason for this. In some places this has been done incorrectly (e.g. where a reference is being made to the Unilateral Undertaking). In addition, the crossing-out of the name has not been initialled;
   - Colin Hedderwick has signed as Attorney for both Ian Nelson Hedderwick and Peter Benson Sidgwick, yet there is no Power of Attorney documentation attached to the Deed of Variation. Please confirm that the relevant Power of Attorney details in the Unilateral Undertaking still apply;
   - as requested in the Secretary of State's letter of 22 October, discrepancies and manuscript amendments in both the Unilateral Undertaking and the Agreement have now been initialled. Please confirm the identity and position of the person initialling the amendments;
   - in her letter of 22 October, the Secretary of State noted that none of the plans in the Unilateral Undertaking had been signed. Said plans have now been

inscribed "We certify that this is plan [x] on the attached Agreement" – with two unidentified signatures added. Please confirm the identity and position of the people signing these plans.

7. She also requested, in her letter of 28 November 2008, further information on a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units, which had not been addressed following her previous letter, and invited comments on her proposed revised condition 22:

   "At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."

8. The Secretary of State received the following replies to that letter:
   - letter dated 8 December 2008 from Clarke Wilmott;
   - letter dated 11 December 2008 from Taunton Deane Borough Council;
   - letter (incorrectly) dated 28 August 2008 from Persimmon Homes South West (received 19 December 2008).

9. She wrote further to Persimmon Homes South West on 22 December 2008, requesting further information on:
   - the names of the individuals initialling the amendments on the Unilateral Undertaking and the Agreement, and signing the plans in the Unilateral Undertaking;
   - what had happened to James Michael Nelson Hedderwick's interest in the land, following his death.

10. The Secretary of State received the following replies to that letter:
    - letter dated 5 January 2009 from Clarke Willmott;
    - letter dated 12 January 2009 from Persimmon Homes South West;
    - email dated 15 January 2009 from Charles Tharnthong on behalf of Hookipa Developments Ltd.

11. She wrote further to Persimmon Homes South West on 29 January 2009 to request final and corrected versions of the s.106 Agreement, the Unilateral Undertaking, and the Deed of Variation.

12. The Secretary of State received the following replies to that letter:
    - letter dated 2 February 2009 from Clarke Willmott;
    - letter dated 18 February 2009 from Clarke Willmott.

13. Where responses addressed these matters, or raised significant new issues material to the case, the Secretary of State has taken account of them in her

consideration of her decision. The majority of the correspondence has already been circulated to parties, and the Secretary of State does not consider it necessary to attach it here, or to further refer back to parties on these issues. Copies of the correspondence can be provided on application to the address at the bottom of the first page of this letter.

Development plan

14. The Secretary of State notes that the Taunton Town Centre Area Action Plan was adopted in October 2008, and now forms part of the development plan. However, she does not consider that its contents raise any matters that require a reference back in the consideration of the present appeals.

Affordable housing

15. As requested in her letter of 22 October 2008, the appellants have removed the provisions relating to discount market housing from the s.106 Unilateral Undertaking, via the Deed of Variation, dated 12 November 2008. Taunton Deane Borough Council, in their letter of 18 November 2008, asked why the Secretary of State has discounted the Council's evidence and approach to affordable housing.

16. The Secretary of State has fully taken into account the Council's preferred split, as set out at the inquiry and in their letter of 19 September 2008, and recognises that the Council has drawn on advice in the Tetlow King study 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and Around Taunton' of August 2006, which is a material consideration. She has taken into account that the overall percentage of affordable housing to be provided is in agreement with the development plan, and that the appellant and the Council are in accordance over the 50% social rented housing to be provided, and differ only on matters relating to the question of discounted market housing.

17. On this matter, the Secretary of State wrote to the appellants on 22 October 2008 requesting the introduction of a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units. In their response of 19 December 2008, the appellants state that they consider the existing Unilateral Undertaking already provides a framework to resolve any future negotiations regarding tenure split, in the event that there is limited demand for shared ownership units, as Schedule 1, Part 1, paragraph 1.1 of the Unilateral Undertaking allows for variation in the 50% social rented housing/50% shared ownership housing split if agreed in writing between the Council and the owners. No comments were received from the Council or other parties on this point. The Secretary of State has considered the appellants' comments and concluded that the current wording provides adequate flexibility in the event of insufficient demand for the shared ownership units. In the circumstances of this case, she therefore considers that the appellants' offer is reasonable and acceptable.

Renewable energy condition

18. The Secretary of State's letter of 22 October 2008 suggested a revised condition 22 to deal with renewable energy. In their letter of 12 November 2008, Persimmon Homes Southwest commented that the proposed condition placed an absolute requirement to provide renewables on site, and did not reflect the wording of the PPS1 supplement or draft RSS policy RE5. The Secretary of State considered these representations, and proposed a revised condition in her letter of 28 November 2008:

> "At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."

19. The Secretary of State noted that the appellants had not in their representations sought to demonstrate that this requirement was neither feasible nor viable for the proposed development. However, in order to expedite matters in this particular case, she proposed this revised condition which allows for this demonstration, subject to the Council's agreement, in discharging the condition.

20. The Council stated in their letter of 11 December 2008 that they did not consider that the revised condition proposed by the Secretary of State met the tests of precision and reasonableness as set out in Circular 11/95. They pointed out that although '10% of the energy supply' is the current standard in the RSS, this is subject to extensive representation and a decision on this is awaited. They suggested changing the phrase '10% of the energy supply of the development' to '10% carbon reduction in energy use' as in their view it is more precise, and further suggested removing the words 'unless it is agreed in writing with the Local Planning Authority that it is not feasible or viable', as they considered this introduced an element of uncertainty. They further considered that the energy reduction measures should be spread across the development to cover both residential and employment uses, and that therefore the word 'each' should be placed in front of 'reserved matters'.

21. Persimmon Homes South West responded to these points in their letter of 12 January 2009. They considered that the introduction of the wording '10% carbon reduction in energy use' would cause a degree of uncertainty about what is intended to be covered by the condition, as it would not be clear what the benefits or technical implications are, or what aspects of 'energy use' are intended to be covered.

