



Appeal Decisions

Inquiry held on 25-28 October 2022 and 1 November 2022

Site visit made on 2 November 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

APPEAL A

Appeal Ref: APP/H1840/W/22/3301732

Land east of Bredon Road and Tewkesbury Road, Mitton

- 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 BDW Trading Ltd, Mactaggart and Mickel, Stuart Pearman and the North Tewkesbury Land Consortium, against the decision of Wychavon District Council.
 - The application Ref. 20/00008/OUT, dated 23 December 2019, was refused by notice dated 6 May 2022.
 - The development proposed is a primary school with seven classrooms and ancillary facilities to serve the local community.
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APPEAL B

Appeal Ref: APP/H1840/W/22/3301742

Land east of Bredon Road and Tewkesbury Road, Mitton

- 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 Barratt Developments PLC, Mactaggart and Mickel, The North Tewkesbury Landowners Consortium, Stewart Pearman and The Croome Estate Trustees, against the decision of Wychavon District Council.
 - The application Ref 18/00771/OUT, dated 23 August 2018, was refused by notice dated 12 May 2022.
 - The development proposed is up to 500 dwellings (C3 Use Class) including means of access (two vehicular access points from the B4080 and a pedestrian/cycle access from Derwent Drive) and associated infrastructure and landscaping including provision of formal and informal open space and drainage attenuation basins.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. Appeal A was submitted in outline with all matters (access, appearance, landscaping, layout and scale) reserved for subsequent consideration. This is the basis on which I have considered the appeal.
4. Appeal B was submitted in outline with matters of appearance, landscaping, layout and scale reserved for subsequent consideration. Details of the means

of access to the site were submitted. This is the basis on which I have considered the appeal.

5. Two completed legal agreements capable of securing planning obligations pursuant to S106 of the Town and Country Planning Act 1990 were received after the Inquiry, in accordance with an agreed timetable.
6. In advance of the Inquiry, the Council confirmed that it would not defend its second and third reason for refusing planning permission, relating to ecology and impacts on the tranquillity of the Cotswolds AONB. As such, it did not submit evidence on these topics.
7. The Bredon and Bredon's Norton Parish Council were granted Rule 6 status in the appeal and participated as a main party to the Inquiry. This included evidence in support of the Council's third reason for refusal, notwithstanding that the Council chose not to defend this reason.
8. Whilst the Inquiry considered both appeals, all parties agree that the acceptability of Appeal A is dependent on the outcome of Appeal B, in that the residential development results in the need for a school. If Appeal B fails, there would be no justification for a school in this location. As such, whilst I have considered each proposal on its merits, I have dealt with them together in my decision to avoid duplication, unless otherwise stated.

Main Issues

9. The main issues are¹:
 - (a) Whether the site is a suitable location for the proposed development, having regard to planning policy;
 - (b) The effect on local highways, including whether the residual cumulative impacts on the road network would be severe;
 - (c) The effect on the character and appearance of the area, having particular regard to the Cotswolds AONB; and
 - (d) The effect on the tranquillity of the Cotswolds AONB, with particular regard to noise and light arising from additional traffic.

Reasons

Planning policy

10. The development plan, so far as it is relevant to the appeals, comprises the South Worcestershire Development Plan (2016) (SWDP), the Waste Core Strategy for Worcestershire (2012) (WCS) and the Bredon Parish Neighbourhood Plan (2017) (NP).
11. Policy SWDP 2 of the SWDP defines the development strategy and settlement hierarchy for the area, based on a range of defined principles. It generally seeks to focus development at the larger urban areas, with a lesser role for smaller settlements and strict control over development in the open countryside, where development will be supported only in limited and defined circumstances. The appeal sites are outside of any defined development boundary and therefore fall in open countryside. That said, they are directly

¹ Only issue (a) is relevant to Appeal A, having regard to the evidence in this case.

adjacent to Mitton, part of Tewkesbury, which is located in Gloucestershire, beyond the SWDP area.

