



Appeal Decision

Inquiry held on 24 - 26 April and 30 April – 2 May 2019

Site visits made on 23 and 30 April and 5 May 2019

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

an Inspector appointed by the Secretary of State

Decision date: 04 June 2019

Appeal Ref: APP/H1033/W/18/3207659

Land at Leek Road, Buxton SK17 6UH

- 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 Persimmon Homes (North West) Ltd. against the decision of High Peak Borough Council.
 - The application Ref HPK/2017/0110, dated 1 March 2017, was refused by notice dated 22 January 2018.
 - The development proposed is outline planning application for up to 120 dwellings including the realignment of part of Macclesfield Main Road and its junction with Leek Road (all matters reserved except access).
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Decision

1. The appeal is dismissed.

Procedural Matters

Amended proposals

2. The application is in outline. Notwithstanding the description in the above heading, the application has been amended such that all matters are now reserved for future consideration. These are access, appearance, landscaping, layout and scale. I have dealt with the appeal on that basis.
3. In addition, between the determination of the application and the Inquiry, the appellant sought to amend the scheme from up to 120 dwellings to up to 100 dwellings. I sought the views of the parties on this matter before ruling that I accepted the amended description and revised illustrative masterplan.
4. The outline nature of the application with all matters reserved means that a proposal for up to 100 dwellings as now proposed could have come forward as part of reserved matters in any case as this amount of development would be within the limits of any approval for up to 120 dwellings. Therefore, in terms of the principle of development on the site, the reduction from up to 120 dwellings to up to 100 is not so material in that context to breach the Wheatcroft Principles.
5. Furthermore, on the basis of the information submitted, I am satisfied that an appropriate level of consultation has taken place in the context of the proposed changes and given that this is an outline application.

6. In reaching a view, I gave particular consideration to the evidence of the Rule 6 Party in terms of its objections to the proposed development. It seemed to me that the matters raised within the Rule 6 Party's case would not be fundamentally altered by a reduction in the quantum of development now proposed. The Rule 6 Party agreed with this. Accordingly, I have determined the appeal on the basis of an application for up to 100 dwellings with all matters reserved for later consideration.

Planning Obligations

7. A completed agreement has been provided under Section 106 of the Town and Country Planning Act 1990. The obligations therein relate to the provision of affordable housing, on-site open space, play space and grazing land along with financial contributions to allotments, outdoor sports facilities, parks and gardens, education, highways and a Travel Plan.

Main Issues

8. From all that I have read, heard and seen, the main issues are:
- the effects of the proposal on the character and appearance of the area
 - whether occupants of the proposed development would have satisfactory access to shops and services
 - whether there are any other material considerations to indicate that the proposals should be determined other than in accordance with the development plan

Reasons

Background

9. The site lies outside the Built-up Area Boundary of Buxton as defined on the Policies Map within the development plan, which in this case, is the High Peak Local Plan (2016) (LP). The site therefore lies within the countryside. It is also next to the boundary of the Peak District National Park (NP) to the west and Buxton Country Park (BCP) which lies to the south-east.
10. The northern site edge is next to a recent housing development in Carr Road. There is a Public Right of Way (PRoW) along this boundary and another that crosses the site diagonally. The site lies next to the junction of Macclesfield Main Road (A54) and Leek Road (A53). These roads border the southern and eastern edges of the site.
11. Neither LP policies S2 or S3 were cited in the reasons for refusal of the planning application. However, given their airing at the Inquiry, it is necessary to address them, particularly because of their references to other LP policies that are within the reasons for refusal.
12. As one of the Market Towns in the Borough, Buxton is a main focus for housing, employment and service growth as set out in policy S2. However, the policy is caveated such that growth in these places is to be consistent with maintaining and where possible enhancing their role, distinctive character, vitality and appearance. Consequently, the appeal scheme must also be tested against other LP policies, logically including those that seek to protect the local environment.