22. As stated in the Secretary of State's letter of 28 November 2008, policy RE5 in the proposed changes to the South West RSS expects at least 10% of the energy to be used in new developments of more than 10 dwellings or 1000m2 of non-residential floorspace to come from decentralised and renewable or low-carbon sources unless, having regard to the type of development involved and its design, this is not feasible or viable. Although the emerging RSS is not yet finalised, it

carries significant weight, and is the most up-to-date expression of policy. The Secretary of State therefore considers it appropriate for the condition to reflect this policy. She does not consider that the insertion of the word 'each' is necessary. The Secretary of State considers that her proposed revised condition is precise and reasonable, and in accordance with Circular 11/95, and is imposing it as condition 22.

Planning obligations

23. The Secretary of State has in her various letters requested the correction of errors in the planning obligations, including the Deed of Variation. She wrote to Persimmon Homes South West on 29 January 2009 to request that a signed and dated version of the obligations and the Deed of Variation be forwarded to her. An amended version of the Deed of Variation was received on 18 February 2009, with the Unilateral Undertaking and Agreement being unchanged since the amended versions were submitted by Clarke Wilmott with their letter of 12 November 2008.

24. The Secretary of State notes that the corrections on the documents have been initialled by Richard Hogg of Somerset County Council, and Timothy John Walker of Clarke Willmott, and that the Legal Estate in the Hedderwick land remained vested in the three surviving Trustees following the death of James Michael Nelson Hedderwick. She now considers that these documents have addressed her concerns adequately, and are in accordance with Circular 05/2005.

25. The Secretary of State has taken into account the comments made by Charles Tharnthong on behalf of Hookipa Developments Ltd in his email of 15 January 2009, that Plan 8 of the s.106 Agreement is incorrect, in that it shows the position of the southern roundabout and its ERR approach encroaching on Hookipa's land. Plan 8 is marked as being incorrect in this respect. The Secretary of State further notes Clarke Willmott's response (2 February 2009), on behalf of the appellants, that Plan 8 pertains only to the Traffic Calming Scheme, that no part of the Traffic Calming Scheme is to be carried out on land belonging to Hookipa, and that the intention is that the Traffic Calming Scheme would be carried out entirely within the carriageway of the existing highway. The Secretary of State considers that the error on Plan 8 is not material to the effect of the Agreement, and does not affect her decision in this case.

Conclusion

26. The Secretary of State considers that the concerns set out in her letters of 22 October 2008, 28 November 2008, 22 December 2008 and 29 January 2009 have been adequately addressed, and therefore concludes that the appeals should be allowed and permission granted for the reasons set out in her letter of 22 October 2008.

Formal decision

27. For the reasons given above, the Secretary of State hereby grants permission, subject to the conditions set out in Annex A, for:

Appeal A: outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

Appeal B: full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

28. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

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

30. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to Taunton Deane Borough Council and all parties who appeared at the inquiry.

Yours faithfully,

M. Stasiak.

Maria Stasiak
Authorised by the Secretary of State
to sign in that behalf

Annex A: Conditions

1. Before any phase of the development hereby permitted is begun (with the exception of the Eastern Relief Road ("ERR")), detailed drawings to an appropriate scale of the proposed public and private access (excluding the ERR), appearance, landscaping, layout and scale of the development shall be submitted to and approved in writing by the Local Planning Authority for such phase. The development shall thereafter be carried out in accordance with the agreed drawings.

2. Application for approval of reserved matters under (1) above relating to the first phase of the development shall be made to the local planning authority within 3 years of this planning permission; and application for approval of reserved matters under (1) above relating the remaining phases shall be made to the Local Planning Authority within 10 years of the date of this permission. Phases are as shown in the submitted Design and Access Statement dated December 2007 unless otherwise agreed in writing by the Local Planning Authority.

3. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. No development shall take place on the site (with the exception of the ERR) until there has been submitted to and approved in writing by the Local Planning Authority, a design code for the site in its entirety (hereafter called the design code). The design code shall be approved prior to the submission of any application for reserved matters. The design code shall include detailed codings for:
   Architectural and sustainable construction principles;
   Character areas, street types and street materials;
   Block types and block principles;
   Renewable and energy efficiency measures;
   Principles of internal highways, cycle-ways and footpaths;
   Car and cycle parking principles;
   Building types;
   Building heights;
   Building materials;
   Surface treatments; and
   Boundary treatments.

5. Applications for the approval of reserved matters shall accord with the approved design code unless otherwise agreed in writing by the local planning authority.

6. Prior to the commencement of development a strategy for the proposed surface and foul water drainage arrangements for the site, to include timescales for implementation and details of future maintenance regimes, shall be submitted to and approved in writing by the Local Planning Authority. Drainage arrangements shall thereafter be provided in accordance with the approved

strategy unless an alternative is first agreed in writing by the Local Planning Authority.

7. Prior to the commencement of each phase of the development a landscape strategy and management plan shall be submitted to and approved in writing by the local planning authority. The landscape strategy shall include details of the proposed structural and internal landscaping and the proposed phasing of landscaping works. The landscape management plan shall include a maintenance plan specifying the extent and timing of grass cutting, shrub pruning and tree maintenance. The landscape strategy shall thereafter be implemented on site in accordance with the approved strategy and management plan unless otherwise agreed in writing by the Local Planning Authority.

8. Before any phase of the development is commenced the following shall be submitted to and approved in writing by the Local Planning Authority:
(a) a plan showing the location of and allocating a reference number to each existing tree on the site which has a trunk with a diameter exceeding 100 mm, indicating which trees are to be retained and which are to be removed and the crown spread of each retained tree (in accordance with Section 5 of BS 5837:2005);
(b) details of the species, height, trunk diameter at 1.5m above ground level, age, vigour, canopy spread and root protection area of each tree on the site and on land adjacent to the site; and
(c) a scheme for protection of the trees, to be erected, maintained and retained for the period of the construction of that phase of development.
The development shall thereafter be carried out in accordance with the scheme unless otherwise agreed in writing by the Local Planning Authority.

9. Before any phase of the development is commenced, the hedges to be retained within that part of the development shall be protected by a chestnut paling fence 1.5m high, placed at a minimum distance of 2.0m from the edge of the hedge and the fencing shall be removed only when the development has been completed, unless otherwise agreed in writing by the Local Planning Authority. During the period of construction of the development the existing soil levels around the base of the hedges so retained shall not be altered.