12. Policy SWDP 2 (I) refers to the Duty to Cooperate² and confirms that due consideration will be given to the housing needs of other local planning authorities in circumstances where it has been clearly established through the local plan process that those needs must be met through provision in the SWDP area. A footnote to the policy makes specific reference to the Joint Core Strategy being prepared by Cheltenham Borough, Gloucester City and Tewkesbury Borough Councils, and Land at Mitton (Wychavon District).
13. The Joint Core Strategy (2017) (JCS) has since been adopted and whilst it does not form part of the development plan for Wychavon, it is an important material consideration. It has been established through the plan making process that Tewkesbury Borough cannot accommodate all the housing that is required. Policy SP2 (4) of the JCS is clear that one of the mechanisms to bring forward the necessary housing will be delivery at sites covered by any Memoranda of Agreement. In identifying the sources of housing supply that will contribute to the housing requirement for the JCS area, 500 units at Mitton (Wychavon District) are included. Although the JCS is not able to allocate this site, being outside the plan area, it is identified as being subject to joint working between Wychavon District Council and Tewkesbury Borough Council.
14. At the time of the JCS being adopted, Wychavon District Council and Tewkesbury Borough Council were in agreement that they would co-operate over the principle of development at Mitton contributing to the housing needs of Tewkesbury Borough. This was the basis on which the JCS was found sound and subsequently adopted. This agreement was set out in a Planning Statement signed by the two authorities but has since been updated, as recently as March 2022, in a Memorandum of Agreement (MoA). The MoA reaffirms the position and recognises that the JCS now confirms that 500 dwellings will be delivered at Mitton to part meet the housing requirement in Tewkesbury Borough. As such, the development is long anticipated and supported by both Policy SP2 (4) of the JCS and SWDP 2 (I) of the SWDP, the latter specifically allowing for consideration of the appeal proposal.
15. More recently, the Tewkesbury Borough Plan (2022) (TBP) has been adopted and continues to anticipate 500 dwellings at Mitton (Wychavon). Whilst it is agreed between the parties that Tewkesbury can currently demonstrate a deliverable five-year housing land supply, it continues to rely on the development at Mitton to meet the overall housing requirement in the area and cannot deliver the necessary number of homes without the scheme. The TBP trajectory indicates that insufficient supply would be available by 2029-30 even if all other sites deliver as anticipated, including Mitton. As such, this scheme is necessary to maintain a deliverable supply of houses for Tewkesbury and to contribute to the delivery of housing anticipated by the JCS, required within the plan period to 2031.
16. The Council furthers its support in the latest version of the emerging South Worcestershire Development Plan Review (SWDPR), which began a period of public consultation on 1 November 2022 and includes the appeal site as a draft allocation.

² Section 110, Localism Act (2011) relating to unmet housing need when plan making

17. Policy NP1 of the NP sets out the spatial plan for Bredon Parish, within which the appeal sites fall. It seeks to direct the majority of future housing to within the defined development boundary but is supportive of development proposals on sites allocated under the strategic policies of an adopted local plan, which for the purposes of policy NP1, is said to include the JCS. As set out above, the proposals are in accordance with the JCS and the SWDP and so they can also be considered to accord with Policy NP1 of the NP. Whilst the JCS has not and could not formally allocate the site for development, the site being outside of the JCS area, the appeal site has been specifically identified for the proposed form of development and the JCS, SWDP and NP have all made specific provision to facilitate it.
18. The appeal proposals directly result from a need identified during the plan making process for the JCS. The Council has cooperated with Tewkesbury Borough Council over many years to facilitate the housing, both Council's having taken proactive steps to include it in their respective plans. Bredon Parish Council have similarly anticipated the scheme and made specific provision for it in the NP. There can be no credible case that the principle of 500 dwellings at Mitton is in conflict with the development plan, taken as a whole. Policy adopted by Tewkesbury Borough Council is another important material consideration that lends further strong support to the scheme.
19. Whilst the planning system should be plan led and it might be preferable if the SWDPR had been concluded in advance of any planning application being considered, the plan making process should not unnecessarily delay important development or the delivery of housing that is known to be required to meet local needs. The SWDPR has already been delayed when considered against the milestones set out in the Council's Local Development Scheme. There can be no suggestion that the development would prejudice the plan making process in this case. Indeed, it is wholly in accordance with the emerging SWDPR, albeit that it currently attracts only limited weight given its early stage in the plan making process.
20. Overall, the appeal site is a suitable location for the proposed development in principle.