13. Policy S2 refers to Other Rural Areas. It says that in all other areas outside the settlement boundary of settlements, including those villages, hamlets and isolated groups of buildings in the Green Belt and the countryside, which do not have a settlement boundary, development will be strictly controlled in accordance with policies EQ3 (Rural Development) and H5 (Rural Exception Sites).
14. Policy S3 sets out that provision will be made for at least 7,000 dwellings over the plan period (2011-2031) at an overall average annual development rate of 350 dwellings. It goes on to say that sufficient land will be identified to accommodate up to 3,549 additional dwellings on new site (sic). The Buxton Sub-Area is to receive 32-43% of the Borough total equating to 1,136-1,526 dwellings. The policy makes it clear that this will be met from large sites allocated in policy H2 and from small sites which accord with policy H1. Allocations account for 736-1,126 dwellings with the remainder (a total of 400 dwellings) to be met on small sites at Buxton and the villages within the Sub-Area.

Character and appearance

15. The site comprises agricultural fields delineated by dry-stone walls. Its localised topography varies and there is a notable ditch-like feature known as the Rushy Gutter running approximately centrally through the site. Overall, the site forms a 'bowl' shape and the land rises sharply up to Leek Road and Macclesfield Main Road and then beyond into the NP. A protected Sycamore tree stands out as a prominent feature within the north-eastern part of the site.
16. I accept that the site is part of a landscape that has been historically manipulated by human activity. However, that could be said of almost any landscape in the British Isles and the site's character and the features it contains make it visually attractive and it appears as an intrinsic part of the rural scene.
17. From the elevated roads, the site is open and its relationship to the settlement and surrounding countryside can be readily appreciated. This is also the case in views from a number of PROWs and other publicly accessible land within the NP from where I was able to view the site.
18. The settlement edge is now formed by the recent Carr Road development, the obtrusiveness of which only amplifies the contrast between the built-up area and the immediately surrounding countryside. For this reason and those already given, the site has a much greater affinity with the rural environment than to the built-up area. I consider that the site forms an important and attractive part of the rural scene at the settlement edge and reflects the character of the wider landscape.
19. Although the application is in outline, the Section 106 Agreement makes provision for a substantial area of the site to remain open for grazing purposes. This means, subject to relevant considerations on the Agreement itself, that the proposed built development would logically occupy the rest of the site. Moreover, it is intended that the proposed development would adjoin the settlement edge, which sets a further constraint to its overall layout.
20. This all leads to a further logical conclusion of where the main route into the site would generally need to be. Given the sharp change in levels of the lower

parts of the site in relation to the abutting main roads, it can be said with some certainty that the illustrative masterplan is a fair representation of how the development would broadly be laid out. My views here are reinforced by the correspondence from the appellant prior to the Inquiry¹, which indicates that the revised illustrative masterplan was prepared following a more detailed consideration of the existing topography, levels and layout.

21. It is clear from the evidence that the proposal would result in the loss of some of the dry-stone walls within the site. These are an intrinsic feature of the Peak District along with field hedgerows and are a traditional upland method for containing livestock. They are a positive landscape feature within the site and one of its key components in linking it in both visual and character terms to the wider surrounding landscape.
22. I acknowledge that a new stone wall would be built around the edge of the proposed housing and that this would accord with the advice for the Settled Valley Pastures landscape character type in the Council's Landscape Character Supplementary Planning Document (SPD) (2006)². However, it would not be a feature associated with the keeping of animals and would appear more as part of the housing development rather than an agricultural landscape component. Its value in contributing to the area's character and appearance would therefore be limited.
23. It was put to me by the appellant that the curve of the proposed built development's edge away from the main roads would assist in creating a strong sense of arrival to Buxton or in the other direction, create the effect of built development gradually giving way to open countryside.
24. However, that does not seem to take fully into account the effect of the engineering that would be required to construct the realigned section of Macclesfield Main Road and its height relative to the dwellings. At the Inquiry, the Council provided a forensic appraisal of the levels across the site in relation to this. It is evident from the site's topography and the dramatic change in levels up to the bounding roads, that to construct the new realigned road, there would need to be a significant amount of cut-and-fill.
25. Moreover, the realignment would be located well into the site and its retaining banking would extend even further beyond it. These new, heavily engineered features would have a dramatic and adverse effect on the character of the site and its visual appreciation as part of the wider rural landscape. Furthermore, because of the topography, the road would be elevated such that drivers would look down onto the dwellings or at best be broadly level with their upper storeys. The appellant suggested that this type of arrangement was evident elsewhere in Buxton³.
26. Having taken the opportunity to drive around the town, I observed that whilst there is some localised evidence of this, the context is very different to that which would result from the appeal scheme. In particular, views from elevated roads rarely extend further than the buildings that run alongside them and are nowhere near as extensive as they would be with the appeal scheme, which would be across an entire housing estate. In addition, the character of these

