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Our Ref: APP/Q1255/V/10/2138124

27 February 2012

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 77)
APPLICATION BY TALBOT VILLAGE TRUST (TVT)
APPLICATION REF: 00/08824/084/P
LAND SOUTH OF WALLISDOWN ROAD, POOLE, DORSET

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Wendy J Burden BA DipTP MRTPI, who held a public local inquiry which opened on 12 July 2011, into your client's application to the Borough of Poole Council (BPC) for the development of land to provide 450 student units with ancillary facilities and 3500 sq m of academic floor space (2.88 ha), 378 new housing units (11.42 ha), public open space including a buffer strip, pedestrian and cycle links and vehicular access from Boundary Road, Gillett Road, Purchase Road and Cutler Close, and improvement works to heathland (15.64 ha) including change of use of existing grazing areas (10.7 ha) for nature conservation purposes, creation of swales/reed beds, installation of fire hydrants and creation of fire access to heath and erection of cat-proof fence, to include associated infrastructure and landscaping, in accordance with application ref 00/08824/084/P as amended by plans received on 08/02/2010.

2. The application was called in for the Secretary of State's determination on 27 September 2010.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that planning permission be refused. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

Procedural Matters

4. In reaching his decision, the Secretary of State has taken into account the Environmental Statement submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Like the Inspector (IR2.1), he considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

5. The applications for partial awards of costs made by your client and BPC against Bournemouth Borough Council are the subjects of separate decision letters.

Policy considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the South West Regional Spatial Strategy (RSS), the Bournemouth, Dorset and Poole Structure Plan, the Poole Local Plan First Alteration (LP), and the Poole Core Strategy (CS). The Secretary of State considers that the development plan policies most relevant to the application are those set out in IR6.1 and IR6.4-6.10.

7. Material considerations which the Secretary of State has taken into account include the Interim Planning Framework (IPF) (IR6.11-6.13) and the Local Transport Plan (IR6.14). He has also had some regard to the draft RSS (IR6.2-6.3) but, as this is not being progressed to a conclusion, he gives it only limited weight.

8. Other material considerations include: Planning Policy Statement (PPS) 1 *Delivering Sustainable Development*; PPS 3 *Housing*; PPS 4 *Sustainable Economic Growth*; Planning Policy Guidance (PPG) 17 *Planning for Open Space, Sport and Recreation*; PPS 25 *Development and Flood Risk*; Circular 11/95: *Use of Conditions in Planning Permission*; Circular 05/2005: *Planning Obligations*; and the Community Infrastructure Levy (CIL) Regulations (2010 and 2011).

9. The Secretary of State has also taken account of Circular 06/2005: *Biodiversity and Geographical Conservation – Statutory Obligations and their Impact within the Planning System*, which provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in PPS 9: *Biodiversity and Geological Conservation* and the accompanying *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. Together, these provide guidance on the application of the Conservation (Natural Habitats etc) Regulations 1994 which, in turn, transposed EU Directive 92/43/EEC (21 May 1992), as interpreted by the European Court in “Waddenzee”, on the conservation of natural habitats and of wild fauna and flora. These 1994 Regulations were replaced in 2010 and 2011, with the 2010 Regulations applying to this application (IR 13.11). However, the requirements in relation to the assessment of planning applications having potential impacts on the integrity of international sites remain the same, with Regulation 61 of the 2010 Regulations being identical to Regulation 48 of the 1994 Regulations. This includes a requirement to consult the appropriate nature conservation body (which, in England, is Natural England (NE)) and to have regard to any representations made by that body.

10. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the South West RSS is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this application.

11. The draft National Planning Policy Framework which was published for consultation on 25 July 2011 is a material consideration. However, as this is a consultation document and is subject to change, the Secretary of State has given it little weight. He has also taken account of the Written Ministerial Statement (WMS) of the Rt Hon Greg Clark MP, on *Planning for Growth*, dated 23 March 2011.

Main Issues

The extent to which the proposal accords with the development plan and the IPF

12. The Secretary of State agrees with Inspector's reasoning and conclusions on the extent to which the proposal accords with the development plan as set out in IR13.2-13.5 and 13.10. However, he notes that the local plan allocation predates the introduction of a domestic requirement to apply the requirements of the Habitats Directive and he agrees with the Inspector (IR13.11) that the fact that the site has been allocated in a statutory development plan does not outweigh the obligation to have regard to, and determine the application in accordance with, the statutory requirements of Regulation 61. He notes that there is no dispute between the parties on this matter (IR13.12), and agrees with the Inspector (IR13.13) that the requirements of the Habitats Regulations apply regardless of the contents of the development plan.

13. The Secretary of State has also taken account of the fact (IR13.5) that the proposed development complies with the IPF with regard to that part of the scheme which would fall outside the 400m buffer zone; and he agrees with the Inspector's conclusion at IR13.9 that the concept of "an exception" to development within the 400m buffer zone is not restricted to a residential development that without mitigation would meet the legal test as he considers that any "exception" would need to be considered on its own merits.

The extent to which the proposed development complies with PPS9

14. The Secretary of State agrees with Inspector's reasoning and conclusions on the extent to which the proposed development complies with Government policies in PPS9 as set out in IR13.14-13.42. In particular, he agrees that if a plan or project is permitted which is likely to undermine the integrity of one part of the Dorset Heathlands, the integrity of the heathlands as a whole must suffer some impact (IR13.29); and that mitigation measures would be necessary to enable this proposal to meet the requirements of the Habitats Regulations (IR13.36).

Adequacy of the appropriate assessment and likely success of the proposed mitigation measures

15. The Secretary of State agrees with the Inspector (IR13.43-13.46) that the central issue is whether it can be established confidently, beyond reasonable scientific doubt, that the proposal will not have a significant adverse effect on the integrity of the designated European sites, either in its own right or in combination with other plans or projects having regard to the mitigation measures proposed. The Secretary of State also takes the view that, despite the argument advanced by TVT that an appropriate assessment is unnecessary since, with mitigation measures there would be no significant effect (IR13.46), the terms of the Habitats Regulations are such as to require him to undertake such an assessment before he could grant planning permission and that, in undertaking any such exercise, he should have regard to any representations made by NE.

16. Turning to the appropriate assessment undertaken by TVT and the likely success of the mitigation measures proposed, the Secretary of State has carefully considered the reasoning and conclusions of the Inspector, the representations of interested parties, and the evidence submitted as set out in IR13.48-13.86 and summarised in IR13.87-13.95.

17. For the reasons given in IR 13.48-13.50, the Secretary of State agrees with the Inspector that any appropriate assessment should take account of the potential for the restoration of the site to favourable conservation status, as opposed to taking

the view that the proposed scheme would not have an effect because, as a result of the poor condition of the site, the interest features are not present. He also agrees (IR13.53) that the important issue is not whether or not an appropriate assessment is required, but the likely effectiveness of the mitigation measures proposed.

18. The Secretary of State agrees with the Inspector (IR13.54) that the two key elements in the mitigation package are the no-cat or dog covenant and the cat/people proof fence and, for the reasons given in IR13.55-13.57, he agrees with her conclusion in IR13.58 that little weight can be placed on the long term effectiveness of the no-cat or dog covenant in preventing the keeping of these pets within the new development. He therefore considers that any mitigation scheme would need to be heavily reliant on the efficacy of the cat/people proof fence.

19. In relation to that, the Inspector concludes (IR13.90) that, if the fence could be implemented in its entirety and properly maintained, it would effectively increase the distance that new residents would need to travel to access Talbot Heath so that the impact of visitors from the new houses would be similar to that which would be expected from new housing in the 400m-5km zone. This would mean that the IPF payment for each of the new houses would provide adequate mitigation when put together with the fence. However, the Inspector then goes on to raise doubts as to the feasibility of implementing the fence for the whole of the proposed length (IR13.62-13.65 and IR13.91) as a result of uncertainties surrounding the Right of Way application (IR13.62-13.63) and the fact that Talbot Heath is an open access area under the Countryside and Rights of Way (CROW) Act 2000 (IR13.64-13.65).

20. The Secretary of State recognises that the right of access to open access land is not absolute and that it is the points of access that will be restricted. He also recognises that access to open access land can be restricted for ecological purposes under the CROW Act. However, whilst the Secretary of State is not in a position to predict the outcome of the rights of way application, which has to follow its own process, and whether there may be further applications to divert or stop the path, the fact that this application has been made creates uncertainty as to whether the fence can be erected in its entirety. This would have significant implications for the effectiveness of the cat proof fence in restricting access to the heath at the Isaacs Close end. These factors weigh significantly against the proposal

21. Not only does the Secretary of State agree with the doubts raised by the Inspector relating to these two potential access points, but he also shares the concerns of NE and the RSPB regarding the more general efficacy of a linear fence (IR7.22-7.33). In particular, he agrees that cats would still be able to enter Talbot Heath round the end (IR7.22); that, in the absence of an effective enforcement of the anti-pet covenant, the number of visits generated by residents with dogs from the proposal would be greater both to Talbot Heath and to other heathland sites (IR7.24); and that there would be potential for deliberate breaching of the fence in view of the direct route to key destinations (IR7.27 and 7.29). Overall, therefore, having regard to the requirements of the Habitats Regulations (see paragraph 9 above), the Secretary of State gives significant weight to the advice from NE with regard to the proposed mitigation measures and agrees with their overall conclusion (IR7.69) that the proposed development on its own is likely to have a significant adverse effect on the integrity of the international sites.

22. The Secretary of State has also considered the mitigating potential of the contribution to the IPF, the integration of three fields into the heath, the improvements to fire fighting and other measures considered by the Inspector in IR13.73-13.85 and 13.93. However, he agrees with the Inspector that a payment to the IPF to cover the houses within the 400m zone would not be sufficient on its own

to mitigate the effects of the development (IR13.76), while the additional fields are already used by the public to some extent and many of the management improvements are likely to occur in any event (IR13.93). He therefore agrees with the Inspector (IR13.93) that any decision to permit the application must depend on the acceptability of the fence.

Visual impact of cat/people proof fence

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on the visual impact of the cat-proof fence as set out in IR13.66-13.71 and 14.6. He agrees with the Inspector that the fence would have a harmful effect on the character and appearance of the adjoining areas of open space and heathland, and would result in a harmful visual impact for new and existing residents and for visitors to Talbot Heath. In particular, he agrees with the Inspector that a fence of such length and height is not a feature which would normally be expected to be found separating an area of public open space and residential development from an area of heath which is also open access land and that it would introduce a feature more associated with keeping people out of dangerous places or acting as a prison to dangerous people or animals. He considers that this is a factor which weighs significantly against the proposal.

Transportation

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on transportation as set out in IR13.96-13.122. Like the Inspector, he considers that the payment of a financial contribution is an appropriate way in which to secure longer term improvements to the transport network and that the s106 provides adequate surety that the funds would be spent on highways improvements in accordance with the CIL Regulations (IR13.121). He therefore also agrees that there is no transportation reason why permission should be refused (IR13.122).

Housing land supply, fallback position and amenities of existing and future residents

25. For the reasons given in IR13.123-13.125, the Secretary of State agrees with the Inspector that the application site is not critical to the overall supply of housing land within BPC (IR13.124), and that there would be adequate sites to meet the Borough's housing land requirements if planning permission was withheld for this scheme. The Secretary of State also agrees with the Inspector that, for the reasons given at IR13.125, it cannot be assumed that the application site would enjoy permission for either 49 or 133 dwellings in the event that this application is refused. He also agrees with the Inspector's assessment of the amenities of existing and future residents as set out in IR13.126-13.131.

Conditions and Obligations

26. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and obligations as set out in IR13.132-13.165. However, although he considers that the proposed conditions meet the tests of Circular 11/95 (except where stated) and that the s106 obligation would meet the CIL regulations and the provisions of Circular 05/2005, he does not consider that the proposed conditions and obligations overcome his reasons for refusing planning permission.

Overall conclusion

27. The Secretary of State agrees with the Inspector that the proposal is in accord with the site allocation in the development plan and that it would meet the objectives of "Planning for Growth". Against these, there are a number of factors against the proposal, particularly with regard to its impact on designated heathland. The

Secretary of State has carefully considered all the evidence and submissions on whether the proposal meets the legal test set out in section 61 of the Habitats Regulations 2010 and considers that it is inherent in the proposal and the mitigation measures as currently proposed that adverse effects cannot be excluded. It is not part of the applicant's case that the development must be carried out for imperative reasons of overriding public interest. The Secretary of State is thus unable to conclude that the proposed development, either on its own or in combination with other schemes, would not have a significant adverse effect on the integrity of the international sites and he is therefore unable to conclude that it complies with the requirements of the Habitats Regulations. Furthermore, even if he could satisfy himself as to the adequacy of the mitigation measures, he considers that the visual impact of the cat/people proof fence, upon which such mitigation would depend, would, in the circumstances of this case, be excessively intrusive and out of keeping with the purpose which it would be intended to serve.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State hereby refuses planning permission for development of land to provide 450 student units with ancillary facilities and 3500 sq m of academic floor space (2.88 ha), 378 new housing units (11.42 ha) public open space including a buffer strip, pedestrian and cycle links and vehicular access from Boundary Road, Gillett Road, Purchase Road and Cutler Close, and improvement works to heathland (15.64 ha) including change of use of existing grazing areas (10.7 ha) for nature conservation purposes, creation of swales/reed beds, installation of fire hydrants and creation of fire access to heath and erection of cat-proof fence, to include associated infrastructure and landscaping, in accordance with application ref 00/08824/084/P as amended.

Right to challenge the decision

29. 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.

30. A copy of this letter has been sent to the Borough of Poole Council. A notification letter has been sent to other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by Wendy J Burden BA DipTP MRTPI

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

Date: 12 December 2011

TOWN AND COUNTRY PLANNING ACT 1990

INQUIRY HELD UNDER SECTION 77

APPLICATION BY TALBOT VILLAGE TRUST

BOROUGH OF POOLE COUNCIL

LAND SOUTH OF WALLISDOWN ROAD, POOLE, DORSET

PLANNING INSPECTORATE ref: APP/Q1255/V/10/2138124

The Inquiry sat from 12- 27 July; 5-7 October 2011

File Ref(s): APP/Q1255/V/10/2138124

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	In the event that the Secretary of State does not accept my recommendation, I recommend that the conditions set out in the Schedule attached at Annex 1 be imposed to any grant of permission. The S106 Agreement is signed and would be put into effect through the grant of permission. That said, I draw the attention of the Secretary of State to comments in my conclusions in respect of the possible need for revisions to the S106.	161
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Annex 4 – Glossary of abbreviations and acronyms

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Land south of Wallisdown Road, Poole, Dorset

Application by Talbot Village Trust for the development of land to provide 450 student units with ancillary facilities and 3500 sqm of academic floor space (2.88 ha), 378 new housing units (11.42 ha) public open space including a buffer strip, pedestrian and cycle links and vehicular access from Boundary Road, Gillett Road, Purchase Road and Cutler Close.

Improvement works to heathland (15.64 ha) including change of use of existing grazing areas (10.7 ha) for nature conservation purposes, creation of swales/reed beds, installation of fire hydrants and creation of fire access to heath and erection of cat-proof fence, to include associated infrastructure and landscaping (as amended by plans received 08/02/2010).

Summary of Recommendation: I recommend that the application be refused

1. PRELIMINARIES

- 1.1 The application was called in by the Secretary of State for his own determination on the 27 September 2010. A Pre Inquiry Meeting (PIM) was held on the 16 March 2011. Natural England (NE) and the Royal Society for the Protection of Birds (RSPB) joined together as Rule 6 parties objecting to the application, and Bournemouth Borough Council (BBC) also appeared as a Rule 6 party. Following the PIM Ms Jenny Neale was appointed as Programme Officer. I am most grateful to Ms Neale for the valuable contribution which she made to the smooth running of the Inquiry.
- 1.2 For reasons accepted by all the parties to the Inquiry, Mr Genge who produced planning evidence on behalf of the Borough of Poole (BPC) was unable to appear. His colleague Mr Jacobs adopted Mr Genge's evidence and appeared for cross examination.
- 1.3 Adjoining the land proposed for residential development, the application site incorporates parts of Talbot Heath which forms a part of the Bourne Valley Site of Special Scientific Interest (SSSI); the Dorset Heathlands Special Protection Area (SPA); the Dorset Heaths Special Area of Conservation (SAC); Dorset Heathlands RAMSAR site; and a Site of Nature Conservation Importance. The Local Planning Authority carried out an appropriate assessment on the proposed development under the Conservation (Natural Habitats, &c.) Regulations, 1994 (as amended, 2007) before the resolution to grant permission was passed. However, Natural England (NE) and the Royal Society for the Protection of Birds (RSPB) have maintained their objection to the scheme. The two objectors joined together to appear at the Inquiry under the prefix NR.
- 1.4 A Statement of Common Ground was submitted on the 25 March 2011. All matters were covered by BPC and Talbot Village Trust (TVT); NE and RSPB participated in relation to heathlands issues and BBC participated in relation to transportation issues.

- 1.5 The Inquiry sat from the 12 – 27 July and the 5-7 October 2011 and was closed in writing on the 25 October 2011. I visited the site and its surroundings on an unaccompanied basis on a number of occasions during the Inquiry, and held an accompanied site visit on the 28 July 2011.
- 1.6 The planning application was submitted to BPC in May 2000. Before the application was considered by the BPC Planning Committee, a number of key documents had been updated. These included the Environmental Statement, the Transport Statement and the Management Statement which included relevant concept and illustrative plans. These documents supported the updated application and the Local Planning Authority resolved to grant planning permission subject to the preparation of a legal agreement under S106 of the Town & Country Planning Act (T&CPA) 1990 on the 9 June 2010.
- 1.7 The matters on which the Secretary of State has asked to be informed for the purposes of his consideration of the application are as follows:
- (a) the extent to which the proposed development accords with the relevant policies and provisions of the adopted Poole LP, the adopted Poole Core Strategy, and the Dorset Heathlands Interim Planning Framework 2010-2011;
 - (b) the extent to which the proposed development complies with Government policies in PPS9 Nature Conservation, with particular regard to:
 - i) the extent to which the proposed development is likely to have an impact on the local flora and fauna and any designated sites;
 - ii) the importance the Government attaches to the Dorset Heath Special Area of Protection, Special Protection Area and candidate Special Area of Conservation, Dorset Heaths Ramsar site and the Bourne Valley SSSI;
 - iii) whether or not there is likely to be any impact on a European protected species listed in the Habitats Directive;
 - iv) whether there is likely to be any impact on a species protected under the Wildlife and Countryside Act 1981 or any other legislation;
 - v) the adequacy of the appropriate assessment and the likely success of the proposed mitigation measures.
 - (c) whether any planning permission granted for the proposed development should be subject to any conditions and, if so, the form that these should take, having regard to the advice in DOE Circular 11/95, and in particular the tests in paragraph 14 of the Annex;
 - (d) whether any planning permission granted for the proposed development should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether any proposed terms of such obligations are acceptable; and
 - (e) any other matters that are considered by the Inspector to be relevant.
- 1.8 Other matters to be considered at the Inquiry were identified as including the issue of transportation which is of concern to BBC as the adjoining Highways Authority as well as local residents; and residential amenity.

- 1.9 I deal first with background matters which are generally matters of fact before reporting the cases for the parties. In reporting the cases of those who appeared, I rely on the closing submissions where they have been given.

2. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.1 With the updated Environmental Statement and the environmental information which was included within evidence submitted to the Inquiry, I am satisfied that the EIA meets the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and permits a full understanding of the likely environmental impacts of the development.

3. THE SITE AND ITS SURROUNDINGS

- 3.1 The application site boundary includes 47.54 hectares of land which is in part existing farmland, mainly used for grazing, and part heathland. Talbot Heath was designated as open access land under the Countryside and Rights of Way (CROW) Act 2000 from 31 October 2005. The application site includes a narrow strip of broad leaved woodland which runs east west through the centre of the site and which would be largely retained.
- 3.2 The main farmland part (Highmoor Farm) is located immediately to the south of Boundary Road Roundabout, which joins Wallisdown Road to the west and Talbot Avenue to the east. The eastern boundary of this part of the site is the rear of properties on Dulsie Road which forms the Borough boundary with Bournemouth. The northern end of this part of the site lies to the east of Bournemouth University and Arts University Campus; a complex of specialist housing accommodation at Mansell Close; a Neighbourhood Centre comprising of a doctors surgery and shops; and houses in Bishops Close.
- 3.3 To the western side of the northern part of the site there is land which has previously gained planning permissions for development. Access roads and street lights have been constructed. It is agreed that one permission has been properly implemented and there is therefore extant consent on this site for 49 houses. In BPC's view the other permission has lapsed since development was commenced before conditions had been discharged. However, the access roads may now be exempt from planning control. The extant consent was granted in 1995 and is not therefore subject to any requirement for mitigation in relation to the European protected heathland.
- 3.4 At the southern end and to the west of the site lies the heathland which is designated as SSSI, SPA, SAC and RAMSAR, with part being a SNCI. Three of the fields associated with Highmoor Farm lie within the western part of the application site and are bounded by the heathland. A Public Footpath (FP33) runs across the southern part of the application site. This links residential properties in Dulsie Road and Alyth Road to the east with the heath to the west. Other rights of way are located around the southern boundary and outside of the application site.
- 3.5 Whilst the entire application site is located within BPC, all of the vehicular traffic generated by the new development would discharge directly onto Wallisdown Road, which is a highway within the boundary of BBC and for which BBC is the highway authority.

4. THE PROPOSAL

- 4.1 Within the farmland area, the proposals seek outline planning permission for the following development:
- 450 student units with ancillary facilities (2.42 ha).
 - 3500 square metres of academic floor space (0.46ha).
 - 378 housing units (11.42 ha).
 - Public open space including a buffer strip (6.07 ha).
 - Pedestrian and cycle links and vehicular access from Boundary Road, Gillett Road, Purchase Road and Cutler Close.
- 4.2 Within the western part of the application site within the existing heathland and grazing land the application proposes:
- Improvement works to heathland (15.64 hectares) including change of use of existing grazing areas (10.7 hectares) for nature conservation purposes, creation of swales/reed beds, installation of fire hydrants and creation of fire access to heath and erection of cat proof fence.
- 4.3 The application is in outline, but a Concept Plan and accompanying information sets out for approval the proposed densities, the mix of uses, the access and the scale of development and these have been assessed as part of the Environmental Impact Assessment. In addition, due to the proximity of the site to protected heathland, specific measures have been set out within a Management Statement. The aim of these measures is to protect and where appropriate to enhance the heathland value.
- 4.4 Key features of the Masterplan for the site are identified in the SoCG as follows:
- i. A green corridor extending from Boundary Road to the heathland – now 25 metres wide – increased in width since the original 2000 plans;
 - ii. A central green space – altered since the original 2000 plans;
 - iii. A retained east- west tree belt crossed at one point for the new access road;
 - iv. Academic buildings and student accommodation adjacent to the current University buildings;
 - v. Higher density residential development on the northern part of the site furthest from the heath (shown on density plan submitted as part of the application);
 - vi. Lower density housing/family housing on land to the south of the tree belt and closest to the heath;
 - vii. A buffer strip that has been increased in size since the original 2000 plans and provides open space for residents with the aim of protecting the heathland
 - viii. A Sustainable Urban Drainage system of reed beds and swales;

ix. New footpaths and cycleways including a defined route across the heathland and facilitation within the site of a link to the supermarket on Alder Road¹;

x. A new vehicular link from the Boundary Road roundabout into the site

4.5 As the proposals have progressed, the extent to which the new footpaths and cycleways can be provided (ix) is a matter of dispute with BBC.

5. PLANNING HISTORY

5.1 An application to erect 84 houses was approved in November 1995 (Ref: 94/08824/071). The site was known as G7A and B (north and south) and is shown generally as sites D and F on the Masterplan. Although roads have been built and street lights installed, BPC consider that the application has not been implemented and is no longer extant because conditions had not been discharged prior to the commencement of development. The roads and lighting are immune from enforcement action. An application to vary condition 1 of the permission on this site was submitted in 2000. The application has not been determined.

5.2 An application to erect 49 dwellings with associated garages and access roads was approved with conditions in March 1995 (Ref: 08824/070). The site was known as E5 and is shown on the Masterplan as site 'E'. BPC accepts that the permission has been implemented and planning consent is therefore extant on this part of the site.

6. PLANNING POLICY

Regional Spatial Strategy

6.1 Although the Government has made clear its intention to abolish the regional plan, the power to do so will not be in place until the Localism Bill has been enacted. Therefore at the time of writing this report, the South West Regional Spatial Strategy (RSS)² remains a part of the statutory development plan. In the 2001 RSS, Policies SS3 and SS13 require development provision to conserve and enhance important national and international designations, and the approach is set out explicitly in Policy EN1: Landscape and Biodiversity.

6.2 The draft RSS³ was subject to a Panel report in 2008 but has not been progressed further due to the requirement for a further Sustainability Appraisal of the proposed changes in July 2008. Although it does not have the status of statute, the draft RSS is a material consideration. In relation to the Dorset Heathlands, paragraphs 4.1.51-54 refer to the "considerable pressure" that previous housing growth has put on heathland habitats, and that "future development, both individually and cumulatively, must ensure that the integrity of these areas is not affected". The draft RSS also refers to the work being

¹ Inspector's note: the revised Concept Masterplan can be found as Appendix A to the Framework Travel Plan in the signed S106. this shows the pedestrian and cycle routes a finally proposed.

² CD66

³ CD67

undertaken between local authorities and Natural England to put in place a joint LDD with an overall policy approach covering minimisation, avoidance and mitigation of potential adverse effects of development on the protected heathland.

- 6.3 Emphasis is placed in the draft plan on the importance of protecting the integrity of Natura 2000 and RAMSAR sites. In particular Policy ENV1 indicates that any development which would have a negative effect on the integrity and conservation objectives of such a site would not be in accordance with the development plan; and Dorset Heaths is one of three locations considered to be particularly vulnerable and requiring special protection. Policy ENV4: Nature Conservation, supports proposals that provide opportunities for the beneficial management of habitats including heathlands.

The Structure Plan

- 6.4 The Bournemouth, Dorset and Poole Structure Plan (SP) was adopted in 2000. Its saved policies remain part of the development plan⁴. However, in relation to the Dorset Heathlands, the SP predates current Government guidance. In particular the policies do not accord with PPS9⁵ and Circular 06/2005⁶ which provide guidance on the application of the law relating to planning and nature conservation and its impact within the planning system. As a result the SP environment policies are of limited assistance in the consideration of the application before the SoS.
- 6.5 In relation to transport, Housing Policy C and Transportation Policy A promote residential development in sustainable locations; an integrated strategy for development of the transport system; and the increased use of public transport and other alternatives to the private car. These policies are in accord with national policy guidance so remain relevant to the application proposals. A proposal for the Wallisdown Relief Road which would require the reservation of a transport corridor was deleted from the SP. The SP recognises at paragraph 8.94 that “most of the principal corridor required for any new road or an alternative public transport system is effectively protected from development by environmental designation of national and European importance. However, on the remainder of the land not so protected, where development opportunities do exist which could affect the transportation corridor, the relevant Local Planning Authority must ensure that any development layouts retain options for a future through main traffic route or innovative mass transport system.” The application site is affected by the route of the transportation corridor referred to in the SP, and it is the potential for the reservation of that corridor which forms the basis for one of BBC’s objections to the proposed development.

Poole Local Plan First Alteration (LP) 2004⁷

- 6.6 There are a number of policies which are relevant to the application which are listed in the SoCG. Of particular relevance, the Talbot Heath site is allocated for development in the LP as saved by the SoS’s modifications of 2007. Policy H3

⁴ CD74

⁵ CD31

⁶ CD/33

⁷ CD/20

provides for 245 units of residential development, 450 units of student accommodation and 3,500 sm academic floorspace. The policy sets out provisos which include the requirements that:

“i) development will not harm the adjacent SPA, RAMSAR site, candidate SAC, SSSI and SNCI.

And that

iv) access to the site is from University Roundabout except for bus access from Boundary Road roundabout.

- 6.7 This was a continuing policy from the 1998 LP and objections to its retention were considered by the Inspector who reported on the First Alterations in 2002. At that time he found that there was no objection in principle on nature conservation grounds; and that the impact of additional traffic generated by the allocation did not amount to a reason to reject the proposal in principle. The weight to be accorded to this policy is a matter of dispute between BPC and NR in relation to consistency with national and regional policy; consistency with the Poole Core Strategy; and the requirements of the Habitats Regulations⁸. Objections raised by BBC relate to the access from Boundary Road roundabout which is supported by BPC as an all purpose access⁹.
- 6.8 The Local Plan, through its policies, seeks to maximise the accessibility of all public transport services through the provision of a high quality reliable and fully accessible bus network. Policy T4 states that where a development on key public transport routes would be detrimental to such services, development will not be allowed to commence in advance of the provision of traffic management measures to maintain their speed and efficiency. In addition, Policy T13 states that planning permission will not be granted for development where the additional traffic generated would be likely to affect road safety or the ability of the transport infrastructure to accommodate the additional traffic unless remedial measures to overcome the problem are provided.

Poole Core Strategy¹⁰(CS)

- 6.9 The CS was adopted in 2009. A number of policies are of relevance to the application and these are set out in the SoCG. A strategic housing need for 10,000 dwellings between 2006 – 2026 is identified. Policy PCS5 deals with locations for residential development and seeks to ensure that proposals contribute positively to the character and function of Poole and its communities. Policy PCS28 deals with the Dorset Heaths and states that development will not be permitted where it would be likely to lead to an adverse effect upon the integrity, directly or indirectly, of the internationally protected sites. In relation to sites in close proximity of the heathlands, which would include the application site, the Policy states that no development involving a net increase in dwellings will be permitted within a suitable buffer around heathlands (normally 400m) unless, as an exception the form of residential development would not have an adverse effect upon the site's integrity. PCS28ii then deals with development

⁸ NR/3 para 3.21

⁹ BBC2 para 2.24

¹⁰ CD65

between 400m and 5km. In this way the Policy reflects the approach adopted in the Dorset Heathlands Interim Planning Framework (IPF)¹¹, and commits to the preparation of a Development Plan Document (DPD) which will set out a long term mitigation strategy to ensure the growth planned for South East Dorset can be accommodated without having an adverse effect upon the integrity of the Dorset Heaths.

- 6.10 Policy PCS15 deals with Access and Movement and places an emphasis on the location of new development in highly accessible locations, with continued improvements in public transport and improved provision for pedestrians and cyclists. It also seeks to achieve joint working with neighbouring authorities, transport operators and other relevant partners to develop a consistent and integrated approach to spatial planning and transport strategies. The A3049 East West Corridor (Wallisdown Road) is identified as an important County Distributor Route and Policy PCS17 states that it will be the subject of improvements designed to increase the attractiveness of alternative travel modes to the car. Measures identified in the policy include selective widening to facilitate bus and multiple occupancy lanes; the improvement of critical junctions where existing traffic hold-ups clearly result in significant delays to public transport; and priority for buses, cyclists and pedestrians.

Interim Planning Framework (IPF)

- 6.11 The Interim Planning Framework provides a mechanism through which pressures on the Natura 2000 heathlands may be managed. The IPF is being applied by 6 Local Authorities all of which have land in close proximity to the European designated heathland. It applies to development which is between 400m and 5km from the boundary of a designated site, measured in a straight line and is based on the consensus that new residential development within 5 km would have a likely significant adverse effect in combination with other proposals where there are no secured measures of avoidance or mitigation to negate its contribution to such an effect¹².
- 6.12 Development within 400m of the heathland boundaries is not included within the IPF. It is considered that such development is likely to have a significant adverse effect both alone or in combination with other development, and the measures set out in the IPF would be unlikely to mitigate those effects. As a result a competent authority would not be able to conclude that the development would be unlikely to have a significant effect upon the site in accordance with the test required under Reg 61 (1) of the Habitats Regulations. Thus it is only in exceptional circumstances that a form of residential development would not have an adverse effect on a site's integrity.
- 6.13 The IPF was first adopted in January 2007 to apply from 2006-2009. It has been updated to apply from 2010-2011, and the intention is to replace it with the Joint Heathland Development Plan Document which is currently being developed. The IPF remains relevant for the consideration of this application.

Local Transport Plan (LTP)

¹¹ CD22

¹² Ibid paras 2.4-2.5

6.14 The statutory LTP (3) 2011-2026 was submitted to the Department for Transport on the 31 March 2011. LTP3 is jointly produced by Dorset County Council, BBC and the PBC. The policies and programmes have been jointly agreed between the three authorities. Improvements are proposed to the Wallisdown Road as part of the implementation of the Wallisdown Quality Bus Corridor. The scheme was identified in the previous LTP 2006-2011 as a Bus Showcase Corridor. BBC is the lead authority for developing the scheme details, and it is expected to be implemented between 2014 and 2020. There is no provision within LTP3 for the reservation of a "green" transport corridor across the application site.

7. THE CASE FOR NATURAL ENGLAND AND THE RSPB (NR)

7.1 The provisional legal submissions for NR remain as submitted in NR/21.

Basic Approach

7.2 There is general agreement about the way to assess the application proposals, considered alone, against the requirements of Article 6(3) of the European Directive and regulation 61 of the 2010 Habitats Regulations (Issue 1). There is a divergence of view about the approach required if the Secretary of State can ascertain that the project would not alone have a significant adverse effect on the integrity of any of the international sites, and therefore has to consider whether it might have such an effect in combination with other plans or projects (Issue 2).

7.3 The applicants seek to draw support for their position in respect of both issues from the IPF. Nevertheless, it has been agreed that if this development satisfies the relevant tests in the Habitats Directive and the Regulations, then permission can be granted, and there is nothing in the policy documents to say otherwise; and that the converse is also true, so that if it fails to satisfy the legal requirements, there is nothing in the development plan documents to save it. Furthermore whatever the IPF says about different zones, an appropriate assessment ("AA") by the Secretary of State would have to address the same question, whether or not the development fell within or outside the 400m zone, because "the policy does not change the law". Again the converse is necessarily true; the making of payments under the IPF is not an alternative means of satisfying the legal tests¹³.

Law, Science and the Interim Planning Framework

7.4 The law which applies to housing development close to sites such as the international heathland sites in Dorset, or the Thames Basin Heaths SPA, is identical with the law which protects all European sites. But there are particular factors relating to the harm caused by residential development which have been accepted as sound by the public authorities (local planning authorities and English Nature/Natural England) and led to their entering into arrangements such as the IPF. These arrangements relate to the nature of the problem, and the identification of a means by which, to a great extent, it can be overcome consistently with the requirements of the law¹⁴. The requirements and limits of

¹³ See Millgate NR/21 paras 79 to 82

¹⁴ NR/21 paragraphs 69 and 70

the Dorset IPFs, and similar strategies adopted in the Thames Basin, have been accepted and respected in decisions on planning appeals and called-in applications.

7.5 The problems arising from residential development include:

- (1) people (and pets) who visit a site cause harm, the level of which is related to the number of visitors;
- (2) housing development which increases the resident population close to such a site is likely, without effective measures of avoidance, to increase the number of visits and thus the level of harm; and
- (3) experience has shown that, at whatever date an application is determined, there will then exist, in the form of outstanding applications or provisions in land use plans, proposals for other housing relevantly close to the protected sites, with the result that the possibility of cumulative effects (effects in combination) is always present.

Consistent with its nature, the harm does not arise in the case of residential development of a form which does not generate additional people or pet visits to any relevant site.

7.6 Thus to survive scrutiny under Regulation 61, the applicant must demonstrate not only that the proposed development will not in itself have a significant adverse effect on the integrity of any of the international sites; but also, because of the in combination rule, that it will not have any adverse effect, and so cannot contribute to a possible significant adverse effect in combination. NR contend that it cannot be shown that the unavoidable adverse effects of the development will not be significant. However, even if it could, the applicant would also have to demonstrate no adverse effects in combination with the current accumulation of other plans and projects for housing development relevantly close to the European sites, unless they can show that this development has nothing to contribute to a combined effect that might make the overall effect significant.

7.7 Given the precautionary nature of the legal control, the key element of any solution is a means whereby any increase in the number of visits to the site by people or pets is eliminated. The only identified means of achieving this is through the provision of a SANG¹⁵ which would attract away from the relevant site sufficient numbers of visitors to avoid any net increase arising from a development. Such provision can be made either on a particular or on a collective basis, and the purpose of the IPF, and similar schemes, is to enable collective provision. That is collective both in the sense of involving concerted action by a group of planning authorities on a common basis, and also in that it enables developments without individual bespoke provision to take advantage of collective avoidance measures.

7.8 TVT seek to draw support from the IPF, despite the fact that it says in terms (paragraph 2.5): **"It is in this area between 400m and 5km that the Interim Planning Framework applies."** They seek to do so in two ways.

¹⁵ Suitable Alternative Natural Greenspace

First, they claim that this development is consistent with the IPF's ground rules because it falls within the "exceptional circumstances" contemplated by IPF paragraph 2.4. Secondly, they claim to take advantage of the collective provision made by the IPF even though the site falls mainly within the 400m zone.

- 7.9 Taking first the "exception" point, Mr Tyldesley explained¹⁶ that exceptional circumstances, in relation to a proposal for residential development in the 400m zone, are intended to apply only to a development which can be judged, without mitigation, not to have a significant effect on the designated heathland. He is plainly correct; and in view of the accepted means by which harm is generated, this equates to housing which can be judged not to generate increased visits to the heathland by people or pets. BPC dealt with the proposals on the basis that "the application can be considered an exception as the form of the residential development would not have an adverse impact on the site's integrity"¹⁷. This claim is plainly unjustified since the proposal includes 378 conventional dwellings.
- 7.10 TVT's position is explained in these terms: "Given the extensive, wide-ranging and bespoke mitigation measures put forward under the proposals, and the way in which they will be secured under section 106 obligations, I believe that the proposed development fully qualifies as an exceptional case."¹⁸ In short, it is said that there are "exceptional circumstances" if the mitigation measures are exceptional. But what could this mean in practice? Developments in the 400m to 5km zone already have to demonstrate no significant adverse effect, either alone or in combination, which means avoiding any such effect either ad hoc or through the collective mechanism provided by the IPF. If this is achieved, it is both necessary and sufficient; but it cannot be regarded as exceptional. If TVT are correct, the difference of approach between the inner and outer zone would disappear; yet the IPF provides for development in the outer zone, but not the inner one.
- 7.11 TVT's approach contradicts the assumption implicit in paragraph 2.4 of the IPF that avoidance measures will not be sufficient to allow ordinary housing to be built in the 400m zone. TVT are free to challenge the correctness of that assumption, but they cannot be allowed to claim that their approach is consistent with it. Mr Jacobs argues that the housing figures used in the IPF relate to all the housing development envisaged within 5 km of the Dorset sites, without any deduction for the 400m zone. But that demonstrates the common expectation that development within the 400m zone would be confined to exceptional types of housing, which would be so limited as not to require any adjustment to the general figures.
- 7.12 The terms of Policy PCS 28¹⁹ reflect the approach in the existing IPF, and the assumptions advanced. In PCS 28 restrictions i and ii respectively relate to the (normally) 400 metre zone, and the 400m to 5 km zone. Under the former, the envisaged exception to the general ban on development is where "the form of

¹⁶NR/3 paragraphs 3.29 and 4.5

¹⁷ CD 12 (the Committee Report) p34 and Genge BPC 002 para 5.3 ii

¹⁸ Mr Goodwin TVT/5 para 4.7.5

¹⁹ CD18 Poole Core Strategy

residential development would not have an adverse effect on the site's integrity". The requirements under ii relating to avoidance or mitigation relate solely to the outer zone; and are clearly assumed to be inapplicable to the inner zone.

- 7.13 There is thus no objective basis for treating the phrase "exceptional circumstances" as capable of accommodating the present proposal, either for the reason advanced on behalf of BPC or that relied on by TVT. These are just different ways of asserting that "exceptional circumstances" are whatever they claim as such. Their approach is unsupported by conventional authority, though there are echoes of the famous dissenting speech of Lord Atkin, in the case of Liversidge v Anderson [1942] AC 206, which involved wartime regulations under which the Secretary of State might make a detention order if he "has reasonable cause to believe any person to be of hostile origin or associations and that by reason thereof it is necessary to exercise control over him". Lord Atkin challenged an interpretation which assumed that "if the Secretary of State has reasonable cause" merely meant "if the Secretary of State thinks that he has reasonable cause", and went on:

"I know of only one authority which might justify the suggested method of construction: "'When I use a word', Humpty Dumpty said in a rather scornful tone, 'it means just what I choose it to mean, neither more nor less'. 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be the master – that's all.'" (Through the Looking Glass, c. vi.)"

Application of the Directive and Regulations

- 7.14 The proposal falls to be assessed against the legal framework provided by the Directive and the Regulations. There is in fact much common ground. As between my clients and Poole, NR understand it to be agreed:

- i) that in the absence of avoidance measures housing on the development area of the application site has the potential adversely to affect the integrity of each of the international sites because of visitor pressure;
- ii) it is therefore likely to have a significant effect on each of those sites alone or in combination with other plans or projects;
- iii) an Appropriate Assessment is therefore required; and
- iv) in the absence of effective mitigation the proposal would fail the integrity test; so that
- v) the critical question is whether the proffered mitigation package enables the Secretary of State to ascertain no significant adverse effect on integrity either alone or in combination.

- 7.15 For TVT the position is the same, subject to Mr Goodwin's preference for the adequacy of the mitigation package to be considered by the Secretary of State at the Significance Test stage rather than the Integrity Test stage. For the reasons given in Legal Submissions²⁰ this would make no difference to the

²⁰ NR/21 paras 6 and 7

rigour of the assessment or the ultimate result. This was recognised in Dilly Lane²¹, which commences:

“Whilst it is true that “effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported”, if the competent authority is satisfied at the screening stage that the proponents of a project have fully recognised, assessed and reported the effects, and have incorporated the appropriate mitigation measures into the project, there is no reason why they should ignore such measures when deciding whether an appropriate assessment is necessary.”

The application of that approach in Dilly Lane was described by Sullivan J in paragraphs 63 to 65 of his judgment, culminating in his approval of Natural England’s position in paragraph 65.

- 7.16 It now falls to the Secretary of State to apply both the Significance Test and the Integrity Test. However, the course of events thus far, with the final content of the mitigation package, and the measures to secure it, emerging over a long period running right up to the Public Inquiry, makes it convenient to address the crucial issue in the same sequence as did Poole. Then, following an appropriate assessment, which takes into account the full mitigation package now advanced, the crucial question is: Can it be ascertained that the project will have no adverse effect on the integrity of any of the international sites, alone or in combination?
- 7.17 Although the AA must cover both effects “alone” and effects “in combination”, it is obviously convenient to consider them in order. If the project cannot survive the Integrity Test when assessed alone, it clearly cannot do better in combination.

The Project Alone

- 7.18 The essential elements of the mitigation package for the proposed development was clarified in evidence by Mr Baker for BPC and Mr Goodwin for TVT and comprises:
- 1 The cat proof fence.
 - 2 The covenant against pets.
 - 3 The interceptor role of the three fields.
 - 4 Wardening.
 - 5 A condition to deal with fire hydrants and improved access for fire fighting.
 - 6 The contribution under the IPF.
- 7.19 Mr Baker’s list of essential items omitted the conversion of the three fields, but was otherwise similar to Mr Goodwin’s. The difference as regards the three fields in fact makes Mr Goodwin’s approach the more precautionary, because he at least recognises the need for the package to contain a means of deflecting visitor pressure away from Talbot Heath, even if all other elements were to have the full effects claimed for them.

²¹ CD 79 para 61

- 7.20 There is a mass of evidence which is relevant to the question: Can it be ascertained that the proposed development will not, alone, have a significant adverse effect on the integrity of each of the international sites? But we have the clear identification of the elements of the mitigation package whose implementation and efficacy in the long term are regarded by TVT themselves as individually and collectively essential to justify a favourable (from TVT's point of view) answer to the crucial question. Poole's list of essentials, as articulated by Mr Baker, is only slightly less comprehensive.
- 7.21 Taking Mr Goodwin's list as the most comprehensive, numbers 1, 2, 3 and 6 are the elements of the package which aim to eliminate, or at least reduce, the net increase in visits to Talbot Heath, and to other parts of the European sites, which would otherwise result from the proposed development.
- 7.22 **Cat Proof Fence:** This fence has its limitations even if it is assumed that it can be erected, would be maintained in existence in the long term, would prevent passage across it by cats, dogs and people when intact and that holes would always be promptly repaired. It would be a linear fence, not one which encloses either the housing development or the parts of Talbot Heath requiring protection. From the development site cats could enter Talbot Heath round the ends, and the Heath would remain well within the foraging range of many of them. The Heath would be accessible by pedestrians from the development site (a distance on foot of no more than 2 kilometres to northern and southern points of access) or by car or bicycle.
- 7.23 Assuming, for the sake of argument, a fully effective fence, (and a fully effective anti-pet covenant) Talbot Heath would still attract a significant number of human visitors from the proposed new housing, since it is known to be attractive, and routes to it on foot and by car or bicycle are well within the distances over which people are known to access this and similar heaths. But it is also necessary to bear in mind that by impeding access to Talbot Heath the fence would tend to increase the number of trips to other parts of the European sites. Some such trips would occur in any case, the development site being well within 5 kilometres of other heaths. In the light of his experience, Mr Tyldesley envisaged that Canford Heath in particular would attract visitors from this development. Thus even with the fence, the development would, in the absence of effective SANG, effect a substantial increase in visits to the protected heaths.
- 7.24 If there were a fully effective fence, but no effective enforcement of the anti-pet covenant, then, since it is known that most visitors to the heaths are accompanied by dogs, the numbers of visits generated by residents on the development site would be greater, both to Talbot Heath and to other heathland sites.
- 7.25 It has become apparent that the existence of an access to Talbot Heath from Isaacs Close casts doubt on the legality of an exclusionary fence at that location, since it would shut out part of a local population from direct access to an open access area²². There are further points to be made as follows:
- In reliance on TVT's own documentation, it was initially assumed that TVT did not own the land lying between Isaacs Close and the boundary of Talbot

²² NR/21 paras 85 to 94

Heath²³. TVT then claimed ownership of that strip²⁴, and there has been a sequence of Inquiry documents which now demonstrate Trust ownership of the land to which it relates, including the finger²⁵.

- As is clear²⁶, the proposed construction of the fence just outside the open access land at this point is intended to defeat the second potential legal objection, that if the path which has provided access to the open access land from 31/10/2005 was obstructed it would be unlawful under the CROW Act²⁷. However, that potential objection does not depend on the fact that the fence would be erected within the open access area; the essential point is that it would involve the obstruction of an access existing on 31/10/2005. Thus all the legal uncertainties raised in NR/21 are independent of the question whether the TVT is the owner of the finger of land which has been identified as unregistered.
- Although the identification of Talbot Heath as open access land from 31 October 2005 means that use of the path across the heath after that date cannot count towards the establishment of a public right of way within the heath, the local residents making the application²⁸ have only to show the existence of a public right of way over the short distance between Isaacs Close and the boundary of the heath in order to achieve their practical objective. Under section 31(1) of the Highways Act 1980, they would need to prove public use as of right and without interruption for a full period of 20 years, but given that the housing estate immediately to the north was under development from the 1980s, this claim must be taken seriously. If established, it would prevent the erection, or require the removal, of a barrier across that footpath. As acknowledged by TVT, if the claimed footpath is registered, the fence would have to stop at the footpath unless that could be legally stopped up or diverted. Clearly it cannot be assumed that this would be possible.

7.26 Apart from issues of legality, there are several powerful reasons why the fence would not survive as an effective barrier in the long term.

7.27 First, it will be regularly and deliberately breached by those who wish to visit or cross Talbot Heath. There has been a small scale example of this at the Isaacs Close access, which TVT have tried unsuccessfully to close off since 2009. This is not surprising, because this route not only gives a convenient way on to the Heath from the north, but provides the shortest pedestrian route across the middle of the Heath. Viewed as from the north, it links the adjoining estate with destinations on the other side of the Heath, including Sainsbury's, the St Aldhelm's Combined School, and several substantial employment sites. Viewed as from the south, it links the residential areas on that side with the two Universities. It also provides a short pedestrian link between the residential areas on either side. This very same route would also be attractive to many

²³ NR/40

²⁴ TVT 22

²⁵ TVT 22, NR/40, TVT 29 and TVT 31

²⁶ TVT 22

²⁷ NR/21, paras 87 to 94

²⁸ BPC Library Docs 6 and 8

residents on the proposed development site. Points of entry further east would be even more attractive to most of them.

- 7.28 This issue is comprehensively examined by Dr Day in his proof²⁹ and his conclusion provides a justified summary of the position:

"Given all these uncertainties, the clear motivation for residents from the new development to allow them to access the large public space adjoining their housing estate, the ability of cats to go round the ends of the fence, the experience of the WWT and Australian example that cat fences only work if they include electrification, the widespread vandalism of fences elsewhere in urban areas and the length of time the fence will need to be maintained, it is my view that the fence cannot be relied on to keep people or cats out of Talbot Heath either in the short term or for the life of the development."

- 7.29 Fencing invites attack if it interrupts desire lines. Here the desire of new residents to enter the Heath, whether to visit or to cross it, will be intense. It will appear unjust that direct access is barred to them whilst being open to other local residents. Both Mr Baker³⁰ and Mr Goodwin³¹ took comfort in the fact that the fence would be erected before occupation of the new housing, whose residents, as newcomers, might not miss what they had not been used to enjoy. That view reflects groundless optimism; but its factual premise is also only partially true, because the fence would also bar the existing residents who are used to entering and crossing the heath to and from Isaacs Close. The longer and more accessible the fence, and the stronger the incentives to breach it, the more certain is it that it will not survive as an effective barrier.

- 7.30 Secondly, the survival in the long term of a locally unpopular and unsightly fence (described by Mr Tyldesley as an anathema to modern landscape planning) assumes a steadfast political will on the part of the local authority. There are various legal means by which the requirement to keep the fence could be abrogated, the most obvious being as a variation of the section 106 Agreement by agreement between TVT and Poole or under TCPA 1991 sections 106A and 106B. There has been introduced into the most recent version of the draft Section 106 Agreement (by new Clause 9.5 read with the definition of Consultation) a requirement that "any variation to the covenants, undertakings and restrictions contained in the Second Schedule may only be varied (sic) pursuant to 9.3 and 9.4 after Consultation by the Council [with Natural England] after such application for variation has been made." This ignores the fact that, if there is agreement between TVT and Poole, no application will be necessary. More fundamentally, Natural England's advice might well be ignored, a possibility not to be discounted in the light of the history of the present application.

- 7.31 Another possibility is the exercise of powers to require an access to Talbot Heath under sections 35 to 38 of the CROW Act 2000 by Poole as the access authority³².

²⁹ NR/9 paragraphs 9.34 to 9.56

³⁰ BPC 004 para 5.22

³¹ Day 6 EiC

³² NR/21 paras 95 to 101

7.32 The Section 106 agreement now does what it can to advance TVT's cause in its provisions for the maintenance of the fence. These provisions are unusual in that, once the fence has been erected, the obligation to maintain it falls on Poole, with enforcement in the hands of TVT under Poole's direct covenant, whilst liability for funding is with TVT, enforceable by Poole, if necessary under Section 106. But faced with the likelihood of continual breaches of a locally unpopular fence, it is, to say the least, unsafe to assume that these mutual obligations will be permanently effective and enforced. Once they have disposed of the development site, TVT would have no motive to enforce the retention of the fence, with its attendant drain on the Trust's own resources. Once they have their desired housing in place, Poole, with a future generation of members and officers confronting a future generation of local residents, cannot be assumed to be prepared to hold the line indefinitely.

7.33 Reliance was placed on a cat-proof fence in the East Dorset case of Oaks Drive, Ringwood, an appeal against refusal dismissed on 4 June 2007³³. Although, as always, the detailed facts were specific to the case, this reliance was roundly dismissed by Mrs Grindey as unrealistic for reasons which have resonance in the present case: see NR/47 paragraphs 11 to 16. No decision has been adduced where the promise of a cat-proof fence, let alone a people-proof fence, has enabled a development to proceed, in either the Dorset or the Thames Basin Heaths areas.

7.34 **Pet Covenant:** Paragraph 9.1 of Part 1 of the Second Schedule to the draft Section 106 Agreement provides:

"The Owner and their successors in title covenant not to cause or permit the keeping of cats or dogs other than Recognised Assistance Dogs on any part of the Development within the area coloured pink on plan 3 at any time on a permanent or temporary basis ".

Apart from a small drafting point (inserting "keep or" before "cause") this falls within TCPA section 106(1)(a), would be legally effective, and enforceable by the Council against individual occupiers.

7.35 As to paragraph 9.2, this adds nothing to paragraph 9.1. It does not amount to a covenant or obligation. It simply envisages that future transactions between third parties (typically a transfer or lease from a developer to a purchaser or lessee of a dwelling) will contain the specified restrictive covenant. Even if the clause were reframed as a covenant by the Trustees of TVT to impose a pet covenant on purchasers from them, and to attempt to require the imposition of such a covenant on sub-purchasers, a covenant to impose covenants does not fall within S106(1) and would not be enforceable against the Trustees' successors in title³⁴. Thus not only is it of no value because of its legal uncertainty, but because it is quite unrealistic to expect TVT to apply themselves to the enforcement of the restrictions on keeping pets. Once they have disposed of the land for development, they would have no incentive to do so, and they appear to employ no relevant staff. The Boundary Survey of Talbot

³³ NR/47

³⁴ NR/39 p4

Heath³⁵ provides numerous examples of extensions to gardens, storage of materials and dumping of garden rubbish on that part of Talbot Heath owned by TVT, against which no action has been taken in the past, and provides some indication of their likely attitude to enforcement in the future. Thus the responsibility for enforcing the covenant would fall on BPC.

- 7.36 It is impossible to envisage effective enforcement in the medium to long term; and even in the short term it would be uncertain. Knowing the importance of reliance on this covenant, Poole should already have planned a system of enforcement. They plainly have not done so, as emerged from Mr Jacobs' answers to Inspector's questions on this point. Although enforcement would be a matter for his (the planning) department, his attitude was that the Council would be reliant on information from local residents, and that the local community would support the pet restriction.
- 7.37 This relaxed attitude is completely unrealistic. Consider the position 20, 40, or 60 years ahead. This development would just be part of the residential areas surrounding Talbot Heath. Residents wishing to keep cats or dogs will resent the restriction, if they are aware of it. There will be no enforcement or whistle-blowing. A reactive posture by the Council would be insufficient. Pro-active, continuous monitoring and policing would be necessary from the start. This would require resources and political commitment, which cannot be assumed, especially when the residents are all voters. If once a cat and/or dog population is established, even with modest numbers, enforcement would become impossible. Even assuming that Poole would be willing to go to court, the courts could not be expected to assist against individual defendants (either by imposing deterrent sentences or granting injunctions – both discretionary) once significant numbers are flouting the covenant.
- 7.38 This expectation reflects the views of Inspectors in other cases where the issue has been debated, including 101 Belben Road, Poole (NR/33) at paragraph 9 and Pembroke Road, Poole (NR/34) at paragraph 17. It is therefore quite impossible to give the anti-pet covenant any credence as an effective element of TVT's mitigation package.
- 7.39 **Conversion of three fields:** The potential role of these fields has shifted over time. In the Environmental Statement – Ecology of May 2005 creation/restoration of the three grazed fields was identified as a mitigation measure and it is set against "Habitat Loss"³⁶. This position remained unchanged in the ES Addendum of October 2009³⁷.
- 7.40 In the appropriate assessment of March 2009 reference is made to the restoration of the fields as one of the "positive impacts"³⁸. It is stated that "many of these measures are to be considered mitigation in the sense that they will off-set impacts that may arise as a result of the proposed development". Furthermore "As well as providing additional heathland habitat within close proximity of the SPA/SAC which may eventually support target habitats and

³⁵ NR/11a Appendix III

³⁶ CD 49 para 6.2.2 and in Table 16 on page 30

³⁷ CD 52 para 3.16

³⁸ CD 13 Section 7.10

species this area is likely to reduce disturbance and trampling related impacts within the main part of Talbot Heath. In other words this habitat creation will mitigate any disturbance or trampling impacts that may arise as a result of the proposed development."

- 7.41 It is the position of NR that loss of or damage to habitat, or the disturbance of fauna, within a European site cannot be avoided or mitigated by the provision of habitat outside the site as is proposed in this case³⁹.
- 7.42 It was Mr Baker's position for BPC that the conversion of the three fields could be omitted from the list of the elements of the mitigation package essential to sustain a finding of no significant adverse effect on integrity. He accepted that the conversion did not amount to a SANG, and when asked whether it was mitigation or something else, described it as an enhancement.
- 7.43 The three fields remain, however, on Mr Goodwin's "essential" list; and he relies on them in a different way, by assigning them an "interceptor" role to dilute pressure on the protected area of Talbot Heath, by causing visitors, including existing visitors, to spend less time on the protected area. Although Mr Goodwin does not claim the fields as SANG, if making the fields available to public use could be judged to have this effect, the effect would be to afford a measure of mitigation similar to SANG. This role would not necessarily be dependent on whether the fields are converted outright to heath.
- 7.44 However, Mr Goodwin's belief that the planned opening of the fields to visitors would have the effect of diverting existing or new residents from the heathland is entirely unsupported by evidence.
- 7.45 A properly designed visitor survey is a pre-requisite of informed judgment about the possible effect of opening up these fields. This is a standard tool used by Mr Goodwin elsewhere (for example at Crowthorne and Chichester) which could readily have been carried out since he was instructed in October 2010.
- 7.46 Thus, for instance, it is not known to what extent visitors to Talbot Heath already use these fields, though there is clear evidence that they do use them⁴⁰. To the extent that the fields are already used, the effect of formally opening them to use would be diminished. It is not known whether walkers visiting the fields would spend correspondingly less time on the existing Heath; or simply extend their walks, or visit more often than they do now. There is none of the other relevant data which a visitor survey would have provided, such as whether the opening up of the fields would draw in new visitors altogether, or a larger number of new adjacent residents than would otherwise be the case.
- 7.47 The effect of opening up the fields can only be speculated. Mr Goodwin's envisaged effect (dilution of impact on the protected area) is only one possibility. Another is that it would make Talbot Heath as a whole a more attractive destination, including for dog-walkers, so increasing visitor pressure on the protected area, which all visitors from the south or west would have to cross in order to get to the fields. It is impossible to say how these would balance out.