10. All trenching works within the canopy spread of existing trees should be agreed with the Local Planning Authority's landscape officer. All works shall be hand dug and no roots larger than 20 mm in diameter shall be severed without first notifying the Local Planning Authority. Good quality topsoil shall be used to backfill the trench and compacted without using machinery.

11. The proposed roads, footpaths, turning spaces and parking where applicable, shall be constructed in such a manner as to ensure that each dwelling or building before it is occupied shall be served by a properly consolidated and surfaced carriageway and footpath.

12. Reserved matters for each phase, shall include the provision of open space in accordance with Plan No. ACD5294 drawing 001 Rev A, unless a variation is first submitted to and approved in writing by the Local Planning Authority

13. Prior to the submission of reserved matters for the first phase of development, a waste management plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The waste management plan shall include proposals for the means by which waste from the site can be managed and recycled to accord with the Somerset Waste Local Plan Policies W9 and W18. The works approved in accordance with the plan shall be implemented and thereafter maintained in full.

14. Prior to the commencement of development a wildlife management strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the information contained within Section 10 – "Ecology" of the Environmental Statement dated December 2007. Prior to the development of each phase a wildlife management sub-plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The sub-plans shall be in accordance with the overall approved wildlife management strategy and be based on up-to-date surveys for protected species. Development for each phase shall thereafter be implemented in accordance with the wildlife management strategy and the relevant sub-plan.

15. Prior to the commencement of the development (other than the ERR) a detailed plan for the relocation underground of the 33Kv electricity cables crossing the development site shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the phasing of such relocation in correlation with the phasing of the development overall. The relocation shall be carried out in accordance with the approved plan.

16. The hours of on-site working during construction of the development shall be restricted to 08:00 to 18:00 on Mondays to Fridays and 08:00 to 13:00 on Saturdays. No on-site working shall take place on Sundays or Public Holidays. The term "working" shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance or cleaning work on any plant or machinery, deliveries to the site and the movement of vehicles within the site. No on-site working outside these hours, other than within buildings, shall take place without the prior written consent of the Local Planning Authority.

17. The development shall not commence until a scheme of attenuation measures to be adopted to reduce road traffic noise at existing and proposed residential properties affected by the development has been prepared by a duly qualified acoustics consultant and submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
    (a) A plan showing the locations where noise attenuation measures are to be installed; and
    (b) Details of the noise attenuation measures that are to be installed at each location including heights and design and materials to be used.

    The development shall be carried out in accordance with the scheme and the noise attenuation measures shall thereafter be retained in position.

18. Prior to the commencement of works on the relevant phase of development, the following shall be carried out:

(a) (i) an investigation of the area of potential hydrocarbon contamination on the western margins of the site; and

(ii) a basic ground gas monitoring exercise on the south-western and eastern site margins,

as defined in the submitted report by Johnson Poole and Boomer dated 13 October 2004 on site investigations at Monkton Heathfield.

The investigation and risk assessment shall include the collection and interpretation of relevant information to form a conceptual model of the site and a preliminary risk assessment of all the likely pollutant linkages. The results of this assessment should form the basis of any subsequent site remediation strategy.

(b) A ground investigation shall be carried out as above, if required, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants.

(c) A site-specific risk assessment shall be carried out on the whole site to evaluate the risks to existing or potential receptors, which could include human health, controlled waters, the structure of any buildings and the wider environment. All the data should be reviewed to establish whether there are any unacceptable risks that will require remedial action.

(d) If any unacceptable risks are identified a remediation strategy shall be produced to deal with them effectively, taking into account the circumstances of the site and surrounding land and the proposed end use of the site.

Two copies of the consultants' written report, which shall include, as appropriate, full details of the initial research and investigations, the risk assessment and the remediation strategy shall be submitted to the Local Planning Authority for the approval in writing. The report and remediation strategy shall be implemented as approved.

If any significant underground structures or contamination is discovered following the acceptance of the written report, the local planning authority shall be informed within two working days. No remediation works shall take place until a revised risk assessment and remediation strategy has been submitted to and accepted in writing by the Local Planning Authority.

On completion of any required remedial works two copies of a certificate confirming the works have been completed in accordance with the agreed remediation strategy, shall be submitted to the Local Planning Authority.

All investigations, risk assessments and remedial works shall be carried out in accordance with current and authoritative guidance.

All investigations and risk assessments shall be carried out using appropriate, authoritative and scientifically based guidance. Any remedial works should use the best practicable techniques for ensuring that there is no longer a significant pollutant linkage.

19. The proposed employment sites shall be used for Class B1 (Employment) or B8 (Warehousing) purposes only as referred in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that order.

Within the B1 use, office use shall be subject to a maximum floor area of 600 square metres across the whole application site, unless a sequential test in accordance with the requirements of PPS6 is first submitted to and approved in writing by the Local Planning Authority.

20. No development shall take place until a programme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority.

21. The Secondary School Playing Field site shall be provided with a boundary fence incorporating a lockable gate at the point where the path to the Playing Field meets the public footpath in accordance with details that shall have been submitted to and approved by the Local Planning Authority. The fencing and gate shall be erected before the Playing Field is brought into use.

22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Communities and Local Government

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22 October 2008

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Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78:
APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES (SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE, MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, C J Tipping MA(Cantab), who held a public local inquiry on 1, 2, 3 and 8 April 2008, which was then closed in writing on 22 April 2008, into the appeals:

   Appeal A: against the failure of Taunton Deane Borough Council (the Council) to give notice within the prescribed period of a decision on your application for outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

   Appeal B: against the failure of the Council to give notice within the prescribed period of a decision on your application for full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

2. On 6 December 2007 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990. Appeal A was recovered because it raises policy issues relating to residential development of 150 or more dwellings or on more than 5 hectares of land which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. Appeal B was recovered because it is most efficiently and effectively decided with

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Appeal A. Given that the appeal schemes are interdependent, the Secretary of State has considered them together.

Inspector's recommendation and summary of the decision

3. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report. The Inspector recommended that Appeal A be allowed and planning permission granted, subject to conditions and a further undertaking being provided (IR8.6.10 and IR9.1), and recommended that Appeal B be allowed subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and is minded to agree with his recommendation that the appeals be allowed and planning permission granted, subject to:

   - the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document (paragraphs 25 and 26 below);

   - the submission of a new s.106 agreement to correct the errors and inconsistencies in the document (paragraph 26 below);

   - the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources (paragraph 23 below).

