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## Appeal Decision

Hearing held on 3 - 4 October 2017

Site visit made on 4 October 2017

**by H Baugh-Jones BA(Hons) DipLA MA CMLI**

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

**Decision date: 03 November 2017**

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### **Appeal Ref: APP/Y1138/W/17/3172380**

#### **Land off Silver Street, Willand, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gallagher Estates against the decision of Mid Devon District Council.
  - The application Ref 16/01811/MOUT, dated 18 November 2016, was refused by notice dated 17 March 2017.
  - The development proposed is outline planning application for residential development of up to 259 dwellings, with public open space, landscaping and associated infrastructure with all matters reserved except the vehicular access from Silver Street.
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#### **Decision**

1. The appeal is dismissed.

#### **Procedural Matters**

2. The application is in outline with only access to be considered at this stage. However, the application documents include a Concept Masterplan that identifies how the development might be laid out. It was agreed by the parties at the Hearing that this provides illustrative material only and I have treated it as such in my determination of the appeal.
3. A suite of planning obligations by way of Unilateral Undertakings (UUs) was submitted prior to the Hearing. However, also at the Hearing, the need for minor amendments was brought to my attention in respect of the proposed village entry signage. Following a round-table discussion, it was concluded by the parties and with which I am satisfied, that no such amendments in relation to this matter are necessary. However, amendments remained to be made to one of the UUs and I agreed with the parties a defined period of time after the close of the Hearing within which they were to address this matter and provide a final signed version of the relevant UU. I now have an executed set of planning obligations before me. Together, they make provision for affordable housing, on-site public open space, sustainable travel, education, healthcare, transport and highways.
4. It is common ground between the parties that the Council cannot currently demonstrate a 5 year supply of deliverable housing sites (the five-year housing land supply (HLS)) and that having regard to paragraph 49 of the National Planning Policy Framework (the Framework), the tilted balance contained within Framework Paragraph 14 therefore applies.

## Background and Main Issues

5. The Council refused the application on two substantive grounds, which having regard to the Council's HLS, I consider give rise to the following main issues:

Whether any harm arising from the proposal would significantly and demonstrably outweigh its benefits having regard to:

- (i) the development plan strategy for the location of housing, the Framework and the scale of the development in relation to Willand; and
- (ii) its effect on the efficient operation of the highway network in the vicinity of junction 28 of the M5, including having regard to any proposed mitigation measures.

## Reasons

### *Planning policy*

6. The development plan for the District comprises the Mid Devon Core Strategy (2007) (CS), the Allocations and Infrastructure Development Plan Document (2011) (AIP) and the Local Plan Part 3 Development Management Policies (2013) (DMP).
7. The policies that feature in the Council's reasons for refusal of the application and which are therefore relevant to the determination of this appeal are: CS COR 1 (sustainable communities); COR 9 (access); COR 12 (development focus) and DMP policy DM1 (sustainable development).
8. Policy COR 1 sets out a series of policy measures which aim to manage growth so that it meets sustainability objectives, brings positive benefits, supports diverse community needs and provides vibrant, healthy and inclusive places for people. It includes a requirement for accessible forms of development that reduce the need to travel by car and are integrated with public transport and other sustainable modes of travel, allow for ease of movement and provide safe environments. Policy COR 9 supports the broad objectives of policy COR 1 by seeking to co-ordinate development and transport planning to improve accessibility for the whole community, reduce car travel, encourage public transport use, cycling and walking.
9. CS policy COR 12 states that development will be concentrated at Tiverton, Cullompton and Crediton, with a limited role for Bampton. The policy goes on to say that other settlements will have only very limited development required to meet local needs and rural regeneration. It sets out development rates for these respective places. DMP policy DM1 reflects the presumption in favour of sustainable development set out in the Framework.
10. Although not included in the putative reasons for refusal, CS policies COR 17 and COR 18 are relevant and have been referred to by both parties. COR 17 designates a number of rural settlements as 'Villages' wherein development will be limited to minor proposals within their defined settlement limits and to allocations for: affordable housing meeting a local need; small scale employment and tourism; services and facilities serving the locality; and other very limited development which enhances community vitality or meets a local social or economic need. Policy COR 18 seeks to strictly control development in the countryside and sets out a number of criteria against which development

will be permitted in these areas. The broad objective of the policy is to enhance the character, appearance and biodiversity of the countryside by focussing growth in the market towns to reinforce their social and economic role and enhance self-sufficiency. Based on all that has been put to me, I am satisfied that these two policies are relevant to my considerations in this appeal and I have therefore taken them into account in reaching my decision.