³⁹ NR/2 para 69; NR/21 paras 57-60

⁴⁰ Dr Day NR/18 para 4.10 and in oral evidence

- 7.48 There are however some known facts which can give TVT no encouragement. The fields are substantially surrounded by the protected parts of Talbot Heath, which seems inconsistent with any “interceptor” role. There is evidence cited by Mr Goodwin himself to the effect that dog-walkers take shorter walks on Talbot Heath than the average for Dorset Heathlands overall, and have a reduced penetration distance⁴¹. This suggests that the enlargement of the walkable area at Talbot Heath might indeed make it a more attractive destination than it is at present.
- 7.49 Mr Goodwin’s overall position in relation to SANG – type effects is incoherent in that he argues that SANG on the TVT development area, would increase visitor pressure on Talbot Heath, whereas the opening of the 3 fields, set within the existing heathland, would have the opposite effect. Given the obvious potential for at least part of the proposed development area to serve as SANG Mr Goodwin’s relative judgment is absurd.
- 7.50 At all events, there is no objective evidence to support Mr Goodwin’s expressed belief that opening the three fields to public access would relieve visitor pressure on the European sites at Talbot Heath. Furthermore conversion of the three fields to heathland might not be achievable, and even if the conversion was possible the time frame for such a conversion is likely to be decades⁴².
- 7.51 Although in answer to Inspector’s questions⁴³ Mr Baker expressed confidence in the ability to convert the fields to heathland, an earlier file note dated 30/6/2011⁴⁴ recording the result of a meeting on 16/6/2011 between Mr Baker and Richard Nicholson, the Borough of Poole’s Greenspace Development Team Leader, notes:
- “Fields restored to acid grass: the implication that because of underlying geology and farming practices not all land will necessarily revert to heathland is welcomed.”
- 7.52 This appears to accord with Dr Day’s assessment of the practicalities. The Management Plan as it now appears in Part 9 of the Second Schedule to the draft Section 106 Agreement has not fully caught up with this development, as is apparent from the varying descriptions of the restoration of the fields on pages 5, 7 and 16.
- 7.53 **Contribution under the IPF:** This attempt to rely on the IPF for an essential element of the mitigation package claims that the combined effect of the fence and the anti-pet covenant is to allow the development site to be treated as if it falls wholly outside the 400 metre zone but within the 400 metre to 5 km zone.
- 7.54 The first problem with this approach is that it is flatly contradicted by the IPF itself. A somewhat similar argument was run in the Oaks Drive appeal (NR/47) in relation to the first edition of the IPF (CD 21). The argument was that although the appeal site was less than 400 metres from the European sites, the new dwellings would be more than 900 metres walk from the nearest access to

⁴¹ TVT/5, Annex 4, para 5.13.1.9

⁴² Dr Day NR/9 at paras 9.12 to 9.26

⁴³ Day 6

⁴⁴ Lib Doc BPC /7

that site (a situation which is normal rather than exceptional). This argument was roundly rejected by the Inspector for reasons which appear in paragraphs 18 to 21, and remain relevant today. The following extracts are taken from paragraphs 18, 20 and 21 of the decision:

"18. But the IPF is a good concept (indeed the only concept that has evolved to tackle the European legislation problem....) and it must be an 'all or nothing' policy. You cannot set it up to tackle this problem with the aim of collecting the payments from developers to facilitate access management, education, wardening and provision of alternative recreational space but then manipulate the *other* provisions of the IPF randomly to secure permission on sites which patently do not fit its criteria.

.....
20. The TVTs seek to apply the IPF as if their site is beyond the 400m distance, but within the 5km and to pay the nature conservation contribution. But it is not.

.....
21. Their argument is a somewhat contrived attempt to manipulate the policy so that their scheme is permissible. This is an argument which could be used by many and, after a short while, the IPF would be about as sound as a sieve."

- 7.55 The second problem is that this element itself depends on a favourable finding to the effect that the fence can be relied on to prevent access by people, with or without dogs, and by cats, across its line, so as to ensure that for new residents the routes to Talbot Heath would all exceed 400 metres.
- 7.56 The third problem is that it relies on a favourable finding that the pet covenant will eliminate cats from being kept in at least that part of the development area from which they could access Talbot Heath, around the fence, without a journey of more than 400 metres.
- 7.57 The fourth problem relates to the fact that, as already noticed, compliance with the terms of the IPF does not in itself guarantee compliance with the requirements of the Directive and Regulations. This is confirmed by Millgate⁴⁵. As regards the IPF, Mr Tyldesley's evidence was to the effect that one has to take a view whether a proposal is of such a size, and so located, that it can safely be regarded as falling within the generality of residential development in the 400m to 5km zone, covered by the IPF package, without closer examination.
- 7.58 This is plainly not such a proposal, and TVT do not themselves suggest that, even treated as if it were in the outer zone, this project could rely on an IPF contribution alone.
- 7.59 It is therefore relevant to look at the projects which form the IPF 2010-2011⁴⁶ package, which are identified in Appendix A to that document and located in its plan. No 33 on the plan conveniently identifies Talbot Heath, and relates to the

⁴⁵ NR/21 paras 79 to 80

⁴⁶ CD22

proposal for three fire hydrants there. Unsurprisingly, there is nothing in the current package which could be expected to deliver SANG so located as to draw away from Talbot Heath visits from residents, both existing and now proposed, living very close to it.

- 7.60 **Interim Review:** The four elements addressed so far are those which are claimed to divert visits of new and existing residents away from Talbot Heath. Each is flawed, either in principle or for lack of practicality. If this development proceeds, there will inevitably be increased visits to the European sites, especially at Talbot Heath but also to other nearby parts of the protected heathland.
- 7.61 The other parts of the mitigation package on which TVT rely, relate in different ways, to the management of Talbot Heath, and are addressed below. An approach which accepts an increase in visits to a protected site, and attempts to cancel their effect by on site management, is inevitably risky.
- 7.62 **Fire Hydrants and Fire Access:** The provision of fire hydrants at Talbot Heath, and improvements to access for fire fighting, are desirable and important, but they need to be carried out in such a way that they do not themselves harm the heath. Discussions since this Inquiry opened, primarily between Mr Squirrell and Mr Martin, have resulted in agreement about what should be provided, and a suitable condition has been devised.
- 7.63 These hydrants are already provided for in the current IPF, and one can safely anticipate that the steps now identified in more detail will be taken, in the near future, in any event. The offer to accept a condition requiring these to be funded by TVT, whilst not to be turned away if permission would otherwise be granted, thus adds no weight to TVT's mitigation package.
- 7.64 **Wardening:** It is impossible to see this as a necessary provision which can only be secured by permitting the TVT residential development, when wardening of Talbot Heath, as part of the Dorset Heaths, is already in place, with a present frequency of visits comparable with that proposed by TVT⁴⁷. This is confirmed in the Management Statement⁴⁸ which states that "that wardening, provided through the Council, may be through the "Heathland Partnership". Thus the supposedly essential "wardening" element of the mitigation package amounts to no more than a monetary contribution by TVT towards the funding of the present wardening scheme.
- 7.65 **Management:** When Mr Goodwin had concluded his oral evidence about his essential list⁴⁹, he went on to consider whether management might be essential, and expressed the view that, if it did not take place, but if the essential items were in place the conclusion can be reached that the development would have no adverse effect. He said that the key to the TVT scheme is that it is able to deliver a scheme of bespoke measures, and anything left over is caught by paying into the IPF.

⁴⁷ NR/36 – Urban Heaths Partnership Wardening Strategy 2010, p14.

⁴⁸ CD 58 Part 9

⁴⁹ Day 7

- 7.66 Mr Goodwin did not go so far as to say that a promise of improved management is irrelevant in considering whether adverse effects on the European sites would be with certainty avoided. Nevertheless if planning permission is granted, a commitment by TVT to rehabilitate their part of Talbot Heath, and thereafter to manage it (or help fund its management) would of course be welcome (providing that the works are acceptable in detail), but these objectives are legally required, and certainly achievable, without the housing development⁵⁰.
- 7.67 It is obviously tempting for a developer to promise to fund effective management of a European site (whether or not in its ownership) in an attempt to offset increased visitor pressure from nearby residential development, but a harmful step (the additional housing) is not as a matter of certainty outweighed by improved management when that improvement can be placed in both sides of the balance. Under a precautionary regime, the only safe course is to avoid increasing potentially harmful pressures. English Nature⁵¹ (whose approach has been taken on by Natural England) from the start stated in the Draft Delivery Plan of 26/5/2006⁵² that "the proposal to improve management of the site as part of the development" should not be considered to offset potential adverse effects on heathland.
- 7.68 Effective management is already mandatory by law; English Nature are determined, if and when this application is dismissed, to see that it is achieved; and there is no reason to believe that they will not succeed, within a reasonable time.

Conclusion on the Project alone

- 7.69 If this development takes place, it is highly likely that it will, alone, have a significant adverse effect on the integrity of all three international sites – SPA, SAC and Ramsar; and it is quite impossible to conclude the contrary.

The Project in Combination

- 7.70 The "in combination" issue is only live if the Secretary of State ascertains that the project will not, alone, have a significant adverse effect on any of the international sites, but is unable to determine that it will have no adverse effect at all. So, assuming for the purposes of argument that this is the position, can it be ascertained that it will not have a significant adverse effect in combination with other plans or projects?
- 7.71 If the settled approach in Dorset is applied, the only possible answer is that it cannot be so ascertained. The inevitable existence of other plans or projects for housing actually or potentially within 5 km of parts of the international sites means that, once it is accepted that the proposal under consideration might have some adverse effect, the possibility of a significant effect in combination cannot be eliminated. This has been Poole's own approach, which it successfully defended on appeal in the decisions provided⁵³.

⁵⁰NR/21 paras 61 to 68, Tyldesley NR/3 para 7.12.

⁵¹As noted in NR/21 paragraph 63

⁵²NR/22 Ref 11, para 1.5.17

⁵³NR/33 and NR/34

- 7.72 The arguments put forward on behalf of TVT and the Borough to escape from this dilemma suggest two approaches.
- 7.73 First, there is the “de minimis” argument, advanced by both Mr Baker and Mr Goodwin, and which finally amounts to this: Although the TVT scheme would or may have residual harmful effects, they are de minimis, and de minimis effects can be disregarded when considering the possibility of effects in combination. Thus the TVT scheme has nothing to contribute to a potentially significant combined effect.
- 7.74 The routes by which these two witnesses reached this position were slightly different. In his AA⁵⁴ Mr Baker does not use the phrase “de minimis”. Instead, he describes residual effects of the development, after taking account of the envisaged mitigation package, as “minor”. Within Section 9 of the Appropriate Assessment – Conclusions – it is said, in relation to the SAC:

“Whilst it is not possible to conclude that the impacts will be fully mitigated, any residual effects on wet and dry heath are likely to be minor and will only affect a very small proportion of the SAC”; and

in relation to the SPA:

“It is possible that these measures may not fully mitigate any impacts on the warbler population, but any impact is unlikely to exceed 1% of the SPA population”; and

“..... any residual effects on Dartford warbler and nightjar are likely to be minor and will only affect a very small proportion of the total SPA population,”

- 7.75 There is a shift in reasoning in Mr Baker’s proof which is neatly captured in the following extract⁵⁵:

“The raft of mitigation measures proposed, as part of the development will greatly reduce the likely impact of the population increase upon the Natura 2000 site at Talbot Heath. Taken together the mitigation measures are considered to be sufficient to ensure that any impacts are either entirely cancelled out or are so small as to be considered *de minimis* in nature. There is therefore no potential for the development to combine with impacts elsewhere that will result in an adverse impact upon the integrity of the site.”

- 7.76 Although the penultimate sentence in this passage appears to distinguish between cancelled impacts and *de minimis* impacts, the last sentence appears to equate them; and this was the position which Mr Baker adopted explicitly in his oral evidence, when he said “De minimis, not worth considering, no impact at all”; and a little later “De minimis equals no impact”⁵⁶.

⁵⁴ CD 13 Appendix 1

⁵⁵ BPC 004 para 5.55

⁵⁶ Day 5 xx Mr Machin

7.77 Mr Goodwin starts from a different position, in that he believes (contrary to Natural England's contention) that in applying the regulation 61 approach one is entitled to bring into account mitigation, avoidance and enhancement, and strike a net overall balance. Thus, he says:

"It is my opinion that the proposed mitigation, avoidance and enhancement measures go further than simply avoiding or mitigating any perceived potential adverse effects on the SPA/SAC, but that net benefits to the SPA/SAC are delivered. I therefore disagree with the conclusion of the Borough of Poole appropriate assessment that there would be residual small scale adverse impacts on the SAC."⁵⁷

7.78 Mr Goodwin then introduces the term *de minimis* in his proof (TVT/5) at paragraph 11.13, thus:

"Natural England/RSPB have failed to take account of the fact that the proposed mitigation/avoidance measures reduce the potential significance for each individual effect such that they are *de minimis*, whilst also diluting or removing some of the current impacts. As such there is no potential for combined effects."

7.79 Although this passage appears to be disputing the possibility of combining different effects arising from a single project, the underlying claim, that *de minimis* effects cannot contribute to combined effects, appears plain.

7.80 In the course of cross-examination⁵⁸, Mr Goodwin said that he did not agree that a *de minimis* impact is the same as no impact, and when invited to say how *de minimis* and "insignificant" differ, said that for him it's either minor, and anything below minor is *de minimis*.

7.81 In these circumstances, the common position of Mr Baker and Mr Goodwin, and thus of Poole and TVT, appears to be, as I have already suggested, that *de minimis* effects can be disregarded when considering the possibility of effects in combination. On this footing they would, indeed, equate to "no effect".

7.82 Although during this Inquiry the discussion on this point has taken place in the context of the "in combination" question, the "*de minimis*" point is in truth an attempt to avoid this question altogether. This is because, if the argument succeeds, the possibly unavoidable "*de minimis*" effects of the project alone are to be treated as equivalent to no effects, and if that were the case, there would be no reason to investigate in combination effects, because this project would have nothing to add to the possible effects of other plans or projects.

7.83 There is, of course, no way of distinguishing a "*de minimis*" effect from an "insignificant effect". We are in Wonderland once more, reliant on assertion rather than logic or evidence. In the real world an absence of effect can be distinguished from a very small effect, albeit not significant alone, in whatever language its label is written.

7.84 The Baker/Goodwin approach, given any credence, would completely undermine the "in combination" safeguard written into both the Directive and the

⁵⁷ TVT/5 para 10.50

⁵⁸ Day 7, am

Regulations. English Nature was wise from the start to rule out any scope for a “*de minimis*” approach⁵⁹; and decision takers have been alert to give it no credence. This is reflected in numerous decisions, but it is not necessary to look any further than the two very local decisions put to Mr Jacobs⁶⁰, which were respectively for two flats, and six houses within the 400 metre zone. Neither of those applications would have had any significant effect on the European sites alone; and their effects alone would certainly deserve the description “*de minimis*”. That did not save them from rejection, by Poole and on appeal, because of the potential in combination effects. In treating the present, much larger scheme, according to a different principle, Poole is seeking to apply double standards, and now invite the Secretary of State to do the same⁶¹.

- 7.85 In support of his approach Mr Goodwin claimed⁶² that Natural England have, in other cases, taken the approach that *de minimis* effects could be ignored in looking at the possibility of adverse effects in combination; and he then advanced Graylingwell Hospital, Chichester and a proposal to cull seabirds in the Ribble Estuary as relevant examples.
- 7.86 Mr Squirrell subsequently obtained information about these two cases⁶³. Mr Goodwin, provided information about Graylingwell, Chichester and a further application, at Queen Elizabeth Barracks, Church Crookham⁶⁴. He did not there refer to the Ribble application.
- 7.87 On examination, none of these three examples supports Mr Goodwin's proposition. In respect of the Graylingwell application, considered in relation to the Chichester and Langstone Harbours SPA, Natural England were not addressing possible combined effects. That was made very plain in their letter dated 1 June 2009 to the local planning authority, especially in the third paragraph on the second page⁶⁵. In the Ribble case there is no suggestion of other plans and projects with which the effects of any of the three applications (one granted, two refused) might combine.
- 7.88 At Queen Elizabeth Barracks, a site more than 400m from, but within 5 km of the Thames Basin Heaths SPA, Natural England's letter of 4 March 2011 to Hart District Council, records their agreement with the conclusion reached in the applicant's *Information for Appropriate Assessment* that “no significant effect on the Thames Basin Heaths SPA either alone or in-combination is likely and thus no Appropriate Assessment would be required.” The letter continues: “Natural England would support this conclusion on the basis that there is clearly enough SANG and SAMM offered as part of this application to avoid impact to the SPA”⁶⁶.
- 7.89 This is a case in which Natural England accepted not merely that the potential adverse effects of the development on the SPA would be reduced to an

⁵⁹ NR/22 Ref 11, para 2.2.2

⁶⁰ NR/33 and NR/34

⁶¹ Matt ch 23, v 24: “Ye blind guides, which strain at a gnat, and swallow a camel”

⁶² Day 7, xx Mr Machin

⁶³ NR/41

⁶⁴ TVT 26

⁶⁵ NR/41 and TVT 26

⁶⁶ TVT 26

insignificant level, but that they would be eliminated altogether; in effect, a Dilly Lane situation. This is confirmed by the subsequent reference to the SANG having additional capacity to support other development.

- 7.90 What is clear from the Graylingwell and Queen Elizabeth Barracks cases, read with his evidence in this case⁶⁷, is that Mr Goodwin is prone to advance a *de minimis* argument in widely different circumstances, whether or not there is the possibility of combined effects; and in very similar language: compare TVT/5 paragraph 11.13, with section 7.11 of his Graylingwell representations and paragraphs 5.91 and 5.92 of those on Queen Elizabeth Barracks (both provided in TVT 26). Even where, as in the latter two applications, Natural England's advice is favourable to Mr Goodwin's client, this does not imply that they accept or adopt his own reasoning or terminology.
- 7.91 It is therefore clear that both TVT and Poole are in effect claiming that they have established the very position which they needed to achieve for success; namely that the development would not have any adverse effect on the integrity of the international sites.
- 7.92 So, what remains for them, in the admittedly unlikely event that the Secretary of State finds that the application will certainly not have a significant adverse effect alone, but will or may have some lesser level of adverse effect?
- 7.93 There remains, secondly, the "I'm alright Jack" argument, advanced by Mr Katkowski when cross-examining Mr Tyldesley. If correctly understood, the argument proposes that the TVT application, being in the 400m zone, can be isolated from other plans or projects. In the case of other housing, within the 400m to 5km zone, this is collectively catered for by the IPF, so that there is nothing in that quarter to combine with the insignificant effects of the current proposal. Mr Tyldesley's objection that, even so, there might be other proposals within the 400m zone which might combine with the TVT scheme, is brushed aside on the footing that the need to turn away subsequent proposals is irrelevant; the loophole might only be exploitable once, but TVT would be through it, and "I'm alright Jack". However, the rules of the game must be the same for all players; even including TVT.
- 7.94 Moreover, the argument does not even hold good in its own terms, because, as indeed Mr Katkowski identified when cross-examining Mr Tyldesley⁶⁸ the IPF does not assume that its package will wholly eliminate harm from residential development which it facilitates in the 400m to 5km zone. IPF paragraph 3.2 records Natural England's Advice as being that the range of measures "together comprise an appropriate package of measures to reduce to an insignificant level the harm that would otherwise occur to protected heathland". Thus even if (which is not the case) the only housing proposals other than TVT which needed to be considered were those permitted under the IPF, there would still remain the possibility of significant harm in combination once the TVT scheme is brought into account.
- 7.95 If TVT's position has been properly understood by NR, before there can be a significant effect of the application scheme in combination with other schemes,

⁶⁷ TVT/5

⁶⁸ Day 1, am

the other plan(s) or project(s) in contemplation must already be judged as likely to have a significant effect. Such an assumption would be erroneous. If it were correct, the “in combination” safeguard would be a dead letter, because its very purpose is to prevent the possibility of significant cumulative effects arising from projects which are individually insignificant.

- 7.96 Once these arguments are dismissed, nothing substantial remains. If once it is concluded that this project may have some residual harmful effects on the integrity of the international sites, albeit insignificant ones, the known existence of other plans and projects for housing development in the neighbourhood of those sites rules out the ability to ascertain that there will be no significant adverse effect in combination. And that in fact is how far less threatening proposals than this have been routinely decided.
- 7.97 A very recent Secretary of State decision, dated 3/10/2011, refusing a called-in application for 23 dwellings at Hurstleigh Park, Ascot provides a good example of the correct approach under the Directive and Regulations to “in-combination” effects. That was an application for 23 dwellings within 5 km of the Thames Basin Heaths SPA, which both Natural England and the RSPB accepted would not, on its own, have a likely significant effect on the SPA⁶⁹.

Expert Evidence

- 7.98 The witnesses called on behalf of NR have relevant experience and expertise that it would be difficult to match. Mr Tyldesley has been involved from the start in the development of what is now the accepted approach for reconciling residential development with the required protection of European heathland sites. Dr Day brings not only specialist knowledge of heathland birds, but long experience of managing the sites which sustain them, as well as a detailed awareness of the conditions required for them to thrive and the changes and activities which threaten them. Mr Squirrell can draw on not only his own ecological knowledge, but the collective wisdom of colleagues at Natural England. He also has a detailed knowledge of the Dorset Heaths, including Talbot Heath, gained over more than 20 years.
- 7.99 Despite the substantial common ground that exists, there are clearly differences of approach, and professional opinion, between these witnesses and those called on behalf of Poole and TVT. These are set out above, where they are directly relevant to the main issues in the case. But more generally, where there are differences between these two bodies of expert evidence, the evidence of the three NR witnesses should be preferred, not only because of its depth and cogency, but also because of some general flaws in the opposing evidence.
- 7.100 Poole’s case obviously depends heavily on the evidence of Mr Baker, the author of the AA of March 2009, and of the other, mainly tabular, part of Poole’s AA which records responses to the advice received from Natural England⁷⁰. Several facts have emerged in the course of the Inquiry which call into question the thoroughness of Mr Baker’s approach.

⁶⁹ NR/49 IR paras 295, 309 to 316, 332 to 339, and 347; DL paras 17 to 19

⁷⁰ CD 13

- 7.101 First, Mr Baker's first visit to Talbot Heath was only a few days before the Committee Meeting of 9 June 2010; after the completion of his Record of Appropriate Assessment dated 20 May. This alone drains his AA of all credibility.
- 7.102 Secondly, another unexpected revelation by Mr Baker related to the authorship of the responses to Natural England's letter of objection which appear in Appendix 2 to the Poole's Record of Appropriate Assessment⁷¹. As confirmed by Mr Genge that document, dated 20 May 2010, was prepared by Baker Consultants⁷². It refers (on page 1 of 2) to the AA as comprising Appendix 1 and Appendix 2. The introductory letter to appendix 2 says that "the attached documentation has been compiled by the Council's ecological consultant". That documentation includes Natural England's letter of 5/3/2010, and the meat of it is the Schedule providing the competent authority's responses.
- 7.103 The responses were in fact the work of two collaborating authors, Mr Baker and Mr Genge. Whilst the exact division of labour is not clear, contrary to its introductory text (drafted by Mr Baker) the Record of Appropriate Assessment⁷³ was not all his own work. Other issues arise as to the way in which Mr Baker's work was reported to Poole's Planning Committee, and which will be considered later.
- 7.104 Thirdly, one would expect a consultant in Mr Baker's position to identify and take advantage of Poole's in-house knowledge and experience of the protected sites, and of Talbot Heath in particular. He clearly failed to do so, because it was only this year (2011) that he first had contact with Jez Martin, Poole's established Nature Conservation Officer, whose intimate knowledge of Talbot Heath and other heaths in Poole should have been an essential part of Mr Baker's evidence base.
- 7.105 These matters, quite apart from the detailed criticisms of Mr Baker's evidence advanced by the NR witnesses, including the failure of the AA to make allowances for the present poor condition of Talbot Heath⁷⁴ mean that only very limited weight can be accorded to his evidence.
- 7.106 The planning officer most closely involved with this application, at least in recent years, was Mr Genge. His approach, and that of the Council, to the determination of this application is of course fundamentally at odds with that taken by NR, and embodied in the evidence of Mr Tyldesley and in legal submissions. Whilst it was not possible to cross-examine Mr Genge, there are two points to make about the general reliability of his evidence.
- 7.107 First, Mr Genge cannot escape some responsibility for Poole's inconsistency in judging the TVT application according to principles quite different from those applied, since 2005, to assess (and reject) other proposals for residential development within the 400m zone⁷⁵. That inconsistency is glaring, but, far from recognising it, Mr Genge implies that it is Natural England which has been inconsistent.

⁷¹ *ibid*

⁷² Genge BPC 002, para 4.3 but presented by Jacobs

⁷³ CD13

⁷⁴ NR/3 para 7.11

⁷⁵ NR/33 and NR/34

7.108 The second point, arises from the reference which Mr Genge makes in his proof to the Delph Gardens permission and the Verity Crescent application⁷⁶ which reads:

"In considering the consistency of the mitigation as now proposed for the current proposal it is clear that Natural England have previously accepted a 'cat proof fence' (Verity Crescent), cat and dog covenant (Delph Gardens), financial mitigation towards IPF (Verity), and that notwithstanding the 400m zone it is possible to adequately mitigate significant schemes where the impact is acknowledged as being up to 5km from Natura 2000 sites."⁷⁷

7.109 Here Mr Genge has collected together various elements of mitigation applied or proposed at one or the other of these sites. Even at first glance it is obviously impossible to infer from this information that the inclusion of a cat proof fence, pet covenant and financial contribution in the mitigation package proposed by TVT might make that package acceptable, or that Natural England's rejection of the adequacy of TVT's package is inconsistent with its past approach.

7.110 But a closer examination of the Delph Gardens permission, and the Verity Crescent application, reveals that Mr Genge has failed to understand the context of the advice proffered by English Nature and Natural England in those two cases. Briefly, the case of Delph Gardens was considered in 2005, before emerging evidence about the adverse effects of residential development in proximity to the European sites compelled the planning authorities and NE to take a much stricter approach. In short, as Mr Genge should know, the Delph Gardens permission preceded English Nature's change of approach to such applications, and Verity Crescent is actually an example of the new approach in action. In that case the cat proof fence was required to protect an existing interest on the application site rather than the designated sites. The development was outside the 400m zone and within 5km of various component parts of the European sites, and was matched to appropriate SANG and financial contributions in accordance with the then current IPF. Natural England, through Mr Squirrell, advised in accordance with the same principles as have, since 2005, informed its advice on the current application⁷⁸.

7.111 Mr Jacobs was thrust into a situation not of his own making, and although he adopted and defended Mr Genge's written evidence, the expression of his own reasoning was inevitably oral. As author of both editions of the IPF Mr Jacobs is well aware of the legal requirements and the scientific assumptions which underpin it.

7.112 Neither NE or RSPB has called into question Mr Jacob's performance as author and lead officer of the IPF. What they do not agree with are his attempts to reconcile a grant of planning permission on this application with the IPF, with the legal approach required by the Directive and Regulations, and with the principles according to which Poole has determined, or sought to determine, all residential proposals close to the European sites, except this application.

⁷⁶ BPC 002 paras 4.20 to 4.25, & Appendix B

⁷⁷ BPC 002 para 4.25

⁷⁸ NR/12 paras 3.7 to 3.18 & NR/15 paras 3.1 to 3.3

7.113 It remains to consider Mr Goodwin, the second of the two ecologists who contend that TVT's mitigation package is adequate to justify the conclusion that the development will not have a significant adverse impact, alone or in combination, on the integrity of any of the SPA, the SAC or the Ramsar site.

7.114 Submissions already made indicate that Mr Goodwin's claims about the effect of the essential elements of TVT's mitigation package are unfounded. In standing back to look more generally at Mr Goodwin's evidence, and his approach to the crucial issues in this case, critical appraisals are provided by Dr Day⁷⁹ and by Mr Tyldesley⁸⁰. The essence of Mr Goodwin's approach is captured by Mr Tyldesley, where he says⁸¹:

"These uncertainties and inconsistencies are compounded by Mr Goodwin 'rolling up' all the measures together. Throughout his evidence, when expressing conclusions about the effects on SPA/SAC, Mr Goodwin appears to use, as a whole, what he refers to as "avoidance, mitigation and enhancement measures". He does not appear to separate out which effects are avoided, which are only mitigated (reduced and may therefore trigger in combination assessment with other plans or projects at likely significant effect stage) and which are enhancement, by which I assume he means a benefit over the existing situation. Everything is just lumped together".

7.115 Mr Goodwin was himself a latecomer to this application, and is the only witness called by TVT notwithstanding their long-standing engagement of the Adams Loxton Partnership. His own surveys in the event did not (except as regards badgers) add significantly to the data already available, and in any case were flawed by the fact that, although the likely effect of housing development would be felt over the whole of Talbot Heath, he surveyed only the part in TVT ownership.

7.116 Mr Goodwin's "lump it all together" approach demonstrated a lack of discrimination and a reliance on assertion rather than reasoned analysis. His evidence needs to be assessed with that in mind.

Consistency of Approach

7.117 This Inquiry has involved two parties with statutory functions and responsibilities, BPC and NE, from whom rigour and consistency in the discharge of their duties should be expected. Where regulation 61 applies, consultation with NE is mandatory, and the judgment in Dilly Lane refers to the appropriate approach of the competent authority to NE's advice. Sullivan J said, in paragraph 49 of his judgment:

"Mr Hockman rightly accepted that the weight to be given to the views of NE was a matter of planning judgment for the first defendant. Since NE is "the appropriate nature conservation body", as defined by reg. 4 of the Regulations, the first defendant was entitled to give "great weight" to its views if she chose to do so. Indeed it would have required some

⁷⁹ NR/18 p2 to 6

⁸⁰ NR/12 p11 to 23

⁸¹ Ibid para 4.21

cogent explanation in the decision letter if the first defendant had chosen not to give considerable weight to the views of NE.”

7.118 In responding consistently and impartially to residential planning proposals in both the Thames Basin and Dorset, Natural England’s advice, according to the circumstances, has sometimes been favourable, and sometimes adverse, from the applicant’s point of view. Natural England has been prepared to back its advice either at Inquiry, or in court, whether it has accepted (as in Dilly Lane) or rejected (as at Hurstleigh or at this Inquiry) the adequacy of mitigation proposals. Natural England has been at the forefront in efforts to reconcile the achievement of residential development with protecting the integrity of European sites.

7.119 The RSPB is also a science-based organisation which respects legal requirements and current planning policy, and whose credibility in pursuing its aims depends on its reputation for being rational and responsible. That is reflected in its being so fully in agreement with NE’s advice on this present application, as to enable the presentation of a joint case. The charges of inconsistency levelled against NE in respect of its approach to the present application, by Mr Genge and Mr Goodwin, are groundless, for the reasons set out above.

7.120 In the case of Poole, initially the competent authority charged with determining the present application, it has, in contrast, been guilty of inconsistency in that its interpretation and application of the requirements of the Directive and Regulations, and indeed of the IPF, in relation to this application, has been markedly different from its treatment of other applications, in a way that has favoured this proposal. Submissions have been made to that effect.

7.121 However, the record of Poole’s consideration of this application reveals another level of inconsistency, in that the Council has fallen below acceptable levels of thoroughness and objectivity in assessing the merits of a scheme which they would clearly like to see brought to fruition.

7.122 Two examples illustrate this. The first relates to the reporting of the ecological issues to the Planning Committee. Reference has already been made to the form of the Record of Appropriate Assessment⁸². In the Committee Report⁸³ Heathland Issues were dealt with at pages 20 to 30, and attention is drawn in particular to the first two paragraphs on page 22 and the final paragraph on page 24. This last reads:

“It is also noted that Natural England continues to strongly object to the scheme and many of the aspects of the Appropriate Assessment. However, each of the points raised by Natural England in relation to this have been addressed by a response from the ecological consultant who carried out the most recent Appropriate Assessment in 2009. The outcome was that the consultant remains firmly of the opinion that the Assessment carried out has been done so properly and in line with the

⁸² CD 13

⁸³ CD 12

relevant regulations and that the mitigation offered overcomes the impact of the development. As such, the Appropriate Assessment has been concluded."

7.123 In the light of this report, it must be questioned whether the Council gave considerable weight to the views of Natural England, or whether it has provided a cogent explanation of its failure to do so. But the main point here is that the report was giving the Committee the misleading impression that the rebuttal of NE's points derived solely from the ecological consultant, when in fact, as we now know, they were a joint effort involving their own officer, Mr Genge.

7.124 The second example is the suppression of the advice tendered by Poole's own Nature Conservation Officer, Jez Martin, in his substantial consultation response of 30 July 2009 advising that this application should be turned down⁸⁴. This response was important, because, amongst Poole officers, Mr Martin was uniquely very well qualified to advise on the ecological implications of the proposal, with a detailed knowledge of Talbot Heath and Poole's other heathland sites.

7.125 Nathaniel Lichfield and Partners were sufficiently concerned about Mr Martin's advice to submit to Poole a detailed rebuttal⁸⁵. None of this was reported to the Committee, and Mr Jacob's procedural explanation of this failure was, it is submitted, inadequate and unconvincing.

7.126 Of course, the decision is now for the Secretary of State, and these matters have now been highlighted; but the Planning Committee was not aware of them. But for the call-in BPC would have granted planning permission on the basis of a misleading and incomplete picture of the available ecological evidence and advice.

Other Issues

7.127 The case as submitted to this point is sufficient to ensure that the application is dismissed. It could not lawfully be granted. However, there are a number of other issues which have been canvassed and which are now dealt with briefly.

The Development Plan

7.128 It is NR's case that the proposal is not in accordance with the Development Plan. In particular, as stated by Mr Tyldesley in his evidence, although the site was allocated for the proposed development in the BPC Local Plan, "limited weight should be given to an allocation which includes development immediately adjacent to internationally and nationally designated sites which:

- a) has not been subject to a Habitats Regulation Assessment because there was no domestic regulatory requirement to do so at the time;
- b) pre-dates PPS9 and Circular 06/2005 and the adoption of the Dorset Heathlands IPF; and

⁸⁴ NR/29

⁸⁵ NR/37 Appendix 1

- c) was originally allocated at a time when the effects of urban development in close proximity to heathlands were not as fully understood as they are today.”⁸⁶

7.129 In any event, despite the policies of the Development Plan relating to the application site, the qualification relating to effect on the European sites, and the overriding force of the legal requirements of the Directive and Regulations, means that consistency of application with policy itself depends on the decision to be made under that legislation.

Nature Conservation Features of National and International Importance

7.130 There are interest features of Talbot Heath of national and local importance, which might suffer adverse consequences should the development proceed. However it has been unnecessary to focus on these in great detail because in effect they benefit from the legal protection afforded to the European interests.

7.131 There is just one point to be emphasised, arising from the holistic approach of the Directive, which is reflected in legal submissions⁸⁷, that: “in the context of habitat protection, Article 1 of the Habitats Directive defines the favourable conservation status of a natural habitat as depending, amongst other criteria, on the favourable conservation status of its typical species”; with reference in particular to Article 1(e) and (i).

7.132 Mr Baker, when asked whether the extermination of all fauna on an SAC would affect its integrity, took the view that it would not; and he contested the relevance of the definitions which are referred to in the Directive. His approach does not do justice to the nature of the Directive. The legal requirements crucial to this case are encapsulated in Article 6(3) of the Directive. That extreme concision is possible, and effective, because of the structure of this (and other) Directives, in which the purposes to be served are spelled out in extensive recitals, and the terms used in the operative clauses are, in the beginning, fully and carefully defined. Thus when considering effects on the SAC, its integrity is not just a matter of the state of its geology and flora, ignoring its typical fauna, any more than the integrity of an SPA can be assessed without considering the condition of the habitat which supports the birds for which it is classified.

Overall Conclusion

7.133 In the circumstances it is submitted that this is an application that as a matter of policy, should not be granted, and as a matter of law cannot be granted. The Inspector is invited to make her recommendation to the Secretary of State accordingly.

8. THE CASE FOR BOURNEMOUTH BOROUGH COUNCIL (BBC)

Introduction

⁸⁶ NR/3 para 3.20

⁸⁷ NR/21, paragraph 35

- 8.1 There are three areas to be addressed which fall under the headings of policy, technical input and guarantees. However, there are two introductory comments that BBC would wish to make as they are important considerations and the Inspector may be invited to make judgments based on them. Before turning to these, there are two matters on which the Inspector may be invited to make comments.
- 8.2 The first is the suggestion raised by BPC that BBC is somehow acting beyond its powers or outside its area of responsibility. Mr Francombe made various comments under that heading and included words like “interfering” or “untrusting” in the way that BBC had dealt with the transport implications of the development proposal. He was clearly trying to paint a picture that BBC were going well beyond anything it was entitled to do. Similarly in cross examination of Mr Davies it was put to him in a question “What right did BBC have to get involved with matters for which BPC was responsible?” and specific mention was made of the cat proof fence, which is clearly located solely in Poole.
- 8.3 BBC’s concerns are very different to that. BBC is the responsible Highway Authority for the road network onto which this development proposal will decamp all its vehicular traffic. The traffic will enter onto the network for which BBC is responsible and all the traffic will add to the flows and the congestion on that network. Those flows will not only include any additional traffic that arises directly from the development proposal it will also include traffic that alters as a consequence of some aspect of the development proposal changing the existing arrangements thereby leading to more traffic than currently exists on the network. A perfect example of a change being the potential transport effects of the adoption of the cat proof fence as an essential part of the development. Although the acknowledgement by TVT that the fence does give rise to a change is welcome, albeit that it is a recognition that has come very late in the day and surprisingly it has come without causing them to make any changes to the way they or BPC see the situation, that must be taken on board.
- 8.4 A suggestion that because it is physically located in Poole and does not run through Bournemouth does not remove the need for the transport effects of that to be taken into account. Fortunately the evidence of Mr Eves⁸⁸ does now recognise an effect of that cat proof fence and even though it may be seen as small, it is one that needs to be taken into account as part of the effects of the development proposal.
- 8.5 In the absence of a clear indication that BBC has acted outside its area of responsibility, and nothing has been suggested in evidence or put to my witnesses other than the partial reference to the cat proof fence which proved to be false when explained that it was the transport effects rather than the location or existence that mattered, BBC urge rejection of any such criticism.
- 8.6 As for the second point that relates to the respective roles of the parties before this Inquiry. Despite the various questions put to Mr Carter, it is not BBC’s role to bring forward a transport justification for the scheme or to develop and design alterations to the highway to accommodate the traffic or other mitigation measures. In short it is not BBC’s job to correct the deficiencies in the TVT’s

⁸⁸ TVT 2 P 17

case. One would expect all such aspects to be covered in the Transport Assessment, which would identify all the relevant implications in accordance with modern and up to date best practice. After that one would expect the Local Planning Authority, who would be determining the application at first instance, to examine that critically provided it had access to the relevant expertise whilst consulting with the relevant highway authority or to seek guidance from the relevant authority if it did not. In this case the transport position seems to have been sorely under examined by the Local Planning Authority; an impression confirmed with Mr Francombe's statement that he was not aware of the non standard Arcady approach followed by Mr Eves in a document intended to address BBC's concerns.

- 8.7 The importance of that is clear from Mr Francombe's evidence. He describes the lack of any involvement by BBC in the process. That lack of involvement started from the initial preparation of the TA throughout the assessment of it, including the application of policy to the planning application itself and the consideration by BPC up to the point that it was minded to give consent⁸⁹. In fact he seems to be praying that exclusion of BBC in aid to support his case. The reality is that BBC was extremely concerned about the transport implications of the proposal and tried repeatedly to make its views known but those representations largely fell on deaf ears. Following the acceptance of the site as a development site by the Local Plan Inspector following the local plan inquiry BBC's representations were clearly on the basis of a satisfactory resolution of the position with associated mitigation measures and developer contributions (as envisaged by the Local Plan Inspector) rather than as a matter of objection to the development in principle.
- 8.8 It was as a consequence of the apparent determination of BPC to grant consent that BBC was forced to do more than it would have expected to have to do in relation to an application of this sort and to try to produce information sufficient to identify the failings in the applicant's case. We do not claim to have done a perfect job in that respect, the inevitable constraints of finance and time prevent it, but BBC has provided sufficient information to prove the problems, problems that have caused TVT to alter its position at this Inquiry, although BPC have not undertaken the same scrutiny and its position is not so clear.
- 8.9 Mr Eves is an experienced Consulting Engineer dealing with transport assessments for developments. He will be accustomed to the differences between 2-tier arrangements for local government and unitary councils, in which the highway and planning authorities are all one Council. He will be aware that in Poole, a Unitary authority, there is no external independent highway response on planning applications, and that highways matters are an internal issue. Mr Francombe says that he relies on Mr Eves for all his highway advice and transport assessments for this development, and that he does not consider himself an expert in Arcady and that he did not seek any advice from any engineering colleague in Poole who understands Arcady better.
- 8.10 Mr Eves must have been aware that TVT had a 'clear run' through the highways development control process in Poole, unchecked by any external authority or internal expert on Arcady. Mr Eves must have found it surprising that Poole did

⁸⁹ BPC 006 Ps 8, 9 and 10

not heed Bournemouth's long-standing concerns given that the effects of the traffic impacts are felt largely in Bournemouth (2/3 of the development traffic) and that only Bournemouth were taking any interest in thorough independent technical checking of his TA. Neither Mr Eves nor Mr Francombe sought discussion with Bournemouth or its technical consultants after BBC reiterated its earlier objections in May 2010 (after the Supplementary Report had been submitted). Which leaves the question: Why? Mr Eves would be well aware of requirements in best practice to consider NATA objectives but the advice given on the choice between Option 1 and 2 is purely on the basis of Transyt on the junction capacity and delays.

- 8.11 Having said that and in the light of BBC's involvement, no doubt, TVT's case has developed from that set out in the TA; in fact it has developed with the presentation of TVT 12/13 and the altered Section 106 Agreement, largely as a consequence of the technical input of BBC and what appears to be an acceptance that the TA was inadequate. We now have an assessment of traffic arising from the academic floor space, a change to the flows arising from the cat proof fence, a recognition of the inability of the Arcady programme to record important features such as queuing through roundabouts as well as the manipulations made to the programme to make it work and the importance of links. Nevertheless Mr Francombe questions the relevance of the link assessment despite the network congestion being on the links as well as at the junctions which received scant coverage in the TA. It is informative that BPC did not authorise and perhaps was not even aware of those limitations in the TA process and could not therefore be said to be considering a full picture.
- 8.12 The importance of that is actually two fold. The views being expressed by BBC, as the responsible highway authority should not be taken lightly but rather need to be given great weight, especially as TVT's position seems to have moved to try to react positively to them. In that respect we will see below the difference between the parties. BBC indicates not only a congested network now but one that will worsen in the future. This is to be contrasted with TVT's position, supported by BPC, that by adding all this development traffic (which amounts to an additional 253 residential movements in the am peak and an additional 268 in the pm; with 30 and 33 respectively for student accommodation in the am and pm peaks along with any for the academic floor space) the assessment shows only a very limited change. Secondly to recognise that TVT's position and therefore that of BPC has changed.
- 8.13 During the opening remarks the input and involvement of BBC was ridiculed to an extent. The subsequent events would suggest that such a stance is untenable; the views being expressed by BBC should carry great weight and are those of a Highway Authority acting responsibly in managing its strategic highway network.
- 8.14 On the three specific issues raised by BBC, submissions are restricted to transport matters, that being the relevant input from BBC.

The Policy Position

- 8.15 The Council are the guardians of Development Plan policy and would normally be expected to seek to apply it to a development project, rely on it to make a decision and where necessary to protect it against challenges. To do so is no more than that which is required by the primary statute. Section 38(6) of the

Planning and Compulsory Purchase Act requires that the determination of a planning application must be made in accordance with the development plan, where that plan contains policy material relevant to the application unless material considerations indicate otherwise. Where there is a relevant policy directed towards the development of a particular site there can be no better indication of the material nature of that policy.

- 8.16 That is the case in this appeal. Within the Poole Local Plan First Alteration (LP) policy H3 is entitled Talbot Village and applies directly to the application site; and there is a subsidiary policy T13 dealing with the necessary traffic management measures. Policy H3, which was considered specifically by the Local Plan Inspector during the examination process, makes provision on the land for residential uses and academic floor space subject to certain provisos. The fact that they are referred to as proviso's in the body of the text ensures that the development can come forward consistent with policy where those various considerations are met. Prior to the adoption of the policy BBC was not keen to see the development of this site as envisaged due to the traffic implications that arise from it. However, that position changed with the acceptance by the LP Inspector that the development could be acceptable if the provisos are met. BBC has maintained an approach consistent with that since.
- 8.17 Those provisos cover matters relating to protection of important aspects such as ecologically sensitive areas, residential amenity and of most significance for BBC the "(iv). Access to the site is (to be) from University Roundabout except for bus access from Boundary Road Roundabout." In BBC's view, a view that fully coincides with the LP Inspector, such a proviso is essential to ensure that a sustainable development is brought forward which will promote public transport and which will minimise the use of the private motor vehicle consistent with Government ambitions and good planning.
- 8.18 The Inspector made comments in recommending the inclusion of policy H3 but before turning to those there is a short point to deal with. Even though the starting point in making any decision must be the contents of the development plan, a policy can be "overridden" if material considerations indicate that it should be. That is the flexibility of the system to take advantage of other factors or where the weight to be given to relevant matters may have changed. If, therefore the argument to be followed is that the policy says one thing but material considerations now suggest a different approach, that should be set out clearly so that it can be understood.
- 8.19 During cross examination of Mr Davies it was suggested that even though the policy says one thing material considerations could mean a different decision is made. Mr Davies unsurprisingly accepted that point. What is surprising is that the new material considerations were not put to him for comment nor were they identified to him. What is also surprising is that not only were those "new material considerations" not identified, in the evidence there is nothing to support a finding that they were presented to Committee for consideration in the light of what the policy says. In fact the officer's report to committee⁹⁰ is silent on the reason for the change. Even though the complete policy is referred to as being the "overarching local policy for developing this site" and under the

⁹⁰ CD12 pp 9 & 17

heading of response to transport issues it states that reference should be made to the "Planning Considerations" section of the report, no material comment is found therein. That section refers to the historical objection of BBC to the application, which clearly had a profound effect on the way Mr Francombe approached the case; it refers to local transport changes 2000 to 2010 (some of which would have been known to the Local Plan Inspector); future transport schemes and the use of travel plans; and then draws the conclusion that the Head of Transportation finds the development sustainable. One searches in vain to find any explanation to justify dropping that significant element of the policy. Nor is it explained how such an approach relying on other material considerations can stand when the BPC evidence in the context of a reference to section 38(6) indicates that the proposal accords with the provision of the development plan rather than overriding it⁹¹.

- 8.20 What does exist is a statement and report written by Mr Francombe, which was summarised in CD12 but was not put before the Committee. Before considering that it is necessary to be reminded of the importance the LP Inspector placed on the provisos in order to find the development sufficiently acceptable to be included in the policy document. This is necessary given Mr Francombe's mistaken belief that the Inspector had considered all relevant matters.
- 8.21 The LP Inspector considered the policy in detail⁹². However, despite the findings and recommendations of that Inspector within a very short time a different approach had been adopted towards the consideration of the application. That different approach was not necessarily adopted by BPC, as there is no evidence to support any finding that it was considered by or brought before any Committee to change the policy approach. Rather the view of some or perhaps one officer had changed towards it and has since been followed on that basis.
- 8.22 The Inspector set out his approach in paragraph 8.175⁹³ when he stated "the application is not before me. In dealing with objections to this Plan, I must first consider the principle of development and then, if that is acceptable, whether or not policies here and elsewhere in the Plan provide the necessary basis for the Council to consider the proposals in detail at the planning application stage". That is a commendably clear statement and explains that the principle could be acceptable but not necessarily the detail, and what was required was a clear indication in the policy requirements to make it so. In that respect "Issue b" was identified as being the "Effect on Traffic".
- 8.23 Paragraph 8.184 of the Inspector's Report makes it clear that many local people as well as BBC raised the concern and the finding in paragraph 8.185 was that the policy could remain as the "improvements and traffic management measures which may be needed directly as a result of the development of the site can be assured by the application of policy T13a". To do so, as he states in the following paragraph, it "will ensure that the proposals meet the Council's requirements on safety, impact on the network and provision for public transport". He thereafter recommends that the original policy be deleted and the one now before us adopted.

⁹¹ BPC /2 para 5.5

⁹² BBC/1 App H

⁹³ Ibid

- 8.24 It is significant that the H3 (iv) reference was included specifically and that the access arrangements were not left to the detailed stage. The policy position could not be clearer on that issue and to find this proposal acceptable in the absence of that restriction would fly in the face of the very policy that BPC should be seeking to protect.
- 8.25 The question is therefore what is being relied on now to support the change. It appears from Mr Eve's evidence as well as from what was indicated in opening that TVT is neutral on the point and suggests that it is a simple question of applying a condition if it is thought appropriate; although it is hard to see how that could be done without examining the background. We also know the reason why that neutral stance is adopted and what supports it. As long ago as 2005 at the time that the application was being brought forward Mr Eves wrote to BBC explaining the position⁹⁴ as follows; "it is not Government policy generally to accommodate unconstrained traffic growth and the emphasis is upon improving public transport, which, by way of the contributions towards bus priority measures, is the emphasis behind the planning application. This approach was also endorsed by the Local Plan Inspector who supported the policy for a bus only access and the development in general taking into account many representations and objections."
- 8.26 Further in the same letter when responding to a suggestion that the development was not sustainable he relied on the bus only restriction as part of the bus measures required to justify a finding of sustainability. Further in that letter he accepts that there is queuing back through junctions and he agreed to the reservation of a corridor for future mass transport systems.
- 8.27 Taken together he is clearly agreeing with the proposition that BBC are putting forward that the bus only access point was not only a necessary requirement to enhance the sustainability approach of the development but further that the Inspector had made the recommendation he did mindful of the effect of that restriction. In those circumstances we are entitled to know and understand the basis of the change.
- 8.28 It is the BPC who are pressing the point, but in the evidence called the explanation is limited to paragraph 4.1 (ii) to describe the position⁹⁵. In that paragraph Mr Francombe describes the factual position. Following the adoption of the policy a consultation on the proposals was carried out in the summer of 2005. Talbot Village residents made representations and Mr Eves was asked to assess the benefits of an all purpose link to the Boundary Road Roundabout in order to address those residents concerns. Mr Francombe does not describe those results in his evidence but merely states, that by early 2006 "I was convinced that the bus only link was substantially inferior ...and (he decided to take his decision) to Poole's Planning Committee." There is no evidence to indicate that ever happened and the only reference to consideration of the application by the Committee is the 2010 date where the report was presented for decision⁹⁶. We know that report did not include any justification of the matter as it was not considered by the Committee.

⁹⁴ BPC /6 App 5

⁹⁵ BPC /6

⁹⁶ CD 12

- 8.29 There is however the report written by Mr Francombe which was summarised in the committee report. In paragraph 2.2 he states “in early 2006 Poole considered that there was overwhelming evidence supporting an all purpose link (rather than a bus only link) to Boundary Road Roundabout”. There is nothing to suggest that Poole ever considered that although we know Mr Francombe was convinced by what he says in his evidence. We also know from that evidence that Mr Francombe recognised that he did not enjoy the power to unilaterally change the policy position by reference to the fact that he intended taking the decision back to the Committee.
- 8.30 Further in that same report at paragraph 5.4 that change of mind is explained. It states that the Transportation Services of BPC were supportive of the restriction but following criticism of it by local residents the position was reassessed and the different approach adopted. There are five reasons listed for that change of mind. Interestingly four of them are set out in identical terms in paragraph 4.6 of Mr Eve’s original evidence⁹⁷ as being choice of route for Talbot Village residents, less congestion, a reduction in traffic flow next to the University (which explains the less congestion point) and a reduction in gaseous emissions from less mileage for those residents. The fifth point is said in Mr Eve’s evidence to be removing the need to change University Roundabout whereas in the report it is said to be “no need for the development to fund changes to the roundabout”.
- 8.31 What is clear from all those measures is the strictly limited view that was taken about them. All in the list are aspects that make driving easier for Talbot Village residents and the consequential benefit that flows from that; including the reduction in gaseous emissions which arises from the shorter distance for users travelling to and from Bournemouth via the Boundary Road Roundabout rather than using the University Roundabout. What is lacking from that is any reference to the purpose underlying the restriction which was supported by the Inspector and which was relied on by Mr Eves in originally promoting the restriction as a positive bus measure, and which underlines much of current thinking. The promotion by BPC of an all purpose link on the basis that it helps car users in Talbot Village is no doubt to be welcomed by them but it flies in the face of modern thinking about transportation. It is a classic case of following an out of date road based solution to a problem rather than taking the wider and more appropriate view. If the residents can be served, and at the same time encouraged, by enhancing non car based transport to make use of public transport that meets current policy; it is consistent with the Local Plan Inspector’s recommendations; and it will support the LTP3 proposals for improvements to public transport in this corridor.
- 8.32 Nowhere in the “assessment” carried out by Mr Eves or presented to Mr Francombe has public transport promotion and accessibility been assessed or promoted. There has been no assessment against PPG 13 and its approach. There is no assessment against the principles of integration and of great significance nowhere has it been assessed against the full range of requirements in the New Approach to Appraisal (NATA).

⁹⁷ BPC /6

- 8.33 What has happened is just as set out in the evidence called by BBC, the local residents objected to the proposal, a review was promised and undertaken and Mr Francombe was convinced of the advantages. Most of those advantages are car borne related for the residents of a small area and are achieved at the expense of the promotion of other means of travel. Mr Francombe was convinced in 2006 and despite his stated intention to confirm that with the Council there is no evidence to say that happened. What was originally his view has transmogrified into a BPC view despite the fact that the public transport implications have never been taken into account and there is no suggestion "Poole", the authority considered it.
- 8.34 Accordingly on the basis that the policy was imposed in the light of the appropriate needs and was justified as such, as well as on the basis that it has never been properly overridden and that the matters now relied on have never been to committee and are partial in that they ignore material factors the policy should stand as drafted and adopted. That is reinforced by the fact that the policy was considered and adopted very shortly before the change of mind came about and the matters relied upon could well have been before the Local Plan Inspector.
- 8.35 That position does not alter if regard is had to Mr Eves' expressed concern about emergency access. Mr Carter dealt with that fully in his rebuttal (BBC 3R) and the needs for emergency, as opposed to unrestricted access can be accommodated within the proposal without altering it. There is no basis for finding otherwise and there is nothing from any of the emergency services suggesting the contrary.
- 8.36 A final point to note under the heading policy is to record Mr Francombe's agreement that applicable policy from Bournemouth is relevant. It is a shame that such recognition did not come earlier and it is made worse by the fact that neither the applicant nor BPC have referred to it. It stands therefore as presented.

The Technical Case

- 8.37 The fact that there were errors in Mr Carter's evidence is unfortunate but not damning, rather the opposite is true given the willingness to recognise them. The important point, however, is not that there were errors but the consequence. Mr Carter accepted that the difference between his erroneous figures and his corrected ones was material but that is not the issue. The issue is whether his corrected figures show an acceptable position and they do not. Where would the cross examination have gone if the errors had not been made?
- 8.38 Since the time of the adoption of Policy H3 covering the site the case being pursued by BBC has remained consistent. Although originally opposed to the development, provided the scheme comes forward in a way that is consistent with the Inspector's recommendations and findings that lead to the adoption of the Local Plan BBC has no opposition in principle to the development.
- 8.39 The objections that do remain relate to the failure to pursue the development in a sustainable way which in essence relates to the failure to maintain the bus only access option; the incorrect estimation of the predicted trip generation for the development, adverse impact arising from additional congestion on Wallisdown Road, resultant inappropriate mitigation and developer contributions

and a final point that can be dealt by condition to protect a policy commitment for a mass transport system (as envisaged in Mr Eves' letter from 2005) and now accepted by Mr Francombe as being an outstanding and current policy commitment. In this respect the questions put to Messrs Davies and Campkin about such a proposal flying into the heart of the protected areas was clearly put on a false basis. The policy envisages the reservation on the non-protected land.