Procedural matters

4. In reaching her decision, the Secretary of State has taken into account the Environmental Statement dated November 2005 which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, and to the revised Environmental Statement submitted in December 2007. She is content that the Environmental Statement and revised Environmental Statement comply with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the appeals.

Matters arising after the close of the inquiry

5. On 7 August 2008, the Secretary of State informed you via your former agents, together with the other parties to the appeals, that she was not in a position to determine the appeals as she had insufficient information with regard to the proposed discounted market housing. To enable the Secretary of State to make a fully informed decision, she invited comments on the following matters:

   - the impact of the provision of some or all of the affordable housing provision as discounted market housing on meeting local housing need;

- the possibility of securing within the scheme a guaranteed minimum level of social rented housing and shared ownership housing;

- the effect on the viability of the scheme of increasing the discount level on any discounted market housing provided from the currently proposed 20% level.

The Secretary of State also sought clarification of the status of further applications submitted by Persimmon Homes and Redrow Homes for the appeal sites.

6. Your response of 28 August 2008 was then circulated under cover of a letter dated 5 September 2008. Further representations received were recirculated under cover of a letter dated 23 September 2008 seeking any final comments by 1 October 2008.

7. A schedule of correspondence received following the closure of the inquiry is attached at the end of this letter. Copies of this correspondence are not enclosed with this letter but can be made available on written request to the address at the foot of the first page of this letter. The Secretary of State has taken account of all representations on relevant matters in reaching her decision on the appeals.

Policy considerations

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

9. In this case, the development plan comprises the Regional Spatial Strategy (RSS) in the form of Regional Planning Guidance 10 for the South West (RPG10); the saved policies of the Somerset and Exmoor National Park Joint Structure Plan Review (SP), adopted in 2000; and the saved policies of the Taunton Deane Local Plan 2004 (LP), adopted in 2004.

10. Material considerations which the Secretary of State has taken into account include the draft replacement Regional Spatial Strategy for the South West 2006 – 2026 ("draft RSS"), which will replace RPG10. The draft RSS has undergone an Examination in Public (EiP) and the EiP Panel Report was published on 10 January 2008. The Secretary of State published her proposed modifications to the draft RSS on 22 July 2008, and consultation on them is now open until 24 October 2008. As the draft RSS is now at an advanced stage she accords it significant weight.

11. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement 1, *Delivering Sustainable Development* (PPS1) and its supplement *Planning and Climate Change*; Planning Policy Guidance 2, *Green Belts* (PPG2); Planning Policy Statement 3, *Housing* (PPS3); Planning Policy Statement 6: *Planning for Town Centres* (PPS6); Planning Policy Statement 7, *Sustainable Development in Rural Areas* (PPS7);

Planning Policy Statement 9, *Biological Diversity and Geological Conservation* (PPS9):; Planning Policy Statement 11, *Regional Spatial Strategies* (PPS11); Planning Policy Guidance Note 13, *Transport* (PPG13); Planning Policy Guidance Note 17: *Planning for Open Space, Sport and Recreation* (PPG17); Planning Policy Statement 22: *Renewable Energy* (PPS22); Planning Policy Statement 25, *Development and Flood Risk* (PPS25); Circular 11/95: *Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations.*

12. The Secretary of State has had regard to the Tetlow King study 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and around Taunton', of August 2006.

Main issues

The extent to which the proposal accords with the development plan

13. For the reasons set out by the Inspector at IR8.3.3 – IR8.4.3 and IR8.4.4, the Secretary of State agrees that other than the conflict with LP Policy EN12 relating to development on the green wedge, the scheme is in all substantive respects in compliance with the development plan. The Secretary of State has gone on to consider whether there are other material considerations which outweigh the lack of accordance with the development plan.

The green wedge and Western Relief Road

14. The Secretary of State has had regard to LP Policy EN13 which states that development which would harm the open character of green wedges will not be permitted, and to the supporting text to LP Policy T8 which, in relation to the appeal sites, refers to the maintenance of the open wedges of land separating Monkton Heathfield and Bathpool as a key planning consideration (IR8.4.1).

15. For the reasons set out at IR8.4.4, the Secretary of State agrees with the Inspector that any additional encroachment into the green wedge must have an impact on the openness of the green wedge, which at the proposed point of encroachment is at its narrowest. However, she notes that the proposed land take would constitute less than 0.2% of the total area of the green wedge, and for the reasons set out in IR8.4.5, she agrees with the Inspector's conclusion at IR8.4.6 that the adverse impact arising from the implementation of the Consortium's proposed ERR alignment would be at worst slight.

16. The Secretary of State has taken into account the Local Plan Inspector's conclusions in his report of 2003 that any narrowing of the green wedge in this area should be resisted (IR8.4.10). However, for the reasons given in IR 8.4.10, she considers that a different approach is now justified given the changes in context in the period of 5 years and the need for substantial housing as recognised in the draft RSS. Whilst the Secretary of State recognises that allowing the appeals may be of potential benefit in terms of the options for the Western Relief Road (WRR), the alignment, status and other details of the WRR do not form part of the appeals proposals, and as there is currently uncertainty about the possible future route of the WRR and the form of other future

development in the area, she does not consider that this matter weighs in support of the appeals proposals.

Deliverability of the scheme

17. The Secretary of State has carefully considered the points made in relation to the deliverability of the scheme, as set out in IR 8.4.12 – IR8.4.15. Whilst she appreciates that dismissal of the appeals may not significantly affect delivery of the scheme given the parallel application by the appellants, she does not consider that this is a reason to refuse the appeals.

18. The Secretary of State has considered the Inspector's view at IR8.4.16 that if the Hatcheries land were not needed for the ERR alignment, this would represent an increase in the developable area of the major development site, and would represent a small but significant additional benefit arising from acceptance of the Consortium's ERR alignment. However, given the uncertainties surrounding future development of the area, and because this increase would be gained at the expense of the green wedge, she does not consider that this potential benefit, in itself, lends support to the appeals proposals.

Housing land supply

19. For the reasons set out at IR8.4.17 – IR8.4.18, the Secretary of State agrees with the Inspector that it is likely that the Council faces a significant shortfall in the supply of housing land against the targets currently set out in the draft RSS. She further notes that since the inquiry closed, the EiP targets have been confirmed by the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South West 2006 – 2026, issued for public consultation in July 2008. As the emerging RSS is at an advanced stage, it carries significant weight. The Council accepted at the inquiry that the dwellings identified as the current supply in Taunton would only represent a 3.7 year supply against the increased EiP figures (inquiry document TDBC/P1/A). She considers that this shortfall against emerging targets carries significant weight in favour of the appeals.