11. The Council is in the process of preparing a Local Plan Review. The plan has been submitted to the Secretary of State and initial hearing sessions have been held on a limited range of policies. However, further hearing sessions have been adjourned pending the commissioning by the Council of an independent report to review the major modifications stage of the Sustainability Appraisal. Dates are yet to be published for the re-arranged Hearings as part of the Local Plan Examination process. The available evidence does not include any policies from the Local Plan Review although references were made to the housing allocation for Willand within it at the Hearing.

*Location of housing and scale of development*

12. The site comprises agricultural land located immediately to the south west of the built up area of Willand, which is recognised as a 'Village' in CS policy COR 17.
13. In my view, it is reasonable to conclude that there is a vast gulf between the scale of development proposed and what the development plan envisages for villages such as Willand as expressed in CS policy COR 17. I therefore consider the proposal to be in conflict with this policy.
14. The proposal would provide a substantial development of market housing and although there would also be an affordable housing element, this would be as a percentage of the total number of dwellings and there is no evidence before me that it would relate to an identified local need. Accordingly, the appeal scheme would not meet any of the criteria set out in policy COR 18 and therefore conflicts with it.
15. It is common ground between the parties that there would be some albeit minor harm to the local landscape<sup>1</sup>. The site would sit between the M5 and Silver Street and it is reasonably well-screened in most of the available views although there are areas along Silver Street and Meadow Park, where there are more open views. The proposed development would clearly change the character of this part of the countryside and the dwellings would have some presence in the available views although this could be mitigated by the use of planning condition. Overall, I agree with the parties that there would be only minor harm to the character and appearance of the countryside.
16. As part of its Local Plan review, the Council has allocated land for development on part of the appeal site, which demonstrates a clear recognition that in order to meet its aspirations for housing growth, not all development can take place within the existing built confines of settlements. Given the current stage of the Plan's preparation I do not consider that its policies can be given any more than limited weight in this appeal. However, the general approach of allocating a site to accommodate a modest number of dwellings in Willand accords with the broad principles of the CS and the Framework in seeking to ensure the

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<sup>1</sup> Statement of Common Ground paragraph 7.13

level of development is adequately supported by infrastructure and to support its health, social and cultural well-being.

17. The proposal would very substantially increase the size of Willand. Within the village, there are a number of dispersed services and facilities. However, taking into account the existing size of the settlement, they represent a somewhat basic and modest level of provision.
18. I have had regard to the findings of the Inspector in his decision<sup>2</sup> (HD3) relating to a scheme for 30 dwellings in Uffculme. The Inspector refers to the number of shops and services within that settlement and it seems clear to me that there are about the same number as in Willand. The Inspector considered the proposed 3% growth in Uffculme would be unlikely to undermine social cohesion in the village. However, the scale of development proposed in this appeal would represent a very significantly greater level of growth relating to a settlement with no greater level of services and facilities.
19. Although the appeal scheme proposes to contribute financially towards education and healthcare facilities in Willand, there would be no corresponding increase in the number of other services and facilities. I recognise that the existing businesses would not necessarily be harmed economically but the scale of the development would be at odds with the Council's strategy for locating the majority of new housing in and around the larger settlements in Mid Devon. For these reasons, the proposal conflicts with CS policies COR 1 and COR 12.