- 8.40 The applicable policies not only require the bus only link, in order to comply with Policy H3 but also require compliance with policy T13. T13 requires applications to be refused unless the additional traffic generated can be catered for safely or accommodated with appropriate remedial measures.
- 8.41 There is nothing unusual about such policies and the ones operative in Poole are essentially the same as for Bournemouth. Those policies do not seek to prevent development but rather, especially given the congested state of the network in many urban areas, to find a solution which allows development to be progressed in an acceptable way. That is often achieved through a combination of actual road works, traffic restraint measures and enhancement of public transport as well as other means. Often it means the expenditure of monies obtained through agreed means.
- 8.42 It is extremely rare for the authority that is actually responsible for much, if not all of that to be excluded from involvement in it. It is BBC who is the responsible Highway Authority for the strategic network and that responsibility will extend to cover all the traffic from this development from the time that it reaches University Roundabout or, unless prevented the Boundary Road Roundabout. It is for that reason why BBC's involvement is so critical and why criticism can be aimed at the failure to respond to that.
- 8.43 Having said that BBC can record that there is much common ground between the parties, as the Inquiry ends. Parties in that respect largely mean TVT and BBC on the technical matters as BPC has not taken an active role. There is agreement on traffic counts and the appropriate amount of allowance for traffic growth; 5% to be allowed for growth from 2009 to 2016 in accordance with current best practice. There is an acceptance that the Replacement Table 15 provided by Mr Carter is correct, and thereby that the allowance of 5-7% for traffic growth and new trips for academic floorspace, which define the realistic 5% growth case are correct.
- 8.44 It appears to be accepted that the way that the original Arcady work was undertaken was fundamentally flawed⁹⁸. Mr Carter holds the view that Arcady can be a very useful tool in determining the impact of development on the existing highway provided it is used appropriately. Mr Carter has given his views that the Arcady program should be used without alteration to the capacity formula or to the standard default peak flow profile in order to make best use of it in the circumstances of the junctions on Wallisdown Road. The traffic count information (in half hourly time segments) and the absence of any surveys to suggest that the capacity formulas should be modified make it necessary to use Arcady in this way. Mr Carter also firmly considers that the advice in Design

⁹⁸ Appx 4 BBC3

Manual for Roads and Bridges (DMRB) TA23/81 should be followed and that, as a result, ratios of Reference Flow to Capacity (RFC) of about 0.85 or greater are not acceptable. The advice of TA23/81 is clear that the use of RFC values below 0.85 will avoid the risk of queuing resulting from the standard error of prediction in the capacity formula in Arcady. Although the TVTs and Mr Francombe hold slightly different views in that they believe that it is the comparative nature of it that helps most, where they must agree is that it is used in a way consistent with the programme.

- 8.45 Within Arcady there is a key parameter in the roundabout entry capacity formula which governs the way the programme responds to the existing situation. The Slope/Intercept value (where Slope is the rate of change of entry capacity of a roundabout with circulating flow and intercept is the maximum entry flow) permits the programme to work out how much traffic can get through the junction. The programme has in built slope/intercept values based on many observations by the creators of the programme and they can only be interfered with in special circumstances and then only when additional work has been done.
- 8.46 That did not happen in this case but rather the changes have been made in the Supplementary Report to adjust the value to arrive at a delay result which Mr Eves wanted to achieve. Unfortunately for the reason given by Mr Carter even the result Mr Eves wanted to achieve was defective as that had also been arrived at on a false basis. As Mr Carter states⁹⁹ "The consequence of using the TVT methodology in the Supplementary Report is that the entry capacity equation was incorrectly adjusted and in this case the result is that the entry capacities to the roundabout and queue lengths are completely wrong." This supplementary report was submitted to address BBC's concerns.
- 8.47 The question arises therefore what reliance can be placed on the work undertaken by the applicant. The short answer is none given the fact that it has been undertaken in a way that fails to follow the appropriate approach. Mr Eves attempt to answer¹⁰⁰ has been dealt with by Mr Carter where once again he points out an error. In attempting yet another approach, all Mr Eves achieves is to mix two separate issues, namely geometry and flat profile.
- 8.48 In an assessment process that had consistently followed an approach using peak within a peak profile approach, he describes a flat profile approach¹⁰¹; the difference being that a peak within a peak is the highest level whereas the flat profile assumes a constant traffic flow throughout the peak period. The fact that is a new approach is surprising but it is even more strange when, as Mr Carter points out¹⁰², Mr Eves' own figures in Appendix C show traffic counts in half hour segments that are not constant during the peak hours. The effect of such an approach is to minimise impact but the results are false because the peak traffic profile is not flat.

⁹⁹ BBC 3 para 3.17

¹⁰⁰ TVT 9

¹⁰¹ TVT 9

¹⁰² BBC6 para 18

- 8.49 In addition there is an absence of pedestrian crossing points of the road in the assessments, which has the effect of overestimating capacity as it removes the disruption caused by the crossing points.
- 8.50 Mr Carter also points out the problems with the Transyt analysis and in particular the saturation flows on approach arms which can lead to higher capacity than is realistically achievable.
- 8.51 These attempts by TVT demonstrate an approach that falls outside the proper application of Arcady and also Transyt and it is only the figures produced by Mr Carter that can be given any weight as they have been compiled in accordance with current best practice. That then takes us to another argument and that in essence is that the differences are so small that they can be regarded as acceptable in the circumstances. One might suggest that such a finding flows inevitably from a congested network which is struggling to cope with the flows being experienced. In essence if the road is full and more is added then the difference might be demonstrated to be small. That is presumably why the relevant guidance in Guidance on Transport Assessment¹⁰³ confirms that "A particular example of material impact would be worsening of congestion. In congested areas, the percentage traffic impact that is considered significant or detrimental to the network may be relatively low (possibly below the average daily variation in flow) and should have been determined in discussions with the relevant highway authorities"; which in this case means BBC. That however will be dealt with in a moment but first it would be useful to record the measure of agreement, especially as it provides the bed rock onto which the assessment should be made and is highly relevant to the question of whether what is proposed is acceptable.
- 8.52 Everyone agrees that the network is congested. There is an existing "problem". Traffic queues can be lengthy and they occur regularly. All the experts agree on that and they are supported by many of the locals who have made their own views known. The development will therefore be adding traffic to a congested network and that is one of the reasons why a TA would have been necessary.
- 8.53 That congestion, according to Mr Francombe, has happened for a period in the region of twenty years and there are times when it extends over lengthy periods of the day.
- 8.54 The queues extend through the roundabouts (which Arcady cannot deal with as it assumes there is never queuing within a roundabout) and the applicant has been aware of that extensive queuing since the time that Mr Eves wrote the letter to BBC in 2005¹⁰⁴.
- 8.55 The existence of such circumstances indicates that the problem is not limited to the traffic going through a roundabout but rather it is a combination of the interaction of the roundabouts and the links between them. That is the scenario to which it is proposed to add the development traffic.
- 8.56 As the Inquiry ends there is implicit agreement in relation to traffic growth and the trip rates and trips generated in respect of existing residential development,

¹⁰³ CD80 para 4.92

¹⁰⁴ BPC /6 Appx 5

the proposed future residential development and the proposed student accommodation. This implicit agreement comes about through Mr Eves' reliance on Mr Carter's Replacement Table 15.

- 8.57 The development will add 330 vehicular trips to the network in the peak hour, as a result of all the elements of this development. Those additional flows amount to an increase of 3670 vehicles per day (BBC 3R para 5.2), which when distributed in both directions on Wallisdown Road will lead to a potential increase of 7.5% as an average figure as explained by Mr Carter¹⁰⁵.
- 8.58 In addition there is the need to be aware of the basis on which the future is being looked at. The agreed position, but for the inclusion of the academic floor space, is that allowance should be made for growth of 5% up to 2016. Accordingly more traffic is anticipated than is currently using the space.
- 8.59 Those additional numbers would be added to the congested network and they can be compared with the existing capacity. Agreement has not been reached on that capacity figure, with TVT suggesting 2650 (in the TA but changed on BBC9 to 2500 - 2600) for the two way capacity whereas Mr Carter prefers a figure of 2167. Flows higher than 2167 have been recorded but that does not equate to capacity. The very concept of capacity has within it an element of level of service and Mr Carter has derived a figure based on the guidance available; BBC refer the Inspector to the words in TA79/99 and the need for favourable road and traffic conditions to be built into the capacity question. Mr Eves figure seems to be more related to the total amount of traffic that can get down there irrespective of the conditions and that would not sit happily with the guidance.
- 8.60 On any sensible reading of the guidance and taking into account the traffic conditions it is very difficult indeed to find that the road is not currently operating at or over the capacity. In fact Mr Eves has repeatedly said it is despite now saying it is not¹⁰⁶. If reference is made to the information produced by Mr Carter about the travel delays that have been measured for this element of the road the picture is complete. Delays of 4.5 minutes in the peak are a strong indication of the road being over capacity and it is into that situation the proposal is to be introduced. The simple fact is that the difference between the peak and off peak travel times is a factor of approximately 3 and clearly indicates the nature of the problem.
- 8.61 Then we turn to the junctions themselves. Here it is noted that the question put to both Mr Davies and also Mr Campkin was that their case depended on the information about traffic produced by Mr Carter. So it does. But it is not just reliance on numbers but also the likely consequences of those numbers in what are known to be congested difficult traffic conditions. In looking at the figures one cannot exclude the judgment related to those figures as indicating what they show; perhaps Mr Carter should have claimed that more in the same way Messrs Eves and Francombe did. A change between the scenarios of one or two seconds when significant numbers are being added to an already congested, if not over capacity, network needs to be looked at realistically.

¹⁰⁵ BBC 3 Addendum 2

¹⁰⁶TVT9; BPC /6 App 2, App 5, & App 4 para 3.1

- 8.62 Take the reference to the RFC discussions and the difference between the parties where one says 0.85 is the maximum and the other that figures up to 1 are acceptable. We will all have experience gained over many years of how RFCs are used and the effect of them. Mr Carter's approach is to adopt the standard use of 0.85 to reflect the standard error of prediction within Arcady and to adopt an approach that avoids the over optimism that the roundabouts in Wallisdown Road will work whereas blocking back and unstable flow is already taking place. Mr Francombe's starting point would also be 0.85, presumably based on his lengthy experience and also no doubt following the available guidance and TA. Latterly Mr Eves accepted the same approach as representing standard industry practice despite what was put to Mr Carter during cross examination. Mr Carter was questioned on whether his approach and that of the TA could be said to be conservative, but he preferred the term 'robust', to accord with best practice in transport assessment.
- 8.63 Thus as Mr Carter explained verbally in his evidence in chief, Replacement Table 15 indicates a worsening of RFC values at University and Boundary Road Roundabouts in situations where the 'base' condition (without development) and the 'with development' conditions exhibit maximum RFC values of about 0.85 or more in the cases of both single or double access. This is not acceptable in terms of the advice in TA23/81 and therefore mitigation is required because both junctions and links will be overcapacity and congested, and the development will worsen the situation.
- 8.64 The safety issues relating to the development have also not been adequately considered. TVT's initial TAs failed to make any reference to accident data contrary to best practice. Following BBC comments revised details were provided. Mr Carter however indicates his continued surprise that despite Fern Barrow having accident figures in excess of 11 times national average the development does not propose further mitigation. Furthermore BPC as the responsible Highway Authority appear to have failed to require this data or to have undertaken the detailed evaluation of the information submitted in the TA requiring BBC to prepare further evidence to support their case at the Inquiry.
- 8.65 The case against the development is therefore very strong unless some mitigating feature is introduced to reduce the nature of the impact. Large reliance is placed on the modal shift from car to bus to help with that. The claims made however are optimistic. Finally Mr Carter has demonstrated, in so far as he has to, that the proposed scheme for the signalisation of Boundary Road Roundabout would not prove successful; which may have some relevance to the eleventh hour change in TVT's approach to the required mitigation measures.
- 8.66 In so far as BBC has to "prove" a case the position taken from the technical assessment undertaken demonstrates a very unsatisfactory state of affairs that should lead to the refusal of this application. BPC has failed to follow best practice in assessing the TA submitted by the developer and has not ensured that the development will comply with planning and transport policies. The mitigation measures originally identified within the TA and accepted by BPC fail to address the impact at the key University and Boundary Road Roundabouts and have now been replaced by the provision of a global sum to contribute towards the future Wallisdown Road Quality Bus Corridor (WRQBC) scheme. This is despite knowledge that there are no detailed proposals for the scheme

and that its anticipated delivery date is late in 2014 – 2020 with no current guaranteed funding (being the subject of a future major scheme bid). Removal of the bus only lane as proposed also removes any real bus priority to the site and the 'cat proof' fence proposed to protect the heath will sever proposed cycle and pedestrian routes from the south of the development, all contrary to policies within the joint LTP3 and Development Plan to promote these sustainable modes. Poole's approval to this development appears to be rather a 'road based' solution rather than the sustainable approach to developing the site as their and national policies require.

The Guarantees

- 8.67 There are no guarantees that remove BBC's concerns in relation to this case. They have not been invited to take part in the agreeing of the Section 106 Agreement and are not included as a party to it. They have had the requests for conditions rejected despite relating to appropriate transport matters. The whole matter has been left to the TVT and the BPC to address.
- 8.68 The scale of the developer contributions and their anticipated phasing fail to address the impact of the development and there are no specific targets in the Travel Plan (TP) to trigger the intervention measure payments identified within the TP. That is made worse given an approach based on what is said to be "conservative" traffic generation. If they do not provide targets then the trigger for the Travel Plan payment will be evaded.
- 8.69 An examination of the Section 106 reveals a problem. There is no requirement to obtain the agreement of BBC for works that will have to be carried out in their area on roads for which they are responsible. No method has been provided for the associated developer contributions to be forwarded direct to BBC as, although they are the responsible Highway Authority, they are not the Planning Authority for the development. This therefore prevents BBC fulfilling its duties to manage the implementation of the required transport mitigation measures to their strategic highway network
- 8.70 Throughout the whole process BBC has been trying to protect its legitimate concerns. No one questions that those concerns exist, are validly held or that BBC's position needs to be protected. No one has been able to explain how the current draft helps to protect that and Mr Eves confirmed the extent of the development that could come about without any remedial measures in place, despite acknowledging that the application has always recognised the need for physical works. Such a position cannot be regarded as reasonable. Unfortunately the applicant and BPC have reached agreement to ensure that is the position.

Conclusions

- 8.71 BBC has raised 4 specific issues that stand as objections and additionally has tested the approach in relation to the application or rather misapplication of the policy base by BPC; TVT not having offered any view on that. These four matters have been raised consistently over the years, answers have been sought and there has been an abject failure to deal with them.
- 8.72 All four matters are justified and apart from the erroneous and misleading approach adopted by BPC, a reasonable authority would have accepted the

position and dealt with it. BPC has had no technical ability to question TVT given Mr Francombe's acceptance that he did not know or understand the detail of the Arcady and further that he had not been informed of the technically different approach adopted by Mr Eves in the Supplementary Report which was meant to address BBC's concerns. Rather than dealing with them it made matters worse.

8.73 Accordingly the Inspector is invited to accept BBC's evidence and to make the recommendation consistent with it.

- the application did attribute zero trips to the academic floorspace without explanation which when examined clearly was erroneous. The academic floorspace could generate up to 47 trips on Mr Carter's evidence using appropriate and comparable information from TRICS. TVT disputes it, but the dispute arises from a difference in professional judgement which will need to be resolved. In resolving it we need to be guided by the advice that small changes may be important in congested situations.
- the junction assessment is now acknowledged to add traffic to congested situations lifting the RFC values which is an indicator of problems. When associated with the "links" information and the extent of the problems the evidence is overriding and Mr Carter is clearly correct. The extent of the mitigation package, especially given the fact that now we may not get any works to any junction at all, is clearly flawed.
- the corridor reservation, which Mr Francombe erroneously linked to a Wallisdown Relief Road is a policy requirement to be met as he accepted.
- the cat proof fencing does make the site less sustainable (the agreed position of Mr Francombe) and accordingly needs to be taken into account.

8.74 The failure of BPC to deal with and address these matters with the applicant indicates a casual approach that should be recognised. But for the involvement of BBC these many material matters may never have seen the light of day.

8.75 The result would have been a permission granted for a large development that would add significant traffic to a network (5 or 7.5% average) that is said to be the most congested road in the conurbation with queues regularly extended over 400 metres, a condition that has endured for decades. The need to deal with it properly is obvious.

8.76 Finally, but for BBC's involvement the failure to follow policy would have been missed. That was not listed as an objection because it falls within Poole and BBC could have expected, as could any resident or anyone looking at the Development Plan, for its contents to be applied. It was only on examination that it became clear that it had not been.

9. THE CASES FOR THIRD PARTY OBJECTORS APPEARING AT THE INQUIRY

Inspector's note: In reporting the cases of the third party objectors, who appeared at the inquiry, I have relied on their submissions. Any references to "I", "we" and "my" in section 9 of this report therefore relate to these parties.

Councillor S Chappell on behalf of residents of Talbot and Branksome Woods Ward affected by the proposed development

- 9.1 The application is placed in the context of the draft National Planning Policy Framework (NPPF) and the priority accorded therein to sustainable development, in the sense of not being saddled with environmental or social problems. On such an interpretation of "sustainability", development of the appeal site would be low down on the priority list because of the inherent problems associated with it, which the "exceptional" proposed mitigation measures delivered through a complex section 106 agreement and a myriad of conditions serve to highlight rather than disguise.
- 9.2 As Borough Solicitor of Bournemouth Borough Council, Councillor Chappell's general advice to the Planning Committee was that the more it was sought to impose conditions on a planning determination, the more problems there were, evidently, with the application, and consequently the more cautious the Committee should be in granting approval. That is the case here. This development is only "sustainable" if the cat proof fence actually works, and if the restriction on pet ownership is enforceable and actually enforced. These are the *sine qua non*.
- 9.3 Mr Goodwin presented a list of 8 items of mitigation and bent over backwards to avoid the obvious conclusion that, without these two measures, the adverse effects would not be "cancelled out". When asked by Mr Katkowski "what if these two measures are only partially effective?" Mr Goodwin could only reply..."they will work at a general level, and with the other measures, the Secretary of State can be satisfied that the proposals will not give rise to an adverse effect on the site's integrity." I would submit that the other 6 measures are not truly in the category of "mitigation"; they should in any event be implemented by TVT as owner of the Heathland as part of a management scheme agreed with Natural England. As admitted by Mr Baker, these other measures are, indeed, "essential" – but essential in any event for the future well-being of this European Site.
- 9.4 Detailed arguments against the cat proof fence and the restriction on pet ownership are set out¹⁰⁷. A number of legal points are raised in relation to the S106 Agreement, many of which have been addressed by the applicants. In relation to the cat proof fence, the particular concern relates to ensuring that the S106 secures the long term maintenance and repair of the fence. An effective "chain of obligation" must be in place in order to ensure that there is a person(s) responsible for the retention and maintenance of the cat proof fence and against whom the obligation is enforceable.
- 9.5 The first matter raised in relation to the restriction on pet ownership is whether such a covenant would be within the spirit and intention of S106. However, assuming that the covenant is a proper use of S106, and that covenants are imposed on 378 new plot owners, how is it proposed that BPC secures compliance in the future? In the event that the covenant was breached, and a pet owner refused to give up the pet, it would be necessary to issue an injunction against the freehold owner of the house where the restriction is being

¹⁰⁷ SJCC1

violated. The question arises as to whether it would be realistic for the courts to exercise their discretion in favour of BPC; or indeed whether BPC would have the political will to enforce the covenant in these circumstances.

- 9.6 Even if it were assumed that these measures will work for today, how certain can it be that they will work in the longer term? There is indeed no substantive evidence before the Inquiry of comparable situations in which they have worked. Mr Baker's optimism that these measures are "highly likely to succeed" is not shared. This is well short of the requirement in paragraph 21 of Circular 06/2005 that the decision maker must be "convinced" that there will not be an adverse effect on the integrity of this European Site. Indeed, decisions before the Inquiry introduced by Natural England (and a further good example is the Ringwood decision¹⁰⁸) show that Inspectors have treated cat proof fences and restrictions on pet ownership with great caution, where these have been offered by way of mitigation. To accept the argument that these two mitigation measures "cancel out" the adverse effects of the development on the integrity of this European Site is a leap into faith. It is an argument which would be copied by many – leading to the situation where, in the Inspector's words on the Ringwood decision, "after a short while the IPF would be about as sound as a sieve." Accordingly, I respectfully ask that these two measures, and the other measures offered up as "mitigation", are treated with great caution, if the future Dorset Heathlands DPD is not to be seriously compromised.
- 9.7 I would also again draw attention to the lack of protection afforded to this European Site because of the provision in paragraph 9.3 of the section 106 Agreement which allows it to be varied by agreement between Borough of Poole and TVT, or in accordance with sections 106A & B of the Act, in both cases without the agreement of Natural England, RSPB, and other interested parties. Representations can be made, but there is no right of appeal for an aggrieved third party under the Modification and Discharge of Planning Obligations Regulations 1992. This could strike a fatal blow to the medium/long term survival of any mitigation measures no longer considered necessary.
- 9.8 It seems that the issue of the ownership of land on which it is hoped to erect the cat proof fence raised by Natural England¹⁰⁹ and by the Talbot & Branksome Woods Residents Association will be sorted out by means of a Statutory Declaration (at the eleventh hour!)¹¹⁰. Accordingly, at this late stage, TVT request the Inquiry to substitute a new plan in place of the current application site boundary plan. This substitution means that the cat proof fence now lies totally within the revised application site, and that the need for a further planning application is avoided.
- 9.9 However, the implementation of any planning consent for the application site might have to await the outcome of the application made by the Talbot & Branksome Woods Residents Association under section 53 (2) of the Wildlife and Countryside Act 1981 for the Isaacs Close footpath to be added to the Definitive Rights of Way Map for Talbot Heath. Whether the fence can be constructed on land while such a footpath application awaits determination is an issue raised by

¹⁰⁸ NR 47

¹⁰⁹ NR/40

¹¹⁰ TVT 29

NR¹¹¹, and mentioned but not resolved by TVT¹¹². The line of the cat proof fence would dissect this footpath and stop the current access from Isaacs Close to the Heathland - unless a gate was provided. A gated access would mean, of course, that the walking distance from the new residential development would no longer be the 1.7 kilometres claimed by Mr Goodwin¹¹³ but "within 400 metres." The same argument is expressed by Mr Baker, where he states that "the key mitigation measure [*sic*] is the installation of fencing that would prevent both cats and people from accessing the Natura 2000 site directly – but rather access would require a walk of over 2km."¹¹⁴ These arguments are also absolutely crucial to the protection which Messrs. Goodwin and Baker say will be offered by the cat proof fence. They are crucial also to the question of breaches in the cat proof fence that may occur. I would draw attention to the concerns expressed by Messrs. Tyldesley¹¹⁵ and Underhill-Day¹¹⁶ on the difficulty of monitoring and speedily repairing such breaches.

9.10 The Inquiry has also heard evidence from Mr Howard Janda who lives at the end of Dulsie Road nearest to the start of the cat proof fence. He speaks of the detrimental visual impact of this intrusive 863 metres long and 2.9 metre high meshed fence. But his main concern is with the loss of residential amenities for himself and his neighbours caused by the loss of the open fields and farmland at the rear of their gardens, and their replacement with houses on Site H overlooking, and at a density (30 -50 dwellings per hectare) higher than, existing properties in Dulsie Road. Such development would be contrary to Policy H3 of the Poole Local Plan which says that any development must not harm the residential amenities of people living nearby through overlooking, loss of privacy and noise and disturbance.

9.11 The evidence from Dr. Howard Rein is representative of the experience of all car drivers who use Wallisdown Road on a regular basis. His practical evidence, based on 13 years of driving that route, is that Wallisdown Road is already at capacity during peak hours. This is not seriously contested. What is contested is the precise calculation of increased trips generated by this development, and their effect on the existing highway and on the efficacy of the proposed mitigation measures. Dr Rein points out that the suggested improvements to the Roundabouts and the bus priority measures are already necessary, irrespective of this development, in order to ease traffic congestion. He is fearful that the additional traffic generated by the proposed development will have the effect of extending the morning, afternoon, and evening peak hours so that congestion becomes endemic throughout the day. And what is the situation if – as Bournemouth Borough Council argues – the developer contributions are insufficient to fund all the works considered necessary? These include essential improvement works to the Wallisdown Roundabout (junction with Alder Road/Kinson Road) (which Dr. Rein sees as one of the key measures to get traffic moving along more quickly) and also any traffic regulation orders required to deal with the incidence of increased parking in Bournemouth by

¹¹¹ NR/40

¹¹² TVT 29

¹¹³ TVT 18, paras 5.15.9 & 11.56)

¹¹⁴ BPC /4 para 5.19 & para 5.6 Summary proof

¹¹⁵ NR/4 para 7.19

¹¹⁶ NR/9 para 9.35 *et seq.*

students and others from the development. If the developer contributions are insufficient, do the works stop short of what is required, or do the Bournemouth Council tax payers foot the bill? In so far as the developer's proposals fail to deal adequately with all the traffic/transportation/parking issues arising, including funding, the development cannot be regarded as sustainable.

- 9.12 Although detailed consideration of alternative schemes is not within the remit of this Inquiry, possible suggestions for a more sustainable form of development have been put forward both by the Borough of Poole itself (in the Site Specific Allocations and Development Management Policies DPD Pre-submission Document¹¹⁷) and by Natural England and interested parties. These suggestions would see a substantial "scaling down" of the residential proposals so as to protect the integrity of the Heathland, with some expansion of the two Universities, but with the "green lung" between Bournemouth and Poole retained either by means of the creation of a SANG (to dilute the effect of visitor pressure from the scaled down residential development) or by the retention of the farm as a model farm. Conor Burns MP has offered to bring all parties together to see whether it is possible to reach a consensus as to what development would be welcomed by all.
- 9.13 My final submission relates to the recently circulated Note BPC/14 on Poole's Strategic Housing Land Availability Assessment. This demonstrates a 5-year supply of 5,654 dwellings, an excess supply of 654 dwellings over Core Strategy targets, and a 10 year supply of 7,054 dwellings, an excess supply of 2,054 dwellings. With regard to the contribution to be made by the appeal site, for the first 5 years, 122 dwellings are programmed to be delivered commencing in 2014-15, with the remaining 228 being delivered by 2017-18. Losing that allocation would not be fatal to the Core Strategy targets, particularly bearing in mind the significant residential development land that will be opened up in Poole's Regeneration Area by the construction of the Twin Sails Bridge.
- 9.14 For all these reasons I respectfully ask the Inspector to recommend refusal in her report to the Secretary of State.

Ms Veronica Trevett on behalf of 1,214 residents who signed a petition against the planning application

- 9.15 Over 1,000 letters of objection were submitted over the lifetime of the planning application, indicating the level of opposition to the scheme. Ms Trevett lives in a garden flat overlooking the west side of Talbot Heath and Isaacs Close and confirms that covenants are ignored over time.
- 9.16 As the application has been progressed, plans have been amended and it has been difficult for local residents to keep track of the changes. This means that the Secretary of State and Inspector may not have a full picture of residents' concerns in their consideration of the proposals. The following matters are of particular concern:
- 9.17 The dead end of Mayford Road has been gated¹¹⁸, thereby closing access to the existing car park which has long been in use. No doubt this gating would be

¹¹⁷ CD 18 & CD 19

¹¹⁸ Inspector's note: no such gates were identified during the ASV

accompanied by yellow lines, meaning persons wishing to park at this location will do so near the residential properties, or they may decide to park near St Aldhelm's School, or elsewhere on Talbot View. It is out of order that there has been no consultation on the proposed closure of this well used car park.

- 9.18 A raised fire track is unnecessary¹¹⁹ right through the meadow that Poole Council have been trying to develop over the past few years. This track layout appears to encourage additional footpath/cycle access from the Merrow Avenue cul-de-sacs and a community garage area overlooking the heath, which is private property. Such tracks quickly become overgrown and unsightly with grass and weeds, returning to their original state through lack of maintenance. People could trip over the edge of the track, and it could hinder pushchairs. However, the local yobbos will love the new "race track circuit" provided for them to ride their motorbikes and old cars, which could also be left dumped and burnt out. The bikers could do a circuit around this meadow area, cross over one of the stream bridges and continue with their fun all over the new fire/cycle/pedestrian track up to Purchase Road and along the cat-proof fence perimeter to Alyth Road. The tenant farmer installed the stiles in the triangular field due to troublesome cyclists. Indeed, some ordinary motorcyclists could use this route as a short-cut across the heath from Winston Avenue to Purchase Road and Alyth Road and return, to avoid Wallisdown Road. It is illegal to ride motorbikes on the heath including in this meadow. Had Dorset Police been consulted on all these new fire/cycle/pedestrian tracks - which will also look completely out of place - they would have objected. Map ALP/5352/MS/04 gives more information.
- 9.19 The Fire Access Map for Talbot Heath dated 4 May 2000¹²⁰, from the Summary of the Bourne Valley Management Plan 2001 produced by BPC Leisure Services, shows the location of the grass area near Mayford Road to be a primary track, leading to a secondary track on the adjacent heathland towards the railway line, meeting another Primary Track from Dalling Road at the rear of St Aldhelm's School. A third Primary Track leads from East Avenue onto the Fern Barrow part of the heath. Therefore, it appears all these tracks and the grassed area are already identified as suitable for fire appliances. Why do formal tracks have to be created in this natural environment, when the grass area clearly supports vehicles, and the farmer has no problem driving her vehicles up and down the existing track in the sloping grazing field?
- 9.20 It was previously proposed to utilise Footpath 121 from the Merrow Avenue cul-de-sac as a fire track and convert the existing F121 footbridge into a bridge for large fire appliances. It appears the new plans have left the previous Footpath 121 footbridge where it is – though one map shows it as a new access - and moved a gated fire appliance bridge northwards to a different location. This bridge will be 3.5m wide, 6-8m long and have timber rails and facade. Hopefully, the access gate lock could not be broken by travellers or others. Presumably, this bridge would also be available for cycle and pedestrian use. Numerous trees and vegetation will still have to be destroyed to accommodate

¹¹⁹ Inspector's note: the proposals for fire vehicle access have been amended and are to be subject to condition to enable EN to influence the arrangements to be put in place.

¹²⁰ VT/PET/App N

this revised location nearer the grazing meadow. Has the Environment Agency made an assessment on the revised location of this bridge?

- 9.21 My experience of a (pedestrian) bridge of similar but smaller design in the Alderney area of Bourne Bottom is that it is a popular meeting place for youngsters. The bridge was originally wooden, but was replaced with a metal one, as they continually kept setting fire to the timber rails and facade. This large fire bridge could attract similar anti-social behaviour in this quiet and secluded area, giving rise to alcohol and possibly drug abuse, with litter, cans and bottles being discarded regularly in the stream and surrounding area. Not very environmentally friendly, and I feel the police would have a view on this. Also younger children may use the bridge as a playground.
- 9.22 There are a lot of red lines on the map around this bridge area which seem to indicate wire fencing. In my view, this bridge is unnecessary, as fires on the east side are best accessible from Redhill Fire Station in Bournemouth and those on the west from Poole Fire Station. Off-road vehicles and Land Rovers normally access the heath, not large fire tenders.
- 9.23 This proposal contrasts heavily with fencing the path from Isaacs Close onto the heath in April 2009 by the applicant. Despite concerns about this being expressed by the Fire Service in 2009 as noted in Jez Martin's report¹²¹ this fence remains in place. To satisfy the Fire Service's request for vehicular access from Purchase Road, the proposal using the farm track which leads up from the sloping field to the farm could have already been gated from Purchase Road, and be currently providing an improved fire access to this part of the heath. I recall that a more destructive fire access gate from Purchase Road was presented to last June's Planning Committee meeting. Who would be responsible for ownership and repair of all the fire gates?
- 9.24 There are fourteen existing fire hydrants in locations around the perimeter of the heath, and eight vehicular accesses¹²². I understand some of these hydrants suffer from water pressure problems. Mr Squirrell suggested last week adding only another three hydrants.
- 9.25 I object to closure of the Mayford Road car park, the new fire/cycle/pedestrian tracks and bridge. Records show last year there were eight fires on Talbot Heath, and two so far this year. The fire tracks and hydrants all appear far too over the top, with no evidence of consultation with Dorset Fire Service, the police or Poole's Leisure Services. Indeed, the Case Officer states on page 24 of Core Document 12: *"It is noted that there has been some concern relating to escape routes in the event of fire and the restrictions imposed by the cat proof fence. Whilst no comments have been received from the Dorset Fire Authority"* There is NO evidence of the Fire Service requesting improved access to the heath from Mayford Road. None of these fire measures represents mitigation.
- 9.26 Because of its location around the Bourne Stream, Talbot Heath contains unique wet and dry meadows. No consideration has been given in this application to protecting this unique wet and dry meadows site from destruction, and to retain

¹²¹ VT/PET App B

¹²² VT/PET App N

it alongside the heathland habitat. Are not all unique natural environments equally important?

- 9.27 Farm gates and stiles have appeared on the heath, mainly around Footpath 33. On the previous plan, Footpath 33 was to be diverted a couple of metres into the adjacent grazing meadow near the stream. If it is to remain in its current location, it needs serious maintenance. The paths and Bridleways on Talbot Heath do not accord with the Poole and Bournemouth Rights of Way Improvement Plan 2008-2011. Do these stiles comply with the Disability Discrimination Act mentioned in this Improvement Plan? Are elderly and young walkers with their leashed dog(s) expected to clamber over these stiles? Have all the ongoing footpath maintenance costs been included in the S106 agreement?
- 9.28 Map ALP/5352/MS/04 shows the location of dog bins. Including existing bins, this will provide nine in the space of approximately 200 yards in this meadow area. This is probably more than those located on the whole of Baiter Park put together! Granted, the two existing dog bins don't work properly, especially when the lids are frozen in the winter. Yet no bin is proposed in the valley near the railway line, where access to a bin is an upward hill journey in any direction and not on a circular route.
- 9.29 Diverting footpath 33 in the triangular field to the south of the application site has been withdrawn as an alternative proposal. This is contrary to what was agreed at last June's Planning Committee meeting! This triangular field was not previously shown to be converted to heathland. Therefore, residents considered that if Footpath 33 was not diverted to accommodate more open space within the application site, this area would continue to be available for use, particularly for walking and playing with dogs. Where else are people supposed to go?
- 9.30 A 5m wide badger corridor and people-proof fencing has been introduced since last June to the south and east of the application site, which also reduces the amount of space available for residential use. This proves that the applicant did not comply with the Protection of Badgers Act 1992 when presenting this application to last June's Planning Committee meeting¹²³. It appears that this is still the case¹²⁴. It is ironic that on Mr Goodwin's TVT/5 Plans list, map ECO11 showing the location of badger setts is marked 'Confidential', yet this fenced-in corridor tells everyone where the badgers live! Therefore anyone wishing to trap or poison them in this confined space (with the cat-proof fence through the widest section), would have little difficulty. Badgers are likely to dig under the new dwelling garden fences to forage. What if children filled the gaps under the gates, or dug them bigger so that they could access the badger corridor? What about fly tipping and garden waste being dumped in this area? How high will this person-proof badger fence and gates be? Could cats use the badger corridor fencing or access-proof gates to jump over the cat-proof fence? How big will the gap be underneath the two 1 metre wide gates? Would these gaps facilitate cats' access to the heath?

¹²³ VT/PET App J

¹²⁴ VT/PET App O – TVT/5 Annexes Section 4 page 151, Mr Goodwin's paragraphs 8.33 – 8.37

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9.31 At the first meeting¹²⁵ between Mr Andrew Baker and Richard Nicholson representing Head of Poole's Leisure Services on 30 June 2011, Conservation Officer Jez Martin, who recommended refusal of this planning application¹²⁶ was not involved, and demonstrates the lack of consultation with, and involvement of, the Leisure Services Department in this planning application. The last item mentions that relocating the badgers is not feasible, and BPC will not take on the ownership or management of the badger corridor as it is not public open space – which was agreed at last June's Planning Committee meeting. So where is the evidence of who will take on responsibility¹²⁷?

Noise and parking issues with Bournemouth University

9.32 There are currently 54 student houses at Bournemouth University. This is to be increased almost ten fold with 450 student flats. The number of existing residential dwellings on Talbot Village will be almost doubled with the new dwellings, all sited on a much smaller area.

9.33 Only first year students stay on campus. The University has its own estate agency. If student numbers fall, will the new student units be occupied by persons not connected with the University? Will they have pets? I understand that the university buildings and housing association properties are leased by Talbot Village Trust. There are already issues regarding student parking around Talbot Village.

9.34 A concerned Talbot Village resident – a young mother on a mission to get a restful night's sleep - organised a meeting on 11 October 2010 between representatives from the University, Poole Council and the police, dealing with ongoing noise and anti-social behaviour problems with students. Complaints direct to students are often met with threats and abuse. She is still trying to deal with these issues¹²⁸. I understand another resident has boarded up her window, and Dulsie Road residents also complain of noise. Dorset Police allocate two police officers to Bournemouth University – Branksome East Ward has only one. So what will be the noise affect of increasing 54 into 504 student units? In CD 12, page 28, the Case Officer states that the development does not harm the residential amenities of people living nearby through overlooking, loss of privacy and noise and disturbance – Policy H3 of the Local Plan is relevant. Residents disagree. Householders in nearby Mansell Close are especially concerned as they will be overlooked by new dwellings on both sides, have a new road running alongside them, and be affected by all the noise.

Access to Talbot Heath from the new dwellings

9.35 Last week, I walked from the dead end of Purchase Road by Bishops Close, through Talbot Village via the pleasant paths and cycleways, along the edge of Wallisdown Recreation Ground (now leased by the University), past Talbot Combined School to the dead end of Talbot Drive to join Footpaths 33 and 124 onto Talbot Heath. This took me **16 minutes**, stopping a couple of times to take photographs. Even allowing for more time, this would provide an extended

¹²⁵ VT/PET App P

¹²⁶ VT/PET App B,

¹²⁷ Inspector's note: TVT is to retain responsibility.

¹²⁸ VT/PET App Q

walk onto the heath, with or without a dog. This distance could have been less than 1.7km.

- 9.36 No consideration is taken of the health and social benefits of walking on Talbot Heath. Dogs are companions who accompany walkers, many of them women, in this enjoyable exercise. Much is made of the damage done to the habitat – but where else are people to go? North Poole is a highly developed area on what was all heathland, with very few open spaces left for walking and pleasure. Development has been allowed to flourish, and now residents feel under pressure that enough is enough.

Wardening

- 9.37 The Urban Heaths Partnership visited the site a few times this year in a wardening capacity. Last summer, they were present on the heath daily for almost two months wardening and giving out free “poo” bags. They also organise annual Dorset Dogs Festivals in Poole, and have a website with dog information. Dwellings at Talbot View have already received leaflets from them regarding the heath, and Council signs are erected at most of its entrances. Last February, together with Dorset Fire Services, they hosted some Heathwatch presentations for residents. BPC’s Conservation Officers also attend the heath occasionally.
- 9.38 In addition, BPC runs a volunteer heath warden scheme. This is active in other parts of Bourne Valley and volunteers help with clearance conservation on Canford Heath. The Council issue periodic newsletters to volunteer wardens, and these are now circulated by email. Educational walks are organised on other nature areas and heaths around the town. Residents run a Dog Walkers Action Group at Hamworthy. However, there is no volunteer input on Talbot Heath, and it has not been encouraged. Surely, volunteer wardening and educational input led by BPC’s Leisure Services in conjunction with Natural England, the RSPB, and Dorset Badger Group would be far more effective than the employment of a ‘Traffic Warden’ fining unleashed dogs to raise funds for the Council, and setting neighbour against neighbour within the new dwellings when a child is given a kitten for Christmas. This demonstrates there is already a warden policy in Poole, therefore the proposals cannot be considered as mitigation. The Council already employs staff to repair damaged fences and clear fly tipping.

Open access area

- 9.39 The public footpaths and bridleways are no longer safe for riding a bike. This includes Bridleway 35 which had a very wide and deep sandy section in the middle of the heath, but this is now inaccessible due to overgrown gorse and is unusable even for rare lizards, bees and wasps. Footpaths 121 and 33 are also overgrown in sections, so it is not surprising that walkers are creating new paths. Also fire breaks from the Fern Barrow seat down the slope and on the opposite slope up towards St Aldhelm’s school have become pathways. There appears to be wire fencing across Footpath 121 and Bridleway 35¹²⁹.

¹²⁹ VT/PET App M

- 9.40 And so to the very lengthy and prison-looking unproved cat and people proof fence. Is it badger proof? As well as comments already made regarding vandalism and unsuitable siting, what guarantees has the manufacturer given? Does it recommend its use on such a site? How often will it need replacing, the process of which in itself could facilitate a breach and create even more habitat disturbance. Would it be an ideal net for playing football and cricket, though the ball may go over the top? How easily could children climb over it, or injure themselves on it? Could they put a ladder up against it? Could they hang some rope on the overhang to create a swing? Children are very good at digging holes and creating ramps to ride over on their bikes. In a situation where there is a fire on the heath and the public have increased access including walking near the cat and people proof fence, what will happen if they get caught between the fire and fence with a prevailing wind blowing towards the fence? Residents do not want this unsightly fence, and want to retain the pathway between Isaacs Close and the heath. They want to keep the last farm in North Poole. The tenant farmer gets enquiries from schools for visits, but refuses as she has no facilities like toilets.
- 9.41 There seems to be a completely unco-ordinated approach to the management of Talbot Heath. Poole's Leisure Services Department, who would take on the management, appear to be almost excluded from this planning process. Much of this planning application appears to have been a desk exercise, with rare site visits and communication.
- 9.42 This proposal is not about providing quality housing and educational facilities, whilst safeguarding the future of Talbot Heath. We request that this planning application is refused "without doubt".

Talbot and Branksome Wood Residents Association (T&BWRA)

- 9.43 Many of the concerns raised by T&BWRA are matters which are covered in the submissions of other objectors to the planning application. The key points were set out in submissions to the evening session of the Inquiry which are set out as follows.

Cat Proof Fence

- 9.44 The fence is 2.5m high with a cantilevered section on top set at 45 degrees, the width of which is to be not less than 400mm with 3 to 5 wires supported by the canted supports at the top of each post with the wire tight at all times¹³⁰. The posts at 80 x 80mm would be twice the width of the posts produced as a model at the Inquiry. According to the submitted description this mesh would be constructed from galvanised powder coated steel weld mesh fencing with posts at no more than 2.4m centres and mesh size of 12.5mm by 76.2mm.
- 9.45 As seen from the Typical Section Diagram the cantilevered top with strained wire is 0.5m in height so in effect the cat-proof fence is to be 2.9 metres in height, or in old money 9 feet 6 inches tall. The question which must be asked is this: In England "this green and pleasant land" are we really expecting householders, young, middle-aged, elderly, to enjoy taking a stroll with their

¹³⁰ TVT/23 attached plan

little children or grandchildren in the buffer strip imprisoned by this nearly 3m high people proof fence?

- 9.46 The word "imprisoned" is used advisedly because at the bottom of the description of the fence it states: "Gates and fences to conform to the 'Protek 358' fencing system supplied by Alexandra Security Products or similar". If you look at the Alexandra Security website there you will find: "Protek 358 – **Prison Mesh**". It is described as providing "a very high level of security that is almost impossible to climb, with the narrow apertures of the mesh preventing any intruder gaining a foothold". It finishes "this system is used extensively by the Ministry of Defence around high security sites".
- 9.47 This fence which is also quoted as having "a high level of visibility" will be clearly seen by people on the heath and those contained behind it as on either side of it the direction is "Vegetation kept low next to fence to aid maintenance inspection and to reduce risk of fire", as can be seen in the 'Typical Section'¹³¹
- 9.48 On the heath side of the fence after this low vegetation comes "the reinforced grass to form the access track for fire engines". This track¹³² is 3m in width and the other side of it again vegetation is kept low to reduce risk of fire. So in other words from the heath this cat-proof / people-proof fence will look to one and all what it is, a barrier designed for use at prisons and military sites.
- 9.49 The fence will stretch from Alyth Road, Bournemouth to Isaacs Close, Talbot Village. Significantly it will stretch back northwards along the width of the back gardens of the last 2 bungalows in Alyth Road to the right of the pathway. These bungalows have been there since the 1950s and the occupants will be very badly affected by the towering security perimeter fence.

Isaacs Close Footpath

- 9.50 This footpath leading from Isaacs Close, Talbot Village down on to the Heath to join up with Footpath 33 has been used by people for many years. The cat-proof fence would cut across this path and block it. In the Inquiry Library¹³³ Chris Francombe of BPC states of the path: "This could breach the proposed cat-proof fence, which is a key item of mitigation for the development proposed by Talbot Village Trust". An application has now been submitted for the addition of this footpath to the Definitive Rights of Way Map.
- 9.51 Mr Francombe acknowledges that a valid application dated 7th July 2011 has been made pursuant to Section 53(2) of the Wildlife and Countryside Act 1981 to add a footpath to the definitive map and statement. The footpath claimed runs from Isaacs Close to the existing Footpath 33 on Talbot Heath¹³⁴. Also regarding this access onto the heath there is reference to Sections 2.1 and 14.1 of the Countryside and Rights of Way Act¹³⁵. This entrance at Isaacs Close to the heath was open and in regular use in and before October 2005 and it would

¹³¹ TVT/23 attached plan

¹³² TVT18 at 5.15.12. Inspector's note: Fire provision to be subject to a condition in order to provide for revision

¹³³ BPC /6 "Re application for additional Rights of Way 30th June – no application"

¹³⁴ Library Document BPC /8 Para 4

¹³⁵ NR/21 paras 85 to 91

seem that CRoW Act does not allow the landowner to block up an entrance which is already in use. It was only in Spring 2009 that Talbot Village Trust tried unsuccessfully to block it with a fence but locals walked over it, which is why presumably Talbot Village Trust after the Pre-Inquiry meeting erected a notice directing members of the public to “use other routes to gain access to Talbot Heath”. Talbot Heath is Open Access Land. It would seem therefore that Talbot Village Trust in trying to block this access in 2009 and also in erecting the sign earlier this year may have been acting unlawfully.

9.52 Also it would mean de facto that putting a people proof fence across it would also probably be unlawful. So if the cat-proof fence had to stop to the east of this Isaacs Close footpath it would mean a ready access for residents of the old estate and new development so the calculation of length of walk to the heath would no longer hold true and so the proposed development would firmly remain classified as within 400m of heathland, not 1.7km away¹³⁶.

9.53 Mr Baker identifies the cat proof fence as “the Key mitigation measure --- to prevent both cats and people from accessing the Natura 2000 site directly – but rather access would require a walk of over 2km” and Mr Baker concludes: ‘I consider the mitigation measures to be comprehensive, highly likely to succeed and contribute to tackling impacts upon the site.’

9.54 We submit that “highly likely to succeed” is far from definite and inadequate and if this fence should fail after the houses have been built then the Key mitigation fails and it will be too late to protect the heath.

Diversion of Footpath 33

9.55 The initial application indicated that FP33 would be diverted to enable the triangular piece of land to the south to be included within the fence and to provide public open space as part of the development. TVT has amended the application to exclude the triangular piece of land, and thus avoid the need to divert FP33. However T&BWRA remain concerned that TVT’s aim is to first achieve approval for this planning application and then afterwards submit a second planning application to Poole for the inclusion of the triangular field and an application for the diversion of Footpath 33 in order to achieve it.

Poole Core Strategy

9.56 In finding the Core Strategy sound the Inspector did not delete Policy H3 from the saved policies of Poole Local Plan First Alteration 2004. However the PCS Inspector did not specifically examine this saved policy H3 and whether the application conformed to H3 of the Local Plan Talbot Village 2004 where permission will be granted only provided:

Development will not harm the adjacent SPA, Ramsar Site, Candidate SAC, SSSI and SNCI.

9.57 Moreover what is not rebutted is what happened at the Poole Core Strategy (Protected Habitats) Session Wednesday 12th November 2008¹³⁷. On that day the Talbot & Branksome Woods Residents Association asked the Inspector how

¹³⁶ TVT/18 para 5.15.9

¹³⁷ T&BWRA/7 p 14

realistic it would be to impose a covenant prohibiting the keeping of pets as part of a mitigation strategy to protect heathland. For example how could parents explain to a young child watching a cat in their back garden which had come from the neighbouring road that they could not give her a similar cat because they were banned from doing so in this road and how could this be policed and enforced? The Inspector asked the 2 Poole officers about the no pets policy being referred to, who said that they knew nothing about it. Unfortunately the Association's Representative was unable to prove at the time that this information had been downloaded from the Poole website, which indeed it had been. Therefore there was no further investigation. However, the Inspector laughed at the idea of such a policy and also said he knew people always suggested fences *"which didn't work"*.

Air Quality

9.58 Mr Eves for TVT rebuts our evidence¹³⁸ where we say that the increased level of traffic generated by the development will also exacerbate the problems caused by the poor air quality now found along Wallisdown Road and he states¹³⁹, "Neither Bournemouth Borough Council nor Poole have declared Wallisdown Road an Air Quality Management Area and accordingly, I am able to conclude that there is nothing to substantiate comments at T&BWRA para 33 that the development will result in pollution levels reaching an unacceptable level."

9.59 We do not draw comfort from this assurance. The table taken from Poole's own website¹⁴⁰ shows that at the Mountbatten Roundabout situated at the top of Wallisdown Road the air quality consistently breached the limit of 40mg per cubic metre 11 months out of 12 in 2004. Poole did not however declare it an Air Quality Management Area but as you can see from the Local Air Quality Management Summary from the Poole Borough Council Website (see Page 3 Detailed Assessment 2005) it shows that their solution was to move the air sampling point some 400m to the west, onto a quieter road (Dolbery Road South) where Poole says the required standard was then met. Poole will no doubt argue that Dolbery Road South is a more relevant area but if the Mountbatten Roundabout is not relevant, why was it chosen as a Monitoring Site in the first place?

9.60 The Bournemouth Air Quality Progress Report 2008¹⁴¹ shows the mean concentration of Nitrogen Dioxide to be 36.1 for Wallisdown Road and 38.3 for Wimborne Road, Winton. We already know that now in 2011 Wimborne Road has been declared an Air Quality Management Area and therefore must have breached the limit of 40. We can only hope that Wallisdown Road which Mr Francombe describes as "one of the busiest single carriageway roads in the conurbation"¹⁴² will not be following if these houses are built.

9.61 We still feel justified in pointing out in respect of Nitrogen Dioxide the expert opinion re the possible long term damage to children's lungs caused by even

¹³⁸ T&BWRA/17 para 30

¹³⁹ TVT/9 para 5.3

¹⁴⁰ Appendix at T&BWRA/41

¹⁴¹ T&BWRA/44

¹⁴² BPC /6 para 5.2

short term exposure to peak levels of Nitrogen Dioxide¹⁴³. We think that as many primary aged children will be walking to both Talbot Combined and St Mark's School at times of maximum traffic movements the risk alone to children's health caused by additional traffic from this project and the probable resultant increased pollution in Wallisdown Road would be sufficient to make this development unacceptable.

Open Space Requirement

9.62 Poole's Open Space Requirements for 378 dwellings and 450 student units is 3.84ha. The Draft Section 106 Plan 6 shows:

Public Open Space 1	1.82ha
Public Open Space 2	1.42ha
Public Open Space 3	<u>1.51ha</u>
TOTAL	<u>4.75ha</u>

9.63 But of this total, 1.61ha is allowed for the 25m wide Transport Corridor reserved in the Bournemouth, Dorset & Poole Joint Structure Plan and cannot be calculated as genuine Open Space in perpetuity. Thus:

4.75ha
-1.61ha
3.14ha.

9.64 The triangular field at the bottom will not be accessible to residents of the new development. Hence this plan with only 3.14ha does not meet the Open Space Requirements of 3.84ha.

9.65 Finally we would like to draw attention to the display in the foyer of Poole Museum¹⁴⁴ about the building of the Twin Sails Bridge. It states that this bridge, and I quote, "**will unlock one of the largest regeneration sites in the South West.**" This Talbot Village Trust land by contrast is immediately next to vulnerable heathland and is a greenfield site. We have long believed that Poole with all the brownfield land immediately available to it, is easily able to meet its housing targets without this farmland.

Talbot Village Residents Association

9.66 In considering the evidence of TVRA it should be recalled that unlike any of those presenting Rule 6 parties, who will retire to their remote offices and homes, we have first hand day to day experience of the current situation. Ours is not an academic view but a realistic one. It is us who will have to live with the consequences if the application is approved. We hope therefore that this will influence the weight given to our representations.

9.67 Whilst we accept that Policy H3 of the Local Plan identifies this land for development that does not imply a presumption to grant permission. For

¹⁴³ T&BWRA/46 para 5.5

¹⁴⁴ T&BWRA/7 para 45 p 21.

example the Inspector in his report on the inquiry into the Poole Local Plan First Alteration Para 8.185 stated "I am not persuaded that the impact of additional traffic generated by the allocation of this site amounts to a reason to reject this proposal in principle. Rather, it seems to me that improvements and traffic management measures which may be needed directly as a result of the development of this site can be assured by the application of policy T13a, as I recommend that it be modified." It is our view that this Application has to comply with all relevant Local Plan and Development Framework Policies and that it does not.

- 9.68 This application is somewhat unusual in that it is adjacent to another Planning Authority, Bournemouth. The proposals rely upon contributions being made to the Planning Authority, Poole, under a S106 Agreement. However a number of these measures can only be carried out by Bournemouth. It would appear that there is no mechanism in place to ensure that the level of S106 contributions has been agreed by Bournemouth or that they are willing and able to carry out the necessary works. There appears to be no mechanism for BBC to receive S106 money given to Poole so that BBC can mitigate the effects of the development.

Effect on the existing Highway Network

- 9.69 The proposal as submitted will further exacerbate the already congested University Roundabout on the Wallisdown Road and increase traffic congestion at Fern Barrow within Talbot Village. The conclusions of the various Traffic Assessments, upon which the mitigation measures are based, are not consistent with the experiences of our members, all of whom live in Talbot Village, and experience the congestion of the local road network on a daily basis. We experience delays much greater than those indicated. This raises serious question marks over the validity of the findings of the TA and hence the proposed mitigation measures.
- 9.70 As an example: the assessments of highway link capacity based upon TA79/99 shows it giving link capacities of 2650vph two way flows for Wallisdown & Boundary Road and 6000vph for Talbot Road & Avenue¹⁴⁵. TA79/99 gives maximum one way flows based upon a 60/40 split. They have wrongly applied TA79/99. A proper application of TA79/99 would be to use maximum one-way flows. The Assessment seems to have determined the maximum flows by taking Wallisdown Road next to the roundabout giving category Urban all Purpose Road (UAP) 2. A more realistic assessment would be to use the worst case scenario for the link and which would be by Wallisdown Road shops giving Category UAP3/4. Using that for Wallisdown Road would give a maximum one-way flow of around 1100vph as a UAP3/4. Taking this as 60% would give a maximum two-way flow of around 1850vph. The Assessment gives projected two-way flows of over 2000 vph for Wallisdown Road which would exceed the capacity of the road. Experience shows that delays on this link are occasioned in the area of the shops and by the pedestrian crossings and this bears out our view on the application of TA79/99.

¹⁴⁵ Transport Assessment Dec 2005 Library Document TVT/5 Tables 33 & 34, Transportation Assessment Feb 2010 CD/54 Tables 10.13 and 10.14.)

- 9.71 The study area of the Traffic Assessment is far too narrow to fully appreciate the complexities of the road transport network within this part of Poole/Bournemouth. Mr Francombe acknowledges the East West traffic uses a number of alternative routes¹⁴⁶. The result is a report that masks the significant traffic congestion currently experienced by local people and people who use the Wallisdown Road on a daily basis to commute into and out of Bournemouth from other communities in Dorset. It is inevitable that additional built development, as proposed in this outline planning application, will increase congestion at the University Roundabout and within the Talbot Village estate.
- 9.72 Poole officers in their report to Planning Committee¹⁴⁷, recognised that the development would have an impact upon the Wallisdown Road/Alder Road junction. The development contains no proposals for improvements in this area but a S106 contribution of £400k towards the cost of improvement works in this area has been agreed. The Bournemouth Local Plan shows no specific scheme but indicates that land acquisition will be required and states that the actual land needed has yet to be identified. Policy T16 of the Poole Local Plan is similar. We do not consider this to be acceptable since there is no defined scheme, no costings are available and it is likely that the Highway Authority would have to meet the balance of any costs. Highway improvements are subject to many constraints including available funding, land acquisition and statutory undertakers works. In short there can be no guarantee that any necessary highway improvements will be carried out especially in the short term.
- 9.73 It has been suggested by BBC that land could be made available by BPC to enhance bus priority facilities along Wallisdown Road. It is assumed that the land referred to is the wooded area between Wallisdown Road and the backs of the houses in "new" Talbot Village. This would result in the removal of the screen of trees and have severe impact upon the adjoining residential properties. It should not be considered to be part of any mitigation measures since it is not part of any Local Plan Policy.
- 9.74 We consider that the traffic generated by the proposed development will increase the congestion on Wallisdown Road, and extend journey times. Policy T13 of the Local Plan states

PLANNING PERMISSION FOR DEVELOPMENT WILL NOT BE GRANTED IF THE ADDITIONAL TRAFFIC GENERATED BY THE DEVELOPMENT WILL BE LIKELY TO ADVERSELY AFFECT ROAD SAFETY OR THE ABILITY OF THE TRANSPORT INFRASTRUCTURE TO ACCOMMODATE THE ADDITIONAL TRAFFIC UNLESS REMEDIAL MEASURES TO OVERCOME THE PROBLEM ARE PROVIDED.