¹ Letter via email to PINS dated 26 March 2019

² Core Document 7.6

³ Evidence of Mr Robinson

existing roads is low-key in comparison to a main A road. I do not consider any meaningful comparisons can therefore be drawn to support the appellant's argument in this respect.

27. In order to address the levels change, the route into the site off the new section of road would out of necessity, be of a serpentine looping form. This would appear contrived and suggests that the proposed development as a whole would not sit comfortably within the landscape. It would impose itself on the site's topography and other features rather than working with them, thereby resulting in a development at odds with its surroundings.
28. In addition to all of this, there would be a remnant section of road once the new road had been constructed. It is unclear what would happen to it other than that it would be stopped up at both ends. It would appear as an incongruous oddity, un-reflective of the area's character and appearance.
29. Whilst I am of course mindful that the application is in outline, it is difficult to see how the above issues could be overcome at detailed design stage. Consequently, I am not satisfied that an acceptable scheme could come forward on the site without resulting in very serious harm to the area's character and appearance.
30. Mitigation could come forward in the way of new planting. However, the sense of a large development would remain and would be clearly seen from close quarters and from the publicly accessible higher land. It seems somewhat implausible to screen the whole development by planting and indeed the appellant has set out that no such approach is intended. This would in any case, be at odds with the open character of the site.
31. Landscaping is yet to be implemented in association with the Carr Road development. I have no firm evidence to indicate that it will not take place, thus having a positive effect in mitigating the current appearance of that development even though it may not completely screen it. I do not consider that further development extending into an attractive area of countryside is necessary to create an improved settlement edge.
32. At my site visit on 5 May (a Sunday), I observed that the PRow network in this part of Buxton is well-used. I stopped at the viewpoints set out in the Council's and appellant's respective landscape and visual assessments. I saw very clearly, even at some distance from the site, that views would change dramatically with what would be a new estate of housing pushing into the open countryside, in many cases in the foreground of the NP.
33. I accept that the site has development in some form along Leek Road and around its junction with Macclesfield Main Road. I also note the presence of a substantial agricultural building in views from the site looking up towards the Terret (a woodland feature on higher land within the NP). However, these developments do not in my view have sufficient visual or physical influence to meaningfully detract from the site's open character and its relationship to the surrounding countryside and which can be enjoyed from the PRow network.
34. The fine panoramic views currently experienced from the PRows would be significantly adversely affected. Whilst I accept that there is already housing close to the PRow along the northern site boundary, this does not alter my overall conclusions on this specific matter.