#### *Highway network*

20. Highways England (HE) does not object to the proposed development on transport grounds in relation to traffic impacts on the M5. However, Devon County Council (DCC) is responsible for the roads leading to M5 junction 28 and the Council's highway concerns relate to the capacity of the roads within and around Cullompton to accept the additional vehicular traffic it envisages will arise from the development.
21. It was put to me that the additional traffic generated would result in vehicles backing up along Millennium Way, which leads from the B3181 where it joins Station Road at a roundabout junction. The Council argues that this would have an adverse effect on the flow of traffic along Station Road, around junction 28 of the M5 and along High Street. At the Hearing, it was agreed by the main parties that the Council's concerns relate only to the AM peak traffic period and the eastbound flow of traffic towards junction 28.
22. The traffic modelling produced by DCC indicates that junction 28 is close to capacity when the traffic volumes predicted to arise from a number of allocated residential and commercial sites are included.
23. However, initially, an allocation at North West Cullompton envisaged 1100 dwellings and 40,000 sqm of commercial land but this latter element was reduced to 10,000 sqm before being increased again to 19,000 sqm although there remains some doubt over whether this will be fully achieved. In addition, allocations at Court Farm, Padbrook Park, Knowle Lane and Exeter Road amount to a total of about 565 dwellings. The modelling did not include the

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<sup>2</sup> APP/Y1138/W/17/3178479

12,000 sqm commercial allocation at Venn Farm set out in the emerging Local Plan (eLP).

24. Improvements to junction 28 are proposed as part of the emerging East of Cullompton allocation. The Council argues that until these improvements have been implemented, there is insufficient capacity at the junction to cope with the additional traffic that it considers the appeal scheme would generate. However, even when taking account of all the above commercial allocations, their combined area still falls well below the initial modelled effects based on 40,000 sqm. The Council has allocated part of the appeal site for 42 dwellings. Taking this from the proposed number of 259 dwellings, it gives a residual increase of 217 dwellings over and above that allocation.
25. The survey work<sup>3</sup> carried out by DCC revealed a significant queuing delay along Station Road with traffic queuing back from junction 28 to the High Street/Station Road junction. At the Hearing the Council accepted that the number of vehicles associated with committed development would be in the region of 48 per hour representing about a 5% increase. The proposed development is predicted to add a further 32 vehicles per hour.
26. It is clear from the connections between the roads that lead from the appeal site into Cullompton that the obvious and logical route for drivers would be initially to head south along Silver Street/B3181 before turning left into Millennium Way. The available evidence indicates that based on the number of vehicles generated, there would be about 1 additional vehicle adding to the back of any queue along Millennium Way every two minutes.
27. Accordingly, in order for any delays in journey times not to worsen, there would need to be a corresponding movement of vehicles from Millennium Way onto Station Road. This would rely upon two main factors in my view. Firstly, there would need to be sufficient opportunity for vehicles to turn left from Millennium Way into Station Road at its roundabout junction and secondly, the cycle time of the signalised junction at the southbound on and off-slip roads of junction 28 would need to be adequate to ensure traffic flowed without backing up.
28. I was able to make my site visit early in the morning and took the opportunity to travel to Cullompton to assess the volume and flow of traffic during the AM peak travel period. I observed that although traffic was queuing for much of the way along Station Road from the roundabout at the top of the northbound on and off-slip roads at junction 28, it was not backed up all the way to the junction with High Street and was moving steadily. There was also a steady flow of traffic between the roundabout and traffic light controlled junctions at the junction 28 slip roads and no clear signs of unacceptable delay.
29. This corroborates the evidence<sup>4</sup> of DCC's highways officer that because the traffic light junction operates under the MOVA system, the queue of traffic only extends as far back as the nearby roundabout once every ten cycles. At my site visit, this seemed to me to be adequate in ensuring a modestly paced but nonetheless steady flow of traffic along Station Road and Millennium Way towards junction 28.

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<sup>3</sup> Cullompton Queue Length Monitoring June 2016 (included as Appendix K of the appellant's Transport Statement of Case ref W15243\_Ap\_01\_C, which in turn forms Appendix 1 to the appellants main Statement of Case).