- 9.75 The development is therefore premature pending the completion of all necessary highway improvements including those for Wallisdown Road referred to in the Local Plans as it does not comply with Policy T13.

Public Transport

¹⁴⁶ BPC /15 Para 3 Appendix C Report of Mr Francombe, May 2010,

¹⁴⁷ CD/12 p 27

- 9.76 Much is made of the role that public transport has in mitigating the effect of the development and reducing traffic congestion. Indeed the BPC report to Planning Committee states "Bus passenger numbers in Bournemouth and Poole showed a dramatic increase of over 50% between 2004 and 2007. The principal reason is the new higher frequency services on main routes introduced by the new owners of the two bus companies." Whilst that might apply to the conurbation as a whole, that is not true of those bus services which would serve the application site.
- 9.77 The December 2005 Revised Traffic assessment¹⁴⁸ described Wallisdown Road as a highly serviced bus route, having a 20min frequency to Bournemouth Town Centre and a service every 15mins to Poole Town Centre. It also refers to the University bus services. The applicants have included the service 164 which does not run nearer than 1600m from the centre of the development. This is way above the accepted figure of 400m. This service should be discounted. Thus in 2005 there were three bus services an hour to Poole town centre and two per hour (165) to Bournemouth and Poole Hospitals
- 9.78 The University bus services should be discounted. They are run for the benefit of the University and subsidised by them. With a minor exception they only run for 30 weeks of the year.
- 9.79 Discounting these services, at the moment The Village is well served by buses to Bournemouth Town Centre having both a 15 minute service (No 6) and an hourly service (No 36). However other major destinations are poorly serviced. The service to Bournemouth Hospital has now reduced to one an hour. These changes are confirmed in the 2010 Traffic Assessment¹⁴⁹ but the Applicant continues to count the service 14 (formerly 164). There is effectively just one service an hour to Poole Town since both services (No 15 and 26) to that destination run within 5 minutes of one another. The westbound No 6 service used to come into the estate and stop in Fern Barrow outside the University. It no longer does so. There has thus been a significant reduction in services in the last six years. Far from bus usage increasing there has been a continuing reduction in bus services.
- 9.80 To even re-instate services to their 2005 level would require substantial subsidies from BPC. Poole subsidises service 26 to the sum of £16,000 per year and the Poole part of the 36 to the sum of £12790. Even some journeys of service 15 are subsidised. Whilst the Applicant has indicated that they will make a contribution of £300K, there must be a question as to what impact this will have in arresting the decline, let alone seeing enhanced services. It seems to be an arbitrary figure. Any contribution should be determined as part of a defined strategy to improve public transport along Wallisdown Road which would include proper costings.
- 9.81 The existing stop in Fern Barrow barely has sufficient capacity at present to accommodate the buses and coaches that use it. We question how these additional services would be accommodated.

¹⁴⁸ TVT/5 Table 11.

¹⁴⁹ CD/54 Table 7.1

- 9.82 We submit that the major deterrent to the use of public transport is the existing congestion and delays along Wallisdown Road. The traffic generated by the development will lead to an increase in journey times and therefore could in fact lead to a reduction in bus usage. This is contrary to Policy T4 of the Local Plan which states:

WHERE DEVELOPMENT ON KEY PUBLIC TRANSPORT ROUTES (AS SHOWN ON THE PROPOSALS MAP) WOULD BE DETRIMENTAL TO THE OPERATION OF SUCH SERVICES, DEVELOPMENT WILL NOT BE ALLOWED TO COMMENCE IN ADVANCE OF THE PROVISION OF TRAFFIC MANAGEMENT MEASURES TO MAINTAIN THEIR SPEED AND EFFICIENCY.

Access to Boundary Road Roundabout

- 9.83 Although Policy H3 of the Local Plan states that a new access to Boundary Road Roundabout should be for buses only, no reason is given. It was not included in the Local Plan originally and only introduced in the first alteration adopted in March 2004. It was not discussed at the Inquiry into the First Alteration. Had therefore this application been determined when it was originally submitted, it would have been approved with an all purpose access.
- 9.84 According to the applicant (Revised Traffic Assessment Dec 2005) it was introduced as part of the Local Plan first alteration process to discourage the use of the private car and reduce movements on the Boundary Road roundabout but no justification for it has been found. Although Bournemouth Council argue this should remain as a restricted access they have not submitted any evidence to demonstrate either that it will encourage the use of public transport or that if allowed as an all-purpose access it would have a greater affect on traffic congestion and delays. Certainly any reduction of car use from traffic generated within the "village" would be insignificant since in the peak hour only some 230 two-way trips per hour are by car.¹⁵⁰
- 9.85 Consideration also has to be given about how this might be adequately enforced. There are only two effective means of enforcement. Cameras would require the support of the Chief Constable who is responsible for enforcement. Physical barriers would rule out use in the case of emergencies.
- 9.86 The applicant's Traffic Assessment indicates that allowing an all-purpose road would not be detrimental and would benefit University Roundabout and reduce queuing on Wallisdown Road West¹⁵¹, which can only be of benefit to bus services. Furthermore, at times there are delays of 10 minutes in the evening peak to traffic leaving the estate and wishing to turn right onto Wallisdown Road East.
- 9.87 There are currently 571 houses served by the existing access. With the new development in place it would lead to nearly 950 private dwellings, 450 student units as well as the University and Arts University College all using a single access. Should that access be blocked the estate would be cut off, particularly if

¹⁵⁰ CD/54 Tables 5.2 and 5.3

¹⁵¹ CD/54 Para 10.4

the restriction were controlled by a physical barrier as was originally suggested by the Applicant.

- 9.88 The nationally accepted guide for the design and layouts of estates is the Manual for Streets. However that is concerned more with internal layouts. Dorset County Council in their document "Highway Guidance for Estate Roads" which lays out design standards states that more than 300 dwellings should be served by a Local Distributor road. That is a road Fern Barrow is classed by Poole as such in the local plan. By definition I would argue that such a road should have two points of access onto a District Distributor. (In this case Wallisdown Road)
- 9.89 The Planning Inspectorate on their web site "Design- Advice for Inspectors" refer to Design Bulletin 32. (Appendix Item 2) That states that even for 300 dwellings consideration should be given to having two points of access. Over that figure there should be two points of access.
- 9.90 The provision of an all-purpose access is supported by Poole Council.¹⁵² In our view to allow a development of nearly 1000 dwellings as well as the University and Arts University College with just a single access point would be unprecedented and against all good practice. Should the Application be approved then the access onto the Boundary Road Roundabout should be all-purpose.

Community Facilities

- 9.91 At the moment there are no Community facilities in the Village itself. Should the development be granted it would create a large village with minimal facilities for the residents and no meeting place. There is the hall at St. Marks Church which is available to all on a first come first served basis and it is never easy to make a booking. We have had to change the date of our Committee Meetings and have tried to book it for a social event later this year only to find it fully booked. It has been suggested by Poole in their Report to the Planning Committee that use could be made of facilities within the University. This is not part of the Application and cannot be covered by any legal agreement. It is dependent upon the good will of the University and therefore not relevant
- 9.92 The developer should be required to provide at his expense, both meeting and sporting facilities as required by Policy CF6 PLANNING OBLIGATIONS - COMMUNITY FACILITIES.

Housing

- 9.93 The original concept of the Talbot Village Estate was to provide high quality low density housing. That has changed over the years but the overall balance remains the same. We are not against affordable housing as such and we recognise that with careful planning and design the estate can continue to accommodate a level of affordable housing similar to that existing at the moment. We believe that to provide 40% affordable housing on site will change the nature of the estate and is excessive. It will only serve to exacerbate existing problems.

¹⁵² BPC /15 para 5.4

9.94 The site has been identified in Policy H1 of the Local Plan as helping to meet Poole's Housing needs. Strategic Objective 2 of the Poole Core Strategy is 'To meet Poole's housing needs and provide the right homes in the right places'. There are already a number of houses within the Village that have been removed from the local housing stock because they are now student lets. Currently the type, cost and nature of the housing acts as some restriction. The high density housing may well in due course because of its cost and nature become student lets thus reducing the amount of housing available to local residents. This will not release housing elsewhere in Poole because as the applicants themselves admit, the creation of student housing (updated Planning Statement) has little benefit to Poole because most students live in Bournemouth. It will also give rise to further tensions between residents and students. Furthermore our experience is that student houses require different car parking standards to family dwellings. It is not uncommon to see 4 to 5 cars parked at such dwellings. Whilst the Council appears to be in the process of making an Article 4 Direction, it has yet to give Notice of that Intention. Furthermore although as part of the Local Development Framework, it is consulting on proposals to control Houses in Multiple Occupancy within the Village (Appendix Item 3) it has no established Policies. The development is therefore premature and fails to meet Objective 2 of the Poole Core Strategy.

Car Parking

9.95 The application does not adequately demonstrate how private vehicle trips to the University are to be limited as required by Policy CF2 of the Local Plan. The attempts to increase use of public transport and cycling are physical only. They will not achieve any change in the modal split for the reasons outlined previously. There are certainly no innovative schemes shown. Thus the proposals will exacerbate the existing problems.

9.96 It has been suggested that this could be addressed by waiting restrictions. We do not consider that to be appropriate or realistic or fair to the residents. Waiting restrictions restrict both students and residents. Recent changes to the waiting restrictions show how divisive this issue is. We do not believe that residents should be made to suffer because the University & Arts University wish to expand. Any waiting restrictions are subject to Statutory Procedures and it would be extremely difficult to come up with proposals that would be acceptable to the residents and therefore capable of being implemented.

9.97 The application does not meet the intentions of Para 49 of PPG13. Until the Planning Authority has given proper consideration to this matter and produced after public consultation, appropriate policies to control parking within one mile of the University, any further expansion of the University should be refused.

Effect on Local Services

9.98 The applicant originally stated the existing schools and medical facilities can cope but failed to show evidence in the application. The Village Surgery has requested additional car parking to cater for additional patients but none is provided as part of this application¹⁵³.

¹⁵³ See their representation of 1st September 2005

- 9.99 In the report to Planning Committee, it is stated that a significant financial contribution for additional school spaces is necessitated as a result of the proposed development. The report talks about expanding schools within Poole Borough. However the two nearest secondary schools which fall within Bournemouth are 1500m away which is within both walking and cycling distance. The application site falls within the Poole catchment area of ST Aldhelms Academy which is 3600m away. This is outside walking distance and would involve cycling along busy roads. This hardly fits in with sustainable transport policies.
- 9.100 There are two combined schools within walking distance of the Application Site. Talbot Combined is within the Borough of Poole. It has been in Special Measures since January 2010 and at the last inspection in March 2011 was making inadequate progress. It has 60 places each year. The Village falls within the Parish of St Marks and the preferred option for parents on the estate is St Marks School. It is rated as outstanding by Ofsted. It has 60 places. It is always oversubscribed. For the academic year starting Sept 2011 it refused 70 applications (in 2010 it was 42). Even those children of families who reside in the parish or historically designated area whose parents are on the Church Electoral Roll have to have been frequent worshippers at St. Mark's Church, Talbot Village for at least 24 months prior to application for admission. Frequent worshippers are those who attend a family or church service and/or who are involved in a weekday church activity, including an element of worship, at least twice a month. The additional development will exacerbate this problem.
- 9.101 Any S106 Contributions in respect of Education should be used to expand Bournemouth Schools but there is no provision to assist Bournemouth in providing more places.
- 9.102 The Application does not therefore meet the requirements of Local Plan Policy CF6 DEVELOPMENT SHOULD MAKE APPROPRIATE PROVISION FOR THE COMMUNITY FACILITIES NECESSARY TO ENABLE ITS IMPLEMENTATION.

Effect on Local Residents during construction

- 9.103 The use of existing public highways within the village and University Roundabout will have an adverse impact upon both the amenities of existing residents and the availability of car parking. The current dual carriageway is taken up with bus parking outside the University, there are a significant number of pedestrians crossing to and from the bus stops and in addition it is a route to school for mums & children. To allow construction traffic especially large vehicles to use the existing access via Fern Barrow would cause congestion and danger. In the event that the application is granted, it should be a requirement that for construction traffic, access is from a temporary access onto Boundary Roundabout and that adequate provision is made for operatives parking and that no loading or unloading takes place from the existing public highway.

Heathland

- 9.104 We fully support the concerns of those parties who will give evidence in relation to the impact upon the heath. We leave them to present the evidence.

Friends of Talbot Heath represented by Councillor Rollo-Smith

- 9.105 The protected heathland is in the ownership of BPC and TVT. BPC maintains the site through direct works agencies and part through RSPB. TVT is in breach of its statutory obligations to provide any form of protective management.
- 9.106 In the planning process there has been a lack of consideration of emerging planning policy, and understatement of public opposition, late submission of planning documents and the incomplete and non-specific components of the appropriate assessment. There is no grounds for a planning permission to be granted unless the merits of the application are sufficient to outweigh the provisions for the protection of the heathland¹⁵⁴. TVT state that its package of mitigation measures is “unique in terms of their comprehensive nature” and that the need for this development is both “pressing and exceptional”. However, there is nothing unusual about the application and it would set a precedent for the overwhelming of the protected site.
- 9.107 The mitigation measures include the cat proof fence; additional fire fighting measures; and the transfer of heathland and marginal farmland to BPC on the basis of a financial package. That may fall as a burden on the tax payers of BPC and BPC has indicated no formal preparedness to accept such a “gift”¹⁵⁵
- 9.108 The application is opposed by NE and there have been previous decisions where such applications have been dismissed¹⁵⁶. The cat proof fence could only be cat resistant and not vandal proof, so children and young people who may commit arson will still have access to the heath. The “no pets” covenant cannot be enforced. The stewardship programme will be as ineffective as the current management programme – no management has been carried out for the last 10 years even though TVT has more than adequate funds.
- 9.109 Bourne Bottom is described as a “site of remarkable habitat variety, comprising large compartments of dry heath on higher elevations, with significant areas of humid and wet heath and valley mire --- this is one of the major lowland heathland areas in Britain.” Nonetheless the applicant’s appropriate assessment states that the proposed development would not impact on the integrity of the protected heathland as a result of the exceptional package of mitigation measures.
- 9.110 The applicant states that the land to be developed is not longer viable for farming. Yet the prospect of maintaining the land in its present use as an urban farm with many benefits including stocking with animals which would provide controlled grazing of the heathland is not considered. This even though the Talbot Sisters Charity included the interests of maintaining model farms. Over 80% of local residents favour the continuation of the urban farm which the current tenant maintains as a viable unit.
- 9.111 There is no current or pressing need for housing on the site, and with the emerging planning process consideration of the application should have been adjourned.

¹⁵⁴ PPS9 Policy H3/1, PCS28 and SP EN.A

¹⁵⁵ Inspector’s note: the signed S106 indicates that the land referred to would remain in the ownership of TVT. BPC would receive payments to cover wardening and maintenance. BPC has indicated acceptance of the arrangements.

¹⁵⁶ FoTH PoE

Conor Burns MP

- 9.112 Conor Burns MP appeared at the Inquiry to support local residents. He had received representations from both sides of Talbot Heath. Highmoor Farm was the last one in this urban area, and NE had made its concerns clear about the current proposal. Whilst he was not opposed to any development at all, existing problems should not be made worse. He was sceptical about the effectiveness of the cat proof fence and the pet covenant, and was also concerned about the impact on traffic using the Wallisdown Road, where an additional 35-40 minutes could be added to travel time.
- 9.113 The University was in favour of a development, and would be happy to find an alternative plan with TVT. Academic buildings had less implications for the heath, and students do not keep cats. This particular plan should not be permitted, but development as a university would be a good thing, and it should be possible to have everything in a differently constituted plan.

10. WRITTEN REPRESENTATIONS

- 10.1 A number of letters have been received in response to the call in by the Secretary of State of the planning application. Many of the written objections to the development reflect the views of objectors who appeared. They refer to the impact of the proposal on the protected heathland; the failure of the cat proof fence to be effective; the precedent which would be set for other development within 400m of the protected sites; the loss of productive farmland and of a large and tranquil area of undeveloped land; and the effect on traffic in Wallisdown Road. There is also much concern about the impact of further students living adjacent to housing which provides for families and people with a number of disabilities. There is already a serious problem with noise and anti-social behaviour from students living in the existing accommodation, which campus security has been unable to control. With the additional development Mansel Close in particular will be surrounded by student accommodation and the situation will deteriorate further.
- 10.2 Concern has also been raised about how water will be supplied to the new housing in view of the constraints on water supply in the area and the impact of further withdrawal from rivers on their quality. The need for further student accommodation in view of restrictive Border Agency directives, and the rise in tuition fees is also questioned
- 10.3 The Ramblers East Dorset Group support the retention of the route of FP33 with the treatment of the land along the southern boundary of the site as part of the heathland. The Ramblers have indicated that they would object to any future proposal to divert FP33. They also expressed concern about the erection of metal stiles at either end of FP33 within the development area, and indicated that any provision for emergency vehicle access should secure the safety of users of the FP.
- 10.4 Dorset Wildlife Trust (DWT) opposes the application for the same reasons as NE and RSPB. The Trust has an interest in the Talbot Slopes and Cutting SNCI which lies within the application site and immediately adjacent to the Bourne Valley Natura 2000 site. The mitigation measures do not offer sufficient certainty that the protected heathland would be protected from the impacts of the development.

- 10.5 The SNCI comprises dry heath and gorse, and is known to support reptile species, with past records of sand lizard, common lizard and slowworm¹⁵⁷. The SNCI is also known to support Dartford Warbler. The SNCI also forms an important corridor connecting two sections of the Bourne Valley SSSI. DWT share the concerns covered by NR in relation to the mitigation measures put forward by TVT and remain convinced that there is insufficient certainty that the measures would either succeed or be successfully implemented through a S106 to assure the long term integrity of the heath.
- 10.6 Poole Agenda 21 supports the case put forward by NR. Highmoor Farm is the last remaining of the six small farms set up by the Misses Talbot at the end of the 19th century. The greenfield land has provided a valuable green lung between the developed areas of the towns of Bournemouth and Poole. Agenda 21 also objects to the development since it does not comply with the requirements for sustainable development. A development of the scale proposed must address the broader issues of climate change, carbon dioxide emissions, resource consumption, the use of sustainable building design, materials and practices, water saving and harvesting, and the ecology of the built site. Sustainable development conditions should be imposed on any outline planning permission.
- 10.7 The development should also include live-work units to reduce the need for travel to work, embrace the idea of “lifetime homes” and address issues of security in the design.
- 10.8 Supporters of the scheme include Bournemouth University, and the Arts University College. The institutions welcome the opportunity for expansion of the academic floorspace and student accommodation for the Wallisdown campuses. Both institutions refer to their importance to the local economy and the high quality of research and teaching which is offered. The new provision is critical to the delivery of the University’s strategic plan which is set in the context of the Government’s Vision for the future of Higher Education. The opening of the second access onto Wallisdown Road is welcomed to reduce traffic congestion, together with the other benefits of the scheme such as improvements to public transport.
- 10.9 The mother of a former student states that by providing student accommodation near to the University the need for student parking will reduce, as students currently live away from the University and use their cars to reach it. Cars park outside homes since the University does not provide sufficient parking on site.
- 10.10 The Ability Housing Association and the Hanover Housing Association both manage affordable housing to meet a number of needs and support the proposal. TVT is considered to be a responsible landowner with a genuine interest in the welfare and well-being of the local community. The affordable housing element of the proposal is urgently needed and will build on an established and successful community.

11. THE CASE FOR THE BOROUGH OF POOLE COUNCIL

¹⁵⁷ CD49 Plan 7

Introduction

11.1 BPC appeared at the inquiry to explain and support the decision of its Planning Committee to grant planning permission for the proposed development. This is a long-standing application and a great deal has happened since it was submitted in terms of the development of the law on European protected sites in general, and on the application of that law to urban heaths in particular.

The determinative question

11.2 The central issue in the determination of this application is a simple one which can be expressed as the following question:

“Can it be established confidently, beyond reasonable scientific doubt, that the proposal – taking into account the manner in which it is proposed to be carried out and the conditions and requirements to which it will be subject – will not have a significant adverse effect on the integrity of the Dorset Heathlands designated as European sites, either in its own right or in combination with other plans or projects?”

11.3 It was accepted by NR that the various development plan and national policies neither add nor subtract from this test. Policy PCS 28 of the Poole Core Strategy¹⁵⁸ states as an overriding principle that development will not be permitted where it would be likely to lead to an adverse effect upon the integrity of the Dorset Heathlands European designations. It is accepted that (a) this includes looking at in combination effects, and (b) “likely” is to be read as importing the *Waddenzee* test¹⁵⁹.

11.4 Para. (i) of PCS 28 further states that no development involving a net increase in dwellings will be permitted within a suitable buffer area (normally 400m) “unless, as an exception, the form of residential development would not have an adverse effect upon the site’s integrity”. BPC submits that this exception is not to be confined to particular types of residential development, but applies to all aspects of the development as proposed which avoid or mitigate the adverse effect on site integrity which would otherwise occur¹⁶⁰. The correct answer is that the issue is not one of the type of the development but one of integrity of the site, as indicated by Inspector David Fenton in the report on the examination into the PCS. A ban on residential development generally would be a restrictive policy of the type which the inspector said should not and could not be imposed¹⁶¹.

11.5 If the development meets that test, no other policy requires it to be refused. If it fails that test, no other policy saves it. Saved Policy H3 of the Poole Local Plan First Alternation¹⁶² allocated the site for residential development and student accommodation subject to the proviso (i) that development will not harm the adjacent European sites, SSSI and SNCI. In so far as this relates to the European sites, BPC accepts that it cannot be read so as to detract from the

¹⁵⁸ CD 65

¹⁵⁹ Mr Jacobs eic

¹⁶⁰ Mr Jacobs eic and xx by Mr Machin

¹⁶¹ CD 17, January 28, 2009 p 22, para. 4.91

¹⁶² CD 20

Art 6(3) test. The Draft National Planning Policy Framework published for consultation on 25 July 2011 does not affect that position.¹⁶³ The commitment in the Draft NPPF to supporting sustainable growth is consistent with the Poole Core Strategy. Poole is designated as a growth point and the application site is identified in Poole's Strategic Housing Land Availability Assessment (SHLAA) which was updated in May 2011, and is being carried forward through the Site Allocation DPD submitted to the Secretary of State for examination on 2 August 2011. There is thus an up to date local plan with which the proposal accords. On the other hand, the Draft NPPF makes clear (paras. 16 and 170) that if the proposal fails the integrity test then it will not be regarded as "sustainable" under the presumption in favour of sustainable development: again this is entirely consistent with the approach of the local development plan and of Poole Borough Council to the application.

11.6 The test of course is not a policy test at all, but a legal test presented by Article 6.3 of the Habitats Directive and reg. 61 of the Habitats Regulations, as interpreted by the European Court in *Waddenzee*.¹⁶⁴

11.7 It is determinative in that NR also accepts that: (a) the SSSI designation does not raise any issues demanding a "high level of protection" in PPS9 terms beyond the European dimension;¹⁶⁵ and (b) to the extent that the development and its mitigating measures may involve disturbance of European Protected Species, this can be accommodated within a licence and such a licence would be likely to be forthcoming¹⁶⁶ – thus satisfying the test set by the Supreme Court in the case of *Morge v. Hampshire County Council*.¹⁶⁷

11.8 NR has confirmed that there is available all such information as the competent authority might require to undertake a valid AA.¹⁶⁸ Indeed NE has produced its own AA in draft.¹⁶⁹

The Integrity Test

11.9 It is important to spend some time at the outset in understanding the components of the "integrity test" as it is fundamental to the determination of the application. There are four key points to be made.

11.10 First, the test relates to the integrity of the entire European site, i.e. the whole SAC and SPA, not simply Talbot Heath.¹⁷⁰ Therefore, whatever the effects might be after taking into account the manner in which the development will be carried out and the mitigating effect thereof, these effects must be judged in relation to the whole area of the SPA and SAC,¹⁷¹ and in relation to the two bird species in question, their entire populations within the SPA.

¹⁶³ BPC /13

¹⁶⁴ CD 07; BPC /10.

¹⁶⁵ Mr Tyldesley, xx by Mr Katkowski.

¹⁶⁶ Mr Squirell, xic.

¹⁶⁷ BPC /11.

¹⁶⁸ Mr Tyldesley xx Mr Katkowski

¹⁶⁹ NR/5, Appx E.

¹⁷⁰ Mr Tyldesley xx by Mr Katkowski. And CD 03.

¹⁷¹ Over 8,000ha in the case of the SPA and some 5,700ha for the SAC: Mr Goodwin eic.

- 11.11 Secondly, the question is not whether the effects will be discernable, or more than nil or de minimis: the test is whether they will be significant in terms of integrity of the whole European site. Here it is relevant to keep in mind the existing visitor pressures on the Heathlands,¹⁷² relative to the additional visitors the proposed development might generate.¹⁷³
- 11.12 Thirdly, in taking into account the manner in which the development is proposed to be carried out, and the mitigating measures incorporated into it, there is no discretion. The requirement to take account of them is mandatory: "... the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given."¹⁷⁴
- 11.13 Therefore the suggestion by NR that matters which are (a) "normal management";¹⁷⁵ or (b) matters which should have been undertaken already; or (c) matters which may or (d) will be undertaken in any event, is simply wrong. It would place an impossible burden on a competent authority to have to separate out such matters, which involve a subjective exercise of judgement. The only legitimate question for the inquiry is whether those measures will be effective in preventing or mitigating the effects on integrity which would otherwise occur.
- 11.14 Fourthly and finally, the "in combination" element of the question does not involve asking whether the project would add anything material to the cumulative impact, as NR submitted in opening. The question is whether the cumulative impact would be significant. This applies both to the assessment of the project alone and in combination.¹⁷⁶ It is not necessary for the applicant to demonstrate that there is no additional impact.

The Interim Planning Framework

- 11.15 That leads into consideration of the IPF¹⁷⁷ and its implications for this application. Again, the issues are in fact quite simple.
- 11.16 The IPF applies to development within 400m and 5km from the European site boundary. It came about, as did the equivalent for the Thames Basin Heaths, because of the impasse which would arise from proposals for development which did not or could not offer their own mitigation, and which might have a very modest impact on integrity when viewed individually, but which when viewed cumulatively could not pass the stringent *Waddenzee* test of confidently ruling out a significant impact on integrity.¹⁷⁸ Put simply, the IPF provides a means by which the competent authority and NE can be satisfied to the

172 Some 8.7 million household visits pa: Dr Underhill, xx by Mr Katkowsky.

173 Approximately a 0.16% increase, as put to Dr Underhill in xx by Mr Katkowsky.

174 Habitats Regulations 2010, reg. 61(6) (CD 32).

¹⁷⁵ Many of the mitigating measures proposed to be undertaken by TVT could not in any event be reasonably described as "normal management", as they go well beyond anything which NE could properly require of a landowner under the legal powers available to NE in relation to SSSIs or European Sites.

¹⁷⁶ As agreed by DT, xx by CK, and TG, xic; contrast AB, xx by GM.

¹⁷⁷ CD 22.

¹⁷⁸ Mr Goodwin, eic; and xx by Mr Machin.

requisite standard that the common mitigating measures funded by contributions from each development would mitigate those effects to an insignificant level.

11.17 Plainly, the project in this case could not rely on the IPF to mitigate such effects as would arise from its location within 400m of Talbot Heath: that was not the intention of the IPF. With regard to such effects, the project must stand or fall on its own merits – either it passes that test or it does not, having regard to its package of mitigation.

11.18 Contrary to Mr Tyldesley's initial suggestion, finding that the project passes that test, if that is the decision, does not compromise the IPF, or open the floodgates to further applications. As the IPF is not engaged with regard to those effects, it can hardly be compromised. Nor, contrary to the view of Mr Tyldesley, does the IPF amount to a green-belt like presumption against development within 400m.¹⁷⁹ All that it says is that the effects of development within that radius cannot be mitigated simply through the IPF mechanism and that "in most cases" it will not be possible for an authority undertaking an AA of such residential development to be "certain that any adverse effects could be avoided or alleviated."¹⁸⁰ What is required is to apply the stringent integrity test – if a project can meet that test then by definition it will not be giving rise to a significant effect on integrity of its proximate site. So what is the objection?

11.19 As has been accepted by Mr Tyldesley, there are no other plans or projects within 400m of Talbot Heath which need to be taken into account with this project in applying the test.¹⁸¹

11.20 The position is different when it comes to impact on other heaths within the SPA/SAC. If the pet and people proof fence is successful in restricting residents of the new development from gaining access to Talbot Heath, they will only gain access by a walk of between 1.7 and 2 km each way. In reality, for regular visits that means they will use the car. Once in the car they have a choice of a number of destinations within equivalent distance to Talbot Heath, some of which will be more attractive destinations for walking and recreation. The impact of such additional visitor pressure on such destinations, if they are between 400m and 5km away, is mitigated through payment into the IPF.

11.21 Nor is it the case that the applicants for this project would have to point to some existing scheme within the IPF suite which offers mitigation specifically in respect of the proposed development. Contrary to the suggestion of NR and Mr Tyldesley, it is plain that the IPF does not require that a developer must identify specific projects or sites within the IPF which would mitigate the effects of their development in order to rely on that general mitigation. The IPF is intended to operate at a strategic level, mitigating cumulative impacts across the Dorset Heathland SAC and SPA as a whole.¹⁸²

¹⁷⁹ Mr Squirrel, eic.

¹⁸⁰ CD 22 para. 2.4

¹⁸¹ Mr Tyldesley xx by Mr Katkowsky.

¹⁸² Mr Goodwin eic, Mr Jacobs eic.

- 11.22 The whole point of the IPF is that payments per unit are paid and the pool of funding is disbursed to provide mitigation across the entire SAC/SPA. This follows from the wording of the IPF, para. 3.2 referring to the package of measures; the fact that the IPF expressly contemplates large scale developments relying on the IPF as a “fallback” having explored the possibility of bespoke measures (para. 3.3); and the fact that after five years the contribution must be returned in full if it has not been spent (para. 4.7). To require a developer to identify the specific schemes which mitigate their development would amount to undertaking a form of AA, which the IPF is specifically intended to avoid.¹⁸³
- 11.23 Further, it is important to note that the IPF contains provisions at para. 6b on administration and audit, under which an Executive Group representing each local authority, the Home Builders’ Federation, NE and RSPB considers schemes recommended by the Heathland Interim Planning Framework Officer Group (HIPFOG) to mitigate the impact of additional urban pressures. The mitigation proposed at Appendix A to the IPF may be varied through the ongoing process, “... but crucially Natural England will need to be satisfied that the necessary overall level of mitigation is achieved” (para. 6c). Thus it lies in NE’s hands to ensure that contributions which are collected are channelled into appropriate projects to achieve the necessary overall mitigation across the Dorset Heathland sites.
- 11.24 As Mr Jacobs explained,¹⁸⁴ contributions under the IPF go to fund a package of measures to mitigate overall impact; the IPF ensures that schemes are assessed and endorsed which will mitigate the impacts of development within SE Dorset. To date over £3m has been collected and £2.4m spent or committed, with the mitigation put in place as money comes forward. There is for example within the present IPF a project for the provision of SANG at Upton Farm to the NW of Poole, which is highly accessible from the development site.¹⁸⁵

The Proposed Mitigation

- 11.25 The key issue therefore comes down to the assurance which the competent authority has that the proposed mitigating measures will work, or will work to such an extent as to mitigate the impacts of the development to non-significant level. It is accepted that the approach must be stringent, in arriving at that conclusion beyond reasonable scientific doubt. Equally, however, it must be remembered that these measures will operate cumulatively to reduce the impact – in other words even if one measure may not be 100% effective, it must be coupled with the other measures in assessing the overall effectiveness. NR will point to appeal decisions involving very much smaller-scale developments where the effectiveness of proposed mitigation measures has been doubted:¹⁸⁶ however, the measures put forward in this case should be considered on their merits and on the basis of the evidence before the inquiry

¹⁸³ See Background Paper to IPF (CD 04), para. 7.4.

¹⁸⁴ Inspector’s questions.

¹⁸⁵ CD 22, Appendix A, Table, items 24-26.

¹⁸⁶ NR47 (demolition of existing dwelling and erection of 3 bungalows and 2 chalet bungalows).

and not by analogy with developments (and mitigation) on an altogether smaller scale.

11.26 Two key measures are obviously the no-cat or dog covenant and the cat/people proof fence.

11.27 **The no cat/dog covenant:** the question is not whether such a covenant is desirable. It is whether it will work. In legal terms, plainly a valid covenant can be imposed. As explained at the inquiry, there are a number of routes to enforcement: (1) enforcement by BPC as a section 106 covenant, binding on future owners and occupiers of the development;¹⁸⁷ (2) enforcement as a private restrictive covenant by the Trustees as owners of the adjoining Heath land, for the benefit of which the covenant was imposed;¹⁸⁸ and (3) by BPC in enforcing against the Trustees if they fail themselves to enforce the restrictive covenant.¹⁸⁹ These are well-established and legally robust means of imposing restrictions on the use of land. The vague assertion that they may be contrary to the Human Rights Act does not take the matter any further – the Act plainly accepts that restrictions may be imposed on the use of private property in the public interest if there are proper reasons to do so and a restriction on keeping cats or dogs (if necessary to protect an important environmental interest) is no different to any other restriction. The particular needs of people with disabilities for Assistance Dogs have been catered for in the Section 106 Agreement.

11.28 The question is whether there is a risk the covenants could be generally flouted and subject to widespread breach. There is no basis to assume that an individual who has entered into a covenant not to keep cats or dogs when purchasing their property would simply ignore that covenant, particularly if coupled with explanatory literature as to why the covenant is imposed, as provided for by the Section 106 agreement in Information Packs which will be provided to all original and new purchasers.¹⁹⁰ Some future residents of the new development may well prefer to live in a cat/dog free environment. The number of cats or dogs which might be kept in breach of the covenant would be a very small proportion of the existing cats and dogs already accessing Talbot Heath and the Dorset Heathlands generally. Of that number, not all cats will have the propensity to hunt on the Heath and not all dogs will be walked on Talbot Heath, as opposed to other Heathlands or open spaces.¹⁹¹

11.29 **The fence:** the key issues would appear to be (a) its efficacy while intact of keeping cats off the Heath; (b) how likely it is to be vandalised and breached; (c) whether it would conflict with the status of the Heath as open-access land under CROW, or with public rights of way; and (d) its visual impact.

11.30 On the first point, though Dr Underhill Day suggested that it might need to be electrified in order to deter cats, this is contrary to literature on field trials carried out with feral cats in Australia, where lower fences than is proposed here

¹⁸⁷ S. 106, cl. 4.1 and Sched. 2, Part 1, cl. 9.1.

¹⁸⁸ S. 106, Sched 2, Part 1, cl. 9.2.

¹⁸⁹ S. 106, cl. 4.2.

¹⁹⁰ S. 106, Sched 2, Part 1, cl. 10.

¹⁹¹ Dr Underhill Day, xx by Mr Katkowsky. Mr Squirrel confirmed in eic that if the fence was effective most dog-walking visits would be likely to be to Canford Heath or Turbary Heath.

have been found to be effective.¹⁹² NR have not pursued with any great conviction the argument that the fencing would be capable of being scaled by a cat.¹⁹³ The fence would have the benefit of restricting access to the Heath by cats already kept in existing housing. Further NR has accepted that it could be designed so as to be impenetrable to digging by badgers.¹⁹⁴

11.31 On the issue of vandalism, the design and specification will have to be in accordance with the outline specification and dimensions set out in the Management Statement¹⁹⁵ and its details will require to be approved by BPC in consultation with NE. It will have to be of a specification that might reasonably be expected to prevent access by people as well as by cats and dogs. It is clear that there are types of fencing available which are designed to provide a high level of security, and would be much more durable than the simple chain link type of fence contemplated by Dr Underhill Day and photographed at the Washington wildlife centre.¹⁹⁶ Cutting it or breaking it down would not be an easy exercise, and the provision of wardening and funding to check, maintain and repair the fence would add to that level of assurance. Whilst NR have pointed to previous appeal decisions which have cast doubt on the efficacy of fences,¹⁹⁷ there is nothing to suggest that the inspector in these decisions was considering fencing of such a specification (or indeed any specification at all). Provision is made for maintenance of the fence by BPC, with a specific annual sum of £7,500 index linked payable by the Trustees for that purpose and with provision for the Trustees to make up any shortfall.¹⁹⁸

11.32 On the question of legality vis-a-vis CROW, the right of access to open access land is not absolute. It can be restricted on ecological grounds.¹⁹⁹ In fact the public will not of course be excluded from either the heathland or the areas to be restored; their points of gaining access will be restricted. Plainly the right of public access would not justify residents of the new development gaining entry by breaking or damaging the fence: see CROW 2000 s. 2(1).²⁰⁰ As TVT has explained,²⁰¹ current informal access from Isaacs Close across the fields to the north of the Heath involves crossing land which is not designated as open access land under CROW – there is no direct access from the public highway to the open access land.

11.33 Whilst an application has been made (dated 7 July 2011) to add a public footpath to the definitive map and statement running from Isaacs Close to existing Footpath 33, that application will be determined according to proper procedures, including if necessary an inquiry, and is not a matter for this inquiry

¹⁹² Dr Underhill Day, xx by Mr Tromans. See BPC /1 and BPC /2.

¹⁹³ Dr Underhill Day accepted in re-x that it is possible to erect a fence that will keep most cats out most of the time.

¹⁹⁴ Mr Squirrel re-x.

¹⁹⁵ Sched. 2, Part 3, cl. 1.1.

¹⁹⁶ BPC /9 and Mr Baker eic.

¹⁹⁷ NR32 – NR34; NR47.

¹⁹⁸ S. 106, Sched. 2, Part 3, Cls. 4-7.

¹⁹⁹ BPC /11. See CROW 2000 (CD 39) Part I, Chapter II, s. 26 allowing indefinite exclusion of access

²⁰⁰ CD 39.

²⁰¹ TVT/22.

to speculate on the outcome.²⁰² If confirmed, it will be for the developer to seek a stopping up or diversion order under the powers in Part X of the TCPA 1990.

11.34 Any fence will have some visual effect, self evidently. However it is possible to mitigate that impact by appropriate design and colour (mid or dark green),²⁰³ and many people live in close proximity to fencing around facilities such as electricity sub-stations, railway lines, roads, MoD land, etc. without undue loss of amenity. The topography of the adjoining land means that the fence would not be prominent against the skyline²⁰⁴ and the shrub or tree backdrop will reduce its visibility. Against such visual impact of the fence as there may be, must be set the importance of the role it would fulfil in protecting a European designated site.

11.35 Thus the measures, even if not 100% effective all the time, will certainly reduce markedly the number of (a) cats; (b) walked dogs; and (c) people accessing the Heath from the proposed development. Against that residual possible impact (which, to remind ourselves, must be judged in the context of the SPA/SAC as a whole) there needs to be set the other mitigation measures proposed which will have a positive effect on integrity.

11.36 **Other mitigating measures:** Chief among these, certainly in the view of Mr Baker and it is submitted rightly so, is the reduction in the impact of fires on the Heath. Common-sense would suggest that a wild fire, uncontrolled, will have a much greater adverse effect on both the physical integrity and ecological functioning of the heathland than any other type of pressure. It will destroy potentially large swathes of vegetation, gorse providing cover and protection for the Dartford Warbler, and for the ground-nesting Nightjar. Nests, eggs and young of ground-nesting birds will be lost, as will the reptile European Protected Species. Recovery may take years, with the complications of the wrong type of vegetation predominating. In fact fire on Dorset Heathlands has been recognised as a serious problem for many years, with Recommendation No. 67 of the Bern Convention on Conservation of Heathlands in Dorset.²⁰⁵

11.37 It is clear that Talbot Heath is already subject to significant numbers of fires each year, relative to other heaths, which reflects the large number of existing houses within close proximity.²⁰⁶ Obviously, while the residents of the proposed new houses are no more likely than other members of the population to start fires deliberately or accidentally, no one can guarantee that one of them will not do so.

11.38 Against this small incremental risk, however, must be set the significant reduction of the risk of fires (started by whoever) spreading and intensifying so as to cause widespread damage to the site. The provision of better access for fire service vehicles, the management of the heath to provide fire-breaks, the provision of better wardening, and the installation of water supply hydrants will

²⁰² BPC /8.

²⁰³ TVT/23.

²⁰⁴ Mr Jacobs, Inspector's question.

²⁰⁵ NR/36, p. 36.

²⁰⁶ CD 86 Analysis and Presentation of IPF Monitoring, p. 42, Table 5.

have this effect. The detail of such matters as the location of hydrants is capable of being resolved by agreement with NE.²⁰⁷

11.39 Further significant mitigating measures include (a) the re-creation of 10.7 ha heathland habitat and acid grassland within existing fields in compartments 19, 20, and 22; (b) the provision of a sustainable drainage system, swales, reed bed and balancing pond with the objective of reversing deterioration in the condition of the wet heath/Ramsar Site by providing a controlled water supply; (c) heathland vegetation management; (d) provision of dog bins and interpretative signs within and adjoining the heath; (e) provision of information packs to new and existing residents; (f) funding for a dedicated warden; (g) provision of 1.57ha alternative open space in compartment 24 (the triangular field) for existing residents. These measures are listed in the Management Statement in the Section 106 Agreement.²⁰⁸

11.40 The Restoration and Enhancement Scheme covering these matters must be submitted for approval to BPC prior to commencement of the development and completed by no later than first occupation of the 151st residential unit, or as a long-stop no later than 3 years following occupation of the first residential unit.²⁰⁹ Natural England are to be consulted on it before approval. Following satisfactory completion of the works, the heathland will be maintained by BPC in accordance with the Management Statement,²¹⁰ with an index-linked annual payment of £40,088 paid by the Trustees in perpetuity, to be reviewed every five years for the express purpose of wardening and maintaining the Heath (the Heathland Maintenance Sum).²¹¹ Should that sum be insufficient, there is provision for the Trustees to make up the shortfall, upon it being evidenced. Monitoring of the effectiveness of the ecological protection measures is provided for by the Section 106 agreement.²¹² There are robust reciprocal remedies available to the Trustees to ensure that BPC does in fact meet its obligations to warden and maintain the Heathland.²¹³

11.41 Such measures are consistent with the objective of BPC's Bourne Valley Management Plan of ensuring the public have the opportunity to appreciate and enjoy the local countryside without detriment to the ecological and aesthetic value, and of moving from recovery management to long term sustainable management of heathland.²¹⁴ They are exactly the type of measures which form part of the comprehensive package of mitigation envisaged at the strategic level by the IPF, i.e. enhancement of existing open space, local amenity actions,

²⁰⁷ Mr Squirrel in response to Inspector's question. NR/42 showing approximate location of hydrants, supply pipes and access tracks, as proposed by NR. Proposed condition 18 provides for approval of a scheme for heathland fire-fighting improvements before commencement of development, in consultation with Natural England.

²⁰⁸ S. 106, Sched 2, Part 6.

²⁰⁹ S. 106, Sched. 2, Part 1.

²¹⁰ Which is to be reviewed every five years in consultation with Natural England: see s. 106 definitions of Consultation and Restoration and Enhancement Scheme.

²¹¹ S. 106, Sched. 2, Part 1, cls. 7 and 8, and Part 7 on review of the sum.

²¹² S. 106, Sched. 2, Part 4.

²¹³ S. 106, Sched. 2, Part 5.

²¹⁴ S. 106, Sched 2, Part 9 (Management Statement).

and measures to increase the ecological robustness of the European sites by sympathetic use of adjoining land.²¹⁵

11.42 As can be seen from Table 6 to the Management Statement,²¹⁶ these amount to very significant investment of capital sums (over £640,000) and annual costs (over £40,000 pa). Measures such as the proposed heathland re-creation will mitigate against the fragmentation of heathland and will create new habitat to support the relevant bird species.²¹⁷ Whilst land currently may be used informally and have some intercepting or buffering effect, benefits will flow from the provision of stiles, signs, etc.²¹⁸ The provision of a dedicated warden will significantly assist in educating the public and in encouraging responsible behaviour, as well as reducing fire risk.²¹⁹ They are measures which will be secured by funding in perpetuity.

11.43 It must be said therefore that NR's approach to these commitments to mitigation at the inquiry has been disappointing and at times somewhat surreal. Obviously there can be legitimate differences of opinion over the detail of how such measures should be undertaken and in some cases (such as the heathland restoration) how successful they are likely to be. BPC for its part is satisfied that such works can and will be effective in mitigating both existing visitor pressures and pressures from such residents of the proposed development as visit the heath, in terms of influencing behaviour, diluting pressure, improving existing areas of habitat and providing new areas of habitat. NE's rather lukewarm approach to many of the measures seems somewhat inconsistent with its obligations under Community law to take steps under Art. 6(2) of the Habitats Directive to reverse any decline in integrity of the European sites and to protect breeding sites of European protected species against deterioration.²²⁰

11.44 NR has sought to draw a semantic and ultimately unworkable distinction between concepts of mitigation, "normal management measures" and enhancement. This distinction is not to be found in the legislation at EU or domestic levels. The obligation on the competent authority by reg. 61(6) or the Habitats Regulations is to have regard to the manner in which it is proposed that the development will be carried out and the conditions and obligations (under the Section 106 agreement) to which it will be subject. As Mr Goodwin pointed out, it is not helpful to shoehorn measures into one or other categories; nor is it required by the legislation. The only legitimate distinction is between measures which mitigate effects on integrity by avoiding or reducing them to an acceptable level of significance, and those measures which accept that there will be a significant adverse effect on integrity, and which seek to compensate for it. The measures in this case clearly all fall into the former category. How one chooses to describe them is not of significance to the test which has to be applied.

11.45 Nor is it of significance whether the measures are to be regarded as "normal" management which an owner should already be expected to be carrying out, or

²¹⁵ See CD 04, Annex 1, NE Advice Note, p. 15.

²¹⁶ S. 106, Sched. 2, Part 6.

²¹⁷ Mr Goodwin eic.

²¹⁸ Mr Goodwin xx by GM.

²¹⁹ Mr Goodwin eic.

²²⁰ Interim Legal Submissions (BPC /11) and Mr Squirrel xx by Mr Tromans.

which might in the past or in future be compelled to be carried out using NE's statutory CROW powers. A moment's reflection would suggest that it will present an impossible task for a competent authority to form a view on what is "normal" and on what measures could or might be the subject of a management notice, and then somehow to separate out and disregard the mitigating effect of those measures within the overall package. It would be impossible, inherently uncertain, and contrary to the approach required by reg. 61(6). It is therefore BPC's view that the entire package of measures put forward by TVT is to be judged as a whole according to its effect in ensuring that the development as a whole, including those measures which form part of it, can be said with the requisite degree of confidence not to have a significant adverse effect on the integrity of the SAC and SPA of which Talbot Heath is part.

11.46 Perhaps the oddest aspect of NR's approach was to argue that the measures to recreate heathland habitat would have the unwelcome effect of making the area more attractive to visitors and increasing footfall. Any heathland restoration or enhancement scheme would presumably therefore in NR's view be a bad thing, for that reason. A more credible view is that of Mr Goodwin²²¹ that in other circumstances than the current inquiry, NE would be biting off the hand of an owner who was willing to offer such measures. NR's view becomes even more bizarre when viewed in the context of their eagerness to see the proposed development site converted into a SANG, which with its car parks, signage and other measures designed to attract visitors, would act as a honeypot or magnet in drawing large numbers of visitors who would then have unrestricted access to Talbot Heath.²²² SANGs with access direct onto heathland could actually increase the footfall to the heathland.²²³

11.47 The above measures will mitigate the direct potential effects from the location of the part of the development site within 400m of Talbot Heath. Obviously, they will not completely prevent all effects. Residents of the new development will still be able to access the Talbot Heath by walking to the nearest access point, or cycling to such access point, or by car. Equally, if travelling by car they may choose to visit other heathland sites or other open space such as the coast. The heathland restoration and enhancement measures required by the Section 106 will mitigate those effects on Talbot Heath.

11.48 Also, the Section 106 requires payment of the appropriate index-linked sums (£1,724 per house and £1034 per flat) towards measures which avoid or mitigate against any adverse effect on the Dorset Heathlands in accordance with the IPF. As is clear from the IPF, payment of these sums and their use on projects agreed within the IPF is adequate mitigation of the effects of the development, in combination with other projects, on the Dorset Heathlands as a whole.

11.49 As already made clear, there is no necessity to find existing or potential schemes within the IPF to which this development specifically relates.

Other alleged defects in the AA

²²¹ Mr Goodwin xx by Mr Machin.

²²² Mr Goodwin xx by Mr Machin; Mr Squirrel xx by Mr Katkowsky.

²²³ See CD 86 Analysis and Presentation of IPF Monitoring, p. 83, Box, first bullet point.

- 11.50 Turning to deal with alleged defects in the AA undertaken by BPC based on the report by Baker Consultants, there are three issues which arise that have not been picked up already. These are (a) cumulative effects; (b) synergistic effects; and (c) typical species.
- 11.51 First, on both cumulative and synergistic effects, the starting point is whether there is any material effect at all to be added to any other: "to have an effect in combination, there must be an effect to be combined".²²⁴ If the effect is zero or *de minimis*, i.e. so trivial or negligible as to be not worth considering, there is nothing to add.²²⁵ The example given by Dr Underhill Day of a fire as a possible cause of synergistic effects shows the fallacy inherent in NR's approach. The proposed development may increase the existing risk of fire by a very small amount; but fire is already a serious problem on Talbot Heath, and the mitigating measures included in the proposal will reduce considerably the risk of severe and uncontrolled fires causing widespread damage. Further it appears that the approach being advanced by NR as to *de minimis* impacts at this inquiry differs from its approach in other cases where objections to development have been withdrawn where potential impacts have been reduced to a *de minimis* level, both in terms of the development alone and in combination: see the examples given by Mr Goodwin of Graylingswell Hospital, Chichester and Queen Elizabeth Barracks, Church Crookham.²²⁶
- 11.52 On typical species, NR suggests that the reference in Art. 1(c) of the Habitats Directive to "typical species" in the definition of conservation status of a natural habitat requires consideration of an indeterminate range of species which may be supported by the habitat, based upon their rarity or scarcity and whether they are a "fundamental element" of the European site.²²⁷ However, reflection would suggest that this is an impossibly vague test for a competent authority to apply as the basis for the legal test of appropriate assessment.²²⁸ How would such species be identified and how could the effect of the proposed development upon them be assessed?
- 11.53 The scheme of protection provided by the Habitats Directive is highly specific. Its aim is to protect habitats and species which are of Community importance and which are specifically defined. The habitats in question in this case are "Northern Atlantic wet heaths with *Erica tetralix*" and European dry heaths. The European qualifying species are Dartford Warbler and Nightjar. These are the subject of the AA.²²⁹ "Typical species" on its true meaning relates to the types of vegetation which define the habitat in question.²³⁰ There is no guidance by NE (or the equivalent Scottish and Welsh agencies) which supports the approach here being advanced by NR.²³¹

²²⁴ Mr Baker xx by Mr Machin; xx by Cllr Chappell.

²²⁵ Mr Goodwin xx by Mr Machin

²²⁶ TVT/26.

²²⁷ Mr Squirrel Rebuttal Proof, paras. 2.4, 2.6.

²²⁸ Mr Baker eic.

²²⁹ Mr Goodwin eic.

²³⁰ Mr Baker eic; xx by Mr Machin.

²³¹ Mr Baker xx by Mr Machin.

- 11.54 The correct approach²³² is to maintain the clear distinction which appears from the legislation and guidance²³³ between (a) habitats and species protected under Art. 6(3); (b) European Protected Species (i.e. in this case the Smooth Snake and Sand Lizard); and (c) species importance nationally (i.e. the numerous species listed in Annex 2 to Circular 06/2005)²³⁴ which should be accorded protection in policy terms under PPS 9, paras. 15-16.²³⁵ It was accepted by NR that this application does not raise issues under PPS 9 which require to be considered apart from the European site aspects.²³⁶ It was agreed by Mr Squirrel that any work which required a licence to disturb European protected species could be accommodated within such a licence.²³⁷
- 11.55 The issue of badgers is dealt with adequately by the proposals put forward by the applicant for a badger corridor, providing access at both ends, the provision of a new artificial sett, and by the protection afforded by the requirement of a licence in the event that it is necessary to disturb any existing badger sett.²³⁸ The badgers are plainly, according to the evidence, highly adaptable to an urban or semi-urban environment and will not be significantly affected by the loss of possible foraging habitat.²³⁹ The Section 106 makes express provision for submission and approval (in consultation with Natural England) of a detailed Badger Mitigation Scheme.²⁴⁰

Overall Assessment

- 11.56 Taking into account the package of measures forming part of the proposed development and which will be secured by the section 106, the overall position can be seen as follows. The covenant against cats and dogs will be largely, if not 100% effective. Equally, the fence will be largely, if not 100% effective. Taken together, these measures will reduce very substantially the key pressures of visitor pressure, disturbance and predation on the Heathland habitat of Talbot Heath and on the two Annex II bird species. To the extent there is residual pressure (the odd cat getting through a temporary gap in the fence, or the odd person getting through such a gap, or individuals taking dogs to visit Talbot Heath by car) against this must be set the suite of mitigating measures proposed to dilute such pressure and increase the robustness of the habitat.
- 11.57 The level of disturbance will further be reduced by appropriate habitat management, so for example impacts of disturbance have been found not to be significant in gorse dominated territories as opposed to heather²⁴¹. Better information and wardening as provided by the scheme would help to ensure that visitors keep their dogs on leads during the nesting season, which would be significantly beneficial in reducing impacts:²⁴² If there is the occasional

²³² Mr Squirrel xx by Mr Tromans.

²³³ See Managing Natura 2000 (CD 06) page 11, para. 1.2.

²³⁴ CD 33.

²³⁵ CD 31.

²³⁶ Mr Tyldesley xx by Mr Katkowsky; Mr Squirrel xx by Mr Katkowsky.

²³⁷ Mr Squirrel eic.

²³⁸ Mr Goodwin eic and xx by Mr Machin.

²³⁹ Mr Goodwin eic.

²⁴⁰ S.106 Schedule 2, Part 8.

²⁴¹ CD 86 Analysis and Presentation of IPF Monitoring, p. 20, para. 2.10

²⁴² Mr Goodwin eic.

disturbance of a single nesting pair of birds,²⁴³ or the occasional predation of a nest or fledgling, that must be set against the integrity of the European Dorset Heathlands sites as a whole and the populations of the species within that habitat. There is an important distinction between affecting individuals and affecting populations.²⁴⁴

11.58 Something was made initially by NR of the precedent effect were this application to be granted permission. However, in truth, if it passes the stringent integrity test the precedent argument has no real validity, a position which NR has now seemingly come to accept.²⁴⁵

11.59 Therefore it is submitted that, taking proper account of the manner in which the project is proposed to be carried out and the requirements to which it will be subject, together an exceptional package of avoidance and mitigation measures, it can be stated with the necessary degree of confidence that it will not have a significant adverse effect on the integrity of the Dorset Heathlands designated as European sites, and of which Talbot Heath is a constituent part, either in its own right or in combination with other plans or projects. Properly considered, there is no remaining reasonable scientific doubt, despite NR's reservations and concerns. That was the conclusion of BPC, having had regard to NR's representations, and that conclusion holds good under scrutiny.

Traffic

11.60 Turning to traffic and BBC's objection to the application, BBC has raised a number of issues, of highly doubtful validity or now effectively abandoned. So far as BPC is concerned, the development delivers a number of benefits from a strategic transport perspective: (1) it delivers a significant quantum of development on a relatively sustainable site compared to a typical edge-of-town site; (2) it provides relatively intense land use adjacent to a Bus Showcase Corridor (BSC)²⁴⁶, and supports proposals to improve bus services along that corridor; (3) it allows easy access by cyclists to the extensive cycle network along Bourne Bottom, providing a realistic mode choice for workers accessing Bournemouth Town Centre; and (4) the provision of 450 student dwellings adjacent to the main Talbot Campus and Arts Institute guarantees that most student trips will be by walk, cycle or bus.²⁴⁷ The development will be extremely well served by buses.²⁴⁸

Invalid Objections

11.61 Dealing first with the objection that the proposal fails to reserve a mass transport corridor through the site, this is a very curious objection, given that: (a) the corridor in question would be adequate to accommodate a dual carriageway and would run across the European protected Heathland; and (b)

²⁴³ Dr Underhill Day xx by Mr Tromans

²⁴⁴ Mr Baker xx by Mr Machin.

²⁴⁵ Accepted by Mr Machin in xx of Mr Goodwin.

²⁴⁶ Inspector's note: the BSC has not yet been implemented and is renamed Quality Bus Corridor (QBC)

²⁴⁷ CD 12, 9 June, 2010, pp. 34-35.

²⁴⁸ TVT/3, Fig. 4

the proposal does in any event include a corridor of adequate dimensions in terms of greenspace.