20. The Secretary of State has considered the Inspector's conclusion at IR8.4.20 that the impact of dismissing these appeals on the Council's supply of land for new housing would be broadly neutral. She agrees that as an allocated site, the Appeal A site would remain as part of the housing land supply. She further accepts that the Council's resolution to permit the parallel application is a material consideration. However, she considers that as planning permission has not yet been granted, the parallel application does not constitute a fall-back position. She therefore considers that the contribution the appeals scheme would make to meeting the need for both market and affordable housing, which is acknowledged to be acute (IR8.4.17), carries significant weight.

Other matters

21. The Secretary of State has considered the design and access statement and Masterplan, and is satisfied that what is before her forms the basis for an acceptable scheme. For the reasons set out in IR8.7.1, she considers that the

other adverse impacts claimed by objectors are not of sufficient weight to justify refusing permission.

Conditions

22. The Secretary of State has considered the proposed conditions and national policy as set out in Circular 11/95. For the reasons given at IR8.6.2 and IR8.64, she agrees with the Inspector's conclusions on the first proposed additional condition, and draft condition 19. The Secretary of State considers that the conditions set out in the Schedule to the IR are reasonable and necessary and meet the requirements of Circular 11/95.

23. She has considered carefully the Inspector's conclusions on the second proposed additional condition (IR8.6.3, IR7.2). She has taken into account that the Council were unable to demonstrate that the condition as proposed, which has significant cost implications, had been discussed substantively before the inquiry, and that there is no development plan requirement for the part of the condition requiring the development to be delivered at levels of the Code for Sustainable Homes and BREEAM standards. However, the Secretary of State notes the clear policy direction set out in PPS1 Supplement *Planning and Climate Change*, and considers that policy RE5 of the emerging RSS carries some weight in the absence of an adopted local requirement for decentralised energy to supply new development. The Secretary of State therefore considers that it is appropriate to impose a condition requiring a percentage of the energy to be used in the development to come from decentralised and renewable or low-carbon energy sources, and having taken into account the requirements of Policy RE5, invites the parties' comments on her proposed condition 22 as set out below:

> "22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."

Planning obligations

24. The Secretary of State has considered the two s.106 planning obligations and national policy as set out in Circular 05/2005.

25. Further to the reference back exercise, the Secretary of State has considered whether changes should be required to the s.106 Unilateral Undertaking to Taunton Deane Borough Council in respect of affordable housing. She has noted the appellant's offer to remove the provision which could result in discount market housing at a discount of 20% being provided if it has not been possible to exchange contracts for all of the affordable housing within any particular cluster within 12 months (schedule 1, part 1, paragraphs 1.1 – 1.15 of the undertaking). This would result in 50% social rented housing and 50% shared ownership

housing. The appellants have further offered to agree a final split with the Council if there proves to be insufficient demand for the shared ownership housing (letters of 28 August and 1 October). The Council seek a split of 50% social rented housing, 25% shared ownership housing and 25% discounted market housing, at a discount of 30% (letter of 19 September). The provision of discounted market housing and the level of discount sought by the Council is based on advice contained in the Tetlow King study, 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and Around Taunton', of August 2006, although no tenure split is set out in development plan policy. The Secretary of State considers that the appellants' offers are reasonable in the circumstances of this case.

26. The Secretary of State also wishes to draw the appellants' attention to errors and omissions in the s.106 Agreement between the appellants and Somerset County Council dated 14 April 2008 and the Unilateral Undertaking to Taunton Deane Borough Council dated 18 April 2008. She considers that, as currently drafted, they would not successfully deliver their intended aims and objectives because:

a) In respect of the s.106 Agreement:

i. covering page: there is an undecipherable manuscript amendment to the name "N P Cavill";
ii. page 1: A manuscript amendment to the name "William Procter Pulman" has not been initialled;
iii. page 1: The name "Norman Philip Cavill" (among those identified as the Third Owners) is crossed through and is replaced with the manuscript change to "Malcolm John Cavill" – this change has not been initialled;
iv. page 23: A manuscript amendment to the name "William Procter Pulman" has not been initialled.

b) In respect of the Unilateral Undertaking:

i. page 2: In contrast with page 1 of the s.106 Agreement, there is no amendment to the name of William Procter Pulman;
ii. page 2: In contrast with page 1 of the s.106 Agreement, the name "Norman Philip Cavill" (as Third Owner) has not been amended;
iii. page 18: A manuscript amendment to the name "William Procter Pulman" has not been initialled;
iv. page 19: The name Norman Philip Cavill is deleted – however, it would need to appear among the parties twice, given that Norman Philip Cavill is listed, at page 2, among the names of both the Third Owners and the Sixth Owners;
v. none of the plans included are signed by the parties.

c) The Secretary of State is also concerned that the two versions of the plan marked "Monkton Heathfield: Land Ownerships Within Red Line Boundary", identified as Plan 3 (rev: A dated 28.03.08) in the s.106 Agreement, and as Plan 2 (rev: B dated January 2008) in the Unilateral Undertaking, contain the following discrepancies:

i. a different spelling is given for the name of "Mr Pullman" as the First Owner, compared with that given earlier in the documents;
ii. Plan 3 includes among the names identified as the Third Owner, the name " Mrs/Miss Cozens", whilst Plan 2 instead includes the name "Mrs Worledge";
iii. Plan 3 identifies "Mr Richards" as the Ninth Owner, whilst Plan 2 instead identifies "Mr Richards" and "Mrs Gothard".

d) The Secretary of State has had regard to the Power of Attorney details, which in the case of the s.106 Agreement are stapled to the inside back cover. She considers, in the interests of clarity and to avoid unnecessary manuscript amendments, that it would be appropriate to also incorporate, where relevant, reference to the roles of the Powers of Attorney within the text of the planning obligations.

Overall conclusions

27. The appeals scheme is not in accordance with a key development plan policy relating to development in the green wedge but is otherwise in compliance with the relevant development plan policies. The Secretary of State has gone on to consider whether material considerations outweigh the lack of accordance with the development plan.