Highways

21. The appeal proposals have been subject to extensive professional transport assessment to consider and seek to identify the likely impacts on both the strategic and local highway networks. The scope of the assessment was agreed with the relevant highway authorities, which include National Highways in respect of the strategic road network (SRN), and both Worcestershire County Council (WCC) and Gloucestershire County Council (GCC), for their respective networks, given the location of the sites on the county border.
22. The objective of the exercise is to provide a sufficient and satisfactory basis for considering traffic impacts. The process is not formulaic and necessarily requires a number of assumptions and professional judgements to be applied. As such, there is significant scope for disagreement between professionals and it will often be the case that two different assumptions can both be reasonably made, where justified in the particular circumstances of the case. However, it is for this reason that those undertaking transport assessments generally apply a precautionary approach, making conservative assumptions that demonstrate that the outcome is robust.

23. That approach is particularly important in this case, because much development has already been granted planning permission in the vicinity and a degree of congestion on the network is evident, both in visiting the area and from the evidence submitted. Whilst the evidence provided is in many respects robust and demonstrably reasonable, there are a number of areas that cast significant doubt over whether the impact of the developments have been accurately predicted or assessed proportionately but with a precautionary approach in mind.
24. The appellant has applied a sustainable travel discount to the expected trips arising from the development to account for an expected modal shift towards walking, cycling and bus use as a result of sustainable transport measures to be secured. In principle this is a reasonable approach, but in this case, a blanket discount across all expected trips ignores the realistic potential for such a modal shift on certain routes, where walking, cycling and bus usage will be less likely/practical. Applying a more fine grain analysis which considers various likely routes can be, and is in this case, necessary where there are capacity issues on certain routes or at certain junctions.
25. In this case, the appellant's highway witness agreed at the Inquiry, that the amount of traffic on routes utilising Hardwick Bank Road would not be likely to benefit from a reduction as a result of walking and cycling, such that this element of the sustainable travel discount is unwarranted. This is important, because the Hardwick Bank Road junction with Tewkesbury Road is where much of the development traffic is expected to pass and where some of the greatest impact is expected in terms of future congestion.
26. The appellant accepts that, if the sustainable travel discount were to be removed entirely, there would be a severe cumulative residual impact for a short time in the PM peak hour at Hardwick Bank Road. I do not consider it appropriate to ignore the potential for modal shift entirely, as the proposed measures such as increased bus frequency, new bus stops and Travel Plans would be likely to achieve some form of modal shift. However, the actual shift would be much less than that applied, simply by removing the walking and cycling discount from certain routes. This may be significant because even when applying the full discount used in the transport assessment work, the junction is expected to become congested in future years, the ratio of flow to capacity being far above 0.85. In these circumstances, robust assessment and analysis are vital, even bearing in mind the provision of a travel plan bond to ensure that modal shift targets are met, which is not unlimited in its value and can only be relied upon if expectations are realistic.
27. There are further questions as to whether the impact on this junction has been robustly considered, in that the expected number of buses using the route as a result of the anticipated service improvement is not modelled and the analysis assumes two streams of traffic at the junction where there is only room for one, with obvious consequences for queue lengths. It is also questionable whether the 'education discount' on the scale applied is appropriate. This leads to a further significant reduction in anticipated vehicle trips, noting that many children will be taken to school from within the development without the need to access the wider road network. However, older children will also be making their way to other institutions beyond the appeal sites and a good number of pupils are also likely to come from further afield.

28. A further uncertainty arises from the VISSIM modelling undertaken to assess the impact of the development on the SRN. The appellants own assessment indicates that by 2024 there would be a number of vehicles unable to enter the modelled area because it is over capacity, and by 2031 this would amount to hundreds of vehicles in the AM and PM peak hours. Whilst this was not a concern of National Highways, the inability of vehicles to enter the SRN not affecting its operation, there remains a question over where these vehicles would go. It seems a reasonable possibility that they would divert to other routes, using local roads. Much of the issue would be in the vicinity of the Northway Lane/A46E junction which is the junction used by Route 5 in the transport assessment and leads to Hardwick Bank Road.
29. Both WCC and GCC have considered the matter, which was put to them by the Parish Council before the Inquiry, and neither raises concern. However, neither seeks to explain how the potential for a significant number of vehicles to use the network as a result of congestion on the SRN has been taken into account and/or why it is not considered important enough to warrant further assessment.
30. I do not accept the proposition that WCC and GCC were unaware of the issue but nor do I accept that they have properly grappled with it in reaching their conclusions. Nowhere in the evidence before me, is there any convincing explanation as to why these vehicles, highlighted as 'errors' within the VISSIM modelling, should be ignored. The fact that the 'errors' were identified in a model used for assessing the impacts on the SRN does not make them an irrelevant consideration in relation to the local network. Whilst I acknowledge that individual junctions on the local network have been assessed separately, this does not overcome the potential cumulative impacts from traffic unable to enter the modelled SRN area in future years.
31. Compounding this concern, is the failure of the VISSIM model to consider a recently granted planning permission for 460 dwellings at Fiddington. Whilst the VISSIM modelling for this appeal took place prior to the Fiddington scheme receiving planning permission, there was a considerable amount of time available before the appeal to update the transport assessment work so that the impacts of this large scheme, accessing the SRN area affected by the current appeal scheme, could be robustly taken into account.
32. I do not accept that the background growth allowance is sufficient to anticipate the likely effects of this scheme, with the intensity of traffic in such close proximity to the appeal scheme and the relevant part of the SRN, which is known to be congested. Nor am I reassured by the inclusion of the current appeal traffic in the transport assessment work for Fiddington, which used a different model and does not assist in understanding the likely impacts on vehicles unable to enter the modelled area in this case. The failure of the appellant to update the transport assessment is not consistent with a precautionary or robust approach.
33. I am very aware that none of the relevant highway authorities' object to the appeal proposals. I have carefully considered their positions and attach significant weight to their professional and considered advice. However, none of the authorities were present at the Inquiry to allow for the testing of their opinions and in this case, notwithstanding the content of the statements of

common ground and other written evidence, I am not satisfied that all issues have been robustly considered.

34. Having regard to the issues set out above, as well as the Satnam Millenium judgement³, I do not consider that the transport assessment work takes a sufficiently precautionary or robust approach. The evidence provided is not sufficiently satisfactory to reach a fully informed conclusion about the severity of impacts on the local highway network and the transport assessment does not allow for the likely impacts of the proposal to be assessed. In this case, there is too much risk of a severe residual cumulative impact to rely on a transport assessment that is not comprehensive or fully robust. For this reason alone, the development is in conflict with the National Planning Policy Framework (the Framework) and planning permission should be refused.

Character and appearance

35. The submitted Landscape and Visual Appraisal (LVA) considers the potential impacts of the development on the character and appearance of the area, including the nearby Cotswolds AONB. As is inevitable when a greenfield site is developed, it identifies some harm both in landscape and visual terms, but the level of harm is not expected to be significant. In landscape terms, existing landscape features would be retained as far as possible and hedgerow reinforcement and other landscaping would assist in integrating the development into its landscape context. In visual terms, views of the development would largely be contained to the local vicinity, including from nearby public rights of way, given the existing hedgerow features and topography of the site and surrounding area. After proposed landscaping had become established, effects would be diminished further.
36. The Council accepts the conclusions of the LVA and did not pursue this issue at the appeal. Bredon Parish Council did raise concerns, but the areas of disagreement are relatively few. The site straddles two landscape character typologies, as defined within the Worcestershire County Council Landscape Character Assessment. The Waterside Meadows follow the edge of the Carrant Brook. In this area, the difference between the parties amounts to whether there would be a beneficial or neutral effect. In either case, there would be no harm, this area largely being reserved for open space and amenity land within the development.
37. The majority of the site occupies the Principal Village Farmlands, the Primary Key Characteristics of which include a nucleated pattern of expanded rural villages and arable/cropping land use. Neither of these characteristics are apparent in the appeal site, which stands on the edge of the large town of Tewkesbury with residential and industrial buildings wrapping around two edges. No nucleated village would be affected, Bredon's Hardwick being clearly separate from the appeal sites beyond intervening countryside. The sites are currently used for grazing land as opposed to the arable/cropping use commonly seen in this landscape typology.
38. Consequently, the development would be seen as an expansion of the existing town. Whilst the development would shift the boundary into countryside, it would have little effect on the separate nucleated villages scattered throughout

³ Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 2631 (Admin)

the wider countryside and would not detract from the Primary Key Characteristics of the Principal Village Farmlands.

39. Both parties agree that this part of the site has a medium sensitivity to development overall, albeit that there is some variation in sensitivity throughout. This has not been ignored and the development parameters seek to minimise the height of buildings in more sensitive areas and mitigate impacts as far as possible through the detailed design strategy. Any loss of hedgerows or green infrastructure, for example to facilitate access to the sites, would be small and would be more than compensated by new planting and hedgerow reinforcement.
40. The Cotswolds AONB stands at some distance from the appeal sites but views towards the sites would be possible from Bredon Hill, around 3km away. The setting of the AONB would be affected, but in reality, the sites are barely perceptible and certainly not prominent. The relationship between the Cotswolds escarpment and the wider vale landscape is important but that does not preclude any development which can be seen from the AONB.
41. It follows from the discussion above that the proposed development is cognisant of the landscape sensitivities in the area and has taken steps to minimise impacts. Again, there is agreement between the parties that a moderate/minor adverse effect would result in views from the AONB. This is again perhaps unsurprising when introducing a significant development into the locality but, whilst material, is not necessarily unacceptable.
42. The Cotswolds AONB covers a large area and far-reaching views of the vale landscape are available from Bredon Hill. Much of this view comprises open countryside but the views towards the appeal sites currently incorporate Tewkesbury, a large town with a harsh urban edge created by residential and industrial development. The expansion of the town and loss of some countryside would result in a slight change in the distant view currently available but the expanded urban area would continue to be appreciated in the wider vale context comprising abundant countryside. The expansion of the town in the manner proposed presents an opportunity to deliver a carefully considered design that is more sensitive. It would not in my view, unacceptably harm the AONB. Subject to suitable design at the reserved matters stage, a scheme could readily conserve the special qualities of the AONB.
43. Much concern was also expressed about the impact of lighting within the development, particularly with regard to Dark Skies. It should be remembered that the appeal schemes are currently in outline form and so the eventual design and configuration of the development remains unknown. While light from a development or urban area has the potential to affect Dark Skies within the AONB, at the distance involved here I do not consider it likely. A sensitive lighting scheme that directs light downwards could be secured by condition if planning permission were to be granted such that the effects of the scheme would not be intrusive or harmful several kilometres away. Rather, it would be seen as a component of the existing distant urban fabric.
44. Particular concern was raised about the impact of the development on Key Views identified within the NP. However, none of the views are towards the appeal site. The closest viewpoint would be VE6 along Bredon Road towards Tewkesbury and in particular the Abbey. Tewkesbury Abbey was not apparent

during my site visit due to tree cover but the alignment of the road is not anticipated to change as part of the development and so the viewpoint would not be affected. Urban development in the vicinity would become more apparent but the view is already towards the urban area of Tewkesbury and so the presence of a residential development or associated highway alterations would not materially harm the view for receptors travelling along Bredon Road.

45. Overall, whilst some harm would result to the character and appearance of the area, the appeal proposals have clearly recognised the intrinsic character and beauty of the countryside in seeking to minimise the impacts of the development through careful design that has regard to landscape and visual sensitivities.
46. AONB's have the highest status of protection and great weight should be given to conserving and enhancing their landscape and scenic beauty. The evidence submitted demonstrates that development within the appeal sites can be located and designed to minimise adverse impacts on the AONB. The proposals have had regard to the policies of the AONB Management Plan, which have similar objectives to that of the Framework and the development plan. The harm arising to the AONB would be negligible in my view, but I nevertheless attach this harm great weight.
47. The landscape and visual impacts of the development would be minimised as far as possible through good design so that, whilst the effect of the development could not be described as positive in landscape and visual terms, the harm arising would be limited. For the reasons set out above, I find no conflict with the Framework, Policy SWDP 25 of the SWDP or Policies NP14 and NP15 of the NP. Furthermore, there would be no material conflict with the AONB Management Plan.

Tranquillity

48. There is no dispute that an increase in vehicular traffic through the AONB has the potential to affect its tranquillity, with particular regard to noise and light. This is also clear from the Cotswolds AONB Management Plan and Cotswolds Conservation Board Tranquillity Statement. The evidence before me suggests that the amount of traffic expected to use routes through the AONB is relatively small. However, the uncertainties identified in relation to the transport assessment leads to similar uncertainty around the amount of traffic that might utilise routes through the AONB. In such circumstances, I cannot reach an informed judgement on whether the development would result in an unacceptable impact on tranquillity.

Conclusion

49. I have found that the appeal sites are a suitable location for the proposed development in principle and could be supported, having regard to the development plan taken as a whole and other material considerations. Furthermore, I have established that the proposed development could achieve a good quality and sensitive design through careful consideration at the reserved matters stage, having regard to the submitted development parameters and indicative drawings. As such, whilst there would be some inherent harm in the development of an area of countryside, the harm would be minimised and would weigh against the proposal only to a limited extent.

50. However, I am not satisfied that the submitted transport assessment has been undertaken using a sufficiently robust approach so that I can be confident that the developments would not result in a severe residual cumulative impact on the road network, or that the tranquillity of the AONB would not be unacceptably harmed.
51. I have had regard to the benefits that would arise from the development, as outlined by the appellant, which together weigh significantly in favour of the proposals. However, I cannot properly undertake a planning balance of harms against benefits where the likely level of harm is not robustly established. It is for this reason that the appeals must fail.
52. In light of the above and having had regard to all other matters raised during the Inquiry, the appeals are dismissed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards, Counsel

He called:

Adrian Hardman Counsellor

FOR THE APPELLANT:

Neil Cameron KC
with Alex Shattock

He called:

Paul Cranley BA(Hons) Divisional Director, Pell Frischmann
CMILT

Ben Connolly BSc(Hons) Associate Director, EDP
PG DipLA, CMLI

Peter Canavan BA(Hons) Partner, Carter Jonas LLP
MSc MRTPI

FOR BREDON AND BREDON'S NORTON PARISH COUNCIL (RULE 6):

Piers Riley-Smith, Counsel

He called:

Bruce Bamber MCIHT Director, Railton TPC Ltd

Peter Radmall CMLI Landscape witness

INTERESTED PERSONS:

Michelle Daunter	Local resident
Adrian Darby	Local resident
Les Ditchbuan	Local resident
Rob Sly	Local resident
David Dews	Local resident
Mike Sztymiak	Councillor for Tewkesbury
Gail Fletcher	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Land North West of Fiddington Transport Assessment
- 2 Land North West of Fiddington Sensitivity Test
- 3 Mitton Approved Drawings List
- 4 Inquiry Timetable
- 5 Appellant's Opening
- 6 LPA's Opening
- 7 Parish Council Opening
- 8 SWDPR Allocation Map Extract
- 9 Adrian Darby Speaking Note
- 10 Rob Sly Speaking Note
- 11 Councillor Sztymiak Speaking Note
- 12 Cawrey Ltd v Secretary of State for Communities and Local Government
- 13 Cotswold Conservation Board response to appeal
- 14 Updated Affordable Housing SoCG
- 15 Robert Stockwell Representation
- 16 W Lishman Ecology Rebuttal
- 17 South Worcestershire Joint LDS 2021-2024
- 18 Affordable Housing SoCG, Further Updated 28.10.22
- 19 Mitton Conditions, Amended 31.10.22
- 20 Bayliss v Secretary of State for Communities and Local Government
- 21 Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government
- 22 Monkhill Ltd v Secretary of State for Housing, Communities and Local Government
- 23 Bredon Road WCC S106 Position Statement
- 24 Parish Council's Closing
- 25 LPA's Closing
- 26 Appellant's Closing

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 S106 agreement
- 2 S106 agreement (education land)