- 11.62 There is no realistic prospect, as accepted by BBC,²⁴⁹ that planning permission would be forthcoming for such a scheme, given the priority accorded to protecting the integrity of the European sites. Nor has BBC purported to undertake any AA in respect of any such plan.²⁵⁰ In short, BBC has failed to give any consideration whatever to the ecological implications of its desired transport corridor.²⁵¹ Further, it is odd that BBC pursues this point, given its participation in the recent LTP process, and the relevant study, which led to the non-inclusion of mass transit systems within the LTP.²⁵²
- 11.63 The second objection which is clearly nonsensical relates to the suggested severance by the cat-proof fence of cycle-ways across Talbot Heath. Since the PIM it has been clear that the applicant does not intend to seek diversion of the existing Footpath 33 across the Heath, and there are no existing routes which will be severed.²⁵³ Nor would it be likely that future cycle routes could be created across the Heath without a process of AA in terms of their potential effect on integrity. The cat proof fence will of course have some impact on the walking and cycling catchments from the development, but this would depend on likely destinations for trips.²⁵⁴ The predominant use of existing footpaths across the Heath is, as common sense would suggest, likely to be recreational, rather than for work, business or shopping.²⁵⁵

Traffic Impact: Wallisdown Road

- 11.64 BBC's main focus of objection has been the traffic impact of the proposed development on Wallisdown Road, the lack of mitigation for such impact, and the proposal that access from the development to the Boundary Road roundabout would be all purpose as opposed to "bus only". One difficulty however is that BBC has persisted in expanding its objections into wide ranging issues of general "sustainability" of the development, rather than focussing on its proper role as highway authority for parts of Wallisdown Road onto which traffic from the development will discharge.
- 11.65 The issue of the traffic impacts of the proposed development was considered, along with BBC's objection, in the context of the Poole Local Plan. The inspector was not persuaded that the impact of additional traffic amounted to a reason to reject the proposal in principle as is implicit in what is now Policy H3, which is a saved policy to which section 38(6) applies.²⁵⁶ The traffic surveys undertaken

²⁴⁹ MC, xx by ST.

²⁵⁰ Mr Carter xx by Mr Katkowsky. See letter on behalf of TVT dated 13 May 2010 (NR/31) making this clear. Even before that, it was clear that Footpath 33 would not be severed, only diverted: see letter of 17 November 2009 (NR/37).

²⁵¹ Mr Carter xx by Mr Katkowsky.

²⁵² Mr Francombe XX by Mr Randle

²⁵³ Mr Carter, xx by Mr Katkowsky.

²⁵⁴ See TVT/3, Fig. 5, and GE xx by GM.

²⁵⁵ Mr Francombe and Mr Eves xx by Mr Machin .

²⁵⁶ Mr Davies, xx by Mr Tromans; see BBC 1, Appx H (Inspector's Report, para. 8.185).

since adoption of the Plan show that there has not been growth in peak hour flows along Wallisdown Road, indeed if anything a slight reduction.²⁵⁷

- 11.66 BBC has relied on the evidence of Mr Carter as to traffic impact. Mr Davies accepted that if Mr Carter proved to be wrong he might revise his view.²⁵⁸ Mr Carter revised his evidence during the inquiry,²⁵⁹ but informed BBC that the changes were “not significant”.²⁶⁰ In fact, Mr Carter has wrongly input the junction geometry in his original modelling, and this had a significant effect on predicted capacity of junctions with dual carriageway approaches²⁶¹ and consequently on predicted RFCs and on travel time increases.
- 11.67 The scale of the revision of Mr Carter’s evidence is however apparent from considering Table 15 of BBC 3 in its original and revised form. This shows the insignificant effect of additional AM and PM peak hour traffic on RFC and Average Queue Delays when correctly modelled, and that the effects of BBC’s favoured bus-only access to Boundary Road Roundabout are worse than the all-purpose alternative favoured by BPC. It is also clear from his extensive revisions to the narrative parts of his proof at BBC 3, large swathes of which have now been withdrawn. The position in regard to the effect of the application scheme on AM and PM peak hour traffic is set out clearly in the Supplementary Proof of Evidence of Mr Eves.²⁶²
- 11.68 Further, Mr Carter’s assessment of the likely increase in travel times as a result of the proposed development (his Table 19) has been shown to be flawed, giving significantly longer delays than is really the case.²⁶³
- 11.69 The alleged serious effects of the proposed development in terms of increased RFCs and delay times which were central to BBC’s case have evaporated. The position was clearly summarised by Mr Eves in EiC – only one arm of one roundabout in the PM peak exceed 0.85 RFC and the corresponding delay was about 6 seconds. This is a very minor impact, and even then it needs to be seen against a background that the assessment is very much worst case on the basis of a fully built out development, utilising higher trip rates than those established for existing adjoining residential development and growth assumptions which are higher than those likely to apply under current economic conditions.
- 11.70 An RFC of 0.85 is in any event plainly not a rigid constraint on development, either as a matter of policy or good practice.²⁶⁴ Very little development would take place in urban areas were that the case.
- 11.71 Mr Carter raised the issue of link capacity as equally important as junction capacity. There is obviously an interaction between link and junction capacities, but plainly Wallisdown Road has carried flows of vehicles in excess of the 2167

²⁵⁷ See Mr Eves TVT/2, paras. 3.12 -3.16. Mr Carter BBC/3, para. 4.3.

²⁵⁸ Mr Davies, xx by Mr Tromans

²⁵⁹ See e-mail by Mr Davies, 8 July 2011, and “Briefing Note” (BPC 3, Addendum 2).

²⁶⁰ Mr Davies, xx by Mr Katkowsky.

²⁶¹ Mr Eves Rebuttal, TVT/9, para. 2.27.

²⁶² TVT/12.

²⁶³ TVT/12, para. 2.15.

²⁶⁴ Mr Eves eic; Mr Francombe xx.

capacity suggested by Mr Carter. The grid pattern of the local roads offers a variety of different routes which avoid congested stretches of Wallisdown Road.²⁶⁵ It would be surprising to find a road such as Wallisdown Road which did not exhibit some congestion at peak hours. Link capacity is one of a number of red herrings advanced by BBC. Arguing over link capacity is in truth a "technical spat" of no real relevance to this inquiry.²⁶⁶

11.72 An issue has been raised as to the attribution of trips to academic floorspace, but the reality is that this makes very little difference in peak hour trip generation (the range of difference being only between a 12-14% increase).²⁶⁷ Mr Carter now does not pursue that scenario, resulting in yet further deletions of his initial evidence.²⁶⁸ Nor is the matter of TVT's approach to slope/intercept values, elevated to an issue of massive proportions by BBC, of any real significance.²⁶⁹

11.73 It is relevant that the Draft NPPF (para. 86) contains new advice that development should not be prevented or refused on transport grounds unless the residual impacts of development are "severe".²⁷⁰ This is of direct relevance to the case advanced by BBC. No-one could reasonably regard the impacts demonstrated by Mr Carter's revised evidence as severe.

Bus only access

11.74 No objection has been raised by BBC to the allocation of the site for residential and student development in the Site Specific Allocation DPD, the pre-submission consultation on which has closed and which does not contain any requirement for a bus-only access.²⁷¹ This does not suggest that BBC is in reality particularly serious about this requirement. Nor was this part of the reasons for formal objections by BBC, rather a matter of preference if BPC decided to grant permission.²⁷²

11.75 Mr Cooper, on behalf of Talbot Village Residents Association, a former senior highways officer with BBC, rightly pointed out that a bus only access is unprecedented and creates serious doubts about its practicality.²⁷³ The change of stance of BPC to favour an all purpose access rather than a bus-only access was taken following public consultation in 2005 and proper examination of the issues including a further Transport Assessment – the additional access was felt to better distribute vehicles over the network and minimise delays exiting Talbot village in peak hours.²⁷⁴ The benefits include a choice of access routes for existing and future residents, less congestion, reduction in traffic flows on Wallisdown Road in the vicinity of the University, a total reduced vehicle

²⁶⁵ Mr Francombe eic.

²⁶⁶ Mr Francombe eic.

²⁶⁷ Mr Carter, eic.

²⁶⁸ BBC6.

²⁶⁹ Mr Eves, eic.

²⁷⁰ See TVT/27.

²⁷¹ Mr Carter question by Mr Cooper. See BPC /11.

²⁷² BBC1, Appx E and F.

²⁷³ Mr Cooper xx by Mr Katkowsky (evening session).

²⁷⁴ See proof of Mr Francombe; also Mr Eves (TVT/2) para. 4.4 and 4.5; also BPC 15.

mileage of 200,000 km resulting in carbon saving, and obviating the need to alter University Roundabout.²⁷⁵

11.76 BBC has failed to produce any cogent evidence in support of bus-only access. Indeed even on its own revised case, the bus-only option would cause the Wallisdown Road west arm of the University Roundabout to “significantly exceed” 0.85 RFC, from 0.84 RFC at present, whereas the all-purpose access would result in a worsening of only 0.01 RFC from 0.84 to 0.85.²⁷⁶

11.77 This outcome is what would be expected as a matter of common sense, by distributing car traffic between two exits from the development, as opposed to one. Mr Carter’s analysis of the bus only and all-purpose accesses at paras. 6.12 (Table) and 6.13 of his Rebuttal Statement (BBC 3R) is superficial, downplays the economic and environmental consequences of restricting the development to a single car access, fails to have regard to the possibility for bus priority measures at a dual-use access, does not even seek to quantify how far if at all a bus-only access might “potentially encourage more modal transfers to bus”, and simply relies on Policy H3(iv) under the heading of “integration”. No basis is given for the opinion expressed at para. 6.14 that the advantages of bus-only access in terms of “accessibility” and “integration” should be given greater weight than its disadvantages in terms of capacity and delays.

11.78 Therefore material considerations indicate that the proviso for bus-only access via the Boundary Road Roundabout in Policy H.3(iv) ought not to be followed in this case.

Mitigation

11.79 BPC remains of the view that the mitigation provided by the revised Section 106 agreement²⁷⁷ is adequate in respect of the traffic impacts of the development, in particular the Bus Service Contribution (£300,000), the WRQBC Scheme Contribution (£1,150,000), the Parking Order Contribution (£25,000) and the Travel Plan,²⁷⁸ plus a contingency sum of £200,000 (the Travel Plan Intervention Fund) for further measures if the Travel Plan targets are not met and traffic generation is greater than expected. Whether these are semantically called “targets”²⁷⁹ or not is a sterile debate; the practical effect is clear. These measures accord with the tests of Planning Obligations Circular 05/2005 and reg. 122 of the Community Infrastructure Levy Regulations 2010. They also give the necessary flexibility to the two highway authorities concerned to achieve maximum benefit as the Wallisdown Road Bus Corridor proposals and options are developed, and would avoid work such as signalisation of Boundary Road Roundabout,²⁸⁰ which might possibly be abortive.²⁸¹ BPC agrees with TVT that a single highway financial contribution of £1,150,000 towards the WRQBC scheme to be expended in the manner that the promoters of the scheme

²⁷⁵ See TVT/2, para. 4.6 and para. 5.21 and table, giving comparative figures on total distance travelled.

²⁷⁶ BBC 3, Addendum 2, para. 4.2.

²⁷⁷ See S106 Fourth Schedule, Transportation.

²⁷⁸ See S106 Fifth Schedule, Travel Plan.

²⁷⁹ Mr Carter xx by Mr Katkowsky.

²⁸⁰ Originally proposed in the S106, with a contribution of £750,000.

²⁸¹ See TVT/12, paras. 2.16 – 2.20.

consider most appropriate is the preferable route for mitigating such impacts as the development will have, together of course with the Bus Service and Parking Order contributions. It cannot be prejudged what will emerge, but it is clear that improvements to the corridor have a sound policy basis in the LTP,²⁸² and that BBC as lead authority has it within its power to progress such improvements.

11.80 Construction access is proposed by TVT to be for the Boundary Road roundabout. BPC agrees with that proposal, which could be dealt with by condition.²⁸³ As agreed by BPC and TVT it is also proposed that, whether the Boundary Road Roundabout is to provide bus only or general access, such access should in either event have been completed and be available for use before more than 150 dwellings have been occupied.

Residential Amenity

11.81 On residential amenity, BPC relies on the fact that while the application is for outline permission, the details submitted on an illustrative basis enabled it to be satisfied that the scheme would not cause material harm to light, outlook or privacy currently enjoyed by occupiers of neighbouring properties, given proposed densities, distances to neighbouring properties, and landscape boundaries.²⁸⁴ The application must be considered against the background that this is an allocated site within Policy H3 of the Poole Local Plan First Alteration (Saved Policy) and that the proposal should be determined in accordance with that policy.

11.82 Concerns such as possible student intensification, impacts of the construction process, site layout and elevations/designs of proposed units, landscaping and tree planting, including reinforcement of boundary landscaping, are all capable of being dealt with satisfactorily at reserved matters stage and by appropriate conditions.²⁸⁵ The issue of conversion of houses into houses in multiple occupation for students can be addressed as necessary through Article 4 direction, and whilst this would not be in place for a year or more, it should be well able to be achieved before units are completed and occupied.²⁸⁶ An appropriate planning condition can require that details submitted as reserved matters should accord with the details at this stage in order to control matters such as layout, densities and storey heights.

11.83 Concerns of local residents as to housing and student accommodation development on agricultural land are entirely understandable, but in BPC's view do not provide a sound basis for refusing this application for outline planning permission on a site allocated within the development plan. This is particularly so when set against the difficulties which would be presented for housing land supply within Poole were the site not developed:²⁸⁷ the site is a key housing site

²⁸² CD 28, 29.

²⁸³ See BPC 002 – Appendix A, revised agreed conditions, Conditions T1 and T2.

²⁸⁴ CD 12, p. 28

²⁸⁵ BPC 2, paras. 4.44 – 4.63.

²⁸⁶ Mr Jacobs, questions by Mr Cooper and Inspector.

²⁸⁷ See BPC /14 Note on the SHLAA. The Poole Core Strategy sets a target of 700 dwellings pa for the first 10 years, which should be met from specific sites with no contribution from non-specific supply, equating to 3,500 dwellings for the period April 2011 – March 2016 and 1,500 for the period April 2016 – March 2021. Allowance for windfalls should not generally be

identified as providing 350 dwellings, the only remaining allocated greenfield site within the Borough, and the inability to develop it for housing would involve reliance on unpredictable windfall sites and at a time when development of constrained brownfield sites is difficult.²⁸⁸ The Council's position is summarised as follows²⁸⁹:

"With the development of brownfield regeneration sites being reprofiled with greater supply now likely in years 5 to 10, 2016 to 2021, the Council considers that the last remaining Greenfield site presents an opportunity to commence delivery of an allocated site within the first 5 years of strategic supply. This is important in trying to maintain housing delivery which includes the priority of delivering affordable housing, a contribution towards which this site will make, in a location that is less constrained and not subject to the same level of costs associated with previously developed land in Poole's town centre."

12. THE CASE FOR THE TALBOT VILLAGE TRUST

Introduction

12.1 The main issue in this case is whether the proposals meet the legal test with regards to their potential impact on protected European Sites. The Applicant, together with the local planning authority the Borough of Poole Council, says that they do. If that is correct then none of the other issues raised (for example, traffic concerns raised by Bournemouth Borough Council or amenity concerns raised by local residents) would warrant refusing the scheme especially in view of the direction of travel of national planning policy – the adverse effects of allowing the proposals would not significantly and demonstrably outweigh the benefits of doing so.²⁹⁰ Quite the opposite in fact as the proposals for 378 new homes together with 450 student units and 3,500 sq. m. of academic floorspace would be beneficial.

Issues arising from the Habitats Regulations 2010

The European Sites and the Law

12.2 The part of the application site upon which it is proposed to build new homes lies close to (and most of the new homes would be within 400 metres of) Talbot Heath which is part of the Bourne Valley SSSI which in turn is one of several dozen SSSI's which together have been classified as the Dorset Heathlands SPA (which extends to some 8,169 hectares²⁹¹) and the Dorset Heaths SAC (a smaller but still very extensive area of some 5,731 hectares²⁹²).

included in the first 10 years of supply (PPS 3, para. 59). The draft NPPF is also strongly supportive of the importance of meeting the housing needs of the area, the delivery of new homes being a key objective for the Government: see TVT/27.

²⁸⁸ Mr Jacobs questions by Inspector.

²⁸⁹ BPC /14 para. 5.1

²⁹⁰ Draft National Planning Policy Framework para 14

²⁹¹ TVT/5 para 7.3 page 44

²⁹² Ibid. para 7.7 page 46

- 12.3 Similarly, Talbot Heath is also part of the Dorset Heathlands RAMSAR site which comprises some 6,730 hectares²⁹³ which is, as a matter of policy²⁹⁴ rather than law, to be protected in a similar manner to European designated sites proper. However in this case, NE acknowledges that no additional issues are raised by this designation.²⁹⁵
- 12.4 Some impression of the sheer scale and fragmented nature of the SPA & SAC Sites, of which Talbot Heath is but a small part, can be seen from the map on the back page of the Dorset Heathlands Interim Planning Framework (2010).²⁹⁶ As Mr. Squirrell explains²⁹⁷ this is a complex of about 150 heaths spread across SE Dorset.
- 12.5 The reason why attention has been drawn to the fact that Talbot Heath is a small part of the very much larger European Sites is not so as to argue that Talbot Heath is unimportant or unprotected – it is protected by the self-same laws and policies as the entirety of the SPA & SAC. The point is that although, perhaps understandably, much of the evidence at the inquiry has focussed upon the closest part of the classified heaths to the proposed new homes, it must not be lost sight of that the legal test relates to the potential impacts that might arise from those who will live in the new homes (and their dogs and cats - if they have any²⁹⁸) on the integrity of the European sites *across their whole areas*. The issue is not the potential impacts on Talbot Heath per se but rather if the risk of such impacts occurring cannot be excluded, whether it can be ascertained that this would not significantly adversely affect the integrity of *the whole* of the European Sites.
- 12.6 The applicable European and domestic case law is explained well and clearly in Circular 06/05²⁹⁹ at paragraphs 17 - 21.³⁰⁰ The domestic Regulations are now the Habitats Regulations 2010 (see in particular Regulation 61) but these have not changed the legal requirements from the position as at the time of the Circular. The Applicant agrees with the Legal Submissions made by BPC.³⁰¹
- 12.7 The net effect of the law can be summarised in a very straightforward manner. It is “not a legal obstacle course”³⁰² and neither the Inspector nor the Secretary of State should be beguiled into thinking that it is all so complex that the default answer should be to refuse permission simply because that is the easiest thing to do.

²⁹³ Ibid para 7.12 page 47

²⁹⁴ PPS9 para 6; draft NPPF para 169 p 48

²⁹⁵ NR6 paras 4.8 – 4.10 p9

²⁹⁶ CD 22

²⁹⁷ NR6 para 5.3 p 10, para 5.9 page 12

²⁹⁸ See later discussion

²⁹⁹ CD 33

³⁰⁰ Paragraph 16 (page 4) of the draft NPPF fits the legal test into the new structure of national planning policy by explaining that development which breaches the test “would not be sustainable under the terms of the presumption in favour of sustainable development.” (Paragraph 170 on page 48 is to the same effect)

³⁰¹ BPC 11

³⁰² Sullivan J (as he then was) in the *Dilly Lane* Judgment at paragraph 72 as quoted in NR/21 at paragraph 75

12.8 Mr Goodwin argues that the Secretary of State can (and should) be satisfied that there is no need for the Applicant to make an appropriate assessment because the proposals would not be likely to have a significant effect, either alone or in combination, on the European Sites' conservation objectives: see Regulation 61(1). Both BPC & NE/RSPB contend that such a likelihood cannot be excluded at this first stage and so an appropriate assessment is required. Mr. Goodwin has dealt with the case both on the basis of his first argument (that an appropriate assessment is not required) and his second argument (that if one is required permission can be granted in accordance with Regulation 61(5)). Nevertheless, assuming that by virtue of Regulation 61(1) the Secretary of State as the competent authority (having called-in the proposals for his own determination) must make an appropriate assessment of the implications of the proposals for the European Sites in view of their conservation objectives (i.e. the reasons why they were classified in the first place) then in order to grant permission in this case he must be satisfied, under Regulation 61(5), that the scheme either alone or in combination with other plans / projects (in essence, other permitted or planned housing developments) will not **significantly**³⁰³ adversely affect the integrity of the European Sites. That is, the coherence of their ecological structure or function across their whole areas that enable them to sustain the habitats and/or the levels of populations of the species for which they were classified.

12.9 The Circular explains³⁰⁴ that the Secretary of State must be convinced that this is the case in the sense of having made "certain" of the position. Much has been made of this by objectors and reference has been made, incorrectly, to there being a requirement for 100% certainty or that there must be no doubt but (unsurprisingly given that neither of these could ever be proven) there is no such test. Instead, as the Circular explains the legal test is satisfied *where no reasonable scientific doubt remains as to the absence of such effects*.

12.10 Regulation 61(6) places a mandatory duty ("must") on the Secretary of State to assess the scheme on the basis of the manner in which it is proposed to be carried out, which includes any proposed restrictions secured by conditions and / or planning obligations, and so any aspects of the wider proposals which would serve to avoid or reduce the potential risks of impacts to the integrity of the European Sites *must* be taken into account. (Such measures are usually referred to as "mitigation" but it is the potential of the measures to avoid or reduce risks of impacts which counts, not how they are labelled.)

What the "integrity" of European sites means here

12.11 The conservation objectives for the SPA are to maintain in favourable condition lowland heathland habitats for (as relevant here) Dartford warbler and nightjar, while the SAC was classified so as to maintain in favourable condition (as relevant here) dry and wet heaths.³⁰⁵ Accordingly, the integrity of these European Sites is the coherence of their ecological structure or function *across their whole areas* that enable them to sustain the dry and wet heaths and the

³⁰³ See ADT v SSETR & Hart DC [2000] JPL 1155 at 1171

³⁰⁴ Circular 06/05 at paragraph 21 on the basis of the ECJ decision in *Waddenzee*

³⁰⁵ NR/12 paras 4.27 & 4.28 pp 16 & 17 and Appendix K

levels of populations of Dartford warbler and nightjar for which they were classified.

12.12 NE's argument that one needs to assess the implications of the proposals for (an extraordinarily long list of) "typical species" is not well-founded legally³⁰⁶ and is unprecedented.³⁰⁷

12.13 Accordingly, the main issue is whether the Secretary of State can ascertain that the proposals alone or in combination will not **significantly** adversely affect the SPA's ability to sustain lowland heathland habitats for Dartford warbler and nightjar, and the SAC's ability to sustain dry and wet heaths.

12.14 An impact, even if it could be characterised as significant in relation to Talbot Heath, is by no means necessarily the same as a significant impact across the European Sites taken as a whole.

"No net additional impact" is not the test

12.15 NR submitted in opening³⁰⁸ that because of the in-combination rule the Secretary of State must ascertain that the proposals "will not have any³⁰⁹ adverse effect, and so cannot contribute to a possible significant adverse effect in combination." This submission must be recognised for what it is, namely an attempt to set an even higher hurdle in the way of the proposals than the law requires. The legal test (Regulation 61(5)) requires the Secretary of State to ascertain that "it" i.e. the scheme, either alone or in combination will not significantly³¹⁰ adversely affect the integrity of the European Sites. There is no legal foundation for the proposition³¹¹ that although the scheme by itself (alone) must not have a significant adverse effect, in order to deal with the in-combination principle the scheme must not have *any* adverse effect. As Mr. Tyldesley agreed³¹² although, of course, if it is ascertained that the scheme would not have any adverse effect then it must necessarily pass the legal test, *this is not the only way in which the legal test can be passed*. He confirmed³¹³ that it is not being said that the legal test would be met only if the scheme adds nothing to the in combination position.³¹⁴

12.16 The severity and overly onerous nature of the gloss on the law that NR seek to establish can be seen from Mr. Machin's opening submissions³¹⁵ at paragraph 12 where it is said (or certainly implied) that in order to gain permission the scheme must not be likely to generate *any* additional pressure on the European Sites, and at paragraph 19 where it is said as a criticism of the Applicant's

³⁰⁶ See BPC 11 paras 9 – 16 with which the Applicant agrees

³⁰⁷ Mr. Baker eic and xx Mr Machin

³⁰⁸ NR/23 paras 12 – 15 p 3

³⁰⁹ Mr. Machin's emphasis [15]

³¹⁰ This qualification springs from the *ADT* case (see earlier footnote)

³¹¹ NR/23 at [15]

³¹² Mr Tildesley xx by Mr Katkowsky

³¹³ As above

³¹⁴ Mr. Baker xx by Mr. Machin, agreed with NR/23 [15] but Mr. Tyldesley (NE) did not (xx Mr Katkowsky) and nor did Mr Goodwin eic and xx Mr. Machin)

³¹⁵ NR/23

reliance on the fence between the development site and Talbot Heath that it would not prevent *all* access to the European Sites.

- 12.17 The Inspector and the Secretary of State must not allow themselves to be beguiled into accepting this unwarranted gloss on the law. The correct position is that the legal test is one and the same both for the assessment of the scheme on its own (alone) and in combination – in both cases the Secretary of State must ascertain that the scheme will not *significantly* adversely affect the integrity of the European Sites. It is wrong as a matter of first principles to imply that the legal test can only be satisfied if there would be no net additional impact from the occupants of the proposed new homes (or their cats or dogs, if they have any).

The role of the IPF and the future DPD in relation to combination impacts

- 12.18 The Dorset Heathlands Interim Planning Framework³¹⁶ applies until the end of 2011³¹⁷ and to proposed residential development within 400 metres to 5 km (measured as a straight line) from the boundary of the (entire) European Sites.³¹⁸ This covers 5 boroughs.³¹⁹ Its stated purpose is that by way of measures to divert recreational pressures away from the European Sites, access management measures and collecting funds to enable the aforementioned to be implemented, development can be allowed to proceed.³²⁰ Large scale developments are expected to explore ways of mitigating adverse impacts through on-site measures or “more likely” off-site measures to facilitate the implementation of suitable alternative natural greenspace [SANG] but with a “fallback” of making financial contributions towards the mitigation projects listed in Appendix A.³²¹ Smaller schemes simply pay the roof tax. The tariff is calculated on the basis of dividing the cost of the projects listed in the appendix by the population that can be attributed to the number of new homes which can be attributed to the two years 2010 and 2011 to give a per house and per flat roof tax.³²²

- 12.19 The projects listed in the appendix range in scale and ambition and include just by way of example, a 2 hectares “dog zone” where (it is explained) dogs can be let off the lead to have a good run around and take pressure off the heath³²³, and fire hydrants on Talbot Heath.³²⁴

- 12.20 The IPF does not require there to be any specific link between a proposed residential development and either its own bespoke measures or any of the projects listed in the appendix – the approach of the IPF is strategic, it does not require for example that the provision of an alternative greenspace or one of the projects listed in the appendix should specifically alleviate pressure on the heaths from the would-be residents of a particular proposed development and

³¹⁶ CD 22

³¹⁷ CD 22 flysheet & 3.1

³¹⁸ As above para 2.5

³¹⁹ Mr. Jacobs xx by Mr Machin

³²⁰ CD 22 para 2.5

³²¹ 3.3

³²² CD 22 Sections 4 & 5

³²³ Appendix A Project No. 24

³²⁴ Project No. 33

their pets. Its underlying logic supports the Applicant's approach that it is the whole picture that counts rather than becoming transfixed by the proximity of any particular development to any particular part of the European Sites.

12.21 As Mr. Jacobs explained³²⁵ the mitigation package in the IPF is based on anticipated population growth from housing development over 2 years across 5 boroughs – the package is not related to *where* this development will take place, in any specific sense.³²⁶ It is there to deal with all the housing to be brought forward across all 5 boroughs.³²⁷ The IPF is not about stopping the number of visits to the heaths or ensuring that there is not a net increase in visits but rather it is about mitigating the adverse impacts of visits.³²⁸ Mr. Baker captured the sense of the point by referring³²⁹ to "restoration by 1,000 projects."

12.22 The IPF does not require that mitigatory projects towards which payments have been made must be put in place before development commences; that this is so is borne out by the way in which larger schemes are allowed to make phased payments³³⁰ and the provision made for repayment of contributions if they have not been spent within 5 years.³³¹

12.23 The IPF does not apply only to houses which will be built within the two years (2010 & 2011) – it is obvious that larger schemes will inevitably involve building homes after the end of 2011 and Mr. Tyldesley acknowledged³³² that it simply applies to *decisions* made within this period (i.e. regardless of when the permitted homes would be built).

12.24 The IPF states in terms that the measures listed in the appendix would "reduce to an insignificant level the harm" anticipated from new residential development in the 400 metres to 5 km zone that it applies to.³³³ The IPF assumes that new homes will not be built within 400 metres (save in exceptional circumstances³³⁴).

12.25 The net effect of the IPF therefore is that it deals with in combination impacts³³⁵ such that *if* the Secretary of State ascertains that the Applicant's scheme on its own (alone) will not significantly adversely affect the integrity of the European Sites, it could not do so in combination with other plans / projects because the whole point of the IPF is to enable such other plans / projects to proceed without causing such impacts.

³²⁵ Mr Jacobs xx by Mr Machin

³²⁶ See also Mr. Jacobs answers to the Inspector on this subject

³²⁷ Mr. Jacobs in answer to Mr Machin

³²⁸ As previous footnote

³²⁹ In answer to Cllr. Chappell

³³⁰ CD 22 para 5.3

³³¹ As above para 4.7

³³² Mr Tildesley xx Mr Katkowsky

³³³ CD 22 para 3.2

³³⁴ As above para 2.4

³³⁵ Tim Goodwin eic and xx. The Secretary of State's 3rd October 2011 decision letter [NR/49] in the Berkeley Homes, Hurstleigh Park, Ascot case has no bearing on the Applicant's submissions concerning in combination impacts but in any event, the Applicant's Submissions are relied upon as correct in law.

- 12.26 As said, the IPF covers projects beyond 400 metres from the European Sites. Any proposals that come forward within 400 metres (such as the Applicant's scheme) would have to meet the legal test – no reasonable scientific doubt as to the absence of significant adverse effects on integrity (alone or in combination) – but in any event Mr. Tyllesley explained³³⁶ that BPC 's SHLAA had rejected all sites within 400 metres and confirmed³³⁷ that there were no other projects / plans that he wished to draw attention to in this regard.
- 12.27 In due course the 2010 / 2011 IPF will be replaced by a Joint DPD which will perform the same role of mitigating in combination impacts for future years. The DPD will not be in place from the beginning of 2012 and so it is likely that the current IPF will be rolled forward to deal with this, just as its immediate predecessor was.³³⁸
- 12.28 Although the inquiry has focussed upon the larger part of the proposed development which lies within the 400 metres straight line distance, it must not be forgotten that part of the scheme falls with the 400 metres to 5 km zone to which the IPF directly applies. The part of the scheme which lies beyond 400 metres is area "B2" within which it is envisaged that 36 new homes would be built.³³⁹ The alone and in combination potential impacts of this part of the proposals would be dealt with by the proposed bespoke package of mitigation measures (of which more later) and the IPF tariff contribution secured by the Section 106 planning obligation.
- 12.29 Most (342 i.e. 90%) of the proposed homes would be within 400 metres of Talbot Heath in a straight line distance but by virtue of the proposed fence the actual distance from home to heath would be very much greater than this.³⁴⁰ The logic of the 400 metres rule of thumb appears to be a simple one – if you live that close to a heath you are likely to walk to it. One of Mr. Squirrell's documents³⁴¹ describes 400 metres as "within easy walking distance." If by virtue of the fence residents of the new homes would not be able to reach the heath in an easy walk because they would be much farther away then it makes common sense to regard the implications of the scheme as if it were beyond 400 metres of the heath. (The same would apply to the residents' cats and dogs, if any – they too would not be within easy striking distance of the heath because of the intervening fence.)
- 12.30 Quite apart from the bespoke package of mitigation measures, the Section 106 planning obligation also secures an IPF tariff payment across the entire scheme (i.e. the roof tax would be paid on each new home whether within or beyond the 400 metres straight line distance). This would amount to over £600,000. Mr. Jacobs explained³⁴² that he would recommend that this "substantial amount" be added to the money that has already been raised (some £170,000)

³³⁶ Mr Tildesley EiC

³³⁷ Mr Tildesley xx Mr Katkowsky

³³⁸ Mr. Jacobs EiC and in answer to the Inspector

³³⁹ NR/30 page 2

³⁴⁰ Mr Goodwin a minimum of 1.7 km

³⁴¹ NR8 App 14 p 154

³⁴² Mr Jacobs in answer to the Inspector; he also explained that since the inception of the IPF in 2007 some £3m has been raised across the 5 boroughs of which some £2.4m has been spent, so a good deal of mitigation is already in place

towards the cost of implementing a major SANG listed in the appendix to the IPF namely Upton Farm³⁴³ which has an overall cost of over £1m. This SANG, which would be an extension to the Upton Country Park, would serve to relieve pressure across the European Sites; it is a strategic site to deal with some 10,000 new homes.³⁴⁴ It would be readily accessible to Talbot village residents (by car)³⁴⁵ and would give existing and future residents an alternative place to go rather than the heaths. Also, IPF project No. 18 (Slades Farm) is even closer.

The Legal Test is the same whether the proposals are within or beyond 400 metres of the European Sites

12.31 The IPF³⁴⁶ and the Core Strategy³⁴⁷ both indicate that residential development is not anticipated within 400 metres (straight line distance) of the European Sites save in exceptional circumstances. Neither document provides any examples of the sort of exceptions that might arise. Time was taken at the inquiry with idle speculation about the circumstances that might have been envisaged. However, as Mr. Tyllesley rightly acknowledged³⁴⁸ and as is obviously the case, the legal test is the same whether the development site is within or beyond 400 metres. (Contrary to the Oaks Drive, Ringwood, decision³⁴⁹ the test is not and lawfully cannot be whether the site is “unique.”) The point put simply is that as paragraph 2.4 of the IPF explains, NE advises that within 400 metres it is unlikely that the legal test can be met but of course, if the test is met, then the assumption which underpins this general advice would have been shown to have been misplaced in the case in hand. As the Core Strategy Examination Inspector concluded concerning the zone within 400 metres:³⁵⁰ “A restrictive ban on development is not justified or appropriate.”

12.32 Accordingly,³⁵¹ the correct approach does not involve asking whether there are exceptional circumstances to allow that part of the proposals which lie within 400 metres of Talbot Heath; if the overarching legal test is met then permission should be granted. The IPF is not part of the development plan but the Core Strategy is. The requirements of the Habitats Regulations apply regardless of the contents of the development plan but the position under Section 38(6) of the P&CPA 2004 is straightforward – if the Secretary of State ascertains that the scheme would meet Regulation 61(5) then this conclusion would amount to a material consideration which indicates otherwise than deciding the application in accordance with PCS 28; in other words, meeting the overarching legal test is more than a good enough reason for making an exception to the Core Strategy (and the IPF as well).

³⁴³ CD 22 Project No. 25

³⁴⁴ Mr. Jacobs in answer to the Inspector

³⁴⁵ Mr. Jacobs in answer to the Inspector

³⁴⁶ CD 22 para 2.4

³⁴⁷ CD 65: Policy PCS28 p 103

³⁴⁸ Mr Tildesley xx Mr Katkowsky

³⁴⁹ NR47 e.g. par 22

³⁵⁰ CD 17 para 4.91 p 22

³⁵¹ And again contrary to the unlawful approach adopted in NR47

12.33 While on this theme it is worth noting that Mr. Tyldesley rightly acknowledged³⁵² that none of the extant or emerging development plan policies add anything to the legal test and that if this is met then so too, necessarily, are any such policies (just as, in similar vein, compliance with any such policies could not override the effect of a failure to meet the legal test).

12.34 In other words, whether the legal test is met is decisive.

If it is concluded that the proposals meet the legal test then no harmful precedent would or could be set

12.35 As is well-known, in planning “each decision turns on its own particular facts” to quote the way in which Sullivan J (as he then was) put it in a case involving Habitats Directive issues.³⁵³ Mr. Tyldesley³⁵⁴ spoke of a favourable decision in the case in hand creating a precedent effect but his argument is illogical. No two cases are the same in this of all fields but if they were and if each met the legal test, then both should be granted.³⁵⁵ *By definition*, a decision that the legal test is met in the particular circumstances of a given case cannot create a *harmful* precedent.³⁵⁶ To place a marker, if the Secretary of State ascertains that permission can be granted under Regulation 61(5) it would be unlawful for him to conclude that nonetheless permission should be refused because of the fear of creating a precedent. Each case that came along (if any) in the wake of a favourable decision here would have to satisfy the legal test in its own right in any event. To talk of precedent in this of all fields with its overarching and exacting legal principles is misplaced.

12.36 Thinking of the application as some sort of test case simply serves to distract one from the proper focus of attention which is whether the legal test is met. Mr. Machin acknowledged in his cross examination of Tim Goodwin that if it is concluded that the legal test is met then this would not create a harmful precedent. He was right to do so.

The scheme includes a wide range of mitigation measures all of which must be taken into account by the Secretary of State

12.37 Mr. Tyldesley lists in Appendix J to his Rebuttal all of the measures put forward by the Applicant but he argues that only a few of these (for example, the fence and the no dogs or cats covenant) should be taken into account as mitigation.

12.38 The Applicant disagrees. All of the measures put forward as part of the overall package would in some way, to a greater or lesser extent, serve to avoid and / or reduce the potential impacts of the proposed development. Mitigation can be direct (for example, the fence) or indirect (for example, the provision of information packs to new and existing residents) and it need not be exclusively related to the impacts which might otherwise arise from residents of the proposed new homes. To give an example, whereas the proposed public open

³⁵² Mr Tildesley xx Mr Katkowsky

³⁵³ *Millgate* at paragraph 26: REF 7 NR21

³⁵⁴ Mr Tildesley xx Mr Katkowsky

³⁵⁵ Mr Goodwin EiC

³⁵⁶ As previous footnote (and contrary to the unlawful approach adopted in NR47 e.g. at paragraphs 21 & 22)

space within the confines of the proposed development would serve to dilute pressure on the heath from residents of the new homes (because they would have alternative open space close to hand)³⁵⁷ the proposal to allow the public at large to use the three fields³⁵⁸ which are adjacent to but not within the open access land of Talbot Heath would mean that these fields would act as an “interceptor” and dilute pressure on the heath from both existing and new residents.³⁵⁹ It is entirely legitimate to regard this as mitigation. If it isn’t then nor could SANGs be regarded as mitigation as they have as their primary aim attracting *existing* residents (as well as new ones) away from the heaths.

12.39 It is also wrong to discount a measure because it would provide an ecological enhancement (for example the proposal to recreate heath on the three fields) – if a measure would serve to avoid or reduce impacts on the European Sites (as the three fields as recreated heaths would by providing a greater area of suitable habitat e.g. for nightjar³⁶⁰) then this must be taken into account.

12.40 Nor can a measure be discounted because it is contended that the Applicant should have done, or should do it as part of the management of the heath. Dr Underhill-Day confirmed³⁶¹ that habitat management can ameliorate disturbance impacts. There has been a great deal of ill-informed and unpleasant criticism of the Trust – which in fact is a very considerable force for good in the local community³⁶² - but the simple truth of the matter is that both the Trust & NE have agreed to await the outcome of this planning process³⁶³ and it must not be forgotten that in 2005 NE welcomed the Applicant’s proposed mitigation measures and considered that they would be beneficial.³⁶⁴ In any event, many of the proposed measures could not conceivably be characterised as normal management (for example, the installation of fire hydrants) and even for those that might be, it is important not to lose sight of the fact that the Section 106 planning obligation secures the position in perpetuity.³⁶⁵

12.41 Be all that as it may the simple point is that by virtue of Regulation 61 (6) the manner in which it is proposed to carry out the scheme – including all the proposed mitigation measures – “must” be taken into account. The measures are discussed in turn in the following paragraphs using the order in which they are referred to in Mr. Tyldesley’s schedule³⁶⁶. Although each will be discussed in turn, *the likely effect of all of these measures as a complete package must be considered. It is their likely effect as a whole and in combination that counts.*

12.42 [1]**The fence:** this is discussed in more detail later on but the obvious point is that if the fence is effective it would reduce significantly the potential impacts on Talbot Heath from people and their pets, and this would still be so even were

³⁵⁷ Tim Goodwin EiC

³⁵⁸ Fields 19, 20 & 22 plan 8 Schedule 10 to the s106 Planning Obligation

³⁵⁹ Mr Goodwin eic

³⁶⁰ Mr Goodwin eic

³⁶¹ Dr Underhill-Day xx Mr Tromans

³⁶² TVT 7 section 2

³⁶³ Mr. Tyldesley in answer to the Inspector

³⁶⁴ T&BWRA / 32

³⁶⁵ Tim Goodwin in chief

³⁶⁶ NR14 Appendix J

it to prove to be the case that the fence was not wholly effective all of the time. The fence would also inhibit to some extent the easy movement of cats from existing homes in the area to the heath.

12.43 [2]**The no cats and dogs covenant:** this too is discussed in more detail later on but the obvious point is that if the covenant is effective it would reduce significantly the potential impacts on Talbot Heath from cats kept by residents of the new homes and on the European Sites more generally (including Talbot Heath) from their dogs; this would be so even were it to turn out to be the case that the covenant was not wholly effective all of the time.

12.44 [3]**Information packs** to new residents and to existing residents in the vicinity: given that the European Sites are open public access land, one of the key measures to try to ameliorate impacts from people and their pets more generally is to try to educate and persuade people of the value of the heaths and how better to take care of them. The information packs which would be distributed to each new purchaser on the development as well as to existing households in the vicinity would make a valuable contribution to this essential process of winning hearts and minds. Mr. Tyldesley³⁶⁷ described them as a helpful measure.

12.45 [4]**Public open space** within the main body of the scheme (i.e. POS Areas 1, 2, 3) would relieve pressure on the heath from residents of the development because they would have somewhere to go for some fresh air and for children to play, close to hand. This would be so even if it was the case that the scheme simply meets BPC's standards but the position is even better than this as the proposed provision exceeds these standards.³⁶⁸

12.46 [5]**Habitat management** within that part of Talbot Heath owned by the Trust and [6]stock proof fencing to facilitate grazing: these measures would serve to improve the "carrying capacity" of the heath and in doing so would assist in ameliorating impacts from existing and new residents and their pets.

12.47 [7]**Heathland re-creation on the three fields** (19, 20 & 22) which are outside but adjacent to the European Sites at Talbot Heath, and allowing public access to these: this important part of the overall package of mitigation measures has already been discussed in these submissions; in essence, re-creating heath on the three fields and allowing public access to them would help to dilute existing and growing pressures on the protected heaths. The scale of this measure is significant at some 10.7 hectares (which would be about the size [10.6 hectares] sought by NE as a matter of general practice had the development provided a SANG³⁶⁹) and it plays a major part in the Applicant's mitigation proposals.³⁷⁰ Recreating heathland is a tried and tested and to date successful measure in Dorset.³⁷¹

12.48 The [8th] item in Mr. Tyldesley's list – field 24 as a buffer zone – is no longer proposed in that manner because the field would be on the other side, the

³⁶⁷ Mr. Tyldesley xx Mr Katkowsky

³⁶⁸ TVT 7 at 4.5

³⁶⁹ Mr Goodwin explained orally and in his TVT / 25

³⁷⁰ Mr Goodwin EiC

³⁷¹ NR/36 page 31 last paragraph "Urban Heaths Partnership's Wardening Strategy 2010"

heath side, of the fence from the proposed new homes; instead [9] the (“triangular”) field which lies outside but adjacent to the protected heath would provide a 1.57 hectares area for existing and new residents to exercise their dogs thereby helping to dilute pressure on Talbot Heath.

12.49 The [10th] item in Mr. Tyldesley’s list (footpath diversion) is no longer proposed and the [11th] (surfaced track creation) was part of the envisaged improvements to access for fire-fighting vehicles, discussed later on.

12.50 [12]**Additional wardening** is an important part of the Applicant’s proposals. Wardening “is spread fairly thinly” at the moment³⁷² as can be seen from the Urban Heaths Partnership’s Wardening Strategy 2010.³⁷³ Dr Underhill-Day said³⁷⁴ that greater wardening and liaison with the local community are “vital measures” and Mr. Tyldesley said³⁷⁵ that wardening is a “very effective mitigation measure.” Some impression of the valuable role of wardens is given by the list of their duties found in the Wardening Strategy³⁷⁶ which explains, surely tellingly, that: “It is not intended that heaths be closed for public access but that visitors realise that their activities could have unintended consequences for the protected habitats and species thus encouraging them to act responsibly when visiting sites. This will be particularly important in those areas where opportunities to divert some visits to other sites are limited.”

12.51 The [13th] item in the list (fencing within the heath to divert people away from certain areas) while previously welcomed by NE³⁷⁷ is no longer so and accordingly has been deleted from the package; [14] new signs would assist in an educational and / or informative role; the [15th] item (more dog-do bins on one part of the heath) is regarded by NE as over-provision given the number of bins already in situ there and so has been deleted.

12.52 [16]**Managing gorse and fire breaks** would help to bolster the integrity of the heath and assist in reducing the spread of fire. That brings us to [17] & [18] which relate to improving access to Talbot Heath for fire-fighting vehicles and providing a better water supply (fire hydrants). Dr Underhill-Day described³⁷⁸ better access for fire-fighting vehicles and a better water supply as “very significant benefits.” As was explained³⁷⁹ in cross-examination of Mr. Squirrell (who was critical of the proposed measures and considered that a better job could be done) the Applicant would wish to agree the detail of these measures with NE in due course and does not hold to any particular way in which to achieve them. It is universally recognised that measures such as these would be a very good thing and a constructive way forward has been found to secure an appropriate way in which to do so through the imposition of a condition.³⁸⁰ Fire is a terrible curse – heathland vegetation can take twenty years to recover from

³⁷² Mr. Jacobs xx Cllr. Rollo-Smith

³⁷³ NR/36 pp 10 & 14 (Talbot Heath is part of the “central zone”) & see also TVT11 4.36

³⁷⁴ In answer to CKQC

³⁷⁵ In answer to CKQC

³⁷⁶ NR/36 at pages 9 & 10

³⁷⁷ Mr. Squirrell xx Mr Katkowsky

³⁷⁸ Dr Underhill-Day xx Mr Tromans

³⁷⁹ Mr. Squirrell xx Mr Katkowsky

³⁸⁰ NR/42

the effects of fire³⁸¹ - and the Applicant's willingness to fund means of reducing the spread of the devastating effects should be regarded as a significant mitigatory measure not only in relation to any potential malevolent or accidental firestarters amongst the new population but also for existing reckless or careless visitors.

12.53 [19] & [20] various **water management measures** would help to bolster the integrity of Talbot Heath and in doing so help it to better withstand pre-existing and potential deleterious impacts.

12.54 [21] The **IPF contribution**, to be paid across the whole scheme and not just on the roofs beyond 400 metres from the heath, has already been discussed – at some £600,000 it is a significant part of the overall package of mitigation measures which would serve to make a very worthwhile contribution to diverting and diluting pressures across the European Sites.

12.55 [22] Works to **enhance the local SNCI** (compartment No. 23) which lies outside but adjacent to the protected heath would also assist.

12.56 In anyone's book this is an impressive package of measures of an unprecedented scale and range for a residential scheme³⁸² with the unique advantage that the Applicant owns a large part of Talbot Heath.³⁸³ Several of the measures are individually significant but it is the overall effect of all the proposed mitigation when taken together that counts and this would be marked and very substantial indeed.

The fence and the no cats and dogs covenant

12.57 Two of the key measures came in for sustained criticism at the inquiry in terms of their efficacy. Much of this criticism was muddled and inconsistent for example in one breath a number of local residents said that the fence would be breached on a regular basis whilst in the next breath the fence was criticised for its visual impact on the basis that a similar specification is used to secure prisons!

12.58 The advice in Circular 06/05³⁸⁴ at paragraph 22 refers to putting "in place a legally enforceable framework with the aim of preventing the risks from materialising". The fence (which would serve to prevent direct access to the heath for residents of the new homes and their pets, should they have any) and the no cats and dogs covenant (the effect of which is obvious) would be secured in the Section 106 planning obligation, along with other mitigation measures. A planning obligation is "a legally enforceable framework"³⁸⁵ – the whole point of Section 106 is to ensure just that. To the extent that planning conditions are relied upon then these too constitute "a legally enforceable framework." One must work on the basis that BPC would act as a responsible planning authority and enforce the provisions of the planning obligation and conditions – it would be wrong as a matter of first principles to assume otherwise. Why should it be

³⁸¹ NR/36 32 under "Fire"

³⁸² Mr. Baker eic and Mr Goodwin eic

³⁸³ MrGoodwin in chief

³⁸⁴ CD 33

³⁸⁵ See also TVT / 24

assumed, and upon what evidence-base, that BPC would shun their responsibilities?

12.59 The correct and only way to proceed is to work on the basis that the mitigation measures are secured by a legally enforceable framework which is fit for purpose; to proceed on any other basis would be to undermine the very purpose of Section 106.

12.60 That brings one to practical matters concerning the efficacy of the measures in question. Starting with the fence: the specification³⁸⁶ is such that it will be *extremely difficult indeed* for people to breach it; comparisons with the flimsy fencing near Isaacs Close are fallacious. Its specification would mean that cats (if any on the new estate, or existing local residents' cats) would not be able to scale it³⁸⁷ and of course the same would be true for dogs as well. If as and when the fence is breached, BPC would be obliged to repair/reinstate it and would have funds to draw down to do so.³⁸⁸ Once one steps away from all the hysteria about the fence, the simple fact of the matter is that it would be right to proceed on the basis that it would work effectively at the very least for the vast majority of the time and in doing so it would serve as a significant mitigation measure. The likelihood is that if it is breached this would be an infrequent occurrence and it would be repaired/reinstated in any event. The prospect of there being any untoward consequences for the protection of the heath during such infrequent periods when there might, for a short period, be a gap in the fence is miniscule.³⁸⁹ A sense of proportion should be applied.

12.61 While discussing the fence there are a few other points to pick up. *First*, an application has been made to add a public footpath to the definitive map running from Isaacs Close and across Talbot Heath.³⁹⁰ The Trust disputes this. As things stand, there is no public footpath in this location and whether there is sufficient evidence to add one to the definitive map will be the subject of entirely separate procedures the outcome of which cannot be second-guessed or assumed. Until the outcome of these procedures is known the correct approach is to work on the basis that the fence can be erected in this vicinity without interfering with a public right of way. *If* in due course a footpath is added to the definitive map then consideration would have to be given to applying to divert it or stop it up³⁹¹ but if all else failed then the fence would stop short of the path; even then the fence would still make it significantly less convenient for people (and pets) to access the heath. But all this is for the future and cannot be dealt with at this stage when one simply does not know the outcome of the application to add the claimed path to the definitive map.

12.62 *Secondly*, the fence can be erected on the Trust's land without impinging upon public access ("CROW") land.³⁹²

³⁸⁶ BPC 9

³⁸⁷ S106, Sched 2, Part 9 (Management Statement). Drawing MS/012 Rev K

³⁸⁸ S106 Part 3 of the 2nd Schedule

³⁸⁹ Mr Goodwin EIC

³⁹⁰ The line is shown on T&BWRA/31

³⁹¹ For example under Section 257 of the T&CPA 1990

³⁹² T&CPA 22, 29, 30 & 31

12.63 *Thirdly*, while it must be the case that without due care and attention to details a fence of this nature and height could be visually intrusive, it need not be so as is demonstrated by TVT/23. The fence will be put in place before any of the new homes are occupied and so new residents will have the fence as an established feature. This is not the case of course for existing residents and users of the heath but, as said, with careful attention to details the fence need not be visually intrusive.³⁹³

12.64 Turning to the no cats or dogs covenant, which would apply to some 90% of the proposed new homes i.e. those within 400 metres (straight-line) of Talbot Heath, the Section 106 planning obligation would provide a legally effective means of enforcing the covenant (and in addition there would be a restrictive covenant that the Trust would be able to enforce against individual homeowners). Such covenants are commonplace in flatted developments³⁹⁴. 66 of the proposed new homes would be flats, with a proportion within the 400m zone, and Mr. Goodwin has come across such covenants in gated developments of new houses.³⁹⁵ There is no human rights issue involved here as in any event human rights (e.g. concerning home ownership and occupation) can always be overridden in the greater public good (otherwise there could be no question of compulsory purchase orders for example) and such a covenant, which aims to protect the valuable ecology of the European Sites, would self-evidently be supportable on this basis. There is nothing illegal either generally or specifically about a covenant to prevent the keeping of pets.

12.65 Unlike the fence – which would take a very determined and well-equipped person to breach it (it certainly could not be breached easily and casually) – it would of course be easier to breach the covenant and doubtless some people would be inclined to do. However the hysterical picture that has been painted of an estate full of militant pet owners defying the covenant is misplaced and silly. Many people (in fact, most of the population) do not keep a cat³⁹⁶ (some 2/3rds don't) or a dog³⁹⁷ (some 4/5ths don't) and do not want to do so. The covenant would be legally enforceable and there can be no doubt that it would deter the vast majority of people from keeping a cat or a dog – for many there would be no need to be deterred as they would not want a cat or a dog in the first place, and all purchasers would know full-well of the covenant at the time of purchase. Yes of course most people who keep cats and dogs love them to bits, and quite right too, but that doesn't mean that the covenant would be breached willy-nilly otherwise one would never find such covenants in leases and on managed estates. The covenant would deter pet ownership but were it to be breached ultimately the sanction would be a court order that the homeowner in question desists from keeping a cat or a dog at the property in issue. To put this in context, one mustn't forget that 36 of the new homes (i.e. those beyond 400 metres) would not be subject to the covenant.

³⁹³ Mr. Jacobs in answer to Inspector's questions

³⁹⁴ BPC /2 It is envisaged that 66 of the proposed new homes would be flats (see Mr. Genge's proof at page 39) and several of these would be likely to be within the 400 metres zone

³⁹⁵ Mr Goodwin re-exam

³⁹⁶ NR/9 para 7.52 p 31

³⁹⁷ CD 38 page 17

12.66 The fact that BPC has no experience via its planning department of enforcing such a covenant is little to the point – Section 106 planning obligations cover a vast array of issues that just a few years ago would not have been contemplated and there always has to be a first time otherwise one could never move forward.

12.67 Nor does the fact that in some cases inspectors have been sceptical about the efficacy of such measures help one way or the other – there have been decisions both ways on this any event – one simply doesn't know how the points were put and argued and in what detail in these cases (two³⁹⁸ of which were hearings and the other, written representations,³⁹⁹ latterly NE has referred to another decision letter where there was a one day inquiry⁴⁰⁰). The question is whether the Inspector and the Secretary of State are persuaded by the arguments and the evidence put before them in this case.

12.68 The correct approach is to proceed on the basis that the fully legally enforceable covenant would very significantly reduce the cat and dog populations of the proposed new homes and serve to significantly reduce the risk of impacts arising from cats and dogs. To the extent that the covenant was breached, there would be no fewer than three routes for enforcement (BPC against the Trust; BPC against individuals; the Trust against individuals) but if a few pets slipped through the net so to speak, they would not be able to slip through the fence and so any impacts which might otherwise arise from a breach of the covenant would be reduced to vanishing point by the fence.

12.69 For the homes beyond 400 metres from Talbot Heath which would not be subject to the covenant, the very extensive mitigation package (including the across the board IPF payment) would ensure that no significant adverse impacts would arise.

The scheme (having regard to its mitigation measures) will not significantly adversely affect the integrity of the European sites:

12.70 Mr. Tyldesley confirmed⁴⁰¹ on NE's behalf that the Secretary of State has all the information required in order to carry out an appropriate assessment.

12.71 NR did not seek to demonstrate that the proposals would cause significant harm; Dr Underhill-Day said that it "was no part of [his] case to demonstrate" that there would be harm to nightjar, and when asked whether he contended that the development would lead to an increase in the level of use of paths on the heath such that nightjar would be more disturbed, he said that this was an "unanswerable question"; he gave similar answers concerning Dartford warbler, saying that he "didn't have the data to positively say."⁴⁰² In other words NR rely on it falling to the Applicant (and BPC) to convince the Secretary of State that the legal test is met; they have not sought to prove that the proposals would significantly adversely affect the integrity of the European Sites.