28. The Appeal A site is allocated in the Local Plan for the type of development proposed, and the Secretary of State considers that the design material before her forms the basis for an acceptable scheme. The site lies in a sustainable location, and the development would provide much-needed strategic growth in the Taunton area. In the light of the shortfall against emerging housing targets, she concludes that the contribution the appeals scheme would make to meeting the need for both market and affordable housing carries significant weight. She further considers that the damage to the green wedge would be, at worst, slight, and that there are no other reasons which justify a refusal of permission.

29. Accordingly, for the reasons given above, she is minded to agree with the Inspector's recommendation, and allow your appeals and grant planning permission for the proposed development subject to:

- the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document (paragraphs 25 and 26 above);

- the submission of a new s.106 agreement to correct the errors and inconsistencies in the document (paragraph 26 above);

- the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources (paragraph 23 above).

30. The Secretary of State proposes to defer her decision on the appeals to enable you to submit the required documents and for parties to comment on the issues she has raised in paragraph 29 above. You are requested to submit these by 13 November 2008. She will, as soon as practicable thereafter, circulate responses for comment, giving a further 14 days within which final comments may be made.

31. The Secretary of State does not propose to allow a lengthy series of cross-representations and further comments. Please note, furthermore, that the Secretary of State does not regard this invitation as an opportunity to address other issues raised during the inquiry. Accordingly, interested parties are asked to restrict their representations to the matters set out in paragraph 29 above.

Variation of timetable

32. The Secretary of State will not be in a position to reach a final decision on these appeals by the statutory target of 23 October 2008 because of the need to allow parties time to submit the specified items. Therefore, in exercise of the powers conferred on her by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, she hereby gives notice that she has varied the timetable previously set and she will now issue her final decision on or before **18 December 2008**.

33. A copy of this letter has been sent to Taunton Deane Borough Council and all parties who appeared at the inquiry.

Yours faithfully

Maria Stasiak
Authorised by the Secretary of State
to sign in that behalf

Annex A

Schedule of Correspondence

Correspondence received after the close of the Inquiry

11 August 2008	Hookipah Developments Ltd
28 August 2008	RPS Planning
28 August 2008	Persimmon Homes
12 September 2008	Philip T Broom
19 September 2008	Taunton Deane Borough Council
22 September 2008	Hookipa Developments Limited
22 September 2008	Scott Winnard of Bruton Knowles
1 October 2008	Persimmon Homes

Communities and Local Government

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12 March 2009

John Milverton
Persimmon Homes South West
Mallard Road
Sowton Trading Estate
Exeter
Devon, EX2 7LD

Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998

Dear Mr Milverton,

LOCAL GOVERNMENT ACT 1972 – SECTION 250 (5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES (SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE, MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006

1. I am directed by the Secretary of State for Communities and Local Government to refer to the enclosed letter notifying you of her decision on the above appeals.

2. This letter deals with the joint application made by Persimmon Homes (South West) Limited and Redrow Homes (West Country) Limited for an award of costs against Taunton Deane Borough Council. The application, as submitted, and the response of Taunton Deane Borough Council are summarised in the Inspector's costs report, a copy of which is enclosed.

3. In planning applications, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of "unreasonable behaviour" resulting in unnecessary expense. The application for costs has been considered in the light of the policy guidance in DOE Circular 8/93, the Inspector's costs report, the parties' submissions on costs, the appeal papers and all the relevant circumstances.

4. The Inspector's conclusions are stated at paragraphs 4.1–4.7 of his costs report. He recommended that the application for an award of costs be refused.

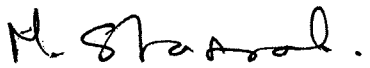
5. Having considered all the available evidence, and having particular regard to Circular 8/93, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, she has decided that an award of costs against Taunton Deane Borough Council is not justified in the particular circumstances. The application is therefore refused.

Department for Communities and Local Government
Maria Stasiak, Decision Officer
Planning Central Casework
1/J1 Eland House
Bressenden Place
London SW1E 5DU

Tel 020-7944 3676
Fax 020-7944 3919
Email: maria.stasiak@communities.gsi.gov.uk

6. A copy of this letter has been sent to Taunton Deane Borough Council.

Yours faithfully,



Maria Stasiak
Authorised by the Secretary of State
to sign in that behalf

Costs Report to the Secretary of State for Communities and Local Government

By C J Tipping MA(Cantab)

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

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372

Date: 19 May 2008

TOWN AND COUNTRY PLANNING ACT 1990

TAUNTON DEANE BOROUGH COUNCIL

APPEALS BY

PERSIMMON HOMES (SOUTH WEST) LIMITED

AND

REDROW HOMES (WEST COUNTRY) LIMITED

MONKTON HEATHFIELD MAJOR DEVELOPMENT SITE

Inquiry opened: 1 April 2008

File Refs: APP/D3315/A/07/2055995 and /2055998

CASE DETAILS

The Monkton Heathfield Major Development Site, Taunton.

File Refs: APP/D3315/A/07/2055995 and /2055998

- On 1 April 2008, I opened a public local inquiry at the Deane House, Belvedere Road, Taunton into the appeals by Persimmon Homes (South West) Limited and Redrow Homes (West Country) Limited (together known as the Monkton Heathfield Consortium and hereinafter referred to as "the Consortium") against the failure of Taunton Deane Borough Council ("the Council") to determine two applications for planning permission within the statutory period.

- By letter dated 6 December 2007, the Secretary of State for Communities and Local Government ("SoS") gave a direction under section 79 of and Schedule 6 to the Town and Country Planning Act 1990 that she would recover the appeals for her own determination.

- An application has been made by the Consortium for an award of costs against the Council, namely, the costs of preparing for and appearing at the inquiry.

- The application is made under sections 78 and 320 of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972.

Summary of Recommendation: I recommend that no award of costs be made.

1. PREAMBLE

1.1 The inquiry was held on 1 to 3, and 8 April 2008. It was adjourned on 8 April until 22 April 2008 to allow further documents to be completed and submitted and was thereafter closed in writing. The Consortium appeared by Counsel on each of the four inquiry sitting days.

1.2 The appeals arise from proposals for the Major Development Site at Monkton Heathfield, Taunton. At the inquiry, the sole remaining issue of substance between the parties related to the alignment of an eastern relief road ("ERR") required to divert traffic round the proposed development. The Consortium's proposed ERR alignment would extend into a local green wedge designated under the Taunton Deane Local Plan 2004 ("the Local Plan").