35. The first criterion of the third part of LP policy H1 requires development to adjoin the built-up area boundary. The site lies immediately next to the built-up area boundary and thus in my view at least part of the proposed built form would adjoin it. There is no clarification in the LP of what is meant by 'adjoin' and on a straightforward reading, I am satisfied that this policy requirement would be met by the proposal. I do not accept the Council's rather arbitrary construction of a 75m rule wherein only that extent of development can be adjudged to adjoin the boundary and anything beyond cannot.
36. The second criterion in this part of policy H1 is that development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside. A considerable amount of evidence was put to the Inquiry on what is meant by the words 'prominent intrusion' and how it should be used to assess the acceptability or otherwise of the proposal.
37. For the reasons already given, the introduction of built form onto this area of open land that reads as part of the attractive countryside would have a significant adverse effect on the local rural environment and also harm the settlement pattern. The proposal would result in a prominent intrusion into the countryside contrary to policy H1. I accept that policy H1 does not set a test of zero harm. However, the harm in this case crosses the threshold of acceptability.
38. In its consultation response on the previous iteration of the scheme (i.e. 120 dwellings) the NP Authority set out no objection to the principle of development albeit whilst voicing concerns about the landscaping and layout. The appellant put it to me that as a matter of law, 'great weight' must be given to that consultation response. However, whilst I have given it great weight, I am not bound by it and in fact I disagree with it. In forming my own conclusions, I consider that there would be an unacceptable effect on the setting of the NP.
39. The proposal would be detrimental to the character of the local landscape and fail to protect its intrinsic character and distinctiveness thereby being in conflict with the third criterion of policy EQ2 and with EQ3. On the basis that policy EQ3 is a permissive policy for new housing development in the open countryside which accords with policy H1, it follows that the proposal cannot accord with policy EQ3. It also runs counter to policy S7, which amongst other things, seeks to ensure development protects and/or enhances landscape character and the setting of the NP. Lastly, the proposal would conflict with Policy EQ6 which includes similar objectives.
40. Reference has been made to the Landscape Impact Assessment (LIA)⁴ and a subsequent update⁵ to it. These are part of the LP evidence base and aim to assess the potential landscape impacts of sites identified for development by the Council and to assess the remaining land on the edge of the settlement for development in landscape terms. The LIA is referred to in policy EQ2. However, given my findings of harm in relation to this and other policies, I do not need to delve further into the LIA.
41. I turn now to the matter of valued landscape. There was considerable evidence put to the Inquiry on the interpretation of paragraph 170a) of the National

⁴ Core Document 3.5; by Wardell Armstrong, January 2014

⁵ Core Document 3.6; Landscape Impact Assessment of Additional Sites Following Written Representations; by Wardell Armstrong, August 2014

Planning Policy Framework (the Framework). However, for the reasons that follow, I do not consider the site to be or form part of a valued landscape as couched in the Framework.

42. The site is unquestionably valued by local residents. It is attractive and makes an important contribution to the setting of Buxton. I also agree with the Examination in Public (EiP) Inspector that it marks a transition between the built environment and the NP. The Council provided me with a plan⁶ giving its assessment of the areas considered to constitute a valued landscape. Not surprisingly, this included the NP along with the site.
43. However, from my observations, the characteristics of the site are not dissimilar to those displayed by other areas around Buxton. In particular, the character of the area to the north of the site beyond Burbage is not readily distinguishable from it. Notably, this other area, which can clearly be seen from Bishop's Lane and the PRow network is not considered by the Council to be a valued landscape. The site's features do not set it apart from other landscapes around Buxton. None of this leads to a conclusion that development of the site is justified but it does not display characteristics that elevate it above the norm.

Access to shops and services

44. The site is located some distance away from the centre of Buxton beyond the generally acceptable 2km walking distance. Apart from a petrol filling station, there are no other shops near to the site.
45. Whilst the filling station would provide for some top-up shopping – for example milk and tea bags, it does not provide for anything like peoples' day-to-day grocery needs. Consequently, the occupiers of the proposed development would need to travel into the centre of Buxton to meet those needs and also to access other services and facilities.
46. There are bus services with stops next to the site. Bus service 16 offers limited provision but bus 58 runs more regularly throughout the day up to the early evening. I agree with the Friends of the Peak District⁷ that the development's occupiers would be unlikely to walk to and from the centre of Buxton for shopping given the length of the round trip. However, cycling would be an option for some trips and paragraph 103 of the Framework indicates decision making should take into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
47. Consequently, there are reasonable alternatives to the use of private motorised transport. Overall, in the context of Buxton, I am satisfied that the proposed development would occupy a satisfactorily sustainable location. The proposal would therefore accord with the Framework.

Planning Obligations

48. The appellant has submitted an executed Section 106 Agreement which includes obligations to come into effect in the event that planning permission is granted. I have considered the obligations in light of the Framework, Planning

⁶ ID22

⁷ Granted Rule 6 status

Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).

49. The obligation in respect of the on-site provision of 30% affordable housing is supported by LP policy H5. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. It therefore meets the statutory tests set out in the Framework.
50. On the basis of the evidence before me, I am satisfied that the other obligations meet the relevant tests. However, with the exception of the potential benefits of securing affordable housing, as I am dismissing the appeal for other substantive reasons, I do not need to consider them in greater detail.