³⁹⁸ NR / 32 & 34

³⁹⁹ NR / 33

⁴⁰⁰ NR/32; 33; 34 and 47

⁴⁰¹ Mr. Tyldesley xx Mr Katkowsky

⁴⁰² Dr Underhill-Day xx Mr Katkowsky

- 12.72 Taking each of the main potential impact pathways and beginning with pressure from people visiting the European Sites: there is no dispute between the main parties that the smaller, urban, heaths which form part (along with larger, rural, heaths) of the European Sites, like Talbot Heath, suffer from very considerable pressure from visitors. These heaths are much visited and NE has decided that it would be counter-productive to try to restrict public access to them.⁴⁰³ It is essential to put into proper context the likely increase in population from the application proposals and the extent to which they might add to these existing, and ever-growing, pressures on the European Sites.
- 12.73 The context is as follows: some 450,000 people live close to the heaths⁴⁰⁴ there being circa 230,000 residential properties within 5 km of the SPA,⁴⁰⁵ and there are some 10,700 homes within 400 metres of the Bourne Valley and Turbary and Kinson Common heathland block.⁴⁰⁶ 7 footpaths and 2 bridleways cross Talbot Heath which is CROW open access land as well.⁴⁰⁷ As best as one can tell, there are something like 8¾ million visits to the European Sites per annum (and this is visits from households and so the number of visitors must in fact be higher).⁴⁰⁸ Dr Underhill-Day said⁴⁰⁹ that estimates ranged from some 5 to 9 million visitors per annum. Calculated on a similar basis, there are over 230,000 visits (households rather than visitors so the same comment applies) to heathland sites per annum.⁴¹⁰ Dr Underhill-Day said⁴¹¹ that estimates ranged from circa 150,000 to 300,000 per annum. It is anticipated that population growth over the Core Strategy period (to 2026) will lead to an additional 10 – 15% pressure on the heaths.⁴¹² The IPF is based on an anticipated growth in population *over just 2 years* of over 3,000⁴¹³ which rather puts into context the number of new residents that the proposed development would bring, which would arise over considerably longer than a two year period, of some 500 or so (when calculated on the basis of the IPF⁴¹⁴) or getting on for 900 on the basis used in the Applicant's Regulation 19 Update.⁴¹⁵
- 12.74 Meanwhile, research indicates that the vast majority of those who visit heaths do so in order to walk their dogs; the figure for heaths in general is some 81%⁴¹⁶ and for Talbot Heath in particular it is higher (presumably because it is surrounded by so many homes) at 88%.⁴¹⁷ Most of the Applicant's proposed new homes (90%: 342 i.e. those within 400 metres of Talbot Heath) would be the subject of the no dogs covenant which would mean that for the vast majority of the new households (8 or 9 out of 10 of 90% of the development

⁴⁰³ Mr. Squirrell's Rebuttal at 2.21

⁴⁰⁴ NR/36 page 31

⁴⁰⁵ CD 38 page 10 Table 1

⁴⁰⁶ CD 86 page 42; NR/6 para 9.3 & plan in SJCC I

⁴⁰⁷ NR/6 para 6.9 p 15

⁴⁰⁸ CD 38 pages 28 and 55 / 56 and Dr. Underhill-Day in answer to CKQC

⁴⁰⁹ In answer to Mr Katkowsky

⁴¹⁰ CD 38 pages 28 & 29 and Dr Underhill-Day xx Mr Katkowsky

⁴¹¹ Dr Underhill-Day xx Mr Katkowsky

⁴¹² CD 15 page 33 Mr. Tyldesley xx Mr Katkowsky

⁴¹³ CD 22 at 4.3

⁴¹⁴ CD 22 at 4.3 Mr. Tyldesley xx Mr Katkowsky

⁴¹⁵ TVT18 p 41

⁴¹⁶ CD 38 page 17

⁴¹⁷ Regulation 19 Update TVT 18 at page 42 (5.13.1.22)

i.e. 75% to 80% of the whole development) the main reason for visiting heathland would not apply.

- 12.75 The research also shows that those who live in flats have a lesser propensity (some 36 – 40%) to visit heathlands than those who live in houses (51 – 59%).⁴¹⁸ Some 66 (17.5%) of the 378 proposed new homes would be likely to be flats.⁴¹⁹
- 12.76 Those who live within 500 metres have a 40% propensity to visit heaths but at circa 2 km this more than halves to less than 20%.⁴²⁰ With the fence in place, residents in the proposed development would have to travel at least 1.7 km⁴²¹ to, and most would be 2 km or more away from, Talbot Heath.⁴²²
- 12.77 One can readily see how these various points accumulate to reduce the potential impacts from the new population of the proposed development. At the distance involved with the fence in place less than 20% would have the propensity to visit heathland and with the no dogs covenant the vast majority of these (75-80%) would have no real reason to want to do so; the lesser propensity of those living in flats to visits heathlands would reduce these percentages yet further in relation to getting on for a 20% of the proposed new homes. Distance also, unsurprisingly, affects the frequency of visits – people who live close to a heath make getting on for 40 visits a year but at 2 km it is more like 12 visits.⁴²³ So not only would the fence and the covenant serve to reduce and very significantly so the propensity amongst residents of the new homes to visit heathland, the fence would also serve to very significantly reduce the number of visits per year by those still inclined to do so.
- 12.78 Dr Underhill-Day said in re-examination that *without* the fence and the covenant he would anticipate a circa 10% increase in visits *to Talbot Heath* (although he pointed out that he had no evidence to support this estimate). *Without mitigation* the increase in visits *to the European Sites* would be less than 1/5th of 1% [0.16%] (or, if one added in the students about 1/3rd of 1% [0.36%]).⁴²⁴ With the fence and the covenant it is clear that the degree of additional visits to the European Sites would be a small fraction of the existing visits. Thus set in the context of the extent of visits currently made to the heaths (as expected to increase over time in any event), the application scheme would add nothing of significance to the total number of visits.
- 12.79 Quite apart from all this, measures other than the fence and the covenant would also serve to mitigate any possible additional (residual) pressure on the heaths from residents of the new homes as well as diluting existing pressure from current residents too. Examples of measures which would have these effects are the opening up to public access of the 3 fields and the triangular field, which would act to relieve pressure on the heath from existing and new residents (much like a SANG but without the “honeypot” effect of SANG that Mr.

⁴¹⁸ CD 38 page 18

⁴¹⁹ Mr. Genge’s proof at page 39

⁴²⁰ CD 38 p 45 Dr Underhill-Day xx Mr Katkowsky

⁴²¹ Mr Goodwin EIC and TVT/11 para 2.24

⁴²² Mr. Baker EIC and xx Mr Machin

⁴²³ CD 38 page 46 and Dr Underhill-Day xx Mr Katkowsky

⁴²⁴ Dr Underhill-Day xx Mr Katkowsky

Goodwin spoke of in chief); additional wardening would help to ensure that visitors (old and new) acted more responsibly when on the heaths; the IPF contribution paid across the entire scheme would go towards measures which NE consider will serve to mitigate wider pressures across the European Sites, and the damage caused by fires. Whilst there is no proven statistical link between level of population and number of heathland fires⁴²⁵, fire has the single most devastating impact on the protected heathlands and that impact would be reduced by the proposals to improve access to Talbot Heath for fire-fighting vehicles and the supply of water to do so (fire hydrants). On top of all this, measures which would restore heathland outside the classified European Sites (the three fields) and better manage the protected heath itself would serve to improve the carrying capacity of Talbot Heath and its immediate environs for Dartford warbler and nightjar, which would assist in further reducing any potential residual impacts.

12.80 The occupants of the student accommodation would add little to the overall picture and the extensive package of mitigation measures would readily cater for any potential yet surely minimal issues arising.

12.81 Taking all of these points on board, together with the more detailed expositions set out in the evidence of Mr. Baker and Mr. Goodwin, the Applicant submits that the Secretary of State can – and should – ascertain that the legal test is met here, the scheme either alone or in combination will not significantly adversely affect the integrity of the European Sites across their whole areas. The impacts arising from the scheme would be “de minimis” i.e. so limited that they could not contribute to in combination impacts in any meaningful way.⁴²⁶ If anything – not that the Applicant has to establish this in order to pass the legal test – the overall effect of the scheme with its extensive package of mitigation measures would be beneficial to the integrity of the European Sites, as NE thought it would be in 2005⁴²⁷ (when most but not all of the proposed measures were on the table) before the rot set in.

12.82 As for dogs: much of what needs to be said has already been said; if the no dogs covenant is wholly ineffective then Dr Underhill-Day would anticipate that there would be about 100 dogs being taken on some 60,000 walks per annum with a proportion of these to heathland.⁴²⁸ Set in context given that the vast majority of visitors to the heaths do so with at least one dog in tow (8 out of 10 generally and 9 out of 10 at Talbot Heath visit with their dogs) there must be many millions of dog visits to the European Sites each year and amongst these, hundreds of thousands to Talbot Heath itself.⁴²⁹ (Dr Underhill-Day confirmed⁴³⁰ that there could easily be a ¼ million visits by dogs to Talbot Heath per annum.)

12.83 The no dogs covenant would serve to greatly reduce the number of dogs within the proposed development and should a few be kept by residents living

⁴²⁵ CD 86 Table p 42 and NR/29 penultimate page, middle of the page

⁴²⁶ Mr Goodwin xx Mr Machin; the Inspector remarked that Mr. Baker’s explanation was to similar effect. TVT 26 shows that this approach has been accepted by NE in other cases

⁴²⁷ T&BWRA / 32

⁴²⁸ NR/9 para 8.16

⁴²⁹ Dr Underhill-Day xx Mr Katkowsky

⁴³⁰ As above.

within 400 metres (straight-line) from Talbot Heath in defiance of the covenant (and assuming against the Applicant that the covenant was not enforced), the potential effect of these together with any dogs that are kept by residents living beyond the 400 metres would be readily mitigated into an insignificant effect overall by virtue of the extensive package of mitigation measures (such as the three fields which would provide for new public access and act as “interceptor” sites, together with the triangular field for dog walking and not forgetting the large IPF payment⁴³¹).

12.84 Very similar points apply to cats with the combined effect of the fence and the covenant being particularly pertinent. As Dr Underhill-Day said in re-examination, he does not dispute that the fence would keep out most cats, most of the time. He estimated that without the covenant there would be some 120 or so cats⁴³² and suggested that one should work on the basis of cats hunting up to 1 km or more from their homes.⁴³³ In cross-examination⁴³⁴ he agreed that there must be thousands of cats within this prowling distance from existing homes to the heath (but that the proportion of cats that would hunt at this sort of distance would be “limited”) and hundreds within 400 metres;⁴³⁵ in re-examination he appeared to suggest that 400 metres was a more appropriate distance to take as the closer a cat is to a heath, the more likely it is to hunt there. Either way, plainly there are already a lot of cats near to Talbot Heath and there must be a staggering number within hunting distance of the European Sites when looked at as a whole. Dr Underhill-Day confirmed⁴³⁶ that “we have no means of telling” how deleterious cats are to Dartford warbler and nightjar on the heaths. Nor did Mr. Squirrell have any idea of the likely level of population of sand lizard on Talbot Heath⁴³⁷ - the “evidence” that cats predate sand lizard⁴³⁸ is flimsy and fire is by far and away a greater issue.

12.85 Fascinating as this subject is, the reality is that the no cats covenant will act to dramatically reduce the number of cats within the development and to the extent that the covenant is defied and not enforced and there are some cats, these together with the cats that will be kept by those who will live in the new homes that are beyond the 400 metres cut-off distance for the covenant, will find their hunting patterns interfered with by the fence which will be an intervening barrier. The net effect of these measures together with the extensive package of mitigation measures would serve to reduce the potential impacts from cats on the development to an insignificant, de minimis, level (if there is any net impact at all). As mentioned previously, for cats beyond 400 metres from the heath, the default mechanism in the IPF is the collection of payments towards mitigation measures which will reduce the net effect of

⁴³¹ The IPF payment is specifically mentioned because for developments within the 400 metres to 5 km zone such payments are the mainstay of the IPF.

⁴³² NR/9 para 7.52 p 31

⁴³³ As above at 7.43.6

⁴³⁴ Dr Underhill-Day xx Mr Katkowsky

⁴³⁵ NR/8 p 197

⁴³⁶ Dr Underhill-Day xx Mr Katkowsky

⁴³⁷ Mr. Squirrell xx Mr Katkowsky (Mr. Goodwin’s 2011 surveys did not find any on the Trust’s part of Talbot Heath)

⁴³⁸ NR/8 Appendix 15 and NR/6 para 7.13 p22 – cats “may” predate sand lizard (but not smooth snakes – the other species that he gave specific evidence about)

development in the 400 metres to 5 km zone to a collectively insignificant level across the protected heaths as a whole. Ironically, one of the measures suggested in the research paper that studies the propensity of cats to predate sand lizards is the introduction of no cats covenants in developments.⁴³⁹

12.86 So for both dogs and cats, the Secretary of State can and should conclude that with the secured mitigation measures the scheme on its own or in combination would not significantly adversely affect the integrity of the European Sites across their whole areas.

12.87 The truth of the matter is that the true enemy of Dartford warbler on the heaths is the phenomenon of hard winters which have a dramatic effect on population levels⁴⁴⁰ and fire is a terrible curse more generally. As Dr. Underhill-Day confirmed⁴⁴¹ Dartford warbler and nightjar numbers have increased significantly across the heaths⁴⁴² despite considerable development pressures and without the implementation of SANGS in the period in question. None of this is meant to deny that people trampling thoughtlessly or dogs being dogs or cats being cats might not have some effect *but* it does seem that NE & the RSPB have lost all sense of proportion and reality in their approach to the proposals, which come with an impressive and thoughtful range of bespoke mitigation measures together with IPF contributions across the whole scheme.

12.88 Some context for the lack of proportion is provided by NE's suggestion⁴⁴³ that the development site should be held back as a potential SANG; as explored in cross examination of Mr. Squirrell.⁴⁴⁴ Research⁴⁴⁵ shows that the likely net effect of this would be to increase visitors to Talbot Heath by some 38% (!) even taking into account that *existing* users of the heath might well walk fewer steps on the heath; this is because, as Mr Goodwin explained⁴⁴⁶ alternative greenspaces are deliberately designed to act as "honeypots" with dedicated parking and all sorts of other must-haves to attract people to them, the vast majority of whom would also walk on the adjacent heath as well. This does rather put into context the issues raised by NR about the application proposals as even the wildest guesstimate of the effect of the scheme gets nowhere near this level of increase in visitors to Talbot Heath.

12.89 The Applicant submits that the Secretary of State should conclude that the legal test is met here and so permission can – and should – be granted.

Other Ecological Issues

12.90 Mr. Squirrell confirmed⁴⁴⁷ that no additional issues arise in relation to the SSSI that are not covered by the debate concerning impacts on the European Sites (see PPS9 at paragraph 7) nor do any issues arise in relation to protected

⁴³⁹ See NR/35 page 150 penultimate bullet point

⁴⁴⁰ NR/9 para 5.9 p 10

⁴⁴¹ Dr Underhill-Day xx Mr Tromans

⁴⁴² CD 86 p 35

⁴⁴³ TVT/5 Appendix 8: NE letter dated 5/3/2010 (see page 398)

⁴⁴⁴ Mr. Squirrell xx Mr Katkowsky

⁴⁴⁵ NR / 26

⁴⁴⁶ Mr Goodwin EiC

⁴⁴⁷ Mr. Squirrell xx Mr Katkowsky

species per se, in the sense that *if* the scheme would involve disturbance of such, the necessary licences are likely to be granted so that the scheme⁴⁴⁸ is likely to be able to proceed, which would meet the test in the case of Morge.⁴⁴⁹

12.91 Mr. Goodwin's 2011 surveys have found that badgers have drifted eastwards to feed off the rich pickings of the gardens of Dulsie Road⁴⁵⁰ and this information has led to some late but carefully thought-through amendments to the scheme in order to protect badgers.⁴⁵¹ Furthermore, TVT have covenanted such that they must retain their ownership of the area in question. Mr. Squirrell has criticised these proposals but Mr. Goodwin in his evidence in chief rebutted each point made and concluded that a licence is unlikely to be required in any event but that if one is, there is no good reason to imagine that it would not be granted. There the issue rests and in the Applicant's submission Mr. Goodwin's evidence should be relied upon.

Traffic, highways and transportation issues

12.92 Bournemouth Borough Council's case is an utter shambles. To dissect each bad point badly made in turn: *first*, the idea that a corridor should be reserved (by condition) across the site for a future transport route – this idea stems from a passage⁴⁵² in the Structure Plan which seeks to “retain options for a future through main traffic route or an innovative mass transport system”. The application scheme incorporates a linear greenspace that could double-up as the route in question *but* the concept has been made redundant by more recent events as any road or mass transport link would have to continue from the site and run across the heath⁴⁵³ which, plainly, is a non-starter given the protected status of Talbot Heath as part of the European Sites. BBC has given no thought to the ecological issues.⁴⁵⁴ The idea has had its day; it is no longer a good one and should be laid to rest. It is hard to understand why BBC thought it worth pursuing.

12.93 *Secondly*, a longstanding criticism of the Applicant's TIA made by BBC was that it did not model base conditions sufficiently accurately.⁴⁵⁵ This criticism has been shown to be ill-founded. On the Friday⁴⁵⁶ before the inquiry started BBC issued Mr. Carter's revised analyses (which sought to rectify the errors in his previously issued work) and it became apparent that his model of base conditions is in fact very similar to Mr. Eves' (for the Applicant) such that there are no material differences between them.⁴⁵⁷ References in cross examination and re examination to the Supplementary Report⁴⁵⁸ are a time-wasting red herring as most of the RFCs in it are considerably higher than the Mouchel

⁴⁴⁸ Mr. Squirrell EiC

⁴⁴⁹ BPC 11 paras 17 – 25

⁴⁵⁰ Including jam sandwiches: VT/PET/Appendix J p 2 of 2

⁴⁵¹ TVT 28 p 4; S106 Planning Obligation Plan 9 (in the 10th Schedule) and Part 8 of the 2nd Schedule;

⁴⁵² CD 74 p 94 para 8.94

⁴⁵³ Mr. Campkin xx Mr Katkowsky

⁴⁵⁴ As above

⁴⁵⁵ BBC/3 para 1.15 p 3 & para 3.21 p 22

⁴⁵⁶ 8th July 2011

⁴⁵⁷ TVT 14

⁴⁵⁸ CD 57

figures *relied upon by Mr Carter* who does not consider the Supplementary Report to be credible.⁴⁵⁹

12.94 *Thirdly*, BBC originally contended that the proposed development would lead to peak hour traffic on Wallisdown Road queuing to such an extent that vehicles would block back through Boundary roundabout & Talbot roundabout. Mr Carter described this in his proof of evidence as an “important” issue⁴⁶⁰ however this point has now been dropped as Mr. Carter’s revised analyses demonstrates that this issue would not arise.⁴⁶¹

12.95 *Fourthly*, BBC originally argued that the proposed development would lead to significant additional delay to peak hour traffic negotiating the roundabouts on Wallisdown Road; Mr. Carter described this additional delay in his proof of evidence as “material”⁴⁶² however his revised analyses shows that any additional delays would be miniscule⁴⁶³ and that the criticism is ill-founded.

12.96 *Fifthly*, Mr. Carter argues that if a junction has an RFC of 0.85 it is at capacity and that an RFC above this is unacceptable.⁴⁶⁴ This is simply wrong. TA 23/81⁴⁶⁵ does not sanction Mr. Carter’s approach. The ARCADY manual explains otherwise and indicates that “demand is close to capacity (i.e. RFC around 1.0).”⁴⁶⁶ There is no publication which indicates that an RFC of 0.85 is a “limit” and no planning policy guidance to support its use in such a way.

12.97 BBC originally contended that in the base (without the proposed development) case a number of arms at the junctions in issue would exceed 0.85 and that with the proposed development this situation would worsen.⁴⁶⁷ However Mr. Carter’s revised analysis⁴⁶⁸ show a very different picture with *only one arm at only one junction* in the “double access” scenario namely the Wallisdown Road West arm of the Boundary roundabout in excess of 0.85 (at 0.91) in the PM peak hour in the base case worsening to 0.97 with the proposed development.

12.98 Figures like this are pretty meaningless unless they are put into context. The context here is that (a) the resultant worsening in delay would be a mere 7 seconds (average delay rises from 0.18 of a minute [10.8 seconds] to 0.29 of a minute [17.4 seconds]⁴⁶⁹ and (b) the phenomenon does not arise throughout the peak hour. It is for half an hour (i.e. 17:15 – 17:45) and on either side of this, the RFC is much lower (17:00 – 17:15 = 0.747 and 17:45 – 18:00 = 0.748) just as the number of vehicles queuing in the busiest period is 15 (17:15 – 17:30) or 19 (17:30 – 17:45) across three lanes i.e. 5 or 6 in each lane but a

⁴⁵⁹ Mr Carter in answer to the Inspector

⁴⁶⁰ BBC/3 paras 5.13 – 5.15 pp 38 & 39; paras 5.25/5.26 pp 44 & 45 & Table 17; paras 5.31/5.32 & Table 18 on pp 45 & 46, and conclusions para 7.22 p 64

⁴⁶¹ TVT 12 para 2.14 & TVT 13 Appendix Supp 2

⁴⁶² BBC/3 paras 5.41 – 5.43 pp 48 & 49 & Table 19 conclusions para 7.10 p 62

⁴⁶³ TVT 12 para 2.15 & TVT 13 Appendix Supp 3

⁴⁶⁴ BBC/3 para 5.13 p39 and his Rebuttal at 6.15 page 14

⁴⁶⁵ BBC 3R Appendix C at 6.2

⁴⁶⁶ TVT/9 App 5 and BBC/3R para 2.24 p 6

⁴⁶⁷ BBC/3 Table 15 (first version)

⁴⁶⁸ Revised Table 15; TVT 12 at 2.5

⁴⁶⁹ Revised Table 15

total queue of just 3 vehicles before and after the peak of the peak⁴⁷⁰ and (c) the modelling makes no allowance for either peak spreading or spreading within the peak hour i.e. people adjusting their journey times so as to avoid the worst conditions.⁴⁷¹

12.99 The Applicant no longer considers it appropriate or the best use of resources to signalise this roundabout and instead now proposes a significant overall financial contribution to the Wallisdown Road Quality Bus Corridor of £1.15m (for the reasons explained by Mr. Eves in TVT 12 at 2.16 – 2.29) together with a contribution of £300,000 towards enhanced bus services.

12.100 None of these criticisms whether erstwhile or still maintained amount to anything of substance; one can hardly expect a major route like Wallisdown Road to be free of congestion in the peak hours, it is along corridors of this nature that new development should be expected, and the Applicant's proposed development would make little difference to the position – certainly nothing to warrant refusing the proposals.

12.101 Similar points arise in relation to University Roundabout where Mr. Carter's revised analysis⁴⁷² shows that with the proposed development congestion on one arm (Wallisdown Road West) would very marginally worsen in the AM peak hour from an RFC of 0.84 to 0.85, a change which is so insignificant that the model shows no additional delay being caused. This position is shown for ½ hour [8.15 to 8.45]. On either side of the peak within the peak the RFCs are considerably lower at 0.68 (0.677 & 0.678).⁴⁷³ In the worst ½ hour the model shows a queue of 5 vehicles with a queue of just 2 on either side of that "shoulder" in the peak hour.⁴⁷⁴

12.102 Both Mr. Davies & Mr. Campkin explained⁴⁷⁵ that they had been assured by Mr. Carter that his revised analyses were not materially, not significantly, different from his earlier work but since several of the major criticisms and concerns have been shown by the revised analyses to have been misplaced, or even more misplaced than they were originally, it has to be said that Mr Carter's assurance to them was somewhat misleading.

12.103 *Sixthly*, Mr. Carter advised that the "capacity" of Wallisdown Road as a link is some 2167 vehicles per hour⁴⁷⁶ but this cannot be anything other than a theoretical or academic point as the reality is that his own evidence (taken from ATC data) shows that actual traffic flows over several years have been higher than this and in most years, very much so⁴⁷⁷.

12.104 The *wider context* for all these points (concerning junctions and the link) is to bear in mind that the modelling on which they are based is conservative in relation to future conditions in the sense that a worse position is shown than is

⁴⁷⁰ See TVT 12 at 2.9 and Appendix Supp 1 in TVT 13

⁴⁷¹ See TVT 12 at 2.12; peak spreading already occurs, BBC/3 para 2.15 &ff

⁴⁷² Revised Table 15

⁴⁷³ See TVT 12 at 2.7 & 2.8 and Appendix Supp 1 in TVT 13

⁴⁷⁴ As above

⁴⁷⁵ Mr. Davies & Mr. Campkin xx Mr Katkowsky

⁴⁷⁶ BBC/3 para 2.2 p10

⁴⁷⁷ BBC/3 Chart 1 p 9

likely to materialise in reality. This can be seen in three main ways: (a) Mr. Carter's analyses project forward from 2009 to 2016 with 5% growth in background (i.e. not from the development) traffic⁴⁷⁸ but the reality is that traffic on Wallisdown Road has fallen steadily - rather than grown - over the years, thus AM peak hour flows were some 20% lower in 2010 than they were in 2004 with a 5% fall from 2009 to 2010.⁴⁷⁹ With traffic levels having fallen even through a period of sustained economic growth, it seems extremely unlikely that there will be a 5% growth through a period of (at best) initial recovery from the recession; (b) the residential trip rates used for the proposal are significantly higher than those surveyed locally with the AM peak hour figure some +22% higher than local survey information would support⁴⁸⁰ and (c) no allowance has been made for any modal shift away from use of the car to be achieved via the Travel Plan.

12.105 *Seventhly*, Mr. Carter's case concerning the Applicant's proposed contributions to the Bus Showcase Corridor and to bus services is very muddled. In relation to the bus corridor contribution it was originally suggested by Mr. Campkin⁴⁸¹ that the Applicant should pay £1.7m. This came down very significantly to £650,000⁴⁸² in BBC's comments on the draft Section 106 planning obligation which required this amount to be paid *but* Mr. Carter argued in his Rebuttal proof of evidence⁴⁸³ that a contribution would not meet the legal tests in Regulation 122 of the CIL Regulations, the upshot of which logic is that BBC cannot justify requiring any payment at all. Similar points apply to BBC's case concerning the bus services contribution where BBC's comments on the draft Section 106 planning obligation required a payment of £500,000 but Mr. Carter argued that a contribution would not meet the CIL Regulation 122 legal tests⁴⁸⁴ and so, as just said, on this logic BBC has no justification for seeking any payment at all.

12.106 *Eighthly*, BBC made the point that the proposed fence would inhibit pedestrians and cyclists; Mr. Eves has analysed the effects of this;⁴⁸⁵ BBC's case seems to involve no more than pointing out the effect of the fence; it is not said that permission should be refused because of it or that the fence shouldn't be provided.⁴⁸⁶

12.107 In this debacle of a case there is only one point that has any respectability as an argument and that is, *ninthly*, BBC's request that the 2nd access (to Boundary roundabout) should be "bus only" rather than all-purpose as BPC would prefer it to be. The argument has some semblance of respectability because Local Plan policy H3 (iv)⁴⁸⁷ provides some support to BBC's case *but* there are convincing material considerations as advanced by Mr.

⁴⁷⁸ Revised Table 15 and BBC/3 para 4.8

⁴⁷⁹ BBC/3 Chart 2 p11

⁴⁸⁰ BBC/3 p 27;

⁴⁸¹ BBC/2R para 7.5

⁴⁸² BBC3 Addendum No. 2

⁴⁸³ BBC/3R p 20

⁴⁸⁴ BBC/3R p25 para11.13

⁴⁸⁵ TVT/2 paras 5.31 – 5.40

⁴⁸⁶ Mr. Davies (also Mr. Campkin) xx Mr Tromans

⁴⁸⁷ CD 20 at pages 105 / 106

Francombe (for BPC) and Mr. Eves⁴⁸⁸ to indicate otherwise and to justify two full accesses, the case for which was made vividly by Mr. Cooper,⁴⁸⁹ a local objector and highways engineer who agrees with BPC & the Applicant on this issue if nothing else. It is noteworthy that BBC did not object to the more recent draft Site Specific Allocations Development Plan Document which has dropped the reference to a bus only second access.⁴⁹⁰ In any event, should the Secretary of State conclude that the access should be restricted to buses then this could be secured by imposing a suitably worded condition on the planning permission.

12.108 In short, BBC's case lacks any substance and none of their points could conceivably warrant refusing the application.

12.109 The draft NPPF states that "development should not be prevented or refused on transport grounds unless the residual impacts of development are severe."⁴⁹¹ This case could not be conceivably characterised as one in which there would be severe impacts.

Other issues raised by local objectors

12.110 No other issues of substance have been raised by local residents who object to the proposals; local amenities and living conditions would be protected via the discharge of reserved matters and other conditions when the details of the scheme are drawn up and submitted for approval.

The draft NPPF

12.111 The Applicant relies upon the very positive direction of travel in the draft NPPF.⁴⁹² The draft is particularly apt when it comes to considering the sort of concerns raised by local residents – including the Inspector's questions to a number of the witnesses concerning the potential visual impact of the fence, which is a common theme of local residents' objections.

12.112 The draft advice is very clear: proposals should be approved "wherever possible" i.e. "unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits".⁴⁹³ Decision-makers are urged to "approach development management decisions positively – **looking for solutions rather than problems**"⁴⁹⁴ – an especially telling way of putting the point – and one should "attach significant weight to the benefits of economic and housing growth."⁴⁹⁵ The draft is emphatic when it comes to its advice concerning new homes: "The Government's key housing objective is to increase significantly the delivery of new homes"⁴⁹⁶ with "the full requirements for market and affordable housing" to be met.⁴⁹⁷ In order to assist in achieving this,

⁴⁸⁸ TVT/2 para 5.40

⁴⁸⁹ TVRA/1 and orally at the evening session of the inquiry

⁴⁹⁰ See BPC 11

⁴⁹¹ Draft NPPF at paragraph 86 (see the top of page 22)

⁴⁹² TVT / 27

⁴⁹³ Draft NPPF at para 14 on page 4

⁴⁹⁴ As above at para 54 (emphasis added) p 15

⁴⁹⁵ At para 54

⁴⁹⁶ At para 107 on p 30

⁴⁹⁷ At para 109 on p 30

“an additional allowance of at least 20 per cent” is to be included in the 5 year housing land supply.⁴⁹⁸

12.113 The direction of travel of the Coalition Government’s planning policies provides clear and compelling support for the application proposals. As Mr. Jacobs explained⁴⁹⁹ this is BPC’s *key site* for the delivery of new homes. BPC emphasises that losing the allocation would harm the delivery of housing particularly at a difficult time for more constrained brownfield sites.⁵⁰⁰

Overall Conclusions

12.114 The Applicant’s case in relation to the matters set out in the call-in letter has been summarised in these submissions. Conditions have been discussed and settled in draft at the inquiry. A Section 106 Planning Obligation, which has been revised⁵⁰¹ extensively in response to points made about earlier drafts, will be signed by the parties and sent to the Secretary of State following the close of the inquiry⁵⁰².

12.115 The direction of travel of the Coalition Government’s planning policies is clear for all to see. If it is concluded, as the Applicant submits it should, that the proposals meet the legal test concerning the European Sites then in relation to all other issues and concerns a “can do” attitude should be adopted in which things are made to work. The planning system is no longer meant to be a seemingly never-ending series of trip wires, instead it should *facilitate not frustrate* the Trust in its ambition to deliver a significant number of new homes together with academic floorspace and student accommodation.

12.116 The Trust asks the Inspector to recommend and the Secretary of State to grant planning permission.

⁴⁹⁸ As above and NB the same paragraph rules out reliance on windfalls save in certain very restrictively defined circumstances

⁴⁹⁹ In answer to Mr Machin, Cllr. Rollo-Smith, Cllr. Chappell, the Inspector

⁵⁰⁰ BPC 14 at 3.3

⁵⁰¹ GEN 25

⁵⁰² Inspector’s note: The Inquiry was kept open until the 21 October which enabled the S106 to be signed and sealed and also to enable BBC to respond to the costs applications and provide BPC /TVT the right of final reply.

13. INSPECTOR'S CONCLUSIONS

In this section, numbers in brackets [] refer to paragraphs in this report of relevance to the conclusions

- 13.1 Conclusions are considered with reference to the matters identified by the Secretary of State in his letter of the 27 September 2010. I do not seek to resolve every detailed point about which the parties disagree, but focus on those matters which are of significance in the determination of the application before the Secretary of State.
- (a) the extent to which the proposed development accords with the relevant policies and provisions of the adopted Poole LP, the adopted Poole Core Strategy, and the Dorset Heathlands Interim Planning Framework 2010-2011 (IPF);**
- 13.2 At the time of the Inquiry and the writing of this report, the South West Regional Spatial Strategy (RSS) remains a part of the statutory development plan. The 2001 RSS provided the framework for the provisions of Poole Local Plan First Alteration 2004 (LP). As a result it is the relevant policies of the LP which are of more significance in the consideration of the proposed development. A draft RSS went to examination in public and was subject to a Panel Report in 2008, but has not been progressed further[6.2]. The non-statutory policies carry weight in so far as they reflect emerging evidence as to the vulnerability of the Dorset Heathlands, the potential impact of new development on the integrity of the Heathlands, and the mechanisms put in place by the Dorset Councils through the Interim Planning Framework to enable development to take place without harm to the integrity of the protected sites.
- 13.3 The Bournemouth, Dorset and Poole Structure Plan 2000 is also of limited assistance in the determination of the application, although BBC relies on a reference to a transportation corridor across the application site to support part of its case against the proposal[6.5]. I return to transportation matters later in my conclusions.
- 13.4 It is the saved policies of the LP and the recently adopted Poole Core Strategy 2009 (CS) which set out the policies pertinent to the determination of the application before the SoS. In particular, the application site was first allocated for residential development, student accommodation and academic floorspace in the 1998 LP. Objections to the retention of the allocation in the First Alteration were considered by the Inspector in 2002, and the allocation was retained as expressed in Policy H3[6.6-6.7]. The Policy sets out certain criteria to be met, and these include the requirement for a bus only access from Boundary Road Roundabout, a provision which continues to be advocated by BBC[8.27] but which is not favoured by BPC and TVT[11.75; 12.107].
- 13.5 In the CS, Policy PCS 28 reflects the approach in the Dorset Heathlands IPF and indicates that residential development should not be permitted in the (normally) 400m buffer zone unless as an exception the form of residential development would not have an adverse effect upon the integrity of the internationally designated Dorset Heathland. Between 400m and 5km avoidance and mitigation measures of the sort identified in the IPF are expected to be taken. This proposal complies with the IPF in relation to that part which falls without

the 400m zone since a financial contribution would be made in accordance with the requirements of the IPF.

- 13.6 The Dorset Heathlands IPF is a strategic solution to the delivery of housing around the Dorset Heathlands which has been adopted by six local authorities⁵⁰³, including BPC, in association with a range of stakeholders including NE and RSPB. The IPF is based on a consensus that new residential development within 5 km, in a straight line distance, of a European heathland site will, unless it takes an exceptional form, have a likely significant effect in combination with other proposals in the absence of secured measures of avoidance or mitigation which negate its contribution to such effect. The provisions do not apply to development within 400m of a relevant site, on the basis that such a development is likely to have a significant adverse effect, alone or in combination, save in exceptional circumstances.[6.11-6.12]
- 13.7 In this case the applicant seeks to apply the provisions of the IPF to the entire site, even though the majority of the housing development lies within the 400m zone[12.29]. Through the S106 agreement, a payment would be made in accordance with the IPF for every dwelling and flat within the entire development. Clearly those payments made in respect of the dwellings within the 400m zone would fall outside the provisions of the IPF and thus they would not satisfy the requirements of Article 6(3) of the European Directive and Regulation 61 of the 2010 Habitats Regulations. However, the IPF tariff payment is put forward by the applicant together with the package of bespoke mitigation measures on the basis that those measures would ensure that although 90% of the new homes would be within the 400m zone, the consequential impacts of their occupation would be no different from those arising from new dwellings in the 400m-5 km zone.[12.28-12.30] This position is disputed by NR[7.10-11], and I return to the issue later in my conclusions. Suffice it to say at this point that the proposed development could only accord with the IPF if the proposed development together with its package of mitigation measures were assumed to amount to the "exceptional circumstances" for which the IPF provides⁵⁰⁴
- 13.8 Clearly neither PCS 28 nor the IPF envisage residential development within 400m of the protected heathlands. Nevertheless, the Core Strategy Inspector expressed the view that "A restrictive ban on development is not justified or appropriate." and provided for "an exception" to be made in the 400m zone[12.31]. It is NR's position that exceptional circumstances, in relation to a proposal for residential development in the 400m zone, are intended to apply only to a development which can be judged, without mitigation, not to have a significant effect on the designated heathland. An example would be housing which can be judged not to generate increased visits to the heathland by people or pets[7.9]. However, Reg 61(6) indicates that in determining whether a scheme will adversely affect the integrity of a site, the manner in which the scheme is proposed to be carried out, which would include all the proposed mitigation measures, must be taken into account[12.10; 12.41].

⁵⁰³ CD22 para 1.3

⁵⁰⁴ CD22 para 2.4

- 13.9 It is difficult to accept NR's position in relation to the form of residential development that could represent an exception. Neither the IPF nor the Core Strategy anticipate residential development within 400m of the European site because such a development is not expected to be able to meet the legal tests. However, if a development, including its mitigation measures, could be implemented within the 400m zone without any significant effect on the heathland, it would, as a matter of fact, be an exception. Thus I accept the position of BPC [11.4] and consider that the concept of "an exception" is not restricted to a residential development that without mitigation would meet the tests. In any event no exception could be permitted unless the overarching legal test is met, and that test is the same whether the development is within or beyond 400m.[12.31]
- 13.10 Saved Policy H3 of the LP allocates the application site for residential development and student accommodation; Poole is designated a growth point; and the application site is identified in Poole's Strategic Housing Land Availability Assessment (SHLAA). The SHLAA was updated in May 2011, and the application site is being carried forward through the Site Allocation DPD submitted to the Secretary of State for examination on 2 August 2011.[11.5] There is therefore an up to date development plan in which the application site is allocated for development as now proposed. The draft NPPF does not affect that policy position, and the application is clearly supported by the "Planning for Growth" Ministerial Statement.
- 13.11 However, the application is a project for the purposes of Article 6(3) of the Habitats Directive which accordingly governs its determination. Article 6(3) is transposed into English law by Reg 61 of the Habitats Regulations⁵⁰⁵. The fact that the site has been allocated in a statutory development plan does not outweigh the obligation to have regard to and determine the application in accordance with the statutory requirements of Reg 61. In any event, as NR points out, because of the date that the LP was produced, the allocation was not subject to a Habitats Regulation Assessment because there was no domestic regulatory requirement to do so at the time; and it pre-dates PPS9, Circular 06/2005 and the adoption of the Dorset Heathlands IPF. Furthermore, the allocation was made and confirmed by the LP Inspector at a time when the effects of urban development in close proximity to heathlands were not as fully understood as they are today[7.128].
- 13.12 There is no dispute between the parties on this matter. In spite of the allocation in the LP, the application scheme must meet the overarching legal test set out in the Habitats Regulations. Since no case is made under Reg 61(1)(b), or Reg 62 and 66, the proposal must demonstrate that it will not have a significant adverse effect on the integrity of the Dorset Heathlands designated as European sites, either in its own right or in combination with other plans or projects before it could be implemented[7.3; 11.2-3; 12.32].
- 13.13 Thus the central issue which must be addressed in determining this application is not a policy test and is generally agreed between the main parties. The requirements of the Habitats Regulations apply regardless of the contents of the

⁵⁰⁵ The Conservation of Habitats and Species Regulations 2010 since the application was submitted before the 2011 Regulations came into effect.

development plan so the main issue is whether or not the proposed development meets the legal test presented by Article 6(3) of the Habitats Directive and Reg 61 of the Habitats Regulations, as interpreted by the European Court in "Waddenzee"[7.3; 11.6; 12.32].

- (b) the extent to which the proposed development complies with Government policies in PPS9 Nature Conservation, with particular regard to:**
- i) the extent to which the proposed development is likely to have an impact on the local flora and fauna and any designated sites;**
 - ii) the importance the Government attaches to the Dorset Heath Special Area of Protection, Special Protection Area and candidate Special Area of Conservation, Dorset Heaths Ramsar site and the Bourne Valley SSSI;**
 - iii) whether or not there is likely to be any impact on a European protected species listed in the Habitats Directive;**
 - iv) whether there is likely to be any impact on a species protected under the Wildlife and Countryside Act 1981 or any other legislation;**
 - v) the adequacy of the appropriate assessment and the likely success of the proposed mitigation measures.**

13.14 In order to establish the national policy framework against which the application falls to be assessed, I deal first with item (b)ii) **the importance the Government attaches to the Dorset Heath Special Area of Protection, Special Protection Area and candidate Special Area of Conservation, Dorset Heaths Ramsar site and the Bourne Valley SSSI**.

13.15 The Dorset Heathlands SPA and the Dorset Heaths SAC are fully classified European sites within the meaning of Reg 61 of the Habitats Regulations. As a matter of government policy in PPS9, the Regulations are also invoked as a result of potential effects on the Dorset Heathlands Ramsar site. Apart from the SNCI, Talbot Heath forms part of the designated SPA and SAC. Talbot Heath is also part of the Bourne Valley SSSI which is subject to the provisions of Section 28 of the Wildlife and Countryside Act 1981.

13.16 The importance Government attaches to these sites is set out in PPS9. Paragraphs 1(i) and (vi), and 6 indicate that because they are the most important sites for biodiversity and they are classified under international obligations, SPA, SAC and Ramsar sites should receive the highest level of protection. In any event, applications likely to have a significant effect on a SPA, SAC or, as a matter of policy, a Ramsar site, must be decided in compliance with the Habitats Directive and the Habitats Regulations.

13.17 In relation to the SSSI, this is a national designation and where also designated as a site of international importance, it is protected accordingly. In addition, paragraph 6 of PPS9 states that where a proposed development on land within or outside a SSSI is likely to have an adverse effect on the SSSI, either individually or in combination with other developments, planning

permission should not normally be granted. An exception to this should only be made where the benefits of the development clearly outweigh the impacts on the site's notified special interest features and any broader impacts on the network of SSSIs.

13.18 Thus there is no doubt that Government attaches the highest level of importance to the Dorset Heath SPA, SAC, and RAMSAR and the Bourne Valley SSSI of which Talbot Heath forms a part.

13.19 I turn now to item i) **the extent to which the proposed development is likely to have an impact on the local flora and fauna and any designated sites.**

13.20 The level of impact which the proposed development is likely to have on local flora and fauna and any designated sites does depend on the effectiveness of the mitigation measures which are proposed as part of the development. To undertake a proper assessment of likely effects, clearly the mitigation measures must be taken into account. However, there is a high level of dispute regarding the effectiveness of the mitigation measures and in particular the desirability of erecting a cat and people proof fence. These matters will be addressed under matter (b)v). In view of this dispute, I consider that it is helpful to look at the potential impacts of the proposed development if the mitigation measures were not in place, or not entirely effective.

13.21 A summary of the potential impacts of urban development close to heathland on flora and fauna and designated sites is set out in the NR Statement of Case⁵⁰⁶. The effects arise mainly from an increase in visits to the heathland by people and/or their domestic pets. There is no dispute that these are the effects which need to be assessed. The main debate between the parties relates to the significance of the effects which would be likely to arise as a result of the proposal, and the extent to which the mitigation measures would prevent any harmful impacts from occurring. The potential effects are summarised by NR as follows:

- Trampling and other ground disturbance, causing soil compaction, erosion and deposition, damage to vegetation, damage to breeding and wintering sites of birds and other fauna, and the creation of more extensive path networks leading to an increase in spatial disturbance; with adverse effects on plant communities and all fauna, including birds, reptiles (especially their breeding sites) and invertebrates.
- Disturbance to birds, including the disturbance of breeding and foraging birds by people or dogs resulting in lower breeding densities and/or lower breeding productivity. Birds affected include Dartford warbler and nightjar, two of the species for which the SPA is classified.
- Predation and increased mortalities, arising from increased access by pet cats, an increase in the numbers of crows and magpies (which are attracted to sites with human activity) and an increase in the number of foxes (which occur in higher densities in urban areas). The fauna preyed on include, amongst birds,

⁵⁰⁶ Gen/2 para 50

Dartford warbler and nightjar, and amongst reptiles, sand lizard and smooth snake, both of which are European Protected Species.

- Fires, whose frequency is related to the size of resident populations close to heathland sites. Fires cause direct or indirect mortality of fauna, the removal of breeding and foraging habitat, and long term changes to vegetation following repeated fires.
- Vandalism, the level of which is also related to nearby population levels. This results in damage to signs, fences and vegetation and inhibits advantageous site management.
- Eutrophication and pollution, especially the inappropriate enrichment of soils by dog excrement.
- Fragmentation, although this proposal would not fragment Talbot Heath itself, or increase fragmentation of habitats along the course of the Bourne Stream to Canford Heath, it is likely, not only to inhibit nightjar foraging over the main development site, but also to fragment their available foraging area by the interposition of built development between Talbot Heath and the Stour Valley to the north.
- Hydrology, modification of natural hydrological regimes with resultant changes to natural habitats.
- The combined effects of the above.

13.22 The conservation objectives for the SPA are to maintain in favourable condition lowland heathland habitats for Dartford warbler and nightjar, while the SAC was classified so as to maintain in favourable condition dry and wet heaths. The parties do not dispute that Talbot Heath is not in a favourable condition. This part of the Dorset Heathlands lies within the urban area and is bordered by existing residential development to the north, south and west. To the east lies the area of mainly farmland which is now proposed for development, and which provides some separation between the heath and the adjoining built up area to the east. Having regard to the number of residential properties, there is a population of about 13,875 people within 747m of Talbot Heath. The proximity of substantial residential areas has resulted in a high level of visitors to the heath[12.72]. Calculations indicate that there could be between 150,000 to 300,000 visits to the protected heath each year[12.73]. Furthermore, it is estimated that some 88% of those who visit Talbot Heath do so in order to walk their dogs[12.74]. It is the impact of this high level of visitors, with their dogs, and the accessibility of the heath to predatory cats which has contributed to the poor condition of the heath.

13.23 In addition to the impacts which arise from its urban location, there has been a lack of habitat management, particularly on that part of the heath owned by TVT. Whilst effective management is mandatory by law[7.68], NE has not sought to enforce it during the lifetime of the current planning application, but indicates that it would secure such management in the event that the application is dismissed[7.68]. Meanwhile the status of the interest features of the SSSI and the internationally designated sites have been adversely affected by the lack of management.

- 13.24 The calculations put forward in the applicant's Voluntary Reg 19 Update⁵⁰⁷ indicate that the existing population within 747m of Talbot Heath could generate some 45.12 visits in each 12 hour day. By the same calculation, the additional population of 1333 residents within 747m resulting from the proposed development would increase that figure to 50.2 visits per 12 hour day. The applicant expresses this increase in terms of an increase in visits to the European Sites as a whole which would clearly appear minimal[12.78].
- 13.25 However, Talbot Heath is a relatively small area of urban heathland which is already in a fragile condition. As I saw from my visits there, the impacts arising from urban pressures can be seen throughout the site, and the areas which are unaffected where important habitats might be maintained and wildlife flourish are fragmented and modest in size. Such a small area of protected heathland is inevitably more vulnerable to any increase in the effects of urban pressures. As a result I find the statistical analysis of visitor numbers undertaken by TVT to be of limited value. If each development in the vicinity of the Dorset Heathlands was to be accepted on the basis that it would only produce a very small additional number of visitors to the heath, in the words of Dr Underhill-Day⁵⁰⁸, this would represent "death by a thousand cuts." Thus any additional trampling or other ground disturbance, fires or vandalism which may result from even a 10% increase in visitors to the site[12.78] would add to pressures which already exist and in this small part of the Dorset Heathlands could have a significant effect on its condition.
- 13.26 TVT apply similar arguments to the impacts which would arise from dogs and cats. The number of dogs which might be owned by residents of the new development if the proposed pet covenant was not in place or proved to be ineffective, would be about 100. There are many millions of visits with dogs to the all the European sites each year. In the context of all the European sites, the additional visits likely to be generated by 100 dogs in the new development would not be significant. However, 100 dogs could generate some 60,000 walks each year[12.82]. Whilst not all these walks would be taken on Talbot Heath, without the cat and people proof fence it would provide the most convenient destination for many of the new residents. Setting aside the effects of the mitigation measures proposed by the applicant, these additional dog walks when added to the existing pressures on this small area of fragile heath could well have a significant impact. This would be through disturbance to breeding and foraging birds or the inappropriate enrichment of soils which lead to the growth of the wrong type of vegetation which displaces the flora typical to heathland.
- 13.27 Again without the pet covenant there could be some 120 cats within the new development. On the basis that cats will hunt up to 1 km or more from their homes, there would already be thousands of cats within this "prowling distance" of Talbot Heath and hundreds within the 400m zone[12.84]. There was no conclusive evidence of the level of damage which might be inflicted by the additional cats on the wildlife of Talbot Heath, but the risk of predation and increased mortalities for Dartford warbler and nightjar and protected reptiles within the site cannot be excluded. Clearly any addition to the number of dogs

⁵⁰⁷ TVT18 p41

⁵⁰⁸ Day 2 Dr Underhill-Day xx Mr Katkowsky

or cats accessing Talbot Heath would reduce further the areas in which flora and fauna may thrive without disturbance from loose dogs or predatory cats.

13.28 TVT argues that when considering whether a significant harmful effect would occur, it is the impact upon the integrity of the European sites as a whole which must be assessed. As a result, it is argued, an impact, even if it could be characterised as significant in relation to Talbot Heath is not necessarily the same as a significant impact across the European sites taken as a whole[12.11-12.14]. Advice in "Managing Natura 2000 Sites"⁵⁰⁹ is that the "favourable conservation status of a natural habitat or species has to be considered across its natural range --- i.e. at biogeographical and hence, Natura 2000 network level. Since however, the ecological coherence of the network will depend on the contribution of each individual site to it, and hence, on the conservation status of the habitat type and species that it hosts, the favourable conservation status at site level will always be necessary."

13.29 Therefore, if a plan or project is permitted which is likely to undermine the integrity of one part of the Dorset Heathlands, it seems to me that the integrity of the Heathlands as a whole must suffer some impact. Article 3 of the Directive refers to a "coherent European ecological network of special areas of conservation" which would "enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status". To allow the risk of further degradation of Talbot Heath must go against the principles established in Article 3. Harm to a part of the network of sites which forms the Dorset Heathlands would reduce the opportunities for the maintenance and restoration of the habitats and species for which the Dorset Heathlands is designated. That to my mind would constitute harm to the overall integrity of the European site.

13.30 Of the species for which the Dorset Heathlands are designated, Dartford warbler and nightjar are categorised as being of unfavourable conservation status⁵¹⁰, and the latest revision of the International Union for Conservation of Nature Red List of species of global conservation concern has listed the Dartford warbler as being of Near Threatened Status⁵¹¹. Whilst no breeding birds have been found on the application site, Dr Underhill-Day considers that it may be used both as an ecological corridor to the woodlands and the wet grasslands of the Stour Valley to the north-east and for foraging by nightjars⁵¹². DWT also identify the SNCI as an important corridor connecting two sections of the Bourne Valley SSSI[10.5]. The TVT and BPC ecological witnesses do not agree that the application site has an important function as an ecological corridor, and argue that in any event a green corridor would be retained through the proposals for Public Open Space which could maintain this function. There is no evidence either way to indicate with certainty that the application site does act as an important ecological corridor. However PPS9 paragraph 12 places weight on the maintenance of networks of natural habitats to provide routes for the migration, dispersal and genetic exchange of species in the wider environment, so the potential of the site to fulfil this function should not be ignored.

⁵⁰⁹ CD06 para 2.3.2 p19

⁵¹⁰ NR9 para 4.7.1

⁵¹¹ As above para 4.9

⁵¹² As above para 5.6

- 13.31 Within the heath itself, there has not been a regular and comprehensive survey for breeding nightjar or Dartford Warbler. Those surveys which have taken place would indicate that the number of territorial male nightjars recorded at the time of SSSI designation in 1985 was 3, with 2 in 1998. A local resident also has records of sightings or of the sound of churring of nightjar males which would indicate their presence in 2005, 2006, 2007 and perhaps 2010 with the centre of activity towards the south east corner of Talbot Heath. Two singing male nightjars have been recorded in 2011. Dartford Warbler are vulnerable to hard weather, and Dr Underhill-Day indicates that the number on Talbot Heath reflects the state of the habitat and the population surviving from the previous winter plus any immigration of birds from elsewhere. In spite of a nil record for 2010, 4 Dartford Warbler territories were recorded on Talbot Heath in 2011, the same number as recorded in 2008 and twice the number as recorded in 2006 and 2009.⁵¹³
- 13.32 Thus even if Talbot Heath currently sustains very few Dartford warbler and nightjar in its current unfavourable condition, this in itself is not justification to allow what may be viewed as a proportionately small increase in visitor numbers, dogs and cats. Dr Underhill-Day was unable to state with certainty what the impacts of the development would be on Dartford warbler and nightjar. However, Article 6(2) of the Directive takes as a starting point the prevention principle, such that appropriate steps should be taken to "avoid deterioration of natural habitats and the habitats of species as well as disturbance of the species, in so far as such disturbance could be significant--". With such low numbers of the priority species at Talbot Heath, any loss of young birds through predation, disturbance to nests, or further deterioration in the favoured habitat which could further reduce the numbers, or deter the use of Talbot Heath by new breeding or foraging birds would in my view qualify as a significant effect.
- 13.33 In assessing the conservation status of the SAC, regard must be had to the typical species which would normally be found in the habitat for which the SAC is designated. This is clear from the definitions set out in Article 1(e) and (i) to the Directive. NE argues that when assessing the effects on a SAC, its integrity is not just a matter of the state of its geology and flora, ignoring its typical fauna, any more than the integrity of a SPA can be assessed without considering the condition of the habitat which supports the birds for which it is classified[7.131-7.132]. On the other hand TVT and BPC argue that in assessing the effect of a plan or project on a protected site it is necessary to focus on the habitats or complex of habitats and/or the populations of species for which the site has been classified[12.11-12.13].
- 13.34 Clearly if the various species which are typical to a habitat when it is in favourable condition are not present in the habitat, then I agree with Mr Squirrel that their absence would be an indicator that the habitat is not in favourable condition. An example was given of the loss of sand wasps as a result of the surfacing of paths⁵¹⁴. Surfacing of paths where sand wasps are present would represent a loss of or change to the habitat. The flora and fauna are intricately connected such that the effect on the one cannot necessarily be

⁵¹³ NR9 para 5.11

⁵¹⁴ Squirrel xx Mr Tromans Day 3

separated from the other. Whilst it may not be practical to survey every one of the species which may be typical to the habitat of the SAC, clearly the presence of a number of typical species would present a measure of its health. Conversely where a development would result in harm to those typical species it is likely to be the result of some change in or impact on the status of the habitat. There is no reason why an assessment should not focus on those species typical of a particular habitat, starting with the rarer species or suites of species which may be similarly affected.

- 13.35 In this case, no such assessment of typical species has been carried out, so there is no evidence of the current populations of typical species, and none available to support a judgement on the extent to which the variety of fauna present on Talbot Heath would be affected by the development proposals.
- 13.36 Nevertheless, even though the applicant may put the view that, even without the mitigation measures, the effect of the proposed development on the integrity of the Dorset Heathlands would not be significant, neither TVT nor BPC resile from the view that mitigation measures are necessary to enable this proposal to meet the requirements of the Habitats Regulations.

(b)iii) whether or not there is likely to be any impact on a European protected species listed in the Habitats Directive

- 13.37 Sand lizard and smooth snake are two European protected species which occur within the application site. These species may be affected both indirectly as a result of the urban pressures which have been identified under (b)ii) and directly through proposed works, although the housing itself would take place on that part of the site that does not support these species.
- 13.38 Proposed works as referred to by NR, included the fire mitigation measures as proposed at the opening of the Inquiry. However, once NR's concerns were understood by TVT, those proposals were taken out of the scheme and the physical works required for fire mitigation measures now fall to be agreed with NE in accordance with a condition if planning permission were to be granted[12.52].
- 13.39 In terms of the policies set out in PPS9, it was accepted by NR that the application does not raise issues which require to be covered apart from the European site aspects which are set out under (b)ii). Furthermore, any work which required a licence to disturb European protected species could be accommodated within such a licence.[11.54]
- 13.40 As in the case of the impact on the designated heathland, the significance of the impact on European protected species would depend upon the effectiveness of the proposed mitigation measures.

iv)whether there is likely to be any impact on a species protected under the Wildlife and Countryside Act 1981 or any other legislation;

- 13.41 The only Wildlife and Countryside Act species apart from birds that would be affected are the two species of rare reptiles which are referred to under iii). SSSI species include the rare reptiles together with the invertebrate assemblage including an outstanding assemblage of Odonata. Dartford Warbler and nightjar

are also amongst the interest features of the SSSI⁵¹⁵, and the effect on these is also considered under iii).

13.42 The other species protected by legislation is the badger under the protection of Badgers Act 1992. Badger setts have been found in the north eastern part of the application site along the rear boundaries of houses in Dulsie Road. A package of measures which includes a badger corridor along the eastern boundary of the development site, and with a system of fences and badger gates to prevent badgers from being trapped within the cat proof fence is proposed, and would be implemented through the Section 106 Agreement[11.55].

v)the adequacy of the appropriate assessment (AA) and the likely success of the proposed mitigation measures.

13.43 There is no dispute that if the proposed development satisfies the relevant tests in the Habitats Directive and the Regulations, then permission can be granted and there is nothing in the policy documents to say otherwise[7.3; 11.3-11.6; 12.32-3]. The central issue in relation to Regulation 61 is identified by BPC as whether it can be established confidently, beyond reasonable scientific doubt, that the proposal – taking into account the manner in which it is proposed to be carried out and the conditions and requirements to which it will be subject – will not have a significant adverse effect on the integrity of the Dorset Heathlands designated as European sites, either in its own right or in combination with other plans or projects.[11.2]

13.44 I have addressed the argument put forward by TVT that since this is only a small part of the Dorset Heathlands, and it is the effect on the integrity of the Dorset Heathlands as a whole which must be considered, an impact on Talbot Heath would not necessarily impact on the integrity of the overall designated site[12.14]. As NR states, Talbot Heath is a necessary and integral part of each of these archipelago sites which form the Dorset Heathlands, and the integrity of such a site is the coherence of its ecological structure and function, across its whole area, that enable it to sustain the habitat, complex of habitats and/or levels of population of the species for which it was classified⁵¹⁶.

13.45 Thus it cannot be assumed that the level of any impact on Talbot Heath is reduced when considered in the context of the overall SPA, SAC and RAMSAR site.