<sup>4</sup> Appendix 3 of DCC's Statement of Case (actually titled 'Proof of Evidence')



30. Moreover whilst there was a queue along a short section of Millennium Way, I observed vehicles merging steadily onto Station Road. I am not therefore convinced by the Council's arguments or those of interested parties that there is a residual issue in this particular respect. Given the modest number of vehicles associated with the proposed development that would join the back of any queue, I am not persuaded that there would be any material effect on the volume or flow of traffic approaching Station Road from Millennium Way or by extension, that there would be any knock-on effects elsewhere on the local highway network. Furthermore, I have nothing of substance before me to counter the appellant's evidence that vehicle delay times because of queuing are in the region of only 93 seconds. In my view, this is not a significant delay.
31. Notwithstanding all of this, because of the various locations of committed developments around Cullompton, the traffic associated with them would be unlikely to travel along Millennium Way. Having said that, it could add to the general volume of traffic along Station Road during peak travel periods. Nevertheless, the increase in the number of vehicles is predicted to be low at 5% and I am satisfied that this will have a negligible effect on overall traffic volume and flows.
32. Interested parties also raised the issue of traffic associated with the two local quarries and a landfill site. However, no information was submitted to show where these are and how they would impact upon traffic through Cullompton towards M5 junction 28 during the AM peak travel period. Furthermore, although the figure of 487 daily vehicle trips was suggested in relation to these sites, there is no empirical evidence as to how they affect the AM peak period. I accept that the PM peak period may also be affected but I have no compelling reason to step away from the Council's contention that the predicted effects of the proposed development would be during the morning. Neither do I have any substantive evidence to suggest a growing adverse cumulative traffic effect in Cullompton. Indeed, the evidence actually indicates a reduction in traffic in this area between 2012 and 2017 even though there has been some growth in development.
33. It was also put to me that there would be an unacceptable effect on the area around Waterloo Cross, which is located to the north of Willand and where there are distributor routes to M5 junction 27. However, there is no clear evidence before me that the proposed development would result in traffic issues in this area, particularly given the modest number of predicted vehicle trips. I therefore give this argument little weight.
34. However, and notwithstanding the appellant's stance in relation to the residual and cumulative impacts of the proposal, a suite of sustainable transport measures have been put forward in order to encourage a modal shift to sustainable forms of travel. These include financial contributions towards: advertising and publicity of the Carshare Devon Scheme within Willand; the improvement of bus services between Exeter and Willand; the promotion of rail usage through marketing events; and undertaking Personal Travel Planning for all dwellings within the proposed development and an additional 400 dwellings in Willand.
35. The parties agree that the proposed package of measures would deliver a modal shift but disagreement remains over the level of such a shift and

- whether it would be successful in achieving its objectives of reducing car journeys.
36. It is clearly impossible to accurately predict what the take up of such measures would be; particularly car sharing and bus travel. Nevertheless, in terms of car sharing, given that it was put to me that there is existing informal car sharing taking place in Willand, the further promotion of this travel option would appear to offer greater potential for car sharing through a formalised scheme. The appellant's evidence clearly sets out that the Devon Car Share Scheme is a successful one and I have no reason to doubt that this could not apply to Willand.
  37. There is a regular bus service between Willand and Exeter with stops very close to the appeal site. The Council's evidence suggests a high take up of this form of transport which to me indicates its popularity. It was put to me that the bus times do not tie in well with journey to work times. However, the bus operator proposes to increase frequency such that buses would arrive in Exeter between 0830 and 0930, which would be within a suitable time period for getting to work. This would initially be funded by the appellant. In my view, the bus operator's proposition that the service would be self-financing after the scheme period would be likely to prevent the previous situation where the service was reduced following the expiration of funding, particularly when taking account of the high level of current bus use.
  38. There are also opportunities to access the railway station at Tiverton Parkway via a cycle ride of about 3.6km, much of which is along a formalised cycle route. There is then a half-hourly train service to Exeter St Davids with onward rail travel into the city centre. There is also a car park at the station that would allow for short car journeys from the proposed development.
  39. In addition to the above measures, the appellant proposes to provide Personal Travel Planning. This has been shown to be successful in other areas, resulting in a 19% modal shift from single occupancy car travel to sustainable forms of transport. I have no substantive contrary evidence to indicate that this could not also be achieved in Willand, both for the proposed development's occupiers and within the settlement more widely.
  40. None of this means that a significant number of households would not still be likely to rely on the car for day-to-day shopping trips and to access other services and facilities in Cullompton. This is mainly because of the convenient and attractive option of it being only about a 10 minute car journey away. Having said that, there is no requirement in the development plan for car travel to be eliminated altogether.
  41. On the balance of probabilities, I consider that the package of sustainable transport measures put forward would achieve an acceptable modal shift in the travel patterns of those occupying the proposed development and elsewhere in Willand.
  42. The Council asserts that to allow the proposed development to go ahead would frustrate the delivery of other developments. At the Hearing, it was clarified that this would only be in relation to highway effects. However, for the reasons I have already set out, I am satisfied that there would be no severe residual and cumulative highway impacts resulting from the proposed development.