Other material considerations

51. The appellant argues that the site, being on the edge of Buxton, does not fall within Other Rural Areas for the purposes of policy S2. It is argued that policy H1 supports sustainable new development subject to the criteria set out, and because the word 'other' contrasts with the preceding headings within policy S2 (Market Towns; Larger Villages; Smaller Villages) it would be redundant.
52. However, the supporting text to policy S2 clearly states that: "The Other Rural Areas comprises of the open countryside and Green Belt outside of the market towns, larger villages and smaller villages where development is generally inappropriate other than to meet essential local needs and for rural activities"⁸. Moreover, the LP Policies Map denotes the area as countryside. I am therefore in no doubt that the site is within the 'Other Rural Area'.
53. Policy H1 was modified during the EiP process to omit any reference to small sites. The policy does not therefore prescribe that development outside settlement boundaries has to be on a small site. Nevertheless, there are other requirements within policy H1 with which the proposal to be in conflict which renders the 'small sites' matter immaterial.
54. I agree with the appellant that policy S3 does not set out that the minimum housing requirement can only be met through small sites and allocations. However, given my findings in relation to other LP policies, this is also immaterial.
55. Moreover, policy H1 clearly states that if necessary, the Council will review the LP to bring forward additional sites for housing. Whilst compliance with the policy is plainly not contingent on showing a housing land supply (HLS) shortfall, I consider a review of the LP to be the appropriate way of addressing it going forward in the plan period. Whether or not development might need to take place outside settlement boundaries and/or the need to develop green field sites is therefore a matter for the local planning process.
56. Furthermore, the spatial strategy has been thoroughly tested through examination and the LP has been found sound. I acknowledge the appellant's point regarding the date of the EiP and that things may have moved on. However, in finding the plan sound, the Inspector was considering it over its lifespan and a LP review provides the appropriate contingency to address the need for allocating additional sites.

⁸ Paragraph 4.43 on page 35 of the LP

57. The consequence of all this is that there is no clear route to lead to a conclusion that the proposal would be in accordance with the development plan as a whole.
58. At the Inquiry, the matter of HLS was covered in both formal evidence and through a round table session which specifically focussed on sites and their deliverability. Whilst agreement was reached on the deliverability of a number of them, dispute remains over some and in particular, the available evidence of deliverability at the base date for the HLS calculation. There is also disagreement over whether the HLS should be calculated on the basis of the 'Liverpool' or 'Sedgefield' method and I deal with this first.
59. The EiP Inspector accepted the Liverpool approach. Since finding the plan sound, there has been only a modest increase in the shortfall and there are 13 remaining years of the plan period. I do not consider the situation to have changed so fundamentally in the last 3 years or that there is a more pressing need for housing to be delivered early to justify an alternative to the Liverpool method as the appropriate one for High Peak Borough. On that basis, the appellant's position is that the Council has a HLS of 2.78 years compared to the Council's assessment that the supply is 5.89 years. That is a considerable difference between those two positions.
60. The agreed base date for the HLS calculation is 1 April 2018. Including the agreed 5% buffer and having had regard to the shortfall of 959 units, the 5-year housing requirement (from 1 April 2018 - 31 March 2023) is 2,224 dwellings, thus equating to 445 dwellings per annum.
61. The Glossary definition of 'Deliverable' in Annexe 2 of the Framework 2018 goes further than its predecessor in providing specific guidance on qualifying sites. Sites that are not major development and those with detailed planning permission should be considered deliverable until permission expires unless there is clear evidence that homes will not be delivered within 5 years. Sites with outline permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years.
62. The PPG sets out what evidence of deliverability may include and provides some examples. These are not exhaustive or prescriptive and do not therefore support the appellant's interpretation that it is in some way possible to apply a 'strict' interpretation of the Framework and PPG.
63. Moreover, the PPG had not been produced at the time that the Council published its Statement of Five Year Housing Land Supply (August 2018) (SHLS)⁹ and clearly it would not have been possible to consider the deliverability of sites against guidance that did not exist. I therefore have some sympathy with the Council's view that additional evidence post-dating the PPG should not be discounted simply because it was not set out in the SHLS.
64. This view is supported by the Inspector's conclusions in the Longdene House appeal¹⁰. Whilst those conclusions do not exactly chime with the approach of the respective Inspectors in two other appeal decisions relating to sites at

⁹ Core Document 5.1

¹⁰ APP/R3650/W/16/3165974

Green Road, Woolpit¹¹ and Colchester Road, Bures Hamlet¹², they were formed in the context of the 2018 Framework definition of 'Deliverable'. Accordingly, I do not discount sites where reserved matters were subsequently submitted but which were shown to be deliverable at the base date.