1.3 I have prepared a report ("the main report") to the SoS regarding the appeals. This recommends that both appeals be allowed and that planning permission be granted subject to conditions.

2. THE SUBMISSIONS OF THE CONSORTIUM

The material points are:

2.1 The Consortium seeks an award of costs on the basis that the Council's case was substantively unreasonable as defined in Circular 8/93. The Council's Members were supplied with inadequate information by its officers and were thereby precluded from reaching a properly-informed decision when determining that the

appeals should be resisted. The Consortium has thereby suffered unnecessary expense, namely the cost of preparing for and appearing at the inquiry. It is accepted by the Consortium that the application for costs can succeed only if the appeals are allowed.

2.2 The duties of a local authority with regard to the determination of applications for planning permission are explained in paragraphs 7 to 11 of the Circular. In particular, paragraph 8 states, in so far as it is relevant:

"Each reason for refusal will be examined for evidence that the provisions of the development plan and relevant advice in Departmental planning guidance in PPGs, RPGs, MPGs or Circulars and any relevant judicial authority were properly taken into account; and that the application was properly considered in the light of these and other material considerations. In any such proceedings, authorities will be expected to produce evidence to show clearly why the development cannot be permitted."

2.3 Paragraph 12 states (again in so far as it is relevant): *"... a planning authority will be at risk of an award of costs against them if they refuse an application which accords with material policies or proposals in the development plan, and they are unable to show that there are any other material considerations supporting such a refusal."*

2.4 It is the Consortium's case that the proposals the subject of these appeals are in accordance with the development plan. Its case in this respect is set out as follows in the main report:

*"3.4.4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. Judicial authority establishes that, when making such a determination, the decision-maker must assess the proposed development as a whole against the development plan as a whole (**City of Edinburgh v Secretary of State for Scotland [1997] 1 WLR 1447**). It is therefore untenable for the decision-maker to maintain that, as here in the Council's determination of the main application, because there is a breach of any one policy in a development plan, a proposed development cannot be said to be in accordance with it (**R v Rochdale MBC, ex parte Milne [2001] JPL 470**). For the purposes of section 38(6) of the 2004 Act, it is enough that the proposal as a whole accords with the development plan considered as a whole; it does not have to accord with each and every development plan policy.*

3.4.5. Nowhere in the Council's officers' November 2007 Report to Committee relating to these appeals is there any acknowledgement that the proposals are compliant with a whole raft of development plan policies. If, which is not accepted by the Consortium, its proposals would cause any harm to the green wedge, this single breach of development plan policy should not result in a determination that overall the proposals are not in accordance with the development plan. The failure of the Officers' Report to put to the Committee on a proper basis the need to strike this balance means that the Committee has not been given the opportunity to reach a decision based on

section 38(6), as interpreted by the courts.

3.4.6. A comparison of the Council's officers' approach to the application the subject of the main appeal and their report to Committee regarding the Consortium's parallel application throws the shortcomings of the Council's consideration of the main appeal into sharp relief. ... The report on the parallel application records that the delivery of housing and particularly affordable housing is an important consideration which must weigh heavily in favour of this proposal. That is not a consideration which the officers appear to have applied to the main appeal application. ...."

2.5 The Report to Committee regarding these appeals did not therefore address the proper test under section 38(6) as established by the judicial decisions referred to above. If the officers had explained to the members of the Committee the degree of compliance of the proposals with the development plan as a whole, then the members could have reached an informed decision.

2.6 Moreover, because they were not mentioned in the officers' report, the Council also failed to consider the material considerations advanced by the Consortium in favour of the proposals under appeal, namely:

- The highways advantages of the Consortium's proposed ERR alignment, especially by providing a more flexible context for the later construction of a western relief road ("WRR"), a matter frequently raised with the Council's officers from an early stage; and

- The acute need in Taunton Borough for both market and affordable housing, and the emphasis in PPS3 on the need for a step change in the supply of housing. The Council relies heavily on windfall sites and on small sites which in many cases it has been unable fully to assess because of lack of resources. It has a history of failure to meet targets for the delivery of new dwellings, and it was acknowledged on its behalf in cross-examination at the inquiry that it faced an acute need for both market and affordable housing

2.7 Members resolved to resist the appeals on the sole substantive ground that they did not comply with Local Plan Policy EN13 (see paragraph 3.4). If these material considerations had been properly drawn to Members' attention, they would have been in a position to arrive at an informed planning judgment between the claimed non-compliance with Local Plan Policy EN13 and the material considerations in favour of permitting the development to proceed. Pursuing the appeals to inquiry might have proved unnecessary.

2.8 These issues remained unaddressed even in the Council's closing submissions, and the Council's response to this application in section 3 below does not grapple with the Consortium's main contention that the Council's officers failed to provide the Committee members with the information necessary to reach an informed decision.

2.9 The Council has resisted the proposals the subject of these appeals which on a proper application of section 38(6) accord with the development plan, and, contrary to paragraph 12 of Annex 3 of the Circular, has been unable to show that there are any material considerations supporting its objection. It follows

that the Council's position has been substantively unreasonable within the meaning of Circular 8/93, because the following were not properly taken into account:

- The full provisions of the development plan and relevant judicial authority regarding the application of section 38(6) of the 2004 Act;
- The guidance regarding the supply of housing land in PPS3; and
- Material considerations including the highways advantages of the Consortium's ERR alignment and the housing delivery benefit of granting planning permission for the Consortium's proposals.

3. THE RESPONSE OF THE COUNCIL

The material points are:

3.1 Claims for awards of costs against local planning authorities are addressed in Annex 3 of the Circular beginning at paragraph 7. The Council also relies on paragraph 8 of Annex 3, including the following additional relevant passage:

"Reasons for refusal should be complete, precise, specific and relevant to the application. In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations. ... authorities will be expected to produce evidence to show clearly why the development cannot be permitted. ... In cases where planning issues are shown to be finely balanced, an award of costs relating to substantive, as distinct from procedural, matters is unlikely to be made against the planning authority."

3.2 The following extract from Paragraph 14 of Annex 3 is also relevant:

"When determining planning applications, planning authorities are expected to consider the impact of development on ... the landscape. Particular weight should be given to the impact of development on environmentally sensitive areas ... ."