43. For the above reasons, I am satisfied that the proposal would not result in a material adverse effect on the volume and flow of traffic during the AM peak travel period within Cullompton or elsewhere on the local and strategic highway network. I am also persuaded that the measures put forward for encouraging the use of sustainable transport modes would be sufficiently effective in reducing car use. As such, the residual and cumulative impacts of the proposed development would not be severe. Thus the proposal would accord with the travel-related objectives of CS policies COR 1 and COR 9.

#### *Planning obligations*

44. The proposal makes provision for 35% affordable housing on the appeal site which would accord with the provisions of AIP policy AL/DE/3. I am satisfied that there is sufficient development plan policy justification for the obligation on affordable housing and that it would comply with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL).
45. The obligations also provide for a Travel Information Pack that would be provided to all residents in Willand promoting Car Share Devon and Tiverton Parkway station. A Travel Plan would also be agreed which would provide personal travel planning for up to 400 residents in addition to those occupying the proposed development. However, given that this would range more widely than the development itself, I do not consider that these aspects of the obligations are necessary to make the development acceptable in planning terms. Thus, they would not accord with the Framework tests or the CIL Regulations.
46. Insofar that the provisions in the DUS relating specifically to mitigating the effects of the proposed development on transport and highways, they are neutral factors that could not be weighed in favour of the development in the planning balance. As I am dismissing the appeal for other substantive reasons, with the exception of affordable housing, I do not consider these obligations further.

#### **Other Matter**

47. On the other side of Silver Street, the built form of the settlement extends considerably further south and in part comprises Willand Old Village. A substantial proportion of this part of Willand is designated as a Conservation Area (CA).
48. Most of the CA is concentrated away from the appeal site and there is a substantial area of other residential development in between as well as Silver Street itself. I am therefore satisfied that the proposal would not result in harm to the setting of the CA.

#### **Planning Balance**

49. The level of the Council's HLS shortfall was considered by the Inspector in the Uffculme appeal to be between 4 and 4.5 years based on the conclusions of previous Inspectors in appeals on other sites in the District. There is no evidence in this current appeal that there has been any material change in the Council's HLS position since then. It was agreed by the parties at the hearing that the HLS is in the region of 4 to 4.5 years and I have no reason to take a different view.