13.46 There is agreement between NR and BPC that an appropriate assessment (AA) is required in this case[7.14], and an AA has been completed on behalf of BPC. It is agreed between NR and BPC that in the absence of avoidance measures, the proposed housing has the potential adversely to affect the integrity of each of the international sites because of an increase in visitor pressure. It is therefore likely to have a significant effect on each of the sites alone or in combination with other plans or projects and an AA is therefore required. In the Dilly Lane judgement⁵¹⁷ it was recognised that “effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been

⁵¹⁵ GEN/2 para 59-60

⁵¹⁶ GEN/2 para 74

⁵¹⁷ CD79 para 61

fully recognised assessed and reported". Thus I agree with the approach taken by NR and BPC that the first step is to consider potential effects, which has been done. From the Dilly Lane judgement, the next step is to incorporate the mitigation measures into the scheme and to assess whether there remains the likelihood of a significant effect. If there is no scientific doubt that no significant effect would occur, then there would be no need for an AA. TVT argues that an AA is unnecessary since with the mitigation measures there would be no significant affect.

- 13.47 Whether or not it is necessary to carry out an AA in this case, one has been produced, on which BPC rely in order to support its position in favour of granting planning permission. Setting aside the points made by NR as to the manner in which the AA was produced, the adequacy of the AA depends upon the effectiveness of the mitigation measures which are proposed as part of the development. There are some other points which I consider before focussing on this matter which is critical to any decision.
- 13.48 The arguments between NR and BPC and the criticisms made by NR are conveniently listed in the NR Statement of Case⁵¹⁸. Taking first the starting point for the AA, the issue is whether the AA should make allowance for the current condition (unfavourable and unfavourable declining⁵¹⁹) of Talbot Heath[7.105]. There could be difficulties in any attempt to undertake a realistic assessment of impact without considering impact on the heath as it currently is. Any assessment of the benefits of a mandatory level of management on the site with its existing pressures would be a matter of judgement rather than of fact, such that the AA would be starting from an uncertain position. However, with an assessment that starts from the heath in unfavourable conservation status as it is, regard must be had to the duty under Article 1 of the Habitats Directive to maintain or restore the Natura 2000 sites to favourable conservation status.
- 13.49 There may be circumstances where a plan or project is assessed as not having a significant effect on the natural habitat types and priority species simply because they are not present. This could be due to the unfavourable condition of the site. In these circumstances consideration is required as to whether those natural habitat types and species would return to the site if the site was to be restored to favourable conservation status. Where it is clear that the plan or project would interfere with such restoration, then it may be assessed as having a significant harmful effect.
- 13.50 Thus the AA should take into account the potential for the restoration of the site to favourable conservation status and the effects of the plan or project on that potential. The outcome of taking such an approach may not differ significantly from the approach which NR advocates. What I consider would not be appropriate is to take the position that the plan or project would not have an effect simply because the interest features are not present when the reason they are not present is likely to be the poor condition of the site.
- 13.51 Other matters at issue which I have not previously covered include the need to consider potential in combination effects; the status in terms of mitigation or

⁵¹⁸ GEN/2

⁵¹⁹ TVT/18 Plan ECO4

compensation of the delivery of habitat creation on three agricultural fields which are without the designated sites, but physically adjacent the sites; whether the funding of habitat management measures within the international sites should be accepted as mitigation for the proposed development; the synergistic effects of the different types of potential effect; the operation and limits of the IPF and whether the application site, outside the protected heathland, should be considered as a potential SANG in order to facilitate development elsewhere.

13.52 Clearly there are a number of differences between NR and BPC as to whether the approach taken in the AA is accurate and appropriate, and between NR and TVT as to whether an AA is necessary at all. However, as NR stated in legal submissions, in this particular case, it makes no difference whether the Secretary of State evaluates all the available information before or after an AA⁵²⁰. This is because, 1) if the development together with all the mitigation measures are considered at the stage of evaluating whether there would be a significant effect on the protected sites and a likely significant adverse effect is found, then 2) an AA would come to no different conclusion because there are no new factors which might eliminate an adverse effect on the integrity of the site[7.15]. In this case, whether or not the AA is adequate or necessary, there is agreement that the development in itself and without the proposed measures in mitigation would be likely to cause significant harm to the European sites as a result of the increase in visits by people and pets.

13.53 Thus the issue which the decision maker as the competent authority must address is whether or not the mitigation measures put forward by TVT would reduce the impact of the development to a level of insignificance when it is considered on its own or in combination with other potential development. Whether or not that assessment is made with or without the AA, I agree that the conclusion would be the same if an AA was carried out. I therefore focus on the effectiveness of the mitigation measures in order to assess the likely effect of the development on the integrity of the protected Dorset Heathland.

13.54 The two key elements to the mitigation package, are the no-cat or dog covenant and the cat/people proof fence. Taking first the covenant. A number of objectors argue about the desirability of having such a covenant on private residences. However, provided residents are aware of the covenant when purchasing a property, it becomes their choice and therefore it is unlikely that the covenant would contravene the Human Rights Act. Furthermore, provision is made for "recognised Assistance Dogs" to be kept which would ensure that the needs of people with disabilities may be met[11.27]. The main issue concerns the enforceability of the covenant.

13.55 The means for enforcement are set out in the S106 Agreement. These include enforcement by BPC as a S106 covenant, binding on future owners and occupiers of the development; enforcement as a private restrictive covenant by the Trustees of TVT as owners of the adjoining heathland, for the benefit of which the covenant is imposed; and by BPC in enforcing against the Trustees if they fail themselves to enforce the restrictive covenant.[11.27] The covenant would be supported by Information Packs to explain the reasons why it is

⁵²⁰ NR/21 para 7

imposed, which would be issued each time a property changed ownership. However, in the long term, the effectiveness of the covenant must depend on effective enforcement. Whilst the number of cats or dogs kept in breach of the covenant may at first be small and may not cause a significant increase in the number accessing Talbot Heath and the Dorset Heathlands generally[11.28], if effective enforcement is not taken against the first few, then numbers could grow. This is especially the case as a number of the new homes would be family houses where circumstances may change as children grow up and press for a family pet.

- 13.56 It is difficult to envisage how effective enforcement would be carried out. For BPC, it would be a matter for the planning department, with reliance on information from local residents to identify those in breach of the covenant. But proving ownership of a cat which roams freely within the new estate may not be straight forward. Similarly residents may not wish to "inform" on their neighbours when they are not personally affected by their neighbour's dog. I agree with NR, pro-active, continuous monitoring and policing would be necessary from the start, which would require resources and political commitment. Once a cat and or dog population was established, even with modest numbers, enforcement would be very difficult. Even if BPC was willing to take residents (who are also voters) to court, there is no certainty that the courts would assist against individual offenders once there were large numbers in contravention of the covenant.[7.37]
- 13.57 NR casts doubt on the legal certainty of the covenant by the Trustees of TVT to impose the pet covenant on purchasers from them, and to attempt to require the imposition of such a covenant on sub-purchasers[7.35]. But even if there is no such legal uncertainty, once TVT has disposed of the land for development, there would be no incentive for the Trustees to undertake the proactive monitoring of future residents which I consider would be required to ensure that no cats or dogs are kept. Even if BPC were to seek to enforce against the Trustees if they fail to enforce the restrictive covenant, I am not convinced that such an action could be effective, although this is a matter on which the Secretary of State may wish to seek legal guidance.
- 13.58 I therefore place little weight on the long term effectiveness of the no-cat or dog covenant in preventing the keeping of these pets within the new development. Clearly the consequences of dogs and cats being kept within the new development for Talbot Heath would then depend upon the presence and efficacy of the proposed cat and people proof fence, but even with the fence, the propensity for residents to visit Talbot Heath is likely to be greater if dogs are kept within the new housing development[7.24].
- 13.59 The fence would be 2.5m high with a cantilevered section set at 45 degrees and with a width of not less than 0.4m. With the cantilevered top the fence would be some 2.9m in height. In view of concerns expressed about breaches to the fence, the example of a system which is generally used where a high level of security is required has been put forward by the applicants.[9.47- 9.50] The fence would be continuous in length for some 863m from Alyth Road in the south west to Isaacs Close in the north east. Provided the fence remains intact, it seems to me that a cat would have some difficulty in scaling the fence in order to access the heath, but it could access the heath around each end of the

fence. The intention would be that any vegetation close to the fence would be kept low to avoid providing any assistance to a determined feline.

13.60 With a security system of fencing using very strong mesh in place, it would be difficult for the public to create access through the fence to the heathland beyond[12.60]. NR is sceptical that the fence would be maintained in the long term[7.32]. However, BPC would be obliged through the terms of the S106 Agreement to repair or reinstate the fence, and it would have the funds to draw down to do so[11.31; 12.60]. NR argue that the provisions of the S106 are unusual in that, once the fence has been erected, the obligation to maintain it falls on Poole, with enforcement in the hands of TVT under Poole's direct covenant, whilst liability for funding is with TVT, enforceable by Poole, if necessary under Section 106. NR paint a pessimistic picture for the future, with TVT having no motive to enforce the maintenance or retention of the fence once the development site is disposed of, and Poole facing a future generation of local residents who do not want the fence, being reluctant to enforce against TVT or secure its long term future. However, this pessimistic scenario is unlikely in a situation where there would be an impact on the protected heath. As a last resort, NE could step in to secure the proper maintenance of the heath, and put pressure on the parties to secure the cat proof fence.

13.61 The long term maintenance of the fence is seen by some objectors as an onerous responsibility for BPC and one which is unlikely to be upheld in perpetuity. Whilst that viewpoint is understandable, local authorities do take on long term responsibility for the maintenance of, for example, public open spaces successfully. With wardening which is to be financed by TVT and with payments for maintenance to be made in perpetuity to BPC, then any breaches in the fence are likely to be effectively secured. In these circumstances I accept that the fence could be an effective means of preventing access to the heath from the majority of cats which may be kept in the new housing (in breach of the covenant), and cats kept in some parts of the existing housing, in particular to the east of the site. Furthermore, subject to the resolution of issues in regard to access from Isaacs Close, it would prevent the easy access onto the heathland which would otherwise be available to the residents of the new housing, and from some of the existing housing. To access Talbot Heath, a diversion around the fence would be required, with the distance to reach the protected heath for the new residents being some 1.7km – 2km each way[11.20].

13.62 As proposed, the fence would connect up to the rear garden of 51 Isaacs Close. That would prevent any access by people to the heath from Isaacs Close, although cats could enter the garden and scale the garden fence at no 51. However, there are two issues which arise in relation to the construction of the cat proof fence at the Isaacs Close end. A path is currently in use by the public from Isaacs Close on to the heathland, and the first issue relates to an application which has been made pursuant to Section 53(2) of the Wildlife and Countryside Act 1981 to add a footpath to the definitive map and statement⁵²¹. For a public right of way to be confirmed, the applicants would need to prove public use as of right and without interruption for a full period of 20 years. The housing estate immediately to the north has been under development from the

⁵²¹ BPC /8 Library Document

1980s. As NR states, this claim must therefore be taken seriously, and if established, the cat proof fence would have to stop at the footpath unless the right of way could be legally stopped up or diverted[7.25].

13.63 It is not a matter for the Secretary of State to speculate as to the outcome of the footpath application, and TVT argues that this planning application should be determined on the basis that a public right of way does not currently exist[11.33; 12.61]. Nevertheless the existence of the application, which has not been made without a sound basis, does have implications for the effectiveness of the cat proof fence. With a direct access via a public right of way from Isaacs Close, the distance for the residents of existing and new housing to reach the heath from their homes would be significantly reduced from the 1.7-2km on which the applicant's case is based, to within 400m for a number of the new houses[9.10; 9.57]. It would be a short walk for residents of the northern part of the applications site and with such direct access, residents would be far more likely to use Talbot Heath for recreation and other purposes. The outcome of the footpath application, and any subsequent application to stop up or divert, will therefore have significant implications for the effect of the proposed development on the protected heathland. It would be irresponsible to ignore those consequences in the determination of this planning application.

13.64 On the second issue, Talbot Heath is an open access area under the CROW Act[3.1]. TVT has established its ownership of the land between Isaacs Close and the boundary of Talbot Heath, such that the fence could be constructed on land which lies outside the open access area. However, the fence would still obstruct an access to the open access area from Isaacs Close which existed on 31/10/2005. NR has raised uncertainties as to whether the obstruction of that access could be regarded as unlawful under the CROW Act⁵²² and the cat proof fence would obstruct this access[7.25]. However, BPC points out that the right of access to open access land is not absolute, and that it can be restricted on ecological grounds[11.32] This legal uncertainty is not an issue on which I am qualified to advise the Secretary of State, but it clearly has implications for the construction of the cat proof fence in such a way as to achieve the intention to discourage new and some existing residents from having a short walk on to Talbot Heath.

13.65 NR also raise an issue as to whether BPC would exercise its powers under Sections 35-38 of the CROW Act to require the opening up of further means of access through the cat proof fence, to the access land. However, such an action does seem unlikely in view of the responsibility conferred on BPC to maintain the fence through the S106 agreement.

13.66 I acknowledge that my colleagues in other appeal decisions have expressed a lack of credibility in the effectiveness of a cat proof fence as a way to enable a development within the 400m zone[7.33]. However, in this case significant efforts have been made to produce a scheme that would provide an effective barrier to people and cats, and which could be retained as such in perpetuity. I draw that conclusion only on the basis that the enclosure of the fence up to the rear garden of no 51 Isaacs Close can be sustained. However, it is not just the

⁵²² NR/21 paras 87 - 94

effectiveness of the fence which needs to be assessed. The fence would be a very significant structure to be constructed across an area of currently undeveloped land, and its visual impact should be considered as an important issue[9.40; 9.45-49]. I carried out my own assessment of the impact on visual amenity during my visits to the site and its surroundings.

13.67 In the south west corner of the area proposed for development, the fence would follow the route of FP33, separated from the rear of new housing by the proposed badger corridor, which would be about 5m in width. In this location the fence would be clearly visible from the open space area (Public Open Space (POS) Area 4) beyond the development site, and from the houses and gardens which abut the badger corridor. In view of the size and type of fencing which would be necessary in order to fulfil its function, this would be a significant and alien feature immediately adjoining a well used public footpath and adjacent to the new housing. The high fence would also run in parallel to the boundaries of existing properties in Alyth Road such that existing residents would view the fence to the detriment of their visual amenity. Since it would be necessary to keep vegetation low next to the fence to aid maintenance and reduce risk of fire, and to prevent cats from using it to negotiate the fence, there would be little if any scope for planting to mitigate or screen the fence from views from within the housing site, or along the footpath. Planting within the triangular area south west of FP33 may provide some backdrop to the new fence, but even with a dark colour finish to the fence⁵²³, it would remain as an obtrusive structure to users of the FP and residents within the nearby houses who would view the fence over a short distance⁵²⁴.

13.68 As the line of the fence then turns north it would run along the west boundary of POS Area 3. Along this line of the fence there are more dense trees and shrubs on the western (heath) side. Thus in views from within the POS and new housing areas F, G and H⁵²⁵ the fence would be mainly seen against a backdrop of dense vegetation. By adopting a dark colour for the fence, as it is viewed over an increasing distance, it would fade against the backdrop such that its presence would not be visually intrusive. Some cutting back of the vegetation may be required for conservation purposes, but the need for screening could be taken into account in any clearance or control. However, POS Area 3 forms a buffer strip of some 1.51 ha so people using the POS would not be far from the fence, and as a result it would be seen as an intrusive feature enclosing the undeveloped boundary of the POS.

13.69 As the fence runs north along this boundary, there is a dip in ground levels, and here the fence would be angled into the POS for a short distance. As a result of the ground levels the screening effect would be diminished, and the fence would stand out against the skyline in views from within the development area and from the heath. However, views of the fence would generally be limited from the west both from within the heath and from adjoining residential areas because of undulations across the heath and existing vegetation. Where visibility might occur in locations such as Mayford Road, the fence would be seen at a distance so would not be unduly intrusive.

⁵²³ TVT/23 3.4

⁵²⁴ TVT/23 3.8

⁵²⁵ Plan 8: Revised concept masterplan

- 13.70 As the fence then links across to Isaacs Close it would pass through an area of dense vegetation. Some clearance would be required for the construction of the fence and to ensure that there are no trees or shrubs along the fence line which a cat could climb and then use to scale the fence. The fence would be set in from the boundary of Purchase Road and Isaacs Close such that some careful screening could be maintained. However it is likely that there would be some views of parts of the fence to occupiers and users of Purchase Road and Isaacs Close.
- 13.71 Clearly a fence of such length and height is not a feature which would normally be expected to be found separating an area of POS and residential development from an area of heath which is also open access land[9.49]. The only witness to appear at the Inquiry with landscape qualifications was Mr Tyldesley, and whilst the visual impact was not a matter pursued by his clients, in answer to my questions he made it clear that such a proposal was an “anathema” to modern landscape planning[7.30]. The fence is an essential part of the mitigation measures to ensure that the development would not have any significant adverse impact on the heath. I have some sympathy with the views of Councillor Chappell, the more onerous the conditions which need to be imposed on a development, the more problems there evidently are with the proposal[9.2]. The erection of a people and cat proof fence of this scale in such a location would introduce a feature which is more associated with keeping people out of dangerous places, or acting as a prison to dangerous people or animals. Even though those who purchase the new housing within the development site would know about the fence beforehand, it is difficult to see how such a fence could avoid the creation of an uncomfortable environment for both existing and future residents.
- 13.72 It is the provision of the cat and people proof fence in its entirety which TVT relies on to ensure that the new development would not have the impact normally to be expected of a new residential development within 400m of the protected site[12.29]. Clearly Talbot Heath would continue to attract visitors from the new and existing housing, since routes to it on foot and by car and bicycle are within the distances over which people are known to access this and similar heaths. Furthermore, by impeding access to Talbot Heath, the fence may have the effect of increasing the number of trips to other parts of the European sites. The application site is well within 5km of other heaths.[7.23] BPC and TVT rely on the contributions to be made to the IPF[12.18] for the whole of the development to provide mitigation for additional pressures on destinations between 400m–5km away[11.20; 12.28-30].
- 13.73 I agree with the point made by NR that compliance with the terms of the IPF does not in itself guarantee compliance with the Directive and Habitats Regulations.[7.57] However, in this case there is an identified package of measures within the IPF. To date some £3m has been collected and £2.4m spent or committed with the mitigation put in place as the money comes forward. The package includes the provision of a SANG at Upton Farm to the NW of Poole which is highly accessible from the development site,[11.24] and the £600,000 which would result from the tariff payment on the application site would make a substantial contribution to its implementation. Other projects such as Slades Farm would also help relieve recreational pressures arising from the proposed development[12.30].

- 13.74 The IPF may not require mitigatory projects to be put in place before development commences, or for there to be a specific link between a new development and a mitigatory project. However, there must be some realistic prospect of adequate mitigation coming forward through the IPF that would reduce the potential harmful effect of residential development within the 400m-5km zone on a Natura 2000 site. Otherwise the development would result in unmitigated harm and is likely to be unlawful in terms of the Directive and Regulations. In this case there is a well established package of measures in the IPF which have a realistic prospect of implementation and which are located such that they would provide existing and future residents an alternative place to go rather than the heaths. As a result I find that the IPF payment would be sufficient mitigation for the effects of the whole development on sites other than Talbot Heath, and which lie within 400m-5km of the development site.
- 13.75 NR argues that the current IPF package does not apply to the application development, since it would take place outside the time frame of the 2010-2011 IPF. However, the IPF applies to decisions made within the 2 year period. The provisions of the IPF are to be taken forward into a Joint DPD, or through the continuation of the current IPF as an interim measure[12.27]. In the event that the Secretary of State reaches a decision to grant planning permission for the application when the current IPF has expired, it may be necessary to review the IPF payment identified in the S106 to ensure that it meets the requirements of the successor to the current IPF.
- 13.76 Furthermore, the application site is included within BPC 's SHLAA[12.26], so could be said to be one of the developments which the IPF provisions are designed to mitigate. There are no other sites within the 400m zone apart from the application site within BPC 's SHLAA. However, this does not in itself indicate that a payment to the IPF to cover the houses within the 400m zone would be sufficient to mitigate the effects of the development.
- 13.77 A further measure put forward by TVT is the conversion of the three fields, which amount to some 10.7ha. These are located between the northern and southern areas of the protected heath and are currently farmland used as pasture. The proposal is to convert the fields to heathland habitat and acid grassland which may then support the target habitats and species of the SPA/SAC. It is stated in the AA, that this habitat creation will "mitigate any disturbance or trampling impacts that may arise as a result of the proposed development"⁵²⁶. In addition, TVT argues that the fields are to provide for public access such that they would have an "interceptor" role in diluting pressure on Talbot Heath by causing visitors to spend less time on the protected area[12.38].
- 13.78 NR does not accept that the provision of new habitat would be mitigation since it falls within the category of compensation. Mitigatory measures are those which are intended to prevent or avoid any significant harmful effect from occurring on the protected heath. In this case the main measures intended to mitigate the impacts considered to be normal for development within the 400m zone are the no pet covenant, and the cat and people proof fence. If those measures are not effective, then the conversion of the three fields as proposed

⁵²⁶ CD13 Section 7.10

would not fall within the category of preventing or avoiding significant effects, and could only be compensation. Under the Habitat Regulations, compensation only becomes relevant under reg 66, in circumstances where a project has failed the integrity test but the decision maker is, pursuant to Reg 62, satisfied that there are no alternative solutions and the project must be carried out for imperative reasons of overriding public interest⁵²⁷.

13.79 In relation to the diversion or dilution of visitors to Talbot Heath, TVT argues that by allowing the public at large to use the fields then the people accessing the heath would spend time within the fields as against using the heath to walk their dogs. This argument has some attractions, but as NR points out, there is evidence on the ground that the fields are already used to some extent by visitors to the heath, so the effects of formally making them available would be diminished. There is no visitor survey to inform any judgement on the effect of opening up the fields. It is not known whether walkers visiting the fields would spend less time on the heath or simply extend their walks[7.46]. Indeed, it was stated for TVT that dog-walkers take shorter walks on Talbot Heath than the average for Dorset Heathlands overall, and have a reduced penetration distance⁵²⁸. Thus the enlargement of the walkable area might make it a more attractive destination than it is at present, so its benefits as a measure of mitigation or compensation are in doubt.

13.80 TVT compare the provision of the fields for public access to the provision of SANGs whose primary aim is to attract people away from the protected heaths. However, in this case there is the risk that the opening up of the fields which are fairly centrally located within Talbot Heath would make the heath more attractive to visitors and for that reason I would not accord the measure the weight or effectiveness of a SANG. Furthermore, TVT's position on SANG does include some inconsistencies, since Mr Goodwin argued that replacement of part of the development with a SANG would be harmful to the heath[7.49].

13.81 In relation to the other parts of the mitigation package, there is dispute as to whether the measures would amount to site management which should take place whether or not the application was permitted. These include the provision of fire fighting equipment and improvements to access for fire fighting. The provision of fire hydrants at Talbot Heath is already identified within the package of measures in the IPF, so cannot be considered to be a "new" measure which could only be achieved through the proposed development. However, subject to agreeing the details with NE, improvements to access for fire fighting and a better water supply are welcomed by NR[12.54]. In view of the destructive effects of fire, a scheme which would reduce the spread of those effects should be regarded as a benefit of the application scheme.

13.82 Wardening is required for implementation of the management plan and to inspect the cat and people proof fence and secure repairs in the event of breaches through vandalism or deterioration. A sum of £22,500 is to be paid by TVT to BPC to enable this to take place⁵²⁹. However, NR points out that the wardening of Talbot Heath, as part of the Dorset Heaths, is already in place,

⁵²⁷ NR/21 para 60

⁵²⁸ TVT/5 Annex 4 para 5.13.1.9

⁵²⁹ S106 dated 18 October 2011 Part 9 Section 9 and Table 6

with a present frequency of visits comparable with that proposed by TVT. It would be carried out as it is currently through the Heathlands Partnership and would thus be a monetary contribution by TVT towards the funding of the present wardening scheme[7.64]. Since the warden is essential to the efficacy of the cat and people proof fence, this provision adds little in terms of mitigation to the package proposed by the applicants, although increased visits by a warden to Talbot Heath would be of benefit in terms of the management of the heath.

13.83 A number of other measures are included in the Management Statement in the S106 Agreement. A Restoration and Enhancement Scheme for Talbot Heath must be submitted for approval by BPC prior to commencement of the development, and should be completed by no later than the first occupation of the 151st residential unit[11.40]. NE would be consulted prior to approval. Upon satisfactory completion of the works, the heathland would be maintained by BPC in accordance with the Management Statement. An annual payment of £40,088 would be made by TVT. This sum includes the £22,500 towards the cost of wardening. It is index linked and may be subject to review.

13.84 NR welcomes the commitment by TVT to rehabilitate their part of Talbot Heath and thereafter to help fund its management but points out that these objectives are legally required without the housing development under the duty imposed by Article 6(2) of the Habitats Directive. I agree with NR, that a promise to fund effective management of a European site as an attempt to offset increased visitor pressure from nearby residential development is attractive. However, the potential harm from additional housing is not as a matter of certainty outweighed by improved management when that improvement can be placed in both sides of the balance[7.67].

13.85 NE indicates that it has refrained from seeking improved management of the TVT part of Talbot Heath during negotiations on the planning application. However, the application has been in place since 2000 and 11 years seems a very long period for NE to have accepted the continued deterioration of the condition of the heath. NE states that with the dismissal of the application, there is a determination to ensure that effective management is achieved "within a reasonable time"[7.68]. However, NE puts forward no scheme for the management of the site, and having regard to past performance, an obligation on the part of TVT to secure restoration and continued management of the site if planning permission is granted has a higher level of certainty of being achieved. In these circumstances I place some weight on the management measures which would be secured if planning permission is granted, although I do not consider that they should be given weight as part of the mitigation measures which would offset the potential harm from the proposed development.

13.86 Having regard to Regulation 61(6) of the Habitats Regulations, in considering whether a plan or project will adversely affect the integrity of the site, regard must be had to "the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which -----consent, permission or other authorisation should be given". Clearly in considering the likely significant effect of a development, it is the mitigation measures which will determine the balance as to whether adverse effects can be prevented. However, if it is clear that the mitigating measures can prevent any significant adverse effect, then I

see no reason why the decision maker should not take into account any additional benefits that would arise for the protected site as a result of the scheme.

Summary Conclusion on b) iv)

13.87 The AA relies on the mitigation measures in order to reach the conclusion that there would be no significant adverse effect on the integrity of the Dorset Heathlands as a whole. It is therefore the adequacy of the proposed mitigation measures which must be assessed before any conclusion can be reached as to whether the proposed development would have a significant adverse effect on the integrity of the European site.

13.88 Having regard to the impacts that are recognised as likely to arise from a development within such close proximity to Talbot Heath without mitigation, there is no dispute that mitigation is necessary. The no pet covenant is intended to ensure that there is no increase in the number of cats who visit the site, or dogs that are walked on the site as a result of the new housing within the 400m zone. However, for the reasons which I have set out above, I consider that a covenant of this sort, in a mixed residential development where many of the houses would be privately owned and/or occupied by families, there can be little certainty that such a covenant would be effective in perpetuity. Thus it is likely that there would be cats owned by householders within the 400m zone. Even if the cat proof fence is effectively maintained to prevent breaches, they could make their way round the ends of the fence. There would be a number of properties where those access points for cats would be within easy hunting distance.

13.89 If the no pet covenant is not effective, the cat and people proof fence would have some deterrent effect on cats if they were kept in properties further from the ends of the fence, and on cats in existing housing for whom the hunting distance would be increased. There may be some balance reached whereby there is no increase in the number of cats accessing the site as a result of the new development with the cat proof fence, but it is not a calculation which can be carried out with any accuracy.

13.90 Provided that the fence can be implemented in its entirety to adjoin the garden fence of 51 Isaacs Close, and any breaches in the fence are swiftly repaired, it would effectively increase the distance that new residents would need to travel to access Talbot Heath. That would ensure that the impact from visitors to the heath from the new houses would be similar to that which would be expected from new housing in the 400m-5km zone. As a result the IPF payment for each of the new houses would provide adequate mitigation when put together with the fence.

13.91 However, there are doubts as to the implementation of the fence for whole of the proposed length. These arise from the application for the confirmation of a right of way and the quite separate legal issue relating to access to Talbot Heath as access land under the CROW Act from Isaacs Close. If it was necessary to maintain an access to Talbot Heath from Isaacs Close for either reason, it would effectively undermine the main purpose of the fence by reducing the travel distance for new residents. In that scenario, the development would have the full impact of one which lies within 400m of the protected site, and the recognised significant adverse effects on that site.

- 13.92 Even if the fence is assumed to be effective, there remains the issue as to whether it is acceptable as a proposal in its own right in terms of its effect on the character and appearance of the new development, its open spaces and the natural environment of the heath. I have identified those places where views of the fence would be screened or seen against a backdrop of vegetation such that its impact in visual terms would be limited, but there will be sensitive locations such as along side PF33 and to the rear of housing, where the fence will be a highly visible feature. Having regard to the height of the fence, the heavy duty gauge mesh that would be required and the cantilevered section at the top[9.47], such a structure would be quite out of place as a barrier between the heath and the new residential development.
- 13.93 The contribution to the IPF, the integration of the three fields into the heath, the improvements to fire fighting, the financial contributions to wardening and all the restoration, enhancement and management measures which are included in the proposals should be recognised as of benefit to the heath. However, the fields are already used by the public to some extent and improved management may be anticipated in any event if this scheme was to be refused, even if the timescale for those improvements may be longer than if the development proceeds. It is the fence which would be the primary element of mitigation for a residential development within 400m of Talbot Heath, and without the fence there is every reason to expect visitor numbers to Talbot Heath to increase, and damage to the periphery between housing and heathland to take place⁵³⁰. Therefore any decision to permit the application must depend upon the acceptability of the fence, and confidence that it can be fully implemented without any break for an access from Isaacs Close.
- 13.94 If the fence is acceptable, it is assumed to be implemented in its entirety, and on the assumption that it would be properly maintained, I consider that there would be no significant harmful effects from the proposed development on the protected heath. The impacts which may arise from the failure of the no pet covenant in the long term, or from breaches in the fence, provided they are dealt with speedily, would be unlikely to be significant. The issue which must then be addressed is whether there would be any in combination effects. In this respect I agree with TVT and BPC. With the fence, the impact of the new development would not be significantly different from the level of impact that may be expected from a development within the 400m to 5km zone. The IPF contribution would thus secure a suitable level of mitigation, and the additional benefits of the development would ensure that restoration and management is secured. The issue of in combination effects does not arise if the fence cannot be assumed to be effective, since the development on its own could not then be judged as meeting the legal test set by Reg 61(1).
- 13.95 There was concern expressed as to the precedent which might be set if permission were to be granted to a development which relies on the package of mitigation put forward in this case. However, it is the proposal together with its specific package of mitigation and other measures to manage and enhance Talbot Heath on which any decision must be based, and it is unlikely that this

⁵³⁰ I saw examples of fly tipping of household and garden rubbish during my visits to the heath.

particular combination of proposals/measures would be replicated such that a precedent could be drawn.

c) & d) Before addressing the proposed conditions and the S106 agreement, I deal first with other matters including Transportation which raises some issues relevant to the conditions which should be imposed were permission to be granted and the contents of the S106.

e) other matters raised which are considered to be relevant:

i) Transportation

13.96 BBC is the responsible Highway Authority for Wallisdown Road on which all vehicular traffic from the proposed development would travel. The traffic would use the network for which BBC is responsible and all the traffic would add to the flows and the congestion on that network. Those flows would not only include any additional traffic that arises directly from the development proposal, it would also include traffic that alters as a consequence of some aspect of the development proposal changing the existing arrangements thereby leading to more traffic than currently exists on the network[8.3]. BBC has no objection in principle to the development, provided provision is made for the traffic which it will generate[8.7]. I agree with BBC that it is not BBC's role to bring forward a transport justification for the scheme or to develop and design alterations to the highway to accommodate the development traffic or other mitigation measures to ensure acceptability of the proposal[8.6].

13.97 This application has been in place for a number of years and over that time it might be expected that BPC and BBC would come to some mutually acceptable position in relation to traffic generation. However, that has not happened, for whatever reason[8.7], and it now rests with the Secretary of State to determine whether BBC's objections have merit.

13.98 The objections relate to the following matters:

- i) The reservation of a corridor across the site for a future transport route.
- ii) The requirement for access to the development to be from University Roundabout with a bus only access from Boundary Road Roundabout in accordance with Policy H3 of the LP.
- iii) The technical assessment of the traffic conditions (including impact of cat proof fence and allowance for academic floorspace) and the need for and implementation of improvements to the Wallisdown Road Corridor.

13.99 Taking the first matter, BBC relies on the reference in the SP to protect options for a future through main traffic route or innovative mass transport system[6.5] which BBC seeks to have reserved across the application site by condition. However, whilst the proposal includes a corridor of greenspace across that part which it is proposed to develop, any road or mass transport link would need to continue across the heath in conflict with the protected status of Talbot Heath[12.93]. Furthermore, in the recent Local Transport Plan (LTP) process, and the relevant study, in which BBC participated, no such mass transit system was included within the LTP[11.62]. In the absence of any provision within the LTP, and having regard to the ecological and statutory constraints to the

development of any such link across Talbot Heath, I give this objection by BBC little weight. In any event if circumstances changed, provided the corridor of greenspace is retained as such, the concept is not entirely excluded by the development of the site as proposed.

- 13.100 The requirement for access to the new development to be from University Roundabout with a bus only access from Boundary Road Roundabout is one of the provisos (iv) placed on Policy H3 by the Inspector who considered the case for the development of Talbot Heath at the Local Plan Inquiry, and subsequently adopted by BPC. BBC maintain the view that this proviso should be met not only because it is part of the statutory plan, but also because it is essential to ensure that a sustainable development is brought forward which will promote public transport and which will minimise the use of the private motor vehicle consistent with Government ambitions and good planning[8.17]. I note that BBC has not commented on the emerging policy in the Site Allocations DPD which relates to this site, but do not consider that undermines BBC's position in relation to this application[11.74].
- 13.101 A planning application should be determined in accordance with a statutory development plan unless material considerations indicate otherwise. In this case the LP was adopted in 2004, and a public consultation was carried out on the application proposals in 2005. Taking the response from the consultation and following work by the applicant's traffic consultants, the officers of BPC took the view that an all purpose link to Boundary Road Roundabout would be preferable. There is no evidence that the matter was considered by Council members at that stage. The application went to Poole's Planning Committee in 2010, and a separate report by Poole's Transportation Services was summarised in the committee report. The reasons given for the change from Policy H3 are set out as being choice of route for Talbot Village residents, less congestion, a reduction in traffic flow next to the University (which would explain the less congestion point) and a reduction in gaseous emissions from less mileage for those residents. A further point set out in the applicant's evidence is said to be removing the need to change University Roundabout whereas in the report it is said to be "no need for the development to fund changes to the roundabout".[8.30]
- 13.102 The change to two all purpose accesses is supported by Mr Cooper on behalf of TVRA. With the development as proposed, a single point of access for the private car to University Roundabout would serve some 950 private dwellings, 450 student units as well as the University and Arts University College. Reference is made to a number of advice guides which state that for 300 dwellings or more, consideration should be given to having 2 points of access onto a district distributor road (which would be Wallisdown Road in this case)[9.93-9.96], and I have some sympathy with the views of existing residents as to the potential for increased congestion on Fern Barrow. Clearly the purpose underlying this part of Policy H3 is an important one, but it must be weighed against the actual impact of reserving the Boundary Road access for bus only use.
- 13.103 In his consideration of the Talbot Heath allocation, the Inspector made it clear that the level of detail which was being assessed alongside the planning

application was not before him⁵³¹. He was only considering the principle of the development, and whether policies could be put in place against which the details of the development could subsequently be assessed. In addition to Policy H3, the Inspector pointed out that any development would also need to meet the requirements of Policy T13 to deal with traffic management measures⁵³². It is therefore clear that H3(iv) was not included as a result of a detailed traffic impact assessment.

13.104 There is much dispute as to whether the applicant's technical analysis provides a true representation of the traffic impact of the application proposal. Nevertheless, the reasons given for the use of 2 multi purpose junctions rather than one are clear, and in my view provide some justification for not following Policy H3iv). BBC refers to the NATA analysis, with the main advantage of the single access point being the potential for modal shift from the private car to use of the bus. However, it is not clear what level of benefit in terms of increased use of public transport would arise from the application of H3iv). A priority bus route between the new development and Boundary Road Roundabout could be provided even with an all purpose access. It may be that the level of congestion at University Roundabout with a single all purpose access would compel more people to choose the bus in order to travel at peak times, but no assessment has been made as what level of mode change would occur, or how this would compare in terms of carbon savings with the use of two all purposes accesses[8.31].

13.105 Furthermore, I note BBC's views on accident data which was not taken into account in the applicant's initial Transport Assessment[8.65]. From my visits to Fern Barrow, within the vicinity of the academic institutions there is a great deal of activity with buses, students as pedestrians, and cars. Whilst I have no evidence of the impact of using Fern Barrow as a single access on this activity, it seems to me that the presence of students in large numbers adds to the need to be cautious in adding to the traffic using Fern Barrow. In all these circumstances I find that there are material considerations which would indicate that there is some justification for not imposing a single point of access on existing and future residents.

13.106 Turning now to the technical case, the argument put forward by BBC was not assisted by the errors made in the technical assessment by BBC's traffic consultant, although I appreciate his willingness to recognise and correct them[8.37]. On the other hand, it did become clear that BPC had not carried out a critical analysis of the work carried out by the TVT consultant[8.6; 8.9; 8.73]. The BBC evidence did therefore provide some assistance in testing the TVT case.

13.107 BBC states that the percentage impact of the development proposal is likely to be small. However, BBC also cites guidance which indicates that in such circumstances the percentage traffic impact that is considered significant or detrimental to the network may be relatively low, and should be agreed with the relevant highway authority. In this case no such agreement has been reached[8.51]. Nevertheless, there is some agreement between TVT and BBC

⁵³¹ BBC1 AppH para 8.175

⁵³² As above para 8.185

such that the figures set out in the revised version of Mr Carter's Table 15 provide some guidance as to the traffic implications of the proposal, including any traffic increases which may arise from the academic floorspace and the erection of the cat and people proof fence.

13.108 As a result, revised Table 15 is the most helpful indicator of the impacts likely to arise from the proposed development, taking into account all the factors raised by BBC. As a result I concentrate my assessment on the calculations set out in revised Table 15. In assessing the implications of revised Table 15, it should be noted that the modelling on which the figures are based assumes a 5% growth in background traffic whereas traffic on Wallisdown Road had fallen with a reduction in AM peak hour flows of some 20%[12.104]. As a result revised Table 15 should be regarded as indicating a worst case analysis.

13.109 Revised Table 15 does not provide average queue lengths, nor does it assist in any assessment of queues extending through the roundabouts, which clearly occur[8.54]. It does however give an indication of the maximum reference flow capacity (RFC) at each roundabout junction with 5% traffic growth at 2016 with no development, and with the development having either a single or double all purpose access. It also provides the average increases in queue delay.

13.110 BBC argues that the advice in DMRB TA23/81 should be followed, and that RFCs of about 0.85 or greater are not acceptable. However, TA 23/81 para 6.2 states that the "RFC is an indicator of the likely performance of a junction under a future year traffic loading" and that "if any entry RFC ratio of about 85% occurs, queuing will theoretically be avoided in 5 out of 6 cases." It goes on to indicate the desirability of adopting a RFC ratio of about 85%, but accepts that there will be cases where the adoption of a lower figure would be justified, and circumstances, for instance in urban areas, where a higher ratio, with consequent queuing, will have to be accepted.

13.111 As a result I do not accept that the 85% ratio is a test for the acceptability or otherwise of a proposed development and its impacts on the roads network. It is a flag to indicate circumstances where queue lengths are likely to become an issue requiring attention, and TA23/81 advises that the possibility of excessive queuing at any entry should be avoided.

13.112 From the results of BBC's analysis set out in revised Table 15, it is for the eastbound traffic entering Wallisdown Road Roundabout and University Roundabout that the RFCs approach or exceed 0.85. At 2016 without the development, a maximum RFC as high as 0.91 is found in the PM peak at the junction of Wallisdown Road West with Boundary Road Roundabout. At University Roundabout, the junction with Wallisdown Road West shows a maximum RFC of 0.84 in the AM peak at 2016 without the development. With the development and a single all purpose access, the RFC for eastbound traffic at Boundary Road Roundabout increases to 0.96, and with a double access to 0.97.

13.113 The increases in the RFC represent increases in the average queue delay from 0.18 minute per vehicle without the development, to 0.26 minute per vehicle with a single access, or 0.29 minute per vehicle with a double access. All these increases would occur at the PM peak. At the AM peak, the increases in queue delay for Eastbound traffic at Boundary Road Roundabout are minor,

being an increase from 0.09 to 0.11 minute per vehicle (single access) or 0.10 minute per vehicle (double access). The table below extracts figures from Table 15 Revised to illustrate the **average increase in queue delays for eastbound traffic** through the two roundabouts in the AM and the PM peaks:

From Table 15 Revised	Av queue delay min per veh	Av queue delay min per veh	Av queue delay min per veh
	No development*	With development & single access	With development and double access
University Roundabout	0.12	0.19	0.12
Boundary Rd Roundabout	0.09	0.11	0.10
Total delay AM	0.21	0.30	0.22
University Roundabout	0.08	0.10	0.09
Boundary Road Roundabout	0.18	0.26	0.29
Total delay PM	0.26	0.36	0.38

* This is average increase in queue delay with a 5% increase in traffic flows without the development.

13.114 Thus the maximum increase in delay for eastbound traffic travelling through the two roundabouts would be 0.9 minute per vehicle in the AM peak with a single access (0.30-0.21) and 0.12 minute per vehicle in the PM peak (0.38-0.26) with a double all purpose access to the new development. Whilst I have not considered in detail the other flows which are set out in Table 15, it is the eastbound movements which display the highest level of congestion on Wallisdown Road. The sum of AM and PM peak eastbound delays on Wallisdown Road would be marginally lower with the double access (0.22+0.38) than with the single access (0.30+0.36). This supports the evidence from the Council and the applicant that congestion, and hence carbon emissions, would be greater with a single access[11.74; 12.107].

13.115 From the evidence before me, the additional delays resulting from the application scheme do not appear to be excessive. Nevertheless, these delays are to be added to a situation where it is clear to anyone using Wallisdown Road in the peak hours that the road is seriously congested, with occasional queuing back from one roundabout to another[8.76]. The application has been amended such that it does not put forward any scheme to increase the capacity of the roundabouts and ease the congestion that is existing and that would be likely to worsen with the development. There are no proposals to either

improve the geometry of either of the roundabouts or to introduce traffic signals to endeavour to reduce delays.

- 13.116 In considering the allocation of this site in the Local Plan, the Local Plan Inspector had in mind the need for any future application to comply with Policy T13. This states that new development will not be permitted where it would adversely affect road safety or the ability of the transport infrastructure to accommodate the additional traffic unless remedial measures to overcome the problem are provided[9.80].
- 13.117 The applicant argues, and BPC agrees, that any provision for improvements to either one or both roundabouts onto which the development would have access, may be a waste of resources in view of the longer term plan to make improvements to Wallisdown Road as a Quality Bus Corridor[11.79; 12.100]. Provision is made through the S106 agreement for a financial contribution of some £300,000 towards improved bus services, a contribution to the Quality Bus Corridor Scheme of £1,150,000, a Parking Order Contribution of £25,000, and a Travel Plan with a contingency sum of £200,000 for further measures if the Travel Plan targets are not met and traffic generation is greater than expected. BPC assert that these measures give the necessary flexibility to the two highway authorities concerned to achieve maximum benefit as the WRQBC proposals and options are developed, and would avoid work such as signalisation of Boundary Road Roundabout, which might possibly be abortive. BPC agrees with TVT that a single highway financial contribution towards the WRQBC scheme to be expended in the manner that the promoters of the scheme consider most appropriate is the preferable route for mitigating such impacts as the development would have, together with the Bus Service and Parking Order contributions. [11.79].
- 13.118 Clearly improvements to the corridor have a sound policy basis in the LTP, and BBC as lead authority has it within its power to progress such improvements. BBC's concern is that the S106 Agreement makes no provision for the financial contributions to be forwarded direct to BBC as highway authority. There is no requirement to obtain the agreement of BBC for works which would need to be carried out in their area on roads for which BBC is responsible, and there is no means whereby BBC may fulfil its duties to manage the implementation of the required transport mitigation measures to their strategic network.[8.70]
- 13.119 I have some sympathy with the position of BBC. There are clear policies set out in the relevant local plan to guide the development of the application site in relation to transportation, but TVT, with the agreement of BPC, is proposing a scheme which neither meets the proviso in Policy H3 concerning a bus only access, nor does it clearly meet the requirements of Policy T13 since the remedial measures to which the payment would contribute are not yet determined, and are unlikely to be in place before the development is completed[8.67].
- 13.120 Nevertheless, Wallisdown Road is a major route through an urban area where congestion is inevitable in the peak hours. I can understand the anxieties expressed by local residents at the additional delays likely to be caused by the proposed development. However, as BPC sets out, the development would deliver a number of benefits from a strategic transport

perspective. These include, a significant quantum of development on a relatively sustainable site compared to a typical edge-of-town site; a relatively intense land use adjacent to a designated Quality Bus Corridor, together with proposals to improve bus services along that corridor; it allows easy access by cyclists to the extensive cycle network along Bourne Bottom, providing a realistic mode choice for workers accessing Bournemouth Town Centre; and it provides for 450 student dwellings adjacent to the main Talbot Campus and Arts Institute such that most student trips would be by walk, cycle or bus[11.60].

13.121 The S106 provides no guarantee of the transfer of funding to BBC since the S106 cannot be made in favour of BBC to ensure that the funding goes to the highways authority. However, the provision of the WRQBC would provide benefits to the residents of BPC as well as of BBC. Furthermore the improvements are within the LTP to which both Councils have contributed. It should be feasible for the two authorities to work together to ensure that the best possible use is made of the contribution which would be made available through the development of the application site in the interests of the residents the two Councils serve. It seems to me that the payment of a financial contribution is an appropriate way in which to secure longer term improvements to the transport network, without the requirement for expensive works to either or both University and Boundary Road Roundabouts which may not then be appropriate in a more extensive scheme. Without the prospect of the improvements which the financial contributions would enable, I would agree that the development would not be appropriate, and therefore I find that the provisions of the S106 in relation to transport are necessary to the scheme. However, the Secretary of State would need to take legal advice as to whether the S106 provides adequate surety that the funds would be spent on highways improvements relevant to this application for the provision to accord with the CIL Regulations.

13.122 Having regard to the results indicated by Revised Table 15 to traffic flows and queue delays, the benefits of a development as proposed in this location, and the financial provision to be made available to help facilitate the Quality Bus Corridor, I find that there is no transportation reason why permission should be refused.

ii) Housing land supply

13.123 In the Poole Core Strategy (PCS), the housing land requirement for the 10 years from 2011-2021 is for sites to accommodate 10,000 houses. The PCS frontloads the delivery of this provision such that 3,500 dwellings should be provided from 2011 – 2016, and 1,500 dwellings should be provided in 2016-2021. Identified sites produce a land supply of 2,924 dwellings for the first 5 year period, and 2,730 dwellings for the period 2016-2021. Whilst PPS3 states that allowances for windfalls should not be included in the first 10 years of land supply, there has been recognition⁵³³ that the Poole housing supply has been supplemented by a high number of windfall developments and that supply is likely to continue. As a result a supply of 140 dwellings per year is expected to

⁵³³ PCS Inspector's report CD17 para 4.40

supplement the identified sites⁵³⁴. As a result there is a supply of some 3,624 dwellings for the first 5 year period, and some 7,054 for the 10 year period.

13.124 The application site is a specific site within the Council's SHLAA[11.5], with a supply of 350 dwellings recorded. Of these, some 122 dwellings are expected to be delivered in the first 5 year period, with the remaining 228 in the period 2017-2018. The application site is the last remaining allocated greenfield site within BPC, and the Council considers that it represents an opportunity to commence delivery within the first 5 years of the strategic supply. Nevertheless, having regard to the overall supply which has been identified, it is clear that the application site is not critical to the overall supply of housing land within BPC[9.14]. BPC would still have adequate sites to meet its housing land requirements if planning permission was withheld for this scheme.

iii) Fallback position

13.125 There is a difference of opinion between BPC and TVT with regard to the two planning permissions which have been granted on the development site. Whilst TVT asserts that there is outstanding consent for 133 dwellings on sites D,E and F, BPC indicates that it accepts only site E for 49 dwellings[5.1-5.2]. If permission for this application is granted, then the permission which is agreed to be outstanding would be revoked through the S106 obligation. In the event that planning permission is not granted, there is provision for any outstanding permissions to be subject to review in accordance with regulations 63-64 and 69-70 of the Habitats Regulations. Furthermore, NR contend that any application for approval of reserved matters on site E would in any event need to be subject to assessment under Regulation 61 of the Habitats Regulations since the original application was not subject to such an assessment⁵³⁵. I therefore conclude that it cannot be assumed that the application site would enjoy permission for either 49 or 133 dwellings in the event that this application is refused.

iv) Amenities of existing and future residents

13.126 A number of representations refer to the impact of the new development on the outlook from their properties. However, dwellings in Dulsie Road would have the badger corridor to separate their rear gardens from the new houses. Furthermore, the layout and design of the new housing, together with a detailed landscaping scheme, remain to be submitted in detail to BPC in the event that planning permission is granted. Careful design and landscaping would minimise any harmful visual impact or loss of privacy to the occupants of existing dwellings.

13.127 T&BWRA calculate the provision proposed for POS and find a shortfall. However, they deduct some 1.61ha to provide for a reserved 25m wide transport corridor[9.68]. In view of my finding that there is no justification for the reservation of this corridor, and as a result it is unlikely to be used as such, I consider that the proposed development meets the requirement for POS provision for the benefit of future residents of the development.

⁵³⁴ Inspector's note – BPC/14 typo in para 2.10. 5,654 should read 3,654

⁵³⁵ NR/12 paras 3.1-3.3

- 13.128 There would be a further 450 student units added to the existing 54. Ms Trevitt reports on the incidence of noise and anti-social behaviour which have occurred as a result of the existing student residents. There is concern that this would be significantly increased with such a substantial rise in numbers in this location adjacent to existing family and specialist housing[9.36]. However, there are clearly benefits in locating student residences close to the University buildings. Whilst I have some sympathy with the local residents and the disruption which they have experienced from the activities of students, such matters would need to be addressed in consultation with the academic institutions which the students attend.
- 13.129 Opportunities for car parking by students visiting the University would be controlled and a financial provision is made for the relevant Orders to be put in place. I appreciate that parking restrictions can provide inconvenience for residents, but this would appear to be the most appropriate means of preventing the use of residential streets for the parking of student cars. Clearly this is a matter which should be the subject of further discussion between the residents and the Council. A Travel Plan would also be put in place to manage transport modes.
- 13.130 T&BWRA raise the issue of air quality. Monitoring is carried out by BPC, and although Wallisdown Road is recognised as a very busy road, there is no evidence that the air quality of the BPC residents is in excess of accepted levels.
- 13.131 TVRA draw attention to the lack of community facilities in Talbot Village. BPC has indicated that there is the potential for use to be made of the facilities within the University. This is a private matter for the residents to pursue, but there is no requirement in Policy H3 for the development to provide for community facilities, and in view of the other benefits which are set out in the S106 I am unable to conclude that the lack of specific community facilities is sufficient reason to refuse planning permission.

c) Conditions

- 13.132 There were two sessions held at the Inquiry to discuss the conditions proposed by BPC. Amendments were made to the conditions following the first session and were agreed with TVT. Further amendments were made following the second session on the 6 October to meet the concerns of Poole Agenda 21. The final list of revised conditions as agreed between BPC and TVT are dated 7 October 2011⁵³⁶.
- 13.133 TVT has agreed with BPC a time limit of 5 years for the submission of the details of the reserved matters, with development to commence within 2 years of their approval. In view of the scale of the works associated with the development of the site, I consider that a longer timescale than normally provided is appropriate in this case. A standard condition requiring the submission of reserved matters before development commences is then proposed, followed by a condition requiring a phasing programme to be included with the first approval of the reserved matters, with the development to be carried out in accordance with the agreed scheme. Such a requirement is

⁵³⁶ BPC002 App A revised 07.10.11

reasonable in view of the road infrastructure and open space provision included within the application site.

13.134 Before development commences, conditions require submission and approval of provision for refuse storage (no 4) secure cycle parking facilities (no 5), a scheme to deal with any contaminated land (no 6), a construction method statement (no 7), a scheme for landscaping (no 8), a scheme for hard landscaping and street furniture (no 12), and details and samples of external facing and roofing materials (no 14). Each condition has a clause to ensure implementation. I consider each of these conditions to be appropriate to secure the amenities of existing and future residents of the site.

13.135 The first approval of reserved matters is required to include details of the sustainable urban drainage system and heathland drainage improvements, as shown on the Talbot Heath Management Statement (no 9). This condition is necessary to improve the condition of the heathland. The first approval of reserved matters is also required to include a Strategic Energy and Resource Statement (no 15) which would ensure that the new homes are energy efficient and sustainable.

13.136 Condition 10 requires details of the roads in the development, with levels, sections, drainage and street lighting. This condition will secure the provision of access to each new building before occupation and is therefore necessary. Condition 11 regulates the hours of operation of plant, machinery and vehicles which are audible at any boundary of the site and is justified to protect residential amenity.

13.137 To protect trees within the site an arboricultural method statement is required by condition 16. Details of a scheme for the clearance and relocation of all reptiles protected by the Wildlife and Countryside Act 1981 is required under condition 13, and condition 17 requires a bat survey to be carried out and appropriate mitigation measures to be taken in consultation with NE. A scheme for improvements for fighting heathland fires is required for approval in consultation with NE and implementation would be in accordance with the approved programme (no 18). These conditions are appropriate having regard to the context of the proposed development adjacent to protected heathland.

13.138 The remaining 3 conditions relate to highways and are the subject of dispute with BBC⁵³⁷. BBC seeks a condition to protect a reservation for a future innovative mass transport system. However, I have considered this issue and give the objection from BBC little weight[13.96]. I do not therefore support the imposition of such a condition. BBC also seeks a condition which requires the provision of a bus only link to Boundary Road Roundabout. Having considered this point, I find in favour of TVT and BPC that there is not sufficient justification to constrain the development to a single point of access[13.102]. A condition is then put forward by BBC to require a scheme for improvements to include the signalisation and/or alteration of the Boundary Road Roundabout. No such condition is proposed by TVT and BPC. Conditions T1 and T2 as proposed require the details of the access road from the development to be approved in conjunction with the Local Highway Authority, and implemented for the use of

⁵³⁷ See BBC4 for suggested conditions.

construction traffic only. Condition T3 then requires the completion of the access road in accordance with approved details to provide for use by public service vehicles and the general public once no more than 150 dwellings are occupied.

13.139 BBC points out that this would imply that that all the academic floorspace, student accommodation and 149 of the residential units could be constructed and occupied without any mitigation being provided on the strategic road network. However, access for this first part of the development, if it was all constructed together, would be from University Roundabout. The scheme as now proposed does not provide for improvements to University Roundabout in any event; a situation which is not ideal but on balance is acceptable[13.115-13.117]. Since there would be no improvement to support the development as a whole, I find no reason why the initial part of the development should not be served entirely by University Roundabout until the 149th house is built.

13.140 In the absence of a bus only link at Boundary Road Roundabout, BBC put forward an alternative condition to require the University and Boundary Road Roundabouts to be improved and signalised to provide bus priority in accordance with a scheme to be agreed by the responsible highway authority. Rather than submit such a scheme to serve this development, or submit any scheme for Boundary Road Roundabout alone, TVT has taken the position that it will make a financial contribution available for road improvements in accord with the provisions of the WTQBS. This is supported by BPC and I have concluded that it is an appropriate way forward[13.117].

13.141 Bearing in mind the provisions set out in the S106 Agreement for transportation, I therefore consider that the conditions T1, T2 and T3 are appropriate.

13.142 At the inquiry I indicated that I would include a condition to ensure that development is dealt with in accordance with the plans submitted with the outline application. This is included as condition no 19. A list of plans was submitted at the Inquiry, but I will not include reference to Plan 10 since that is an illustrative layout and does not therefore form part of the approved scheme. There is also a plan which shows a reserved Road Corridor, but for the reasons given in relation to that corridor, I will not be including reference to that plan in the condition.

d) S106 Agreement

13.143 The S106 Agreement was reviewed over the course of the Inquiry and a final version was signed on the 20 October 2011. The agreement covers a number of matters. I deal with each in turn, and identify any points in dispute in relation to each matter.

13.144 The provision of affordable housing is the subject of the First Schedule. Some 132 affordable units or not less than 35% of the total number of dwellings are to be provided within the development. There is no dispute with BPC that this provision accords with policy requirements, and I am satisfied that the obligations to provide the affordable housing are enforceable⁵³⁸.