3.3 The Council accepts that the proposals are in accordance with the development plan in all respects save one. It wishes to see the Monkton Heathfield Major Development proceed. The proposals have been the subject of negotiations between the Consortium and the Council for more than two years. The time has allowed a rigorous analysis of policies as well as continuing negotiations. Members have been kept fully informed throughout.

3.4 The negotiations have narrowed the issues, but the Council has continued to take the considered view that planning permission could not be allowed for a scheme which included locating the ERR roundabout and its westernmost section in the green wedge. Policy EN13 is clear in its terms: "Development which would harm the open character of green wedges will not be permitted". The supporting text to Policy EN13 makes clear that the Policy seeks to protect predominantly open areas to prevent coalescence of settlements, commenting that there is otherwise a risk that successive appeal decisions would over time reduce these

areas and undermine their integrity.

3.5 The supporting text to Local Plan Policy T8, which allocates the appeal site and other land at Monkton Heathfield as a Major Development Site, states at paragraph 8.137 that: "The key planning consideration has been to maintain the open wedges of land which separate Monkton Heathfield from Bathpool ... ." The use of the expression "The key planning consideration" means that the application of Policy EN13 carries a heavy degree of significance in the determination of any application for planning permission for the development provided for in Policy T8. The maintenance of the green wedges is a long-term planning objective.

3.6 The Council's position on Policy EN13 is supported by the Monkton Heathfield Development Guide which was adopted as supplementary planning guidance in September 2004, after public consultation, and is a material consideration. The Guide states that the ERR must not encroach on to the green wedge which is already the narrowest point of physical separation between Taunton and Monkton Heathfield.

3.7 The Council's position was endorsed following an objection on this issue by the Consortium at the Local Plan Inquiry. The Inspector's conclusion on the issue in his report is in the following terms: "The proposed Green Wedge at this point is relatively narrow and ... any further erosion would substantially reduce its function in preventing the coalescence of the settlements. ... I consider that the boundary should remain unchanged." The Inspector's view informed and confirmed the Council's approach to the protection of the green wedge in this locality.

3.8 The Consortium has for unexplained reasons on two occasions (the more recent during the inquiry itself) declined to reach a clearly available agreement with Hookipa Limited, owners of the land on which the Local Plan alignment of the ERR would be located. The Council has made it clear that planning permission for a development which complies with Policy EN13 by aligning the ERR across the Hookipa land would be promptly forthcoming, as its in-principle resolution to grant planning permission in respect of the parallel application made by the Consortium confirms. The Consortium had no need to pursue the appeals to which this application relates.

3.9 The Council does not accept that it currently faces a shortfall in the 5-year supply of housing land. Given the Council's agreement in principle to grant planning permission in respect of the parallel application and the availability of the Hookipa land, it also does not accept that dismissal of these appeals would materially delay or place in jeopardy the implementation of the proposals for the Major Development Site, including the 900 new dwellings proposed. The impact on the supply of housing land of refusing these applications and/or dismissing these appeals is broadly neutral.

3.10 In these circumstances, whatever the Secretary of State's decision may be, the Council considers that its decision to resist these appeals resulted from a duly- and cogently-struck planning judgment. It has not acted unreasonably and any expense the Consortium has been put to results from its own decision to pursue the appeals.

4. CONCLUSIONS

4.1 Having regard to the foregoing, I have reached the following conclusions, references to earlier paragraphs of this report being given in square brackets where appropriate.

4.2 The circumstances in which an award of costs can be made in town and country planning and analogous cases are set out in Circular 8/93. The normal rule in such cases is that the parties meet their own expenses. If I am to recommend that costs be awarded, then the Consortium will need to establish that, in accordance with the Circular, unreasonable behaviour on the part of the Council has resulted in the incurring of unnecessary expense by the Consortium.

4.3 I turn first to the issue of whether the proposals are in accordance with the development plan, having regard to section 38(6) of the 2004 Act and the judicial authorities relied on by the Consortium [2.4]. In the main report I reached the following conclusion on this issue:

"8.4.2 I have acknowledged above, as is not in dispute, that the scheme is in all other material respects in accordance with the development plan. I have had regard to the arguments set out and the judicial decisions cited on behalf of the Consortium in paragraphs 3.4.3 to 3.4.7. Nevertheless, the Local Plan Policy is clear, and its application to Policy T8 and the development is in strong terms: "The key consideration ..." . This is not a case where a policy of general application is in conflict with a site-specific policy where the latter may properly be assumed to prevail. It seems to me accordingly that, notwithstanding that non-compliance is in respect of Policy EN13 alone, it cannot be said that the proposals are in accordance with the development plan."

4.4 As appears from this extract, I do not agree that the proposals can be said to be in accordance with the development plan when they do not comply with the clear terms of Local Plan Policy EN13 and the strong terms in which it is expressly applied to Policy T8. In the main report I also conclude that, as submitted by the Council [3.9], the impact of dismissing these appeals on the supply of housing land is likely to be broadly neutral.

4.5 I decided to recommend that the appeals be allowed and planning permission be granted because the impact on the green wedge is in my view slight and, though also relatively small, the highways flexibility advantage of the Consortium's alignment is a material consideration which outweighs it. In the main report, my conclusion is set out as follows:

"8.4.11 In all these circumstances and given the very limited impact of the Consortium's alignment on the green wedge which I have identified above, the benefit of providing a more flexible starting point for the WRR is in my view sufficient to establish that the Consortium's proposed ERR alignment should be approved."

4.6 The balance to be struck between the potential damage to the green wedge and the highways benefit was in my view a fine one, and I note the advice in

paragraph 8 of Annex 3 of the Circular that, where planning issues are shown to be finely balanced, an award of costs against a local authority is unlikely to be made [3.1].

4.7 It is accepted by the Consortium that, if the SoS disagrees with my recommendation and dismisses the appeals, this application for costs cannot succeed [2.1]. Even if she allows the appeals, however, it is my view that, for the reasons set out above, the Council has not behaved unreasonably and that, having regard to Circular 8/93, the circumstances in this case are not such as to demonstrate that an award of costs in favour of the Consortium would be justified.

5. RECOMMENDATION

5.1 I recommend that the application for costs be refused.

C J Tipping

Inspector

Award of Costs – Guidance

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment. This is handled by:

The Supreme Court Costs Office
Cliffords Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

The detailed assessment process is governed by part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.