50. The Framework states that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. There are no restrictive policies in the Framework that indicate development should be restricted in this instance. At the heart of the Framework is the presumption in favour of sustainable development, which has three mutually dependent dimensions - economic, environmental and social.
51. CS policies COR 17 and COR 18 are contributing to a restriction on bringing forward development in the District in line with the Framework requirement to boost significantly the supply of housing. Accordingly, the appeal scheme's conflict with these policies is limited.
52. The Framework seeks to boost significantly the supply of housing. In this respect the contribution of 259 dwellings to housing supply in a District where there is currently a shortfall carries significant weight. The Framework also says that local planning authorities should consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs. The appeal scheme would result in 35% of the total number of proposed dwellings being affordable, which on the face of it would represent a significant benefit.
53. However, the emerging Local Plan Review envisages 42 dwellings including 30% affordable housing for Willand. This is very substantially lower than both market and affordable housing growth proposed in this appeal. Even if I were to accept that the need for housing could be greater than planned for in the CS in order to reflect the Full Objectively Assessed Need for Mid Devon, I am not persuaded that a development on the scale proposed would be likely to reflect a requirement to meet identified local needs for either market or affordable housing. Furthermore, I have not been made aware of a pressing need for affordable housing in Willand such that the scale of housing proposed should override the provisions in the development plan.
54. Moreover, all of this must be considered in the wider context of creating a mixed and balanced community as promoted by the Framework. I am not persuaded that the proposal would make satisfactory provision for the shops and services that would be necessary to meet the growing needs of a village resulting from such rapid and substantial expansion. The influx of new households on the scale proposed would place additional pressure on the overall limited range of services and facilities in the village and whilst I accept that it is not necessary for the proposed development to be self-contained, I consider it would unbalance the settlement and undermine social cohesion. I give significant weight to the appeal scheme's conflict with the development plan and the Framework in this regard. This in turn limits the weight that I give to the appeal scheme's contribution to market and affordable housing.
55. Given that the Framework seeks to promote the vitality of our main urban areas, it seems to me that this chimes with the Council's development focus as expressed in CS policy COR 12. Insofar that CS Policies COR 1, COR 9, and DMP policy DM1 also seek to promote sustainable forms of development, I consider them to be in general conformity with the broad sustainable

development objectives of the Framework. I therefore give significant weight to the appeal scheme's conflict with these development plan policies.

56. The Framework says that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. There is good availability of sustainable transport options in Willand, which would be further enhanced as part of the appeal scheme. In this regard, I do not find any material conflict with the Framework or the development plan.
57. There would be other benefits from the economic uplift likely to result from the construction process and as I have already said there would be no harm in terms of the retention of existing local businesses.
58. There would be minor harm to the character and appearance of the countryside. However, I do not consider that this would be of sufficient consequence to weigh materially against the appeal scheme. This general absence of harm is therefore a neutral factor in the overall planning balance.
59. In terms of the transport impacts of the proposal, Paragraph 32 of the Framework says that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. For the reasons set out in my consideration of the second main issue, I do not find that to be the case here and thus this is also a neutral factor in the overall planning balance.
60. To conclude on the planning balance, I have not found harm in respect of the appeal scheme's effects on the highway network or, on balance, to the countryside. I have found that there would be some economic benefits of the appeal scheme. The proposal would also result in a substantial increase in the availability of housing in Mid Devon. However, I attach significant weight to its conflict with the development plan policies relevant to the scale and distribution of housing in Mid Devon and which I consider broadly reflect the sustainable development principles in national planning policy. In my view, the totality of these adverse impacts significantly and demonstrably outweighs the benefits of the appeal scheme.

## **Conclusion**

61. I have taken into account the Council's HLS shortfall and have attached appropriate weight to the appeal scheme's benefits. I have found that, in some respects, the proposal is supported by certain Framework and development plan policies. However, in undertaking the tilted balance, the benefits of the appeal scheme do not override all other considerations. Accordingly, when the Framework is read as a whole, the proposal would not be sustainable development. As such, the Framework does not indicate a decision other than in accordance with the Development Plan.
62. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

*Hayden Baugh-Jones*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Satnam Choongh No 5 Chambers

Andrew Ross Turley  
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Matthew Grist Jubb

### FOR THE LOCAL PLANNING AUTHORITY:

Alison Fish Mid Devon District Council  
BA(Hons) DipTP MRTPI

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### INTERESTED PERSONS:

Councillor Bob Evans Member, Mid Devon District Council

Councillor Barry Warren Willand Parish Council

James McKechnie Hydrock, on behalf of Messrs Dorse

## **DOCUMENTS SUBMITTED AT THE HEARING**

- HD1 Technical Note 07 prepared by Jubb dated September 2017  
HD2 Two copies of Unilateral Undertaking dated 2 October 2017  
HD3 Appeal Decision APP/Y1138/W/17/3178479  
HD4 A3 version of Proposed Site Access General View Drawing SK\_001 Rev A  
HD5 A3 version of Proposed Site Access Drawing SK\_001\_01 Rev A

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

- PHD1 Unilateral Undertaking dated 11 October 2017