⁵³⁸ TVT24 para 1

- 13.145 The Second Schedule deals with environment and ecology matters. In Part 1 Definitions, any reference to "consultation" is to mean allowing a period of 21 days for NE to review and make written comments on the subject matter of the consultation. The restoration and enhancement scheme for the heathland is the initial responsibility of TVT and thereafter wardening and maintenance of the heathland is to be the responsibility of BPC. Both initial works and ongoing works are to be paid for by TVT, and TVT remains liable for these obligations in perpetuity even in the event of a change in land ownership. The scheme is to be approved by BPC following consultations with NE. In the event that BPC fail in their duty to maintain the heath then TVT may undertake works and charge its costs back to the Council. The applicants rely on legal provisions covering the protection of the heath in the event that both parties were to fail in their duties to maintain⁵³⁹. This part of the S106 is clearly an important provision to secure the long term maintenance of the heathland, and the provision of finance towards wardening would help secure the effectiveness of the cat proof fence.
- 13.146 NR is concerned about the potential abrogation of the requirement to keep the fence[7.30]. However, any changes to the covenant and undertakings in the Second Schedule which deals with Environment and Ecology require consultation with NE, and NE retain the back up power of enforcement of the proper management of Talbot Heath. It seems to me that with the development in place, the need to retain the fence would become an essential element in the management of the Heath, and NE would be in a position to put pressure on BPC to ensure that it is retained and maintained.
- 13.147 In relation to the proposed no pet covenant, it is the responsibility of TVT to ensure that each dwelling has a private restrictive covenant against cats and dogs placed upon it from first sale. This will be binding on all future owners, and TVT as owner of the heath would be able to enforce the covenant. BPC would also be able to enforce the restriction under S106. Information packs would be provided by TVT to all new owners of properties within the 400m zone, and this obligation would remain enforceable after TVT had sold the land within the development. Whilst the provisions of the S106 may be adequate in legal terms, I have dealt with the practical issues which are likely to arise in the long term enforcement of the no pet covenant and place little weight on its long term effectiveness.
- 13.148 TVT is obliged to erect the cat proof fence prior to the commencement of development as a direct s106 obligation enforceable by BPC. BPC would then be liable for maintaining and replacing the fence, with TVT providing the finance in perpetuity even if they no longer own any of the relevant land. TVT is also responsible for monitoring the ecological measures until completion of the last residential unit, and for providing all necessary licences and consents to allow BPC to meet its obligations in maintaining the heathland and the cat proof fence. NR and a number of local residents cast doubt on the effectiveness of the cat proof fence over the long term. However, subject to the issues raised concerning access to CROW land and the application for a public footpath, I consider that the provisions of the S106 would ensure that the fence remains as an effective barrier against access by people or cats to the heathland, and that

⁵³⁹ TVT/28 p2

the fence in its entirety is necessary for any planning permission to be granted for the proposed development.

- 13.149 A Management Statement is included within the S106 and provision is made for this to be reviewed every five years by TVT and BPC in consultation with NE. The Management Statement has been revised to respond to a number of points raised by NR at the inquiry, and the fire fighting measures which were an issue are to be dealt with by condition.
- 13.150 A requirement for a detailed scheme for mitigation of the impact of the development upon badgers is included in Part 8 to the Second Schedule. This has been agreed in principle with NE, and the access corridor to be provided for the badgers is to be fenced and maintained by TVT in accordance with the approved Badger mitigation scheme in perpetuity. TVT covenant with BPC not to dispose of the badger corridor to ensure its long term protection.
- 13.151 It is within this schedule that provision is made for payments under the Dorset Heathlands IPF. Since the current IPF covers the period 2010-2011, it is recognised that if a permission was to be granted, it may no longer be the relevant document. TVT indicates that an amendment may then be required to this part of the S106⁵⁴⁰. Apart from that part relating to the no pet covenant, I am satisfied that the provisions of the Second Schedule are necessary to any grant of planning permission and proportionate to the development proposed.
- 13.152 The Third Schedule sets out the obligations to provide the Public Open Space (POS) and to pay the annual maintenance sum. These are binding on TVT and subsequent land owners carrying out the development for each relevant phase of the development. POS Area 4 would lie outside the cat proof fence, and provision is made within the Management Statement and the Heathland Maintenance sum for its ongoing maintenance. I am satisfied that the S106 makes appropriate provision for POS and its ongoing maintenance to support the proposed development of the application site.
- 13.153 Transportation is provided for in the Fourth Schedule. The access itself to the site from the Boundary Road Roundabout is to be dealt with by means of a condition, since any improvement works at this junction are intended to be undertaken as part of the WRQBC and funded by a contribution which is covered in the S106. BBC objects to this arrangement and seeks improvements to University and Boundary Road Roundabouts to mitigate the traffic impacts of the development. I have considered this above, and concluded that the approach put forward by the applicant is acceptable in view of the benefits in terms of sustainability which would arise from a development in this location[13.116].
- 13.154 Public Transport subsidies of £300,000 are payable by TVT and subsequent landowners involved in the development of the site, (but not individual householders) and this obligation would remain binding upon the land pursuant to the provisions of S106. BBC disputes the sum put forward and seeks an increase to £500,000. However, it seems to me that the subsidy would be proportionate to the development as proposed in this location.

⁵⁴⁰ TVT/28 p3

- 13.155 The payments of £1,150,000 towards the WRQBC, the £25,000 for Parking Order costs, and the contingency fund of £200,000 are subject to the same obligations.
- 13.156 With regard to the WRQBC payment, BBC argues that it fails to address the impact of the development on the strategic roads network. However, it is clearly a significant sum, and the new development would only be a small part of the overall area of housing which the WRQBC would serve. Of more concern is the inability of BBC and BPC to negotiate and agree an appropriate way forward in this case. There is clearly a long history to the relationship between the two Councils regarding this matter. I have no detailed knowledge and attribute no blame. However, it should be possible for two local authorities to work together to advance the interests of their constituents. Para 2.1 of the Fourth Schedule provides for a sum of £115,000 to be paid to BPC on commencement of development for the sole purpose of developing the WRQBC Scheme, including the scoping and design of specific aspects of the WRQBC scheme as required.
- 13.157 Once a scheme of works comprising all or any identified elements of the WRQBC which is ready to be implemented within 5 years has been produced, then the balance of the WRQBC contribution becomes payable. To my mind these provisions should help concentrate the endeavours of BBC and BPC to work together on producing an appropriate scheme which would trigger the payment. Nevertheless, the Secretary of State will have in mind my comments above[13.121] and may wish to take legal advice as to whether the arrangement in the S106, whereby payment would not be to the local authority responsible for carrying out the works, would accord with the CIL Regulations.
- 13.158 In relation to the Parking Order payment, BBC considers that it should provide for orders to be made on roads outside the development which are affected by students attending the academic floorspace who wish to park their cars. Local residents also raise the issue of student parking. Although the academic floorspace is associated with the provision of new living units such that there would be no need to drive from the units to the University, students living in the new units may have cars which they wish to park. A Student Travel Plan is required under the Fifth Schedule, but it is unlikely that this would prevent students from owning cars which they park away from the campus. As a result roads in BBC could be affected. I therefore consider that there is a weakness in the provisions for mitigation in relation to prevention of student parking outside the development site. BBC suggests that the definition of "Parking Order Contribution" should be rewritten to include "affected roads outside the Development" to enable a wider application of the funds, but no such amendment has been made.
- 13.159 BBC also identifies some inconsistency in the wording between paragraph 5 of the Fifth Schedule and Table 8.1 of the Framework Travel Plan. Table 8.1 requires a payment of £1000 on commencement of the development, whereas paragraph 5 of the Fifth Schedule requires a payment of £5,100 upon first occupation of the first Residential Unit.
- 13.160 The Travel Plan Intervention Fund of £200,000 is intended to be used in the event that Travel Plan targets are not met. Further clarification of the purposes of the fund would improve this section of the S106 agreement, but I

consider that the principle of such provision should be welcome and would help secure the provisions of the Travel Plan in the long term⁵⁴¹.

13.161 In relation to the payments to be made under the Fourth Schedule, a bond is to be provided by TVT to secure the payment of the Travel Plan Intervention Fund and the balance of the WROBC contribution in the event that the Trust becomes insolvent before such monies are paid over⁵⁴².

13.162 Thus I find that there are some shortcomings in the provisions made in respect of car parking, and some inconsistencies in the drafting of the Fifth Schedule, but these should not be considered to be fatal to the proposal. Should there be any need for the S106 to be revised, these are matters which TVT should be encouraged to review. All the measures would meet the tests of the CIL Regulations as necessary, proportionate and relevant to the application scheme.

13.163 In addition to the measures to secure environmental, ecological and transportation mitigation for the development, the S106 also makes provision for an education contribution, a contribution to off site recreation and leisure provisions, a considerate constructors' scheme and a monitoring schedule. The provisions are directly required for the development to progress, and are proportionate to the development proposed.

13.164 Subject to my comments in relation to the assignment of funds for the WROBC, having regard to Regulation 122 of the Community Infrastructure Regulations 2010, I am generally satisfied that the provisions of the S106 agreement are: necessary to ensure that the proposed development is in accordance with the Habitats Regulations and is acceptable in planning terms; directly related to the scale and type of development proposed; and fairly and reasonably related in scale and kind to the development in so far as this is the level of provision required in terms of mitigation on transportation, and community infrastructure. It therefore complies with the statutory tests.

13.165 However, BPC is currently progressing a CIL Charging Schedule with adoption programmed for Spring/Summer 2012. It is likely that some of the obligations to pay contributions currently set out in the S106 Agreement would, with the adoption of the Charging Schedule, be replaced by CIL. In the event that the CIL Charging Schedule is in place when the Secretary of State is ready to make a decision on the application, and in the event that the decision would be favourable, the applicants have requested an opportunity to reconsider the terms of the S106 and to submit a revised deed before the Secretary of State issues his final decision⁵⁴³.

14. Overall Conclusions and Recommendation

14.1 This application concerns a site which has long been identified in a statutory development plan for the mix of development currently proposed. It is allocated in a specific saved policy in the LP, and is being carried forward in BPC's emerging Site Allocation DPD. The allocation also forms one of the

⁵⁴¹ Fifth Schedule para 6

⁵⁴² Fourth Schedule para 5

⁵⁴³ TVT/28 section 4 p7

specified sites in the Council's SHLAA. In terms of policy therefore, the proposal is generally in accordance with the statutory development plan, and it would meet the objectives of "Planning for Growth". These matters are of significant weight in the decision making process.

- 14.2 However, the allocation of the site in the LP was made before the wide implications of the designation of the Natura 2000 sites were either properly understood or recognised in Government policy. It predates Circular 06/2005, PPS9, and the adoption of the Dorset Heathlands IPF. Furthermore the allocation has not been the subject of a Habitats Regulatory Assessment since there was no domestic regulatory requirement to do so at that time. As a result, even though the proposal is generally in accordance with the development plan, it cannot be assumed that it meets the requirements of Article 6(3) of the Habitats Directive transposed into English law by Reg 61 of the Habitats Regulations.
- 14.3 The essential test for this proposal is therefore whether or not the proposed development, *as a whole*, meets the legal test presented by Article 6(3) of the Habitats Directive and Reg 61 of the Habitats Regulations. Whilst the draft NPPF generally supports the proposed development, and the application would meet the objectives of "Planning for Growth" the position in relation to the legal tests remains unchanged.
- 14.4 The majority of the proposed residential development would be located within 400m of Talbot Heath which is a part of the Dorset Heathlands SPA, SAC and RAMSAR. If the mitigation measures were not put into effect, there is no dispute that the proposed development would be in conflict with the Dorset Heathlands IPF and it would not pass the legal test. TVT puts forward the argument that because of the condition of Talbot Heath and its small scale in relation to the heathlands as a whole, the impact on the integrity of the Dorset Heathlands as a whole would not be significant. However, such an argument could be made in relation to any small scale development within the 400m zone and a significant impact could then accumulate in any event. Furthermore, because of its scale and location within the urban area, Talbot Heath is a fragile portion of the overall network of sites which make up the Dorset Heathlands. If the deterioration in the conservation status of one small site is accepted, the contribution of that site to the whole heathlands is diminished and the ecological coherence of the network as a whole would be affected.
- 14.5 With regard to the impact on European protected species, and on species protected under the Wildlife and Countryside Act 1981 or any other legislation, no specific issue is raised by NR. However, as in the case of the effect of the proposed development on the designated heathland, the significance of the impact on any protected species, or the potential for Talbot Heath to be returned to a favourable condition for those species, does depend on the effectiveness of the mitigation measures.
- 14.6 Whether or not the AA undertaken on behalf of BPC was either necessary or adequate also largely depends on this matter. I find that there is a significant risk that enforcement of the no pet covenant is unlikely to be effective in the long term, and therefore effective mitigation should not rely upon this measure. The cat and people proof fence, if erected in its entirety, would ensure that the new residents were in effect placed outside the 400m zone of Talbot Heath.

The measures set out by TVT and in the S106 Agreement would be likely to ensure that the fence is of suitably robust construction to resist breaches, and that it would be effectively managed and maintained in the long term. Nevertheless, there is uncertainty as to whether the fence could be erected to restrict access to the heath at the Isaacs Close end. Access here would eliminate the effect of removing the new residents from within the 400m zone of the heath. Furthermore, having regard to the scale of the fence in terms of its length and height, I find that it would have a harmful effect on the character and appearance of the adjoining areas of open space and heathland, and it would result in a harmful visual impact for new and existing residents and for visitors to Talbot Heath. In these circumstances I consider that the erection of the fence is a high price to pay for the achievement of a development within 400m of a protected site.

- 14.7 The other measures proposed as mitigation, which NR disputes (as mitigation), are desirable but would not without the fence provide adequate protection of Talbot Heath from significant harm from visitors and from peripheral damage adjacent to the new development. Even with the other measures, without the fence in its entirety, I consider it unlikely that Talbot Heath could be restored to a favourable condition. There would be a continual conflict between the damage resulting from people and pets accessing the site and the work of the warden and BPC in trying to manage and improve the status of the site.
- 14.8 In relation to transportation, the contributions associated with the proposed development have the potential to help progress the WRQBC which would benefit not only the future residents of the scheme, but also the wider community. With this prospect, the likely increase in congestion and delays in the short term is unlikely to be so severe as to justify refusal of the application.
- 14.9 In terms of impact on existing residents, clearly a number would lose their view across open fields. However, there is no right to a view and residents would be consulted on the detailed design and landscaping of the scheme to assure themselves that it would not have a harmful impact on their amenities. The issues connected with the noise generated by students at night and the parking of their cars should be pursued with the academic institutions to which the students belong.
- 14.10 There is some reliance on the development of this site to meet housing requirements in BPC. The site is identified in the SHLAA, and its greenfield status would make it easier to bring forward for development than alternative brown field sites. However, BPC would have sufficient housing land identified to meet 5 and 10 year requirements even if this application was to be refused.
- 14.11 I make no comment on the potential for part of the site to be used as a SANG, but clearly there is potential for a scheme on a more restricted area of the development site which would be outside the 400m zone and which may not then require the erection of such an unsightly cat and people proof fence.
- 14.12 There are a number of factors in favour of a grant of permission in this case, but the prime means of ensuring that the legal test would be met would in my view be such that the proposal should not be granted permission

I recommend that planning permission be refused.

In the event that the Secretary of State does not accept my recommendation, I recommend that the conditions set out in the Schedule attached at Annex 1 be imposed to any grant of permission. The S106 Agreement is signed and would be put into effect through the grant of permission. That said, I draw the attention of the Secretary of State to comments in my conclusions in respect of the possible need for revisions to the S106.

Wendy Burden

INSPECTOR

Annex 1

Schedule of Conditions

1.	Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 5 years from the date of this permission and the development hereby permitted shall be begun before the expiration of 2 years from the final approval of reserved matters, or, in the case of approval on different dates, the final approval of the last such matters to be approved.
2.	Commencement of the development or of any phase agreed pursuant to condition 3 shall not take place until approval of the details of the layout, scale and appearance of the building(s) the means of access thereto and the landscaping of the site (hereinafter called 'the reserved matters') has been obtained in writing from the Local Planning Authority for the development as a whole or for any phase agreed and the development shall be carried out in accordance with the approved details for each phase.
3.	The first approval of Reserved Matters shall include a phasing programme for the implementation of the approved scheme. This programme shall include phasing of all development, laying out of open space, provision of footpaths, drainage, roads and other supporting infrastructure, and shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed programme.
4.	Prior to the commencement of development or any phase agreed pursuant to condition 3 details of the provision for refuse storage prior to disposal and the process by which it shall be disposed of from the site shall be submitted to, and approved in writing by the Local Planning Authority, implemented prior to the first occupation and thereafter retained.
5.	Commencement of the development or of any phase agreed pursuant to condition 3, shall not take place until details of secure cycle parking facilities for that phase have been submitted to, and approved in writing by, the Local Planning Authority. The cycle parking facilities shall be implemented in accordance with the agreed details and thereafter retained.
6.	Prior to the commencement of development or to any phase agreed pursuant to

condition 3, a scheme to deal with contamination of land and/or groundwater shall be submitted to and approved in writing by the LPA and the measures approved in that scheme for the development or any phase shall be fully implemented. The scheme shall include the following stages.

1. A desk-top study carried out by a competent person to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site. The requirements of the LPA shall be fully established before the desktop study is commenced and it shall conform to any such requirements.
2. If the desk top study confirms the possibility of contamination, a site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until the extent and methodology have been agreed in writing with the LPA and the requirements of the LPA for site investigations have been fully established.
3. If stages 1 and 2 identify unacceptable risk(s) a written method statement for the remediation of land and/or groundwater contamination affecting the site shall be submitted to and approved in writing by the LPA prior to commencement and all requirements shall be implemented and completed in accord with the approved statement.
4. A validation report confirming the completion of the remediation works shall be submitted to and approved in writing by the LPA before any building hereby permitted is occupied.

7.

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors;
- ii. loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v. wheel washing facilities;
- vi. measures to control the emission of dust and dirt during construction; and
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.

8.

Prior to commencement of the development, or of any agreed phase pursuant to condition 3, a scheme for the landscaping of the site or phase of development shall

be submitted to, and approved in writing by, the Local Planning Authority. The landscaping scheme shall include provision for landscape planting, the retention and protection of existing trees and other site features, and any changes in levels.

Following approval of the landscaping scheme:

- a) the approved scheme, either in full or phased, shall be carried out in the planting season October to March inclusive following occupation of the building(s) or the completion of the development whichever is the sooner, or in accordance with a timetable to be agreed in writing with the Local Planning Authority;
- b) all planting shall be carried out in accordance with British Standards, including regard for plant storage and ground conditions at the time of planting;
- c) the scheme shall be properly maintained for a period of 5 years and any plants (including those retained as part of the scheme) which die, are removed or become damaged or diseased within this period shall be replaced in the next planting season with others of a similar size and the same species, unless the Local Planning Authority gives written consent to any variation; and
- d) the whole scheme shall be subsequently retained.

9.

The first approval of Reserved Matters shall include details of:

- i. the sustainable urban drainage; and
- ii. heathland drainage improvements;

Both as generally shown on drawing ALP/5352/MS/06 rev K in the Talbot Heath Management Statement.

Such details shall be submitted to and approved in writing by the Local Planning Authority.

These details shall include:

- (i) a timetable for its implementation with regard to any phasing programme agreed under condition 3; and
- (ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime.

The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.

10.

Prior to the commencement of development on any phase agreed pursuant to condition 3, plans and particulars showing the layout, together with details of levels, sections, drainage, and street lighting of the proposed road(s), in the development or that phase shall be submitted to, and approved in writing by, the Local Planning Authority. No building shall be occupied until vehicular and pedestrian access to base course level has been provided in accordance with the approved details to serve

that building.

11.

During implementation of the development hereby permitted no plant, machinery or vehicle that is associated with the implementation of the development that is audible at any boundary of the site shall be operated at the site other than between 0800 hrs and 1800 hrs on Mondays to Fridays inclusive, and between 0800 hrs and 1300 hrs on Saturdays. In the case of machinery operated in association with any piling operations, this shall be operated only between 0830 hrs and 1800 hrs Monday to Friday. During implementation of the development no machinery associated with implementation of the development shall be operated at any time on Sundays or recognised Public Holidays, nor shall any Heavy Goods Vehicles associated with implementation of the development enter or leave the site other than during the permitted hours.

12.

Before the development hereby permitted, or any phase agreed pursuant to condition 3, is commenced, proposals for the hard landscaping and street furniture of each phase, including full details of surfacing materials and colours/kerbing/bollards/railings/walling, and fencing and other means of enclosure shall be submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be implemented in accordance with the phasing scheme pursuant to condition 3 above and thereafter retained.

13.

Prior to each phase of development commencing (including the removal of herbage or the disturbance of topsoil), that part of site shall be cleared of all reptiles protected under the Wildlife and Countryside Act 1981 in accordance with details of the timing and method of proposed rescue, protection, relocation and monitoring of protected species to be submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. Such works shall be subsequently carried out in strict accordance with the agreed details of methodology and programme.

14.

Prior to commencement of development hereby approved, or of any agreed phase pursuant to condition 3, details and samples of all external facing and roofing materials to be used shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

15.

The first approval of Reserved Matters shall include a Strategic Energy and Resource Statement which shall be submitted to and approved in writing by the Local Planning Authority. This Statement will demonstrate how the residential development, or any agreed phase pursuant to condition 3:

- (1) will provide at least 20% of the energy supply of the residential dwellings from decentralised and renewable or low carbon energy sources (as described in the glossary of PPS: Planning and Climate Change (December 2007));
- (2) will meet the relevant code level in the Code for Sustainable Homes;
- (3) will address the 16 Lifetime Homes Standards through the provision of an inventory of the Lifetime Homes Standards and how these are incorporated into the development.

The statement shall also demonstrate how the development meets the BREEAM 'Excellent' or equivalent standard.

Subsequent reserved matters applications shall be in accord with the approved Strategic Energy and Resource Statement and the development shall be implemented in accordance with this Statement.

16.

An arboricultural method statement prepared by an arboricultural consultant holding a nationally recognised arboricultural qualification providing comprehensive details of construction works in relation to trees for the development hereby approved or any agreed phase pursuant to condition 3 shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of demolition/development in the area to which the Statement applies. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:-

- a) a specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2005 and a plan indicating the alignment of the protective fencing;
- b) a specification for scaffolding and ground protection within tree protection zones in accordance with BS5837;
- c) a schedule of tree works conforming to BS3998;
- d) details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- e) plans and particulars showing the siting of the service and piping infrastructure;
- f) a full specification for the construction of any arboriculturally sensitive structures and sections through them,;
- g) details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- h) details of all other activities which have implications for trees on or adjacent to the site.

17.

Prior to the commencement of development, or any agreed phase pursuant to condition 3, a bat survey shall be undertaken and submitted to the LPA. The methodology of the survey shall be agreed in writing with the LPA in consultation with Natural England prior to commencement of the surveys. Provisions to be made for bat roosting sites/boxes and any other mitigation works required as a consequence of the surveys carried out shall be submitted to, and approved in writing by the Local Planning Authority in consultation with Natural England. The mitigation works shall be implemented in accordance with the approved provisions

18.

Notwithstanding the proposals shown in the planning application, prior to commencement of development a scheme for improvements for fighting heathland fires which may occur on the part of Talbot Heath within the application site, including the installation of fire hydrants and improved access for fire fighting vehicles and equipment, together with a programme of implementation, shall be submitted to and approved by the Local Planning Authority in consultation with Natural England. The approved scheme shall be implemented in its entirety in accordance with the approved programme.

19.

The development hereby permitted shall be carried out in accordance with the following submitted plans:

IL/5352-066	Figure 1 Site Location Plan
CL/5352-023 Rev F	Plan 8 Revised Concept Masterplan
CL/5352/014B	Plan 9 Land Use and Density Diagram

T1.

Prior to the commencement of development details of an access road from the development connecting to Boundary Roundabout by way of a *"give-way"* onto the existing roundabout shall be submitted to, and approved by, the Local Planning Authority, in conjunction with the Local Highways Authority (LHA) in order that the LHA can enter into any relevant Agreement. The submitted details shall include the identification of the measures proposed to restrict the use of this access road to construction vehicles associated with the construction of the development.

T2

Prior to the commencement of any part of the development except for the construction of the Boundary Roundabout Access Road and any ecological mitigation works, the Boundary Roundabout Access Road shall be constructed and made available for use by construction vehicles in accord with the approved details.

T3

No more than 150 dwellings shall be occupied until the Boundary Roundabout Access Road has been completed in accordance with the approved details and is available for use by public service vehicles and the general public.

Annex 2

APPEARANCES at the Inquiry

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Tromans QC instructed by Borough of Poole Solicitor

He called

Mr Jacobs MRTPI	Planning Officer BPC
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Mr A Baker BSc MIEEM	Baker Consultants Ltd
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Mr C Francombe MSc CEng MICE MCILT MCIHT	Transport Policy Manager BPC
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FOR THE APPLICANT:

Mr C Katkowsky QC instructed by Nathaniel Lichfield Partners

He called

Mr T Goodwin MSc MIEnvSc MIEEM MIALE	Ecology Solutions Ltd
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Mr G Eves BSc CEng MICE MICHT	PFA Consulting
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FOR NATURAL ENGLAND and RSPB:

Mr G Machin of Counsel instructed by Solicitor for NE

He called

Mr D Tyldesley Dip TP Dip LD FRTPI, MIEEM FRSA	David Tyldesley & Assocs
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Mr N Squirrel MSc	Natural England
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Dr J Underhill-Day MIOB MIEEM FRICS	Ecological advisor to RSPB
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FOR BOURNEMOUTH BOROUGH COUNCIL:

Mr S Randle of Counsel instructed by Solicitor for BBC

He called

Mr S Davies MRTPI

Principal Planning Officer BBC

Mr M Campkin BSC
CEng MICE

Development Control and Forward Planning
Manager BBC

Mr M Carter MSc CEng
MICE

Mouchel Group

INTERESTED PERSONS:

Councillor S Chappell MA Oxon

For residents of Talbot and Branksome Woods
Ward, Bournemouth

Mr S Coltman
Mrs S Warner

Talbot and Branksome Woods Residents
Association

Councillor S Rollo-Smith

Friends of Talbot Heath

Ms V Trevitt

Local Residents Petition

Mr Cooper

Talbot Village Residents Association

Conor Burns MP

Mrs Tibbalds

Poole Agenda 21

Annex 3

Documents

Natural England & The RSPB

NR/1	Natural England and RSPB's Document List supplied to the Programme Officer 30 th May Updated document supplied 13 th July Updated document supplied wk 1 of public inquiry 18 th July 2011 Updated document supplied 26 th July 2011 (This document was logged as a Library Document)
NR/2	Statement of Case for Natural England and The RSPB.
NR/3	Proof of Evidence of David Tyldesley
NR/4	Summary of the Proof of Evidence of David Tyldesley
NR/5	Appendices to the Proof of Evidence of David Tyldesley
NR/6	Proof of Evidence of Nicholas Squirrell
NR/7	Summary of the Proof of Evidence of Nicholas Squirrell
NR/8	Appendices to the Proof of Evidence of Nicholas Squirrell
NR/9	Proof of Evidence of Dr. John Underhill-Day
NR/10	Summary of the Proof of Evidence of Dr. John Underhill-Day
NR/11(a)	Appendices i-iii to Proof of Evidence of Dr. John Underhill-Day
NR/11(b)	Appendix iv to Proof of Evidence of Dr. John Underhill-Day
NR/12	Rebuttal Proof of Evidence of David Tyldesley
NR/13	Summary of Rebuttal Evidence of David Tyldesley
NR/14	Appendices (G-L) Rebuttal Evidence of David Tyldesley
NR/15	Rebuttal Proof of Evidence of Nichols Squirrell
NR/16	Summary of Rebuttal Evidence of Nicholas Squirrell
NR/17	Rebuttal Appendices Proof of Evidence of Nicholas Squirrell
NR/18	Rebuttal Proof of Evidence of Dr John Underhill-Day
NR/19	Summary Rebuttal Proof of Evidence of Dr John Underhill-Day
NR/20	Appendices i and ii to Rebuttal Proof of Evidence of Dr John Underhill-Day
NR/21	Provisional Legal Submissions
NR/22	Provisional Legal Submissions, Reference Bundle
NR/23	Opening Statement
NR/24	Predation risk in woodlark <i>Lullula arborea</i> habitat. Dissertation submitted by E Taylor 2002
NR/25	Visitor access patterns on the Dorset Heathlands 2006
NR/26	Footprint ecology, evaluating the public use and effectiveness of Sunnyside Farm
NR/27	Footprint ecology, Review and collation of access data to inform Public Inquiry relating to Talbot Village, Poole
NR/28	Visitor access assessment for Talbot Heath (Bourne Valley SSSI, SPA, SAC, RAMSAR)
NR/29	Memorandum from Jez Martin (Leisure Services BoP) Ref JTM/P/63/1 27 th July 2009
NR/30	Letter from NLP ref 05352/NT/JL/941099v1 5 th February 2010
NR/31	Documents from NLP ref 05352/NT/JL/1037262v1 13 th May 2010
NR/32	Refusal of Planning Permission application no 06/31461/001/F 1 st September 2006
NR/33	Refusal of Planning Permission application no 06/35255/003/F 27 th December 2006

NR/34	Refusal of Planning Permission application no 07/04101/002/F 27 th June 2007
NR/35	Predation of the Sand Lizard <i>Lacerta Agilis</i> by the domestic cat <i>Felis Catus</i> on the Sefton Coast
NR/36	The Urban Heaths Partnership Wardening Strategy 2010
NR/37	Letter from NLP ref 05352/NT/JL/753751v1 17 th November 2009
NR/38	Letter from NLP ref 05352/NT/JL/1037262v1 27 th April 2010
NR/39	Talbot Village Trust Application Observations on the Draft S106 agreement and the Draft Conditions Submitted 20 th July 2011 and on TVT 24 S106 agreement: Summary of enforceability submitted 26 th July 2011
NR/40	A response to TVT 22
NR/41	Note on Natural England involvement in proposals affecting Ribble and Alt Estuaries SPA and Chichester and Langstone Harbours SPA
NR/42	Copy of Plan 1, showing the approximate location of additional hydrants, water supply pipes and access tracks, and note of meeting with Mr J Martin, Borough of Poole (BoP) Nature Conservation Officer 18 th July 2011 to discuss acceptable hydrant, water supply (pipe) routes and fire access routes.
NR/43	Map of Bourne Valley SSSI, SAC, SPA, Ramsar edged green with 400m Consultation Area edged purple Application area edged in red
NR/44	Map of Talbot Heath and surrounds. Bourne Valley SSSI (green edge) SPA and SAC (purple) Ramsar (blue) SNCI edged orange.
NR/45	Map of accompanied site visit at Talbot Heath, proposed route NE/RSPB Mrs Trevitt.
NR/46	Representation on the Draft National Planning Policy Framework
NR/47	Appeal Decision May 2007 55/57 Oaks Drive, Ashley Heath, Ringwood, BH24 2QR
NR/48	Note of Natural England/RSPB position on revised draft of Section 106 Agreement
NR/49	Application by Berkeley Homes Inspectors Report
NR/50	Closing Submissions for Natural England and The RSPB

Bournemouth Borough Council

BBC/1	Proof of Evidence of Steve Davies MRTPI
BBC/1	Appendices to the Proof of Evidence of Steve Davies MRTPI
BBC/2	Proof Of Evidence of Michael Campkin BSc (Hons) CEng MICE
BBC/2	Appendix A Report to the Director of Development Services to the Planning Committee
BBC/3	Proof of Evidence of Michael Carter BSc (Hons), MSc, CEng, MICE in regard to Highway and Traffic Technical Matters
BBC/3	Appendices to the Proof of Evidence of Michael Carter BSc (Hons), MSc, CEng, MICE in regard to Highway and Traffic Technical Matters
BBC/3	Addendum to BBC/3 appendix
BBC/3	Addendum 2
BBC2 R	Rebuttal Evidence of Michael Campkin BSc (Hons) CEng MICE
BBC 3R	Rebuttal Statement of Michael Carter BSc (Hons) MSc, CEng, MICE In regard to Highways and Traffic Technical Matters
BBC 3R	Appendix A Extract from ' Manual for Streets'

The following documents were provided by Bournemouth Borough Council during the Public Inquiry

No ref no	Opening remarks on behalf of Bournemouth Borough Council in respect of the application to develop land South of Wallisdown Road, Talbot Village, Poole
BBC 4	Draft Section 106 requirements and conditions
BBC5	Comments on the impact of the draft National Planning Policy Framework (NPPF)
BBC6	Note prepared by Michael Carter to assist with the presentation of his evidence in chief at the resumed Inquiry into the proposal to develop Land South of Wallisdown Road, Talbot Village, Poole.
BBC7	Note on conditions
BBC8	Response to TVT12/13
BBC9	Issues/BBC Position/TVT Position/BoP Position
BBC10	Comment by Bournemouth Borough Council on TVT34
No Ref No	Final remarks on behalf of Bournemouth Borough Council
No Ref No	Response on behalf of Bournemouth Borough Council to the costs application made by Poole Borough Council and TVT at the Inquiry into the Development of Land South of Wallisdown Road, Poole.

The Borough of Poole

BPC/1	Summary of the Proof of Evidence of Richard Genge TD, Dip TP, MRTPI
BPC/2	Proof of Evidence of Richard Genge TD, Dip TP, MRTPI
BPC/2 appendix	Revised as agreed between BPC and TVT 20 th July 2011 'Conditions'.
BPC/3	Summary of the Proof of Evidence of Andrew Baker BSc MIEEM, Ecology
BPC/4	Proof of Evidence of Andrew Baker BSc MIEEM, Ecology
BPC/5	Executive Summary of the Proof of Evidence of Chris Francombe BSc, MSC, CEng, MICE, MCILT, MCIHT
BPC/6	Proof of Evidence of Chris Francombe BSc, MSC, CEng, MICE, MCILT, MCIHT
BPC ref 002	Appendix C
BPC/7	Rebuttal by Richard Genge TD, Dip TP, MRTPI
BPC/8	Rebuttal Ecology Proof of Evidence of Andrew Baker BSc MIEEM

The following documents were logged as Library Documents

BPC/1	Moseby, Read 2006 (Biological Conservation 127 (2006) 429-437) in their paper 'The efficacy of feral cat, fox and rabbit exclusion fence designs for threatened species protection
BPC/2	Robley A. Purdey D. Johnston M, Lindeman M, and Busana F (2006) 'Experimental Trials to determine effective feral cat and fox exclusion fence designs.
BPC/3	Catalogue of fence designs (unreferenced)
BPC/4	Guidelines for Ecological Impact Assessment in the United Kingdom
BPC/5	Habitats Regulations Guidance Note issued by Greg Smith, Environmental Impacts Team, English Nature

BPC/6	CF/SS/1 Note re: applications for additional Rights of Way across Talbot Heath
BPC/7	Leisure Services: Planning application consultation
BPC/8	CF/SS/2 Updating Note re: applications for additional Rights of Way across Talbot Heath

The following documents were provided by The Borough of Poole during the Public Inquiry

BPC/9	Fence specification
BPC/10	Outline Opening Submissions
BPC/10	Statement of Experience of Nigel Jacobs BA (Hons) MRTPI
BPC/11	Interim Legal Submissions
BPC/11	Site Specific Allocations and Development Management Policies DPD (Extracts)
BPC/13	Notes to the Planning Inquiry on the significance of the Draft National Planning Policy Framework (NPPF)
BPC/14	Note to the Planning Inquiry on Poole's Strategic Housing Land Availability Assessment
BPC/2	Appendix revised as agreed between BPC and TVT 14 th September 2011
BPC/15	Chris Francombe's comments to Planning Officer 20 th May 2010
BPC/16	Updated Information on Bus Patronage in Poole
BPC/2	5 th October 2011 Addendum to BPC doc ref 002-Appendix A. Revised as agreed between BPC and TVT 14 th September 2011
BPC doc ref 002	Appendix A Revised as agreed between BPC and TVT 07/10/2011 (Conditions)
No Ref Number	Application by Borough of Poole Council for partial award of costs against Bournemouth Borough Council
No Ref Number	Closing Submissions for Borough of Poole Council

Talbot Village Trust

TVT/1	Summary Proof of Evidence of Graham Eves BSc, CEng, MICE, MICHT (PFA Consulting)
TVT/2	Proof of Evidence of Graham Eves BSc, CEng, MICE, MICHT (PFA Consulting)
TVT/3	Appendices to the Proof of Evidence of Graham Eves BSc, CEng, MICE, MICHT
TVT/5	Proof of Evidence in respect of Ecology and Nature Conservation by Timothy J. Goodwin BSc (Hons), MSc, MEnvSc, MIEEM, MIALE (Ecology Solutions Ltd)
TVT/5	Proof of Evidence in respect of Ecology and Nature Conservation.....Plans by Timothy J. Goodwin BSc (Hons) MSc, MEnvSc, MIEEM, MIALE (Ecology Solutions Ltd)
TVT/5	Annexes Proof of Evidence in respect of Ecology and Nature Conservation by Timothy J. Goodwin BSc (Hons) MSc, MEnvSc, MIEEM, MIALE
TVT/7	Written Statement of behalf of Talbot Village Trust (Nathaniel Lichfield & Partners)

TVT/8	Summary Rebuttal Evidence of Graham Eves BSC CEng MICE MCIHT
TVT/9	Rebuttal Evidence of Graham Eves BSC CEng, MICE MCIHT
TVT/10	Appendices to Rebuttal Evidence of Graham Eves BSC CEng MICE MCIHT
TVT/11	Rebuttal Proof of Evidence in relation to Ecology and Nature Conservation Issues Timothy J Goodwin BSc (Hons) MSc, MEnvSc, MIEEM, MIALE

The following documents were logged by TVT/NLP as Library Documents

TVT/ 1	Planning Statement (18 th May 2000)
TVT/ 2	Transportation Assessment (18 th May 2000)
TVT/ 3	Flood Risk Assessment (November 2005)
TVT/ 4	Management Statement (May 2005)
TVT/ 5	Transport Assessment (December 2005)
TVT/ 6	Transport Assessment (May 2005)
TVT/ 7	Management Statement (October 2009)
TVT/ 8	Further Updated Transport Assessment (November 2001)
TVT/ 9	Plan 1 Extent of Planning Application Site (CL/5352/01a) (June 2000)
TVT/10	Plan 1 Extent of Planning Application Site (CL5352/01b) (August 2001)
TVT/11	Plan 2 Location of Application Site (CL/5352/02) (March 2000)
TVT/12	Plan 7 Development Parcels within the Application Site (CL/5352-012 Revision A) (August 2001)
TVT/13	Plan 8 Concept Masterplan (CL/5352) (May 2000)
TVT/14	Plan 8 Revised Concept Masterplan (CL/5352-010 Revision B) (August 2001)
TVT/15	Plan 8 Revised Concept Masterplan (CL/5352-023 Revision C) (October 2002)
TVT/16	Plan 8 Revised Concept Masterplan (CL/5352-023 Revision E) (October 2002)
TVT/17	Plan 10 Illustrative Layout (CL/5352/031)
TVT/18	Voluntary Regulation 19 Updated Environmental Statement - Ecology
TVT/19	Reptile Survey Results (May-June 2011)
TVT/20	Bird Survey Results (April-June 2011)
TVT/21	Bird Survey Plan (April-June 2011)

The following documents were provided by TVT/NLP during the Public Inquiry

TVT/15	Applicant's (Brief) opening submissions
TVT/22	Public Inquiry: Planning Application for development to South of Wallisdown Road – CroW Act 2000
TVT/23	Briefing Note – Visual impact of Cat-Proof Fence
TVT/24	Section 106 agreement: summary of enforceability
TVT/25	Ecology Solutions Ltd, Open Space Provision (outside the proposed development) and Suitable Alternative Natural Greenspace (SANG)
TVT/26	Ecology Solutions Ltd, Experience of Natural England's stance to reducing potential impacts on European sites to a <i>de minimis</i> level
TVT/12	Supplementary Proof of Evidence of Graham Eves.BSC CEng MICE MCIHT

TVT/13	Appendices to Supplementary Proof of Evidence of Graham Eves.BSC CEng MICE MCIHT
TVT/27	Note to Inquiry: The Implications of the Draft National Planning Policy Framework (NPPF)
TVT/28	Amendments to Section 106 Agreement Notes on version R (6)
TVT/29	Further information on CRoW Act Following TVT 22
TVT/30	Figure 1 Site Location Plan September 2011
TVT/31	Statutory Declaration
TVT/32	Notes to amendments to section 106 agreement
TVT/33	Response to S Chappell, TBWRA and Poole Agenda 21
	Comments on S106 agreement and conditions
TVT/34	Delays at University Roundabout
TVT/35	Applicants Closing Submissions
TVT/36	7 th October 2011 List of Application Plans

Cllr Stephen Chappell M.A. (Oxon)

No reference numbers	Proof of Evidence/Representation of Cllr S Chappell MA (Oxon)
	Proof of Evidence of Mr H Janda
	Proof of Evidence of Dr H.I.Rein MA, MB, Ch.B.
Appendix to P.o.E. SC/1	Received during Public Inquiry.
	Rebuttal of Evidence submitted on behalf of the Applicant Cllr S Chappell on behalf of Residents in Talbot and Branksome Woods Ward, Bournemouth, affected by the proposed development
<u>The following documents were provided during the Public Inquiry</u>	
No reference number	note on responsibilities and enforceability (NLP.FID139095), email dated 27 th July 2011
No reference number	Letter to the Inspector (not dated)
SJCC 1	The Draft Section 106 Agreement Observations of Cllr S Chappell
SJCC2	Closing Submissions of Councillor S Chappell
	On behalf of Talbot & Branksome Woods Ward Bournemouth

The Talbot Village Residents' Association

TVRA/1 page 1	Proof of Evidence Executive Summary
TVRA/1 pages 2 - 8	Proof of Evidence General Points
TVRA/1 pages 9 – 11	Proof of Evidence Appendix a – c
TVRA 2	Talbot Village – Houses in Multiple Occupation
<u>The following documents were provided during the Public Inquiry</u>	
TVRA 3	S106 between The Council of the Borough of Poole and Bournemouth Polytechnic
TVRA 4	Opening statement given at the evening session 20 th July 2011
TVRA 4	Planning Conditions and S106 Agreement

Talbot & Branksome Woods Residents' Association

T & BWRA pages 1 – 6	Summary of Proof of Evidence
T & BWRA pages 7 – 21	Proof of Evidence

T & BWRA pages 22 – 50 Appendices to Proof of Evidence
 T & BWRA pages 1 - 16 Rebuttal submission Talbot & Branksome Woods Residents Association
The following documents were provided during the Public Inquiry
 T & BWRA Oral submission given at the evening session 20th July 2011
 T & BWRA Comments on the 20th July Draft S106 agreement

Residents' Petition

VT/PET pages 1 - 3 Proof of Evidence of Veronica Trevett
 VT/PET Appendices to Proof of Evidence
The following documents were provided during the Public Inquiry
 VT/PET TVT/7 Appendix 1 Plan of Trustee's current land holding
 VT/PET/2 pages 1 to 7. Statement on 20th July 2011
 VT/PET/2 appendix M
 VT/PET/2 appendix N
 VT/PET/2 appendix O
 VT/PET/2 appendix P (BPC/7)
 VT/PET/2 appendix Q
 VT/PET/3 PoE Addendum at 28th July 2011
 VT/PET/3 appendix R (26th July 2011)
 VT/PET/3 appendix S
 VT/PET/3 appendix T
 VT/PET/3 appendix U
 VT/PET/3 appendix V

Friends of Talbot Heath

FOTH pages 1 – 5 Proof of Evidence of Cllr S J Rollo-Smith
 FOTH Appendices to Proof of Evidence
 FOTHR pages 1 – 4 Statement of Objection Rebuttal S J Rollo-Smith
The following documents were provided during the Public Inquiry
 Letter from Cllr S Rollo-Smith dated 13th July 2011
 No reference number Summary of the Bourne Valley Management Plan 2001

Poole Agenda 21

No reference number Submission by Poole Agenda 21 received 28th June 2011 logged as WR/5
The following document was provided by Poole Agenda 21 during the Public Inquiry
 No reference number further submission by Poole Agenda 21
 No reference number Reference to S 106 Conditions (appendix to original submission logged as WR/5)

Conor Burns MP

The following document was provided by Mr Burns MP during the Public Inquiry
 No reference number Letter from Mr Burns to the Inspector and attached copy of letter from Mr Burns to the Rt Hon E Pickles MP

CORE DOCUMENTS

- CD 01 The EC Birds Directive 2009
- CD 02 The EC Habitats Directive 1992
- CD 03 Citations and maps of the SPA, SC, Ramsar site and SSSI
- CD 04 Appendix to Dorset Heathlands Interim Planning Framework, Background Paper 23rd October 2006
- CD 05 Heathlands DPD Issues and Options Consultation 2007
- CD 06 Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC. Published by the EC in 2000 with the 2007 update
- CD 07 Judgement of the ECJ the Waddenzee case C – 127/02 7th September 2004
- CD 08 Birdlife International 2008 IUCN Red List Criteria
- CD 09 Birdlife International 2008 IUCN Red List of Threatened Species, Species factsheet *Sylvia undata* downloaded 30th May 2011 from <http://www.birdlife.org/datazone/speciesfactsheet.php?id=8090>
- CD 10 JNCC 2005 Natura 2000 Standard data form for Special Protection Areas (SPA) Dorset Heathlands downloaded 30th May 2011 from <http://jncc.defra.gov.uk/pdf/SPA/UKK9010101.pdf>
- CD 11 Bournemouth District Wide Local Plan (DWLP) 2002
- CD 12 Borough of Poole Planning Committee List of Planning Applications dated 9th June 2010
- CD 13 Planning Application Land South of Wallisdown Road, Talbot Village, (App ref 00/08824/084/P) Record of Appropriate Assessment dated 20th May 2010 prepared by Baker Consultants and undertaken by the Borough of Poole Council
- CD 14 Borough of Poole Minutes of Planning Committee dated 9th June 2010
- CD 15 Core Strategy for the Borough of Poole Habitats Regulations Assessment by Footprint Ecology 10 January 2008
- CD 16 Poole Local Plan First Alteration Inspectors Report 2002
- CD 17 Report to Poole Borough Council by David Fenton (Inspector appointed by the Secretary of State) on the Examination into the Borough of Poole Core Strategy dated 28 January 2009
- CD 18 Poole Local Development Framework. Poole Core Strategy (February 2009). Sustainability Appraisal/Strategic Environmental Assessment. Post Adoption Statement into the Core Strategy
- CD 19 Poole Core Strategy. Sustainability Appraisal of submission document. May 2008
- CD 20 Poole Local Plan First Alteration (Adopted March 2004)
- CD 21 The Dorset Heathlands Interim Planning Framework 2006-2009. Dated 1 January 2007 amended 19 December 2007. Adopted by Borough of Poole, Bournemouth Borough Council, Christchurch Borough Council, Dorset County Council, East Dorset District Council and Purbeck District Council
- CD 22 The Dorset Heathlands Interim Planning Framework 2010-2011. Dated April 2010 2007. Adopted by Borough of Poole, Bournemouth Borough Council, Christchurch Borough Council, Dorset County Council, East Dorset District Council and Purbeck District Council
- CD 23 Annotated extract of Key Diagram, from the S.E. Dorset Structure Plan 1980

-
- CD 24 Extract from The East-West Corridor Transportation Study in S.E. Dorset Preliminary Investigations into Light Rapid Transit Options, Halcrow Fox May 1990. Pp2.1-2.4 and fig 1, pp9.1-9.2
 - CD 25 East –West Corridor Transportation Study in S.E. Dorset Executive Summary, Halcrow Fox March 1991.
 - CD 26 Extract from the Poole Local Plan, Poole Borough Council Local Plan Inspector's Report on Objections, Chapter 7, pp101-143. Oct 95-Feb 96.
 - CD 27 Extract from County of Dorset Structure Plan, Examination in Public, 22 October- 7 November 1996, Report of the Panel, Transportation Matter 5b(i), pp 76-79. Note following Local Government Reorganisation in April 1997, the name of the plan was changed to the Bournemouth, Dorset and Poole Structure Plan
 - CD 28 Bournemouth, Poole LTP3, 2011-2026; Strategy Document
 - CD 29 Bournemouth, Dorset & Poole LTP3, 2011-2026-2014; Implementation Plan **Replaced** by Bournemouth, Poole and Dorset LTP 3 April 2011, Implementation Plan 2011 - 2014
 - CD 30 PPG 13 Transport
 - CD 31 PPS 9
 - CD 32 The Conservation of Habitats and Species Regulations 2010 (SI 2010 No 490)
 - CD 33 ODPM Circular 06/2005
 - CD 34 Defra Circular 01/2005 Government Circular: Biodiversity and Geological Conservation
 - CD 35 Statutory Obligations and their impact within the Planning System ODPM Circular 06/2005 16th August 2005
 - CD 36 2008 Supplemental Ecology Report by Mark Loxton
 - CD 37 The Habitats Directive 92/43/EEC
 - CD 38 Liley, D. Sharp, J & Clarke, R.T. (2008) Access patterns in South-east Dorset. Dorset Household Survey and Predictions of Visitor Use of Potential Greenspace Sites. Dorset Heathlands Development Plan Document. Footprint Ecology.
 - CD 39 Countryside and Rights of Way (CROW) Act 2000
 - CD 40 Planning Application Form (22nd May 2000)
 - CD 41 Environmental Statement (Part 1: Non Technical Summary) (18th May 2000)
 - CD 42 Environmental Statement (Part 2: Technical Studies) (18th May 2000)
 - CD 43 Environmental Statement – Ecology (August 2001)
 - ~~CD 44 Environmental Statement – Visual/Landscape Impacts (30th August 2001)~~
Withdrawn by TVT

 - CD 45 Environmental Statement – Ecology Supplementary Information (November 2001)
 - CD 46 Updated Planning Statement (11th May 2005)
 - CD 47 Environmental Statement Non-Technical Summary update (11th May 2005)
 - CD 48 Environmental Statement Part 2 (11th May 2005)
 - CD 49 Environmental Statement – Ecology (May 2005)
 - CD 50 Consultation Statement (30th November 2005)
 - CD 51 Appropriate Assessment (February 2009)
 - CD 52 Addendum to Environmental Statement (May 2000, updated May 2005)- relating to proposed ecology mitigation works (29th October 2009)
 - CD 53 Addendum to Environmental Statement – Non Technical Summary (May 2000, updated May 2005) (5th November 2009)
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- CD 54 Transport Assessment (February 2010)
 - CD 55 Framework Travel Plan (February 2010)
 - CD 56 Flood Risk Assessment (updated March 2010)
 - CD 57 Supplementary Report (dealing with transport) (April 2010)
 - CD 58 Talbot Heath Management Statement (April 2010) Report prepared by the Adams Loxton Partnership Ltd.
 - CD 59 Plans Amended Application Boundary (CL5352/01 Rev C)
 Concept Masterplan (CL/5352/023 Rev F)
 Illustrative Masterplan (CL/5352/046)
 Land Use and Density Diagram (CL/5352/014B)
 Potential Transport Corridor Plan (CL/5352/047)
 - CD 60 PPS 1 Delivering Sustainable Development
 - CD 61 PPS 3 Housing
 - CD 62 PPS 4 Sustainable Economic Growth
 - CD 63 PPG 17 Planning for Open Space , Sport and Recreation
 - CD 64 PPS 25 Development and Flood Risk
 - CD 65 Poole Core Strategy (Adopted in February in 2009)
 - CD 66 Regional Planning Guidance for the South West (RPG 10) (September 2001)
 - CD 67 Draft Regional Spatial Strategy for the South West (June 2006)
 - CD 68 Birds Directive (Council Directive 79/409/EEC)
 - CD 69 Wildlife and Countryside Act 1981 (as amended)
 - CD 70 Protection of Badgers Act 1992
 - CD 71 Assessment of plans and projects significantly affecting Natura 2000 sites (European Commission 2001)
 - CD 72 The Statement of Common Standards Monitoring (JNCC 1998)
 - CD 73 Common Standards Monitoring (JNCC 2004)
 - CD 74 Bournemouth, Dorset and Poole Structure Plan (July 2000) – saved policies
 - CD 75 The Borough of Poole SPG Planning Obligations: Recreational Contributions (2000)
 - CD 76 The Borough of Poole SPG A Design Code (2001)
 - CD 77 The Borough of Poole Affordable Housing SPD (October 2010)
 - CD 78 Dorset Biodiversity Strategy (Dorset Biodiversity Partnership 2003)
 - CD 79 Hart District Council v Secretary of State for Communities and Local Government, Luckmore Homes Ltd., Barrett Home (Southern Countries) Ltd., Natural England and Another. 4 April 2007
 - CD 80 Guidance on Transport Assessment (Department for Transport March 2007)
 - CD 81 South East Dorset Transportation Contributions Scheme (2009)
 - CD 82 Circular 05/2005 – Planning Obligations (ODPM)
 - CD 83 Community Infrastructure Regulations 2010 (as amended 2011)
 - CD 84 The Plan for Growth (HM Treasury and BIMarch 2011)
 - CD 85 Letter to Chief Planning Officers of 31st March 2011 and accompanying Ministerial Statement 'Planning for Growth' (Greg Clark 23rd March 2011)
 - CD 86 Footprint Ecology Analysis and presentation of IPF monitoring and projects to inform the Heathland DPD

General Documents

- Gen/1 Statement of Common Ground
- Gen/2 (NR/2) Statement of Case for Natural England and The RSPB
- Gen/3 Statement of Case for Bournemouth Borough Council
 - i) Main Statement of Case
 - ii) Transportation
 - iii) Planning Board 20th May 2010

	iv) Planning Board 22 nd March 2010
Gen/4	Statement of Case for The Borough of Poole Council
Gen/5	Statement of Case for Talbot Village Trust
Gen/6	Natural England letter to Tim Goodwin dated 23 rd May 2011. TVT Proof of Evidence, Ecology Solutions Annex 3 page 51
Gen/7	Natural England letter to Tim Goodwin dated 26 th May 2011. TVT Proof of Evidence, Ecology Solutions Annex 3 pages 55/56.
Gen/8	Natural England letter to Tim Goodwin dated 26 th May 2011. TVT Proof of Evidence, Ecology Solution Annex 3 pages 58/59
Gen/9	Natural England letter to Tim Goodwin dated 20 th June 2011
Gen/10	Outline of Matters Talbot Village Residents Association
Gen/11	Letters of Representation part 1 A & J Toms to G W Baylis Submitted on planning application, not the Public Inquiry
Gen/12	Letters of Representation part 2 G Falla to N A Farrell Submitted on planning application, not the Public Inquiry
Gen/13	Letters of Representation part 3 N A Farrell to Z Wilson Submitted on planning application, not the Public Inquiry
Gen/14	Letters of Representation part 4 Dr & Mrs Courts to Mr & Mrs Rendall Submitted on planning application, not the Public Inquiry
Gen/15	Letters of Representation part 5 Mr & Mrs Rennie to Mr R Munden Submitted on planning application, not the Public Inquiry
Gen/16	Letters of Representation part 6 Mr Read to Mr R Syms MP Submitted on planning application, not the Public Inquiry
Gen/17	Letters of Representation Neighbours/Anonymous by Address Anonymous/Unknown Submitted on planning application, not the Public Inquiry
Gen/18	Consultees Submitted on planning application, not the Public Inquiry
Gen/19	Application by Talbot Village Trust Supporting Documents Submitted on planning application, not the Public Inquiry
Gen/20	Bournemouth Borough Council Residents Associations Petitions Submitted on planning application, not the Public Inquiry
Gen/21	Draft Section 106 with Plans
Gen/22	Updated bespoke programme (PINs)
Gen/23	Revised draft section 106 with plans received 21/7/11
Gen/24	Revised draft section 106 with plans received 14/9/11
Gen/25	Revised draft section 106 received 5/10/11
Gen/26	Signed section 106 received Friday 21 st October 2011

Annex 4

Glossary of abbreviations and acronyms

AA	Appropriate Assessment
BBC	Bournemouth Borough Council
BPC	Borough of Poole Council
CIL	Community Infrastructure Levy
CROW	Countryside and Rights of Way (Act 2000)
CS	Core Strategy
DMRB	Design Manual for Roads and Bridges
DPD	Development Plan Document
EIA	Environmental Impact Assessment
ES	Environmental Statement
HIPFOG	Heathland Interim Planning Framework Officer Group
IPF	Interim Planning Framework
LP	Poole Local Plan First Alteration
LTP	Local Transport Plan
NATA	New Approach to Appraisal
NE	Natural England
NPPF	National Planning Policy Framework
NR	Natural England and the Royal Society for the Protection of Birds
P&CPA	Planning and Compulsory Purchase Act 2004
PBC	Poole Borough Council
PIM	Pre Inquiry Meeting
POS	Public Open Space
RFC	Reference Flow to Capacity
RSPB	Royal Society for the Protection of Birds
RSS	Regional Spatial Strategy
S106	Section 106 (of the Town and Country Planning Act 1990)
SAC	Special Area of Conservation
SANG	Suitable Alternative Natural Green Space
SHLAA	Strategic Housing Land Availability Assessment
SNCI	Site of Nature Conservation Interest
SoCG	Statement of Common Ground
SoS	Secretary of State
SP	Structure Plan
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
T&BWRA	Talbot and Branksome Wood Residents Association
TVRA	Talbot Village Residents' Association
TVT	Talbot Village Trust
WRQBC	Wallisdown Road Quality Bus Corridor
XX	Cross Examination

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.