65. Notwithstanding that, the Waterswallows and Dinting Road/Shaw Lane sites are non-allocated sites with outline permission. That means they fall within the category of windfall sites and cannot be counted in the supply as windfalls are already accounted for in the calculations. To include them would be double-counting. The Council agreed at the round-table session that a number of other sites should be taken out of the calculations¹³. Having taken all of this into account, I consider that 967 units should be deducted from the supply thereby resulting in a HLS (against the August 2018 figure) of just over 5 years.
66. The proposal would result in a number of benefits. The provision of market housing and a policy-compliant level of affordable housing each attract substantial weight. However, I am not convinced that it is necessary to prefer a large development over piecemeal schemes in order to avoid harm and a compelling case for this has not been made out.
67. The appellant considers that the road realignment provides a highway safety benefit of considerable weight. However, given that there have been just two serious and one slight accidents in a 5-year period around what is an extremely busy junction of two major roads does not lead me to a conclusion that there is a pressing matter to address. Indeed, if that were the case, it seems likely that measures would have been put in place by the highway authority. I have no evidence that there is a proposed scheme under consideration.
68. I consider that the aforementioned policy conflicts each attract very significant weight. Even if I am wrong about the Council's HLS and accept the significant shortfall on the scale suggested by the appellant, the adverse impacts of the development by way of the very serious harm to the character and appearance of the area and setting of the NP and the conflict with the development plan strategy for the location of housing in the countryside would significantly and demonstrably outweigh the benefits of the proposal. There is no reason to take a decision other than in accordance with the development plan

Conclusion

69. For the above reasons, the appeal does not succeed.

Hayden Baugh-Jones

Inspector

¹¹ APP/W3520/W/18/3194926

¹² APP/Z1510/W/18/3207509

¹³ These are detailed in ID26. However, the sites at Hawkshead Mill, Dinting Road and Buxton Road are erroneously counted twice as they appear in both Table 1 and Table 2

APPEARANCES

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Local resident

Christine Slack

Local resident

Lynda Windows	Local resident
Roger Floyd	Representing Green Holm Community Group
Ruth Potheary	Local resident
PJ Eccleston	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID01 Landscape Statement of Common Ground
- ID02 Appellant's opening statement
- ID03 Local planning authority's opening statement
- ID04 Rule 6 Party's opening statement
- ID05 Extract from Planning Practice Guidance
- ID06 Email from Mr McCorquodale
- ID07 List of sites (with reference to HLS)
- ID08 Map of sites (with reference to HLS)
- ID09 Extract of Department for Transport National Travel Survey 2017
- ID10 Statement from local resident
- ID11 HLS position – disputed sites update
- ID12 Amended HLS based on August 2018 figure
- ID13 Draft Section 106 Agreement
- ID14 Community Infrastructure Levy Compliance Statement
- ID15 Final Section 106 Agreement
- ID16 Appellant's updated visualisations
- ID17 Appellant's updated sections
- ID18 Appellant's additional visualisation
- ID19 Statement from local resident
- ID20 Statement from local resident
- ID21 Statement on behalf of Green Holm Community Group
- ID22 Local planning authority's valued landscapes plan
- ID23 HLS summary note
- ID24 3D simple model massing methodology
- ID25 Letter from appellant to National Park Authority
- ID26 Local planning authority's further amended HLS figure
- ID27 Representation from local resident not previously put on file by PINS
- ID28 Additional suggested condition
- ID29 Bundle of consultation responses on revised appeal scheme

DOCUMENTS SUBMITTED AFTER THE INQUIRY HAD CLOSED

Closing statements on behalf of the three main parties

Signed Section 106 Agreement