

**Land at and adjacent to Hulton Park  
Applicant's Closing Submissions**

**Introduction.**

1. "Look around you. It's Bolton: be realistic. If the Ryder Cup was held here: who would come?". Rarely can so little faith or confidence in a constituency have been shown by its own MP<sup>1</sup>.
2. The true answer to the question posed by the elected member is this. If Hulton Park were to be awarded the Ryder Cup, the **World** would come. So would its media. The eyes of the globe would be focussed again on Bolton.
3. And that, and the significant economic consequences and legacy which came with it, would be the best possible fit with the Government's flagship policy for the area "The Northern Powerhouse".
4. "The Northern Powerhouse" is a nomenclature that deliberately and forcefully reminds us of the area's past, of the role the North and proud places like Bolton played in the industrial revolution and in making the UK one of the world's richest and most advanced economies.
5. But the name of the policy also points to the future and to the real ambition of (cross party) policies for the post industrial areas of the North.
6. Rarely can there have been a better fit for the Northern Powerhouse policies than this application. The proposal has at its heart the repair and regeneration of the **historic** Hulton Estate: an estate which was at its heyday in and after the second phase of the industrial revolution. It also provides a long-term and profitable **future** for the restored Estate, and a massive injection of investment and confidence in the north-west; an area well used to making the very most of such opportunities.
7. That is why ALL of the bodies responsible for the determination of the public interest in the round are supportive of this application. And it is the public interest in the round which should drive the decision in this case.
8. The planning system above all of its constituent policies and protocols **exists** to make decisions on the development and use of land in the public interest. That is its very raison d'être.
9. This application by necessity tests the policy mechanisms which make up that planning system to their widest extent. Objectors raise issues such as uncertainty and prematurity and they are right that this application is not a conventional one.

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<sup>1</sup> Yasmin Qureshi, Member of Parliament for Bolton South East

But, listen! If the planning system is not flexible enough to cope with the unconventional aspects of this application, then truly, it is not fit for purpose.

10. The Applicant in this case has not shirked the unconventional nature of the application. Nor has it sought to sidestep the inevitable policy tensions that arise from the nature of the application itself.
11. But in the end, for all the alleged complexity in the case, the choice for the Secretary of State is a truly simple one. **It is a choice between (i) taking up a generational opportunity to show faith and confidence<sup>2</sup> in one of the most deprived areas<sup>2</sup> in the Northern Powerhouse while providing a thriving long term beneficial use for an asset of immense importance for the area and (ii) turning that chance of a generation away and leaving the Hulton Estate to decay and to die on the vine.**
12. If the Inspector is looking for the gist of the Applicant's case, then that is it.
13. The route to consent in this case is determined by the policy matrix that sits beneath the overall public interest test of the planning system. I propose to structure this closing by reference to that matrix.

#### **The Development Plan and the Presumption in favour of Sustainable Development.**

14. The policies of most importance to a determination of this case in the development plan are plainly out of date. In addition, it is common ground that the policies of the plan have systematically failed to provide even a 5 year housing land supply (5YLS). It is agreed that the provision lies well below 4 years<sup>3</sup>. That is a serious and significant shortfall.
15. As a result, the presumption in favour of development<sup>4</sup> applies in the determination of this case unless, that is, any of the footnote policies<sup>5</sup> properly applied clearly establish a reason for refusal on their own terms.
16. This formulation, sets the decision-making process for the application. It gives rise to a clear framework which this closing will adopt.
17. But, before I launch into that analysis, it is right to say something about the admitted failure of the development plan system to provide a sufficiency of housing for its inhabitants. One of the main duties for a local authority is the duty to provide sufficient homes for its inhabitants. It is not a dry numbers issue. The provision of decent appropriate housing at all levels is a fundamental limb of the system.

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<sup>2</sup> English indices of deprivation 2019: mapping resources, Published 26 September 2019

<sup>3</sup> Statement of Common Ground on Housing Issues, dated August 2019 (CD.13.9)

<sup>4</sup> Paragraph 11 d) of the National Planning Policy Framework, February 2019

<sup>5</sup> Footnote 6 to National Planning Policy Framework, February 2019

18. If sufficient homes are not provided, the harms occasioned include but are not limited to the following:
- a. Families are inappropriately split up as children have to leave the area
  - b. House prices rise as supply is constrained
  - c. Workers are forced to commute from outside the travel to work areas
  - d. Businesses cannot employ those local to them
  - e. Those at the bottom of the ladder are forced to live in inappropriate accommodation.
19. It is for this reason that government policy rightly places very significant weight on the provision of at least a 5YLS<sup>6</sup> and why the consequences for the decision making process of not providing such a provision are also so profound.
20. In this case, two relevant NPPF footnote “restrictive” policies are engaged<sup>7</sup>. Both need to be dealt with as part of the correct decision-making process.
21. They are (1) the heritage provisions associated with impact on the designated heritage assets and (2) the Green Belt policies. Because of the nature of the tests raised by these policies, there is an inevitable interaction between the two topics. There is no one set or legally correct way in which this interaction should be analysed. But, care is necessary to seek to ensure that all relevant considerations are appropriately balanced in any overall determination.
22. I propose to address the Green Belt issue first. I do so both for ease of presentation and to recognise that the truth that the Green Belt balance involves an inevitable consideration of almost all of the relevant benefits and harms associated with the case.

**Green Belt: the test and component parts of the development.**

23. The NPPF makes it clear that inappropriate development in the GB is by definition harmful to the Green Belt and should not be approved except in very special circumstances<sup>8</sup>.
24. Such circumstances only exist where harm to the Green Belt by reason of inappropriateness and other harm resulting from the proposal is clearly outweighed by other considerations. Any harm to the Green Belt should be given substantial weight.
25. As I mentioned in opening, this is a deliberately high hurdle to set against development in the Green Belt but it is also, equally deliberately, not a policy of total restraint. It recognises the potential for a set of circumstances to exist which

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<sup>6</sup> Paragraph 73 of the National Planning Policy Framework, February 2019

<sup>7</sup> Footnote 6 to National Planning Policy Framework, February 2019

<sup>8</sup> Para 143 of the National Planning Policy Framework, February 2019

when considered together are very special and which are capable of allowing development which is in the wider public interest.

26. For the reasons set out below, rarely could the circumstances have been more special than those which accompany this application.
27. Self-evidently, the three areas of housing proposed in the GB are all inappropriate development.
28. The golf course by itself would not be inappropriate development and neither would its smaller ancillary buildings. The club house too is limited in scale. But the hotel, conference facilities and other buildings are all essential to the operation of the facility in the round as a leisure resort. As such, and for the avoidance of doubt the applicant has treated the Ryder Cup resort as a whole as inappropriate development.
29. Notwithstanding this, the fact remains that outside of the housing areas, by far the greatest element of the proposal, the golf course would **by itself** NOT be inappropriate development and neither would it in any meaningful way interfere with the openness of the land.
30. These matters are very relevant to the weight to be given to definitional harm across the site and to the existence and weight to be given to harm to openness. Self-evidently the golf course will continue to serve Green Belt purposes and would, on a proper understanding of the term, remain open.

#### **Assessment of Green Belt Harm.**

31. There is broad agreement about the overall conclusion to be reached in relation to Green Belt.
32. Overall the applicant accepts that the harm to the Green Belt is substantial or considerable. There will be definitional harm and, clearly, the proposed residential development will remove the sense of openness from the areas of its development, will extend the extent of urban areas and encroach into the countryside.
33. The balance of the development also comprises inappropriate development as a whole: though it is right that most of the site of the resort would remain open with isolated buildings breaking up the physical sense of openness. The nature of the land forming is not harmful by and of itself to openness.
34. There will be a notable reduction in the separation between Westhoughton and Atherton but that will not generate either an actual or perceptual merging of those settlements

35. There are subtle differences between the approach of the applicant and that of the local planning authority; but these are not sufficient to really make a meaningful difference to the analysis as a whole.
36. The analysis of Mr Bell and Ms Lancaster establish clearly, and on slightly different bases that the function and value of the Green Belt in this area and its overall integrity will not be compromised.
37. In fact, of all, of the matters before the Secretary of State, it is the matters surrounding Green Belt harm where the experience and knowledge of local conditions which means great weight should be given to the overall approach of the local officers and Ms Lancaster.

### **Identification of “Other harm”**

38. The other harm identified by the evidence is
  - a. a limited visual harm carefully considered and defined by Ms Knight and
  - b. a technical breach of the policy protecting a limited area of the best and most versatile agricultural land.
39. Both of these elements of additional harm are dealt with in detail by Mr Bell and Ms Knight in the evidence. They do not form a central part of any parties opposition to the proposal in the round. These matters are addressed in full in paras 11.43 and in chapter 12 of the Bell evidence
40. In addition, If, contrary to the applicant’s case, there is a finding of less than substantial harm on any designated heritage asset, then as explained below, there is a potential for such harm also to be considered “other harm” caused by the proposal(see below).

### **Conclusion arising.**

41. It follows from the above analysis that for planning permission to be granted, the harms associated with the proposal in Green Belt and in other terms fall to be clearly outweighed by other considerations associated with the proposal so as to demonstrate very special circumstances.
42. I now turn to the very special circumstances that exist in the circumstances of this case.

### **Identification of Very special Circumstances**

43. For the reasons set out below, the applicant and the local planning authority for the relevant administrative area (and its experienced cadre of officers) and the independent consultant instructed to audit that approach all believe that there is a unique coincidence of benefit here: a generational opportunity for the area which should not be turned away.

44. I set out the main elements of that case here. The full suite of considerations is advanced by Mr Bell in Chapter 11 of his proof.

### **Hulton Park – Heritage Matters.**

#### **Introduction: the place of heritage in the decision making process.**

45. Heritage matters are at the heart of this case in more ways than one. The restoration of the park and its key elements of significance and the provision of the park with a long term and secure use (in comparison to the alternative) are huge benefits of the proposal in heritage terms. In addition, the park also provides the perfect home for a well-designed Parkland golf course which would bring one of the world's biggest sporting mega-events and all of its socio-economic impacts to Bolton<sup>9</sup>.

46. Yet further, the heritage issue is **by itself**, one of the "footnote" issues which falls to be determined as part of the assessment of whether the presumption in favour of development should apply.

47. This section of the closing therefore does "double duty". It identifies why the restoration and provision of a long term future for the significance of the park provides by itself (and in combination) a very special circumstance and why (in reaching this conclusion) the heritage policies of the NPPF (properly applied) do not "provide a clear reason for refusing the development proposed" thus allowing and requiring the presumption in favour of development to be applied in this case.

#### **Introduction: the main moving parts of the assessment.**

48. There are only two designated assets at large in this case. The first is the park itself. The second is the Listed Dovecote.

49. Both are listed at Grade II<sup>10</sup>. These are national listings and within gradings, importance will of course vary and are matters of judgment. But, since the Framework makes it clear that greater weight should be given to impacts upon more important assets, it is right to note that Grade II is the lowest listing achievable for a "designated" asset. That of course does not diminish the fact that significant importance and weight to apply to the conservation of these assets.

#### **Approach.**

50. There is now, after much debate and litigation, a very clear and definitive view of how heritage policy contained in the NPPF works. For the purposes of this application, the application of the NPPF approach should be determinative of the

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<sup>9</sup> Set out in the Proof of Evidence of Andrew Tong

<sup>10</sup> Historic England List Entry Number: 1001581

heritage issue. There is nothing in the development plan which suggests that an alternative approach is appropriate.

51. The Courts and policy makers have now definitively established the following.

- a. If a decision-maker follows the fasciculus of paragraphs contained in the nppf<sup>11</sup>, then that decision maker will have complied with all of the relevant statutory tests applicable to designated heritage assets.
- b. Therefore sticking to and applying those paragraphs (and their PPG supplements) will be the safest course for an Inspector.
- c. Great weight should be given to the “conservation” of a designated heritage asset.
- d. Conservation of the asset includes a consideration of whether a proposal enhances the significance of such an asset.
- e. Thus, when considering the impact of a proposal as a whole on a designated asset as a whole, the decision-maker is entitled to have regard to elements of the proposal which enhance its significance as well as to any harms in determining whether in the round the asset is conserved- the “Palmer” test.
- f. Where a proposal leaves the asset unharmed in this net way or where there is net benefit then the provisions of the NPPF which deal with harm are not engaged.
- g. Where there is “conservation” or net beneficial impact, for the reasons given in above, such an impact must as a matter of law be given great weight.
- h. Any net harm to the designated asset is also to be given great weight. It falls to be justified in a clear and convincing way. The clear and convincing justification for harm (if any) is provided in the fasciculus of paragraphs dealing with harm in the NPPF. It is not a separate or freestanding test to be passed.
- i. Substantial harm and total loss of significance are dealt with together in the NPPF. They give rise to a very onerous test. For that reason, substantial harm only occurs when most if not all of the significance of the asset is drained away by the proposal. When the proposal leaves the asset almost vitiated in terms of its designation.
- j. Less than substantial harm is justified when it is outweighed by public benefits which can include the provision of an asset with its OVU.
- k. Not all elements of a designated asset are of equal significance.
- l. It is long established that assets with a beneficial use are more likely to have their conservation enhanced than those which do not.
- m. In constructing a plan for the use of an asset, a Conservation Plan identifying the relative importance various parts of the asset should, as a matter of practice be drawn up and development should be guided to areas most consistent with the conservation of the asset.

### **Applying that approach.**

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<sup>11</sup> Paragraphs 11, 73, 189 to 202 of the National Planning Policy Framework.

## Elements of significance not in serious doubt.

52. This park has been the subject of extensive research and study as a result of this inquiry. Thus, a consensus has arisen as to what is significant about the asset. A SOCG<sup>12</sup> captures this agreement.
53. The work of Emes represents the earliest and most authentic element of landscape design in the Park.
54. What is very clear is that Emes was something of a master of the water feature. His skill in this regard is noted in contemporary literature and in the modern texts such as the DNB. An entire chapter (out of 4) is reserved for this skill and feature in the academic dissertation<sup>13</sup> we have before the inquiry: the only complete work of reference we have before the inquiry. That chapter and the overall introduction are required reading for the Inspector (if not the Secretary of State).
55. In addition, he was a talented creator of pleasure gardens and woodland perambulations. They appear in most of his completed and well considered work and occasionally include or incorporate Walled Gardens. The Stamper note, the DNB and the dissertation all establish this fact, as does Mr Wikeley's award winning work on other Emes landscapes.
56. Emes is also associated with the enhancement of existing woodland and water features to create pleasant and sylvan walks. Details of this characteristic feature of his work again are found in Dr Stamper's biographical analysis and in the dissertation.
57. All of these features on a proper analysis formed part of the Emes design at Hulton. Each can be specifically identified without doubt in the evidence<sup>14</sup>.
58. Dr Stamper (to whom Mr Gallagher said he would bow due to his greater knowledge in this regard) is very clear that **"At Hulton there are three features of real interest to the garden historian: the former Pleasure Garden with its lake behind the house platform; the Kitchen Garden extending down to the gulley and the romantic Woodland Walk by the stream with its cascades in Mill Dam Wood."**<sup>15</sup>
59. On any fair analysis that conclusion is accurate. It represents an important (indeed probably THE most important) element of significance in the Park

## The condition of these key Emesian elements of significance.

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<sup>12</sup> Statement of Common Ground on Historic Landscape, dated September 2019 (CD:13:10)

<sup>13</sup> Thesis on Emes provided at Appendix 12 to Proof of Evidence of Dr Chris Miele.

<sup>14</sup> See proof of evidence and Rebuttal of Dr Chris Miele

<sup>15</sup> Appendix 5 to Proof of Evidence of Chris Miele - Paul Stamper peer review reports – "WILLIAM EMES (1729/30-1803) William Emes: a brief professional biography" page 6

60. All of these accepted elements of significance remain to a degree now. But, all have been harmed by the absence of use and the significant passage of time and all are in danger of being lost as unmanaged nature takes hold.
61. Thus, the signature scimitar lake, is silted up (and overgrown with knotweed) and its form is not fully revealed.
62. The Walled garden is in a parlous state of disrepair: its significance would have lain in the nature of its planting and in the way it served the functional and recreational needs of the family seat. That is no longer apparent.
63. The remnants of the Pleasure Grounds are also capable of being made out on the ground, though the precise nature of their planting is no longer typical of Emes time. Indeed the grounds are overgrown and populated by invasive species.
64. The romantic walk is but a shadow of its former self and of its potential. It still is an element of significance... but large parts of the water course are silted up and planted with self-seeded willows and other invasive species<sup>16</sup>. The polite, genteel managed landscape with its park features has all but disappeared. The romantic walk is now a more naturalistic trail unmanaged and overgrown. It is an attractive but overgrown walk but lacks the authenticity and as a result, large elements of the significance it once had.

#### **The impact of the proposal on these Emesian features of significance.**

65. Put simply, these key Emesian features of significance are all retained and significantly enhanced as a result of the proposal.
66. All, at very substantial cost will be restored and better revealed by the proposals<sup>17</sup>.
67. These features constitute the very heart of Hulton Park and its significance. They represent the largest part of its authentic Emesian legacy. The other largest part of the Emesian contribution, the creation of the Great Park has been largely overwritten by the work of his successor Webb<sup>18</sup>. It too has significance and is dealt with below.
68. All of the key Emesian features which are retained and enhanced will also be available to be experienced by those visiting the restaurants and the hotel and by the public on those many days when the venue is open to them and when heritage tours take place<sup>19</sup>.

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<sup>16</sup> See Proof of Evidence of Francis Hesketh

<sup>17</sup> See Gleeds Report provided at Appendix 9 to the Proof of Evidence of Derek Nesbit

<sup>18</sup> Mr John Webb (c 1754-1828)

<sup>19</sup> Proposed to be secured by condition – providing for programme of public access events in the Registered Park and Garden

69. In comparison to the existing position (much less that which will arrive if no works of recovery are undertaken) this is a huge benefit and heritage enhancement.
70. It follows from just this element of the analysis that a large and most important part of the significance of the park will remain and indeed be substantially enhanced as a result of the proposal. And for reasons set out below, the enhancement does not begin and end with the Emesian landscape.
71. HEART's introduced objection to the proposals on the basis of absence of authenticity (see below) are simply perverse. The Kitchen Garden as a concept is already degraded in terms of its significance. It would not take very much for its condition to further deteriorate and to be lost completely. The conservation restoration proposed is undertaken following best practice: the reuse of the existing bricks (carefully marked as to location) where possible and the careful recreation of the garden as close to its pre-existing existence and with as much original fabric as possible is faultless conservation practice. No more could be done to restore or enhance the significance of these features. It is not surprising that these points were NOT taken at all in the proof or until after the applicant's case.... a formidable rebuttal.

**Substantial Harm not consistent with any view of the evidence: a necessary diversion**

72. It further follows, and pausing there, that the allegation made (and remarkably maintained ) by Mr Gallagher, that these proposals will result in substantial harm to the park as a designated heritage asset are simply not legally defensible.
73. As we have seen above, the concept of substantial harm for this part of the NPPF is not a simple relative term where the adjective can mean what the analyst likes. It is a specific term of art because it is linked to total loss and the deliberately tougher tests that apply to such harm- the same test that applies to the total loss of significance of an asset.
74. The difficulty for Mr Gallagher, put frankly, is that he was wholly unaware of the careful, esoteric and somewhat nuanced guidance of the court in Bedford<sup>20</sup> or of the guidance in the PPG to similar effect when he wrote his proof or formed his substantial harm judgment. Bedford and the PPG deliberately sets the bar very high: they must be read to be consistent with each other. Mr Gallagher candidly accepts that he was only aware of that advice when he read the proofs of evidence in this case. His judgments before that could not have been guided by this corpus of learning.
75. It is unreasonable and implausible to assert that the park post development will be drained of "very much if not all of its significance." On any view of the evidence at

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<sup>20</sup> Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2013] EWHC 2847

least very large elements of significance will remain (and be enhanced). Even though Mr Gallagher may baldly maintain his significant harm mantra, even his own evidence (written before he was even aware of the test) on the importance of the features mentioned above (and their continuing significance) does not support that mantra at all.

76. On a proper examination of his own evidence he thus clearly himself demonstrates that the proposals do not drain away very much if not all of the significance of the park. He accepts that some of the (very most significant) elements of the park will be retained and enhanced<sup>21</sup>.
77. Having accepted absence of knowledge of the key and specific guidance at the time of his assessment, Mr Gallagher has, it is submitted, to show clear evidence that he has applied (by chance almost) applied the correct analysis. On any fair reading of his evidence there is no evidence that he has, and all the evidence is that he has not.
78. Either way, the decision-maker should be very clear that allegations that the proposal constitutes substantial harm are simply neither legally feasible nor evidenced at all by Mr Gallagher.

**The significance of the overwritten element of the Emes landscape: Webb.**

79. Returning to the Landscape and the post Emes matters of significance, the following matters must be made.
80. Webb is the lesser of the two designers. He is not mentioned in the guidance to those grading RPG<sup>22</sup> and neither does he merit an entry in the Oxford National Biography<sup>23</sup>.
81. Webb was by common understanding, less innovative, less authentic but probably more fashionable in the sense that he (and his clients) were more followers of shorter lived fashion.
82. That does not mean that his work and what remains of it is not significant; far from it. But the context is important.
83. He was responsible for the moving of the Emes carriageway and for the more picturesque access route of the main drive to the house.

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<sup>21</sup> See sections 5 and 7 of the Proof of Evidence of Christopher Gallagher

<sup>22</sup> Guidance on the listability of sports buildings is provided in Historic England's selection guide on Sports and Recreation Buildings - Referred to by Dr Stamper in Appendix 5 to Dr Chris Miele's Proof of Evidence under the note entitled "What is Historic England's current advice on golf courses in historic/designed and especially registered landscapes?"

<sup>23</sup> Oxford Dictionary of National Biography

84. He was also responsible for much of the main parkland planting in the Great Park area of the site and the area to the West of the House.
85. This part of the site has suffered as much as most areas of the park since its active management ceased over 100 years ago. Most noticeable is the absence of the larger standard parkland trees which used to populate the area. The site is notably spartan now as one travels toward the location of the main house. Large areas of grass take the place of the blocks of woodland which have perished.
86. More than 2/3rds of such parkland trees are no longer apparent at all: they have gone. 15% of those that remain are dead dying dangerous moribund or have a lifespan of less than 5 years. 52% of all of the trees are identified as dead damaged moribund or otherwise having a short life<sup>24</sup>. (red or amber).
87. It is within this area of the park that the golf course is in part located. As Mr Whitely clearly explained , the course works with the grain of the existing parkland and replicates the shape and essence of the long lost parkland planting. Most of the new parkland trees will be planted in as close a position to the original as is consistent with OS mapping and the others will replicate the style and essence of Webb's planting.
88. The search for absolute accuracy in this context is meaningless. First, it wrongly assumes the absolute accuracy of the OS mapping. Second, it ignores the fact that much of the planting was irregular in nature and/or in fact opportunistic in the sense that it was not planted for landscape reasons but to hide the outcome of extraction of coal from the heart of the estate. Third, it overlooks the objective of the planting which is to create an effect of dispersed Webbian woodland pasture.
89. Overall , the impact of the proposal on the Webbian Great Park will be significantly to restore the historic element of tree cover and parkland trees as shown on the first edition OS plan which all parties agree is the best model for the recreation of this part of the park.
90. There were over 360 Parkland trees on the Park according to Mr W. Mr G has the figure even higher. At present about 90 continue to exist (4-5 have died in the process of this application). As indicated above, of these, over half, are dead dying moribund or time limited on the basis of the expert evidence.
91. They will be replaced by significant new parkland planting in either the exact location of trees lost or to reflect in the key parts of the park as far as possible the essence of the more random scattering of trees favoured by Webb.
92. These are obvious enhancements over the existing position: the true test of impact.

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<sup>24</sup> See Proof of Evidence of Francis Hesketh and Statement of Common Ground on Ecology and Arboriculture (CD.13.11)

93. The golf course will require some alteration to landform. All golf courses will require this to a degree as accepted by the EH Guidance. Mr McMurray was very clear that the total amount of land forming required to create this course had been kept to its minimum and is in comparative terms modest overall. He was careful in describing the landform shifting as modest and limited.
94. He was guided in the nature of the land-forming which would be appropriate by Mr Whitely, himself expert in the understanding of the landscapes of Emes and Webb and the main author of the HE guidance on Golf Course Design. It is very clear as Mr Stamper and Dr Miele agree that close attention has been paid across the piece to the proposal being in tune with the HE Guidance.
95. The table contained in Mr W's evidence a pp 46 and 47 summarises the compliance overall with the proposal with all aspects of the Golf Guidance. The decision makers attention is specifically drawn to that important summary table which should be taken to be incorporated by reference into this closing. (I have for reference added it as an appendix).
96. The table (and the careful analysis which surrounds it) represents the views sincerely held of the very author of the guidance specifically dealing with the acceptability of Golf Courses in historic Parklands. You will have judged that Mr W was a passionate supporter of the conservation of landscapes of this nature. His corpus of work is world class. His list of awards in respect of works just like this (including other Emes works) speaks for itself. He was very protective of his reputation and that of LUC
97. Overall, on an accurate analysis of the golf course as a whole the land-forming<sup>25</sup> produced is proportionate to the nature of the use proposed.
98. Where there is remodelling it is deliberately subtle and undertaken to match the Parkland character which presently exists. That character is already gently undulating and reflects the fact that the Park has been the subject in places of coal extraction and regrading.
99. The golf course guidance is very clear that when looking at the impact of a proposal on landform, what is required is an assessment of the importance of the particular landform and of its sensitivity to change.
100. The landform here is not one that has been finely modelled as in Repton landscapes. Rather it reflects its previous use as agriculture and deer park. It is largely flat with very gently undulating and sloping north to south with "lumps and bumps" reflective of past use and mining.
101. Its characteristic is that it held and now holds the landscape character which consists of scattered trees in an open setting surrounded by larger woodland

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<sup>25</sup> See section 07 and table at 7.93 of the Mr Wikeley's Proof of Evidence

elements. The actual form of the land or its landform surface is nowhere identified as of particular importance.

102. There is no archaeological significance in the landform which the proposal will harm. There is as a result and importantly no objection on any landform ground from the County Archaeological department.
103. The “worst case” examples of impact chosen by the council to be modelled and shown on the topological plans at Dr M's Appendix 13 illustrate that even the elements of the course which involve land-forming are in fact modest and subtle.
104. They certainly would not result in a changed overall landform character in the Park.
105. Rather than identify and examine any particular landform concern, Mr Gallagher pursues an overall and indiscriminate attack on the concept of reforming land at all. Thus, throughout the inquiry Mr Dixon continuously referred us to the “remarkably large volume of cut and fill” contained at Mr Gs evidence paragraphs 7.52 to 7.55.
106. Two things flow from this analysis for the decision maker.
107. First, there was no attempt to contextualise that sum at all in relation to other golf courses or other relevant park alterations. It is as Dr M put it merely a figure as opposed to analysis of relative impact.
108. Second, there was no serious consideration of where the cut and fill it represented took place. Thus, more than half of it occurs not on the golf course area at all (as constantly suggested by Heart) but on the (very much less sensitive) housing areas including those beyond the park. Mr G was wholly unaware of this fact.
109. A useful test of the scale and impact of the regrading lies in the fact that out of the greens proposed (always the largest and most likely areas for regrading) only 2 greens fall below the non-binding indicative figure of 1m contained in the relevant detailed golf guidance issued by EH<sup>26</sup> (as they were). And of those 2, the Applicant through Mr McMurray indicated that he would be content for one (the 8<sup>th</sup>) to be conditioned to no more than 1m if the Secretary of State thought it appropriate, while the other was constrained by the need to avoid the Aqueduct that runs across the site at that point.
110. In short, when looked at in the round, the overwritten Emes/ Webb element of the proposal will reprove an enhanced, better tree'd landscape significantly in

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<sup>26</sup> Provided in Appendix 1 to 3 to the Proof of Evidence of Dr Chris Miele

keeping with the original design ethos of that part of the park. This is a clear enhancement.

111. Compared to the existing condition of the overwritten element of the Park, this constitutes a significant benefit of the proposal. Rather than presenting as a substantially undertree'd landscape with wide stretches of unleavened grass, the proposal will once again have the Parkland feel of the past.

112. These substantial benefits fall to be added to the enhancement of the Emesian benefits already identified above.

### **HEART's Assessments of the Benefits of the proposal**

113. I described HEART's assessment of the impacts of the proposal in opening as unbalanced. That is because the significance of the benefits of the proposal was simply neither analysed as to significance nor weighted at all in the overall balance undertaken. A simple reading of Mr G's proof confirms this position clearly- see last paragraph at section 9.

114. But, at least in the proof the benefits of the proposal were recognised even if their overall place in the decision-making process was irresponsibly underplayed and left unweighed.

115. Then, without any foreshadowing in XX of two heritage witnesses, and unfairly in terms of procedure, Mr G volunteered in chief for the very first time, an exposition of why he believed that such benefits were either non-existent or were of reduced value.

116. Ms Copley who failed meaningfully to mention the benefits of the proposal at all in her evidence even in passing, then volunteered that the £10s of millions of pounds of restoration contained in this heritage led project constituting mere tinkering.

117. The Secretary of State will wish to understand how this evidence came about and what weight he should give to it in the circumstances of its disclosure.

118. The transparent truth of the matter is I fear that both Heart representatives recognised that the wrong approach to harm and overall balance had been adopted and were driven to "stick to their guns" by (for the first time in the witness box) trivialising the benefits of the proposal to an irresponsible degree while also asserting that the alleged harms would leave this landscape unlistable.

119. Given that a large part of their concerns relate to the construction of a golf course in a Registered Park and we know as a matter of clear evidence that many golf courses have been permitted ( in accordance with the EH Guidance) in much more sensitive parkland locations (without such extensive heritage benefits) (see

Meile Appendix of such courses and judge from the photographs): then HEART's "end of spectrum" judgments and balances appear even more extreme.

### **Overall Conclusion on Main elements of Significance.**

120. There can be little realistic doubt but that the main elements of significance of this park will be massively enhanced by the proposal. All of the key Emesian features are restored, repaired and better revealed. The overwritten Parkland will be properly retree'd with appropriate species and its present savannah-like appearance will be enhanced.
121. Its long term existence as such will be retained and maintained.
122. Overall, the Park will once again appear as and function as an 18thC Parkland with its key features restored and made available to the public in large degree.
123. Such enhancements should be afforded great weight consistent with the Framework.
124. Especial weight should be afforded these matters in the absence of any reasonable meaningfully costed alternative (see below).

### **The less sensitive/contested areas of the Park: Housing.**

125. Both national guidance and the specific golf guidance issued by HE<sup>27</sup> makes it clear that not all areas of a registered park (or indeed any area based asset) are likely to be of equal value. Further, as mentioned above, there is a recognition that generally an asset with a long term beneficial use is more likely to retain its significance.
126. The aim of this proposal from the outset has been to provide such a long term sustainable beneficial use for the Park.
127. The restoration of the key elements of the Park and the provision of that long term sustainable use come at a very significant (and agreed) cost<sup>28</sup>.
128. Although the resort use (once created) is highly profitable as a long-term going concern, its development is not in an objective sense viable. The development phase of the site (consistent with most other Ryder Cup venues- even those without the heritage asset) produces a significant deficit. This reflects the huge costs of the proposal.

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<sup>27</sup> See Appendix 1 to 3 to the Proof of Evidence of Dr Chris Miele

<sup>28</sup> As set out in the Proof of Evidence of Mr Derek Nesbit

129. As a result, in order to cross subsidise the development as a whole, the application contains the outline permission areas of housing development. These elements of the proposal represent the areas which in planning and heritage terms reflect the maximum areas of housing which are appropriately judged suitable and deliverable while representing the minimum safety net for Peel as a rational developer.
130. Without the housing areas, put simply, there will no development and none of the related significant benefits.
131. The housing areas were identified as the areas which would produce least (or no) harm to the significance of the heritage asset and which could also be defended in GB and landscape terms. This exercise was undertaken in very close consultation with the local planning authority.
132. The rationale for the joint selection of these areas as the most suitable areas for housing was thorough, consistent and comprehensive. It remains valid despite the criticisms of Mr G.
133. Thus, the housing is located in those parts of the Registered Park which clearly have least significance (if any) or in areas which fall outside the Park.
134. It is to be remembered that the whole essence of the designation of RPG is to protect the extent of the historic garden, parkland and designed ornamental landscape which survives in sufficiently good condition. Thus ordinarily "land which is laid out for purely agricultural... purposes or other economic or utilitarian purposes is normally omitted" from the protection of the designation.
135. This explains what is likely to be of most important and most sensitive to change in any RPG.
136. As to Dearden's and Park Farms and indeed (Wood End Farm too) Dr Meile's assessment was that these parcels of land were always laid out to agriculture not parkland or ornamental garden. In addition neither farm ever formally formed part of the designed park itself and had no true significance for the landscaped park itself, beyond perhaps the limited fact of historical ownership. Importantly, that judgment is shared by Dr Paul Stamper, who for more than 20 years worked with and for HE in the area of Registered Parks and Gardens.
137. Dr Miele's (and Paul Stamper's) assessment ought to be given considerable weight. Dr Miele is not shy of ascribing significance or increasing the value of areas of significance where he believes the evidence merits that.
138. In this case, the evidence clearly does not support an assertion that these parcels of land were integral to the significance of the Park as an historic landscape properly understood.

139. In fact, it is of relevance that at no time until the objector's proof has anyone ever asserted a meaningful link between the housing land farms and the Park as historic Park.
140. Thus, in cartographical terms ( almost always the best and most reliable source of information at this remove) it is very clear that each of these farms was in full agricultural use and whenever the extent of the Park was marked on the official OS plans, none of the "housing sites" were ever included within its boundaries. Those boundaries were the best evidence of the extent of the park or ornamental gardens. They were not seen or understood as part of the park by the surveyor: they were clearly physically and functionally distinct for mapping purposes. There is no evidence that the surveyor was inaccurate at all. The decision maker should proceed on the basis that (almost certainly at that date) he was correct.
141. Next, there is no evidence whatsoever of an historic, functional relationship between the farms and the Park in any meaningful historic context. Supposition or guesswork is not sufficient in these circumstances.
142. Despite a very comprehensive Hulton Archive: no documentary evidence of any such relationship has been produced.
143. Neither physically is there evidence of a meaningful historic relationship in terms of the significance of the park.
144. The suggestion that there were important views to the relevant areas is simply not borne out by the evidence. Such views are now and were at all material times not achievable. The fact that Mr G and Mr D sought to suggest otherwise is instructive indeed.
145. Views of the relevant farms as a matter of topography landform and trees could never have formed part of the Park's design intent.
146. There is no physical evidence of substantial linkage either in relation to the relevant farms. The OS maps do not disclose extensive or any meaningful farm tracks to suggest interdependence in an agricultural or other functional way.
147. The suggestion in evidence in chief that somehow Emes had a specific hand in the laying out of these farms is wholly unevicenced and is frankly fanciful. Mr G accepted in XX that it was simply speculation.
148. Both Stamper and Meile are clear that in significance terms and for the reasons set out above, these parcels add little if anything to the true significance of the Park properly understood.
149. In any event, wherever the debate as to the relationship with the two farms within the site ends up: there can be very little doubt that these areas of the designated asset are of much less significance than the core areas and the areas of

the site which will be significantly enhanced as a result of these proposals in the round.

150. As a result, the harmful impact of the proposal on the housing character areas outside the historic park but inside the Registered boundary is significantly outweighed by the benefits of the proposal to significance overall identified above.
151. The same analysis applies a fortiori in relation to the Western Fields. The fields lie outside of the Park, have always been in pure agricultural or mineworking use. There is no evidence of the creation of borrowed views or of any truly functional relationship with the designed ornamental park.
152. The lpa landscape character assessment contained in the Landscape Character Appraisal of Bolton contained in Ms Knight's evidence is an accurate description of the true landscape character of the area. It is identified as being "low grade agricultural land with ponds and flash areas and " fragmented landscape with scattered settlements and dissecting transport links" . It is said to have "a lack of historic continuity and variety in landscape quality".
153. She explains why in the circumstances of the case the land has and had no functional or meaningful visual connection with the park as a whole and also why (though the point is no longer pursued by Heart) that landscape is not "valued" for the purposes of the NPPF Para 170.
154. This material heritage (Palmer) balance is truly NOT a close one. Every appropriately qualified professional analyst other than Mr G has also come to this conclusion. Those analyses are consistent over time and as to judgment. All identify net beneficial impact. The care and attention which these assessments display needs to be understood. We have not spent much time on it at the inquiry but, the Historic Impact Assessment undertaken by Mr de Figueredo ( Dip Arch MA (Urban Design) RIBA IHBC more than 20 years employment with HE) is truly a tour de force of detailed and balanced analysis. It deserves to be read in full please.
155. Great weight and importance should and must be afforded to this benefit.

#### **Alternative heritage judgments.**

156. It follows from the analysis set out above, that it simply cannot be lawfully contended that the proposal drains the Park of most if not all of its significance. I make no bones about it, the substantial harm assessment is in the circumstances simply not legally feasible.
157. The only alternative judgments available to the decision maker are therefore that the proposal on balance leaves the designated heritage asset unharmed or that on balance, the proposed asset is harmed but less than substantially.

#### **Asset left unharmed.**

158. In the event that the proposal leaves the asset unharmed: then for the purposes of the NPPF and the footnote, there would be no strong reason to refuse the permission. Indeed even absent positive net enhancement: great weight as a matter of policy should be given to the assets conservation.

**Less than substantial harm.**

159. If, contrary to all the submissions at the inquiry, the proposal overall causes less than substantial harm, then in the terms of the NPPF<sup>29</sup> such development can be permitted in the event that the public benefits of the proposal which can include securing its OVU, outweigh the less than substantial harm.

160. The purpose of this provision and in particular the reference to OUV is of particular relevance to the circumstances of this case where the potential future of the Park in the absence of meaningful intervention is bleak on any reasonable assessment.

161. The concept of an optimum viable use, reflects the settled policy position that ordinarily a designated asset's significance is secured and safeguarded by having a beneficial use.

162. In the present case, the use of the Registered Park as a family seat and Park has long ceased. In the 100 years since it has ceased, the park has suffered considerable loss of significance even though its core features of significance are still discernible (for now).

163. No party to the inquiry is suggesting that this landed estate use remains available to the asset.

164. Planning policy has long recognised that certain original uses of land such as stately homes and their parks, workhouses, large mental health institutions are simply not appropriate to provide those original assets with a continued use.

165. In such circumstances, alternative uses for those buildings whose original use is no longer socially achievable or desirable are encouraged. Such uses even if they cause less than substantial harm are in policy terms to be preferred to no use and continued dereliction.

166. This is particularly the case if the uses promoted constitute the OVU of the asset. Such a use optimises the use of the site in a way which limits the nature of the harm but at the same time is viable in the sense that it provides a long term sustainable use for the asset concerned. If there is no alternative use to that which is proposed than that proposed constitutes the optimum use.

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<sup>29</sup> Paragraph 196 of the National Planning policy Framework, February 2019

167. The thing about an OVU is that it is the planning systems best effort at placing the most appropriate use into an asset to secure its long term future in comparison to and in preference to doing nothing.
168. In the present case, the only analysis of whether the proposed development constitutes the OUV for the site has been undertaken by Dr Miele<sup>30</sup>. He was not challenged on it and OUV was simply ignored by HEART.
169. Dr Miele is very clear that in order to protect the best and most important elements of significance of the Park and to enhance them to the degree proposed then a valuable use is required. That approach is consistent with the NPPF (193) and with the detailed sections of the PPG.
170. Dr M identifies the golf course/resort use as an appropriate use and also the fact that there is no alternative use: hence his conclusion that the proposal as the only realistic use is also the optimum use.
171. We also know as a matter of agreed fact that the resort use is viable for the owner and for the asset itself going forward. As the PPG makes clear, the aim of the OUV is to provide a use which secures the future of the asset (albeit with less than substantial harm) into the future.
172. The evidence of Mr Nesbitt establishes that the resort when built, is highly profitable looking forward, even on the most modest of assumptions. There is no challenge to the evidence that the alternative use would be in the position to finance the maintenance and onward safeguarding of the asset.
173. In the absence of an alternative use for this asset it has a sorry future.
174. The Secretary of State should not proceed on the basis that there is any reasonable costed deliverable alternative to the application in the circumstances of this case. There is no sustainable evidence whatsoever that an alternative use would be able to stop the irresistible decline of the Park. We know that the restoration work for the key Emes/Webb features will run to £10ms of pounds without onward investment in maintenance.
175. None of the objectors- even those with a full professional team- raise even the beginnings of a realistic potential alternative use for the site which will do anything other than accelerate or perpetuate the present demise of the asset.
176. Further and importantly, the relevant planning authorities have had to consider the condition and future of the heritage asset as part of its development planning duties. The strategic authority (supported by Bolton Council) has as part of the exercise of such duty considered what realistic options were available for the

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<sup>30</sup> See paragraph 4.30 to 4.36 of the Proof of Evidence of Dr Chris Miele

site. It is instructive in deed that these authorities have not identified any alternative uses for the site which in planning terms might be appropriate or might provide a long term future for the site. Indeed the emerging plan has contained a formal allocation supporting the provision of a Ryder Cup Course and heritage regeneration. Support for such a development still appears in the plan albeit that the plan is at a very early stage.

177. So, the policy support cannot be given great weight as a land-use planning policy but the conclusions of the planning authorities over the last few years further underscore the absence of alternative realistic solutions.

178. It therefore follows that if there is a finding of less than substantial harm to the asset from the proposal, then there should also be a finding that the proposal nonetheless secures its OVU, the only use which **on the evidence** realistically results in the securing the future of the asset in comparison to the alternative of a do nothing option.

179. In these circumstances alone and without moving outwith the heritage field, the proposal will constitute the best use for the site in heritage terms going forward. As such any less than substantial harm will (as the NPPF paragraph contemplates) be outweighed by securing the OVU for the asset alone. This is particularly the case when such an out-turn is considered in the context of the absence of alternative uses and the need to consider the future of the site in the absence of development.

180. In addition to these matters, if there remains less than substantial harm to the significance of the Park, then the other public benefits which flow (in addition to the securing of the OUV) and which are set out in full below fall to be added to the balance.

181. For the reasons set out below, these benefits substantially outweigh any conceivable less than substantial harm to the asset when seen as a whole as part of the heritage footnote assessment.

182. The way in which a finding of less than substantial harm, if any, fits into the Green Belt analysis is interesting.

183. There are two ways of thinking about the matter. If it is identified that the proposal constitutes the assets OVU (a potential heritage (and public benefit)), then, if that OVU is better for the asset as a heritage asset than leaving the asset without a viable use, then, even if the finding is that there is less than substantial harm from the development, the fact that such harm is its OVU and is better for the asset than no use is in fact on proper analysis a heritage benefit of the proposal and is properly counted as such by the GB assessment. Both Mr Bell and Ms Lancaster advanced this position albeit without prejudice to their clear position that overall, net benefit is clearly demonstrated.

184. If, in the alternative, less than substantial harm, is taken into account in the overall GB analysis as “another harm”, then the existence of the OVU and all of the other public benefits associated with the proposal would also fall to be weighed (along with all of the other public benefits) also as part of the overall balance. This would mean that “all harm” would be judged against “all benefits”.

185. This overall balance is dealt with below.

### **The Dovecote**

186. The Dovecote is a Listed Building Grade II. It is in a poor state of repair and has a poor existing setting made up of modern ugly buildings and containers. Most of the significance of the asset clearly lies in its physical fabric as a listed building.

187. That significance as a building will be significantly enhanced by the repair and restoration of the dovecote. The detailed nature of these works would be the subject of a condition if detailed matters are at large. (None were raised in oral evidence).

188. The ugly modern and uncharacteristic setting of the Georgian dovecote will be altered. The relationship of the dovecote to the other heritage building of value ( the non-listed barn) will be enhanced.

189. As a matter of fact the Georgian Dovecote, predates the founding of Home Farm or in fact any farm at this location. (see e.g. OS Plan 1845<sup>31</sup> and the archaeological desk study) It follows that the dovecote was always likely to be associated with the main house, its stables, its pleasure garden and the environs of the core of the Park rather than. This is confirmed by the archaeological analysis.

190. The proposal not only enhances the listed building and its fabric significantly, it also places the dovecote in a better and more appropriate setting than present - again associated with the new version of the Main House and its curtilage.

191. The finding by Mr G and Ms C that this dovecote as a listed building is caused substantial harm by the proposal as a result solely of the removal of the later farm buildings and the other modern farm detritus from its setting is a useful instructive barometer of the nature and reliability of their judgments on such matters.

192. Such a judgment is in the circumstances of the case, a clear indication of a faulty approach overall to heritage matters.

### **Overall Conclusion on Heritage Case.**

193. The heritage footnote is engaged by this proposal.

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<sup>31</sup> Shown in the Appendix 14 to Chris Miele's proof of evidence - University of Salford Archaeological Evaluation - at page 58

194. The assessment falls to be considered carefully, proportionately and on the evidence.
195. The Secretary of State will wish to know why those objecting to the proposal have reached views which are so extreme in comparison to the consensus of opinion before the inquiry.
196. Put bluntly, describing the benefits which flow from the application as a whole as mere tinkering establishes an inaccuracy of judgment which is simply staggering. So too is the assertion that post development most if not all of the significance of the park will be removed and that as a result the Park would come as a result “unlistable”. These assessment as sold as unnegotiable: neither of Heart’s witness was prepared even to consider that these assessments might be inaccurate.
197. The Inspector and the Secretary of State will need to judge by how far such overall and wildly inaccurate conclusions infect and colour the underlying judgments which have fed into these unfeasible conclusions and balances.
198. On the other hand, there is a consistency of approach and a proportionality of language and judgment among all other professional judgments. Dr Meile identifies harm, adds to and alters the assessment of significance across the park proposed by Mr W and fully justifies his analysis by evidence that he presents in his proof.
199. There is, in this case, a history of balanced assessments which recognise that there are very considerable benefits of the proposal to the **most** sensitive and important part of the RPG and the securing of a valuable longer term use while also identifying harms and less acceptable impacts in the **less** sensitive parts of the park.
200. Again there is a clear, balanced and fully argued consensus of opinion that the balance necessary in such case falls conclusively and clearly in favour of heritage benefit.
201. As a result and if the Secretary of State agrees the heritage assessment element of the footnote is met. Neither would there be a clear reason identified in heritage terms for the refusal of planning permission (see paragraph 11 of the NPPF).
202. Further, the significant enhancement of this important heritage asset is by itself sufficient to outweigh the Green Belt and any other harm identified as a result of the proposals. Of course because the heritage benefit only arises as a result of the provision of the Ryder Cup Golf course, then this intellectual exercise of using heritage as a VSC by itself does not arise in fact.
203. But the benefits of the proposal in this regard should not be diminished lightly

## **Economic Benefit of the proposal.**

### **Introduction.**

204. It is possible to cut straight to the chase in relation to this evidence.
205. This because in answer to a question from Mr Dale-Harris, the only person at the inquiry who was in any way questioning the extent of the socio-economic benefit of the proposals in the round, (Ms C) conceded that despite her concerns the socio economic and cultural benefits of the proposal identified by Mr Tong, if delivered, ought to be given very significant weight.
206. That concession was very appropriate as the evidence establishes.
207. Of course, each case falls to be determined on its own particular circumstances. But, the scale of economic and social benefit apparent in this case has by itself often been sufficient for the Secretary of State to find very special circumstances. (See McIlaren in Tong Chapter 9.)

### **The evidence.**

208. In a nutshell, using the best evidence and the appropriate methodology, Mr Tong assessed that the total monetised socio-economic impact of the development is estimated to total £1.2 bn between 2021 and 2040 at 2019 prices. The vast majority of that impact<sup>32</sup> will be felt in the North West and at least half in Greater Manchester.
209. The intangible benefits of the proposal cannot accurately be monetised in the same way but are likely to be very significant and are in line with all levels of government policy to heighten the visibility and status of the Northern Powerhouse and in particular to harness the ability of Greater Manchester to make the most of sporting events and their legacy.
210. Such enhancements in profile and the showing to investors that Government has confidence in the area is likely to be just as important in terms of meeting policy objectives as is the monetised contribution of the investment itself.

### **The Baseline.**

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<sup>32</sup> See figure 9.11 of the Proof of Evidence of Mr Andrew Tong

211. At present, the site makes a very minor contribution to the economy of the area.

212. It has lain in an unviable state as an entire estate probably since the family left the estate and main house in 1918. The state of disrepair of the main features of interest identified above are testament to that.

### **Local Context.**

213. Greater Manchester is the second most deprived local authority area in England. Its levels of multiple social deprivation<sup>33</sup> are across the board among the worse in the country.

214. Bolton and Wigan fare better. But not much better and the cities of Salford and Manchester have had most of the investment that has taken place in the NW. It is Bolton's time. The evidence in Mr Tong's chapter 6 on these deprivation matters is all official and officially collated evidence. It cannot be seriously challenged.

215. It means that the impact of inward investment to the area as a whole will be disproportionately beneficial.

216. Levels of worklessness and low productivity are particularly high and need to be addressed.

### **Ryder Cup impact**

217. The impact of the Ryder Cup event itself has been modelled carefully and robustly. The location of the Cup in an urban area with good public transport links to large parts of the UK as well as the very sophisticated and developed golf community (in comparison to say the more nascent golf communities in France and Italy) all mean that the forecasts for the Ryder Cup itself are overall in GVA terms higher than for other UK venues, but slightly lower for the region of the south east than other regional estimates.

218. The split of the regional distribution of the 4 day tournament GDV reflects the different scales of the local economies to the regional and national ones. But even on this analysis over the 4 day period of the tournament Bolton and Wigan stand to benefit to the tune of £3M (the north west by £35M).

219. This analysis pays no attention to the media coverage and the impact that such will have on the longer term brand status of Bolton. Bolton already successfully hosts and will host part of the RL World Cup in 2021 and Iron Men (open to both sexes and none) competitions.

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<sup>33</sup> English indices of deprivation 2019: mapping resources, Published 26 September 2019

220. As the inspector will see and as Mr Tong identifies, the holding of the Ryder Cup at Newport/ Celtic Manor is universally accepted to have put it on the map to such a degree that it successfully made itself a candidate for a NATO summit and now for the opening of the brand new Wales convention centre at the very Ryder Cup site<sup>34</sup>.

### **The Monetised impact overall**

221. All of the monetisable anticipated benefits of the proposal are set out in section 9 of Mr T proof.

222. They are the best available using the most up-to date, relevant and robust information. Deloitte are the market leader in this field and have provided similar assessments of economic impact of other mega sport events including (using this methodology) for central government. They have a track record of getting it right.

223. It is true, that as in all forecasting, there is not absolute certainty as to their delivery. But that is why forecasting uses the appropriate and up-to date methodology and requires a robust approach to be adopted by the assessor.

224. If there is uncertainty then it would be wrong in principle to assess that uncertainty in only one direction,. The methodology has in-built conservatism to it already and forecasts may be sensitive in either direction.

225. This is particularly the case when no alternative figures as to socio-economic impact are before the inquiry and no suggestion is made that any of the analysis is materially inaccurate.

226. The suggestion that the Ryder Cup anywhere else in the UK or the NW would produce similar economic impacts is nothing to the point.

- a. There is no realistic suggestion of an alternative venue for the Ryder Cup: suggestion in evidence wholly unsupported by evidence that Heaton Park or Royal Lytham and St Anne's might be better candidates are more notable for wholly random and unevicenced nature of the suggestion than their reality. Neither course would come close to meeting the requirements of the RCC.
- b. There is no guarantee that another venue in the UK would be found which could win the Ryder Cup (though Ms Copley's very clear assertion that because the last awarded Ryder Cup was in the UK (Ireland) then the next following the pattern of awards(sic) would surely be on the mainland was possibly the most ill-conceived and evidentially inaccurate submission in the inquiry).
- c. As such there is simply no sustainable evidence to suggest that the benefits which would flow from this Ryder Cup should be in any way reduced on the

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<sup>34</sup> See paragraphs 7.37 to 7.56 of the Proof of Evidence of Andrew Tong

basis that the event and its out-turns “would have taken place anyway” (see Additionality Guidance: Mr Tong).

227. For all of these reasons, the socio economic benefits of the proposal should be given very great weight. Again, alone these benefits would be sufficient to constitute VSC (as well as adding to the public benefit case in heritage terms if less than substantial harm is found). But again, the benefits are never provided alone. Rather they form part of the overall coincidence of benefit that flows from the very nature of the development itself.

## **Enhancement to Biodiversity.**

### **Introduction**

228. Rarely can the biodiversity of a site have been so comprehensively studied by an applicant and a strategic Ecology Unit<sup>35</sup>.

229. The detailed work which led the GMEU from an initial potential stance of objection to one where there is a complete and thorough agreement in a biblical scale SOCG<sup>36</sup> is difficult to underestimate.

230. The nature of that agreement which is to identify a very significant ( but conservative) 15.32% overall enhancement in the biodiversity metric of the site represents an extraordinary benefit of the proposal. This is exactly what Central Government is seeking to achieve (and more).

231. It is saddening to note that almost of the objectors raised the destruction of the ecology of the site as among their reasons for refusal. They were clearly unaware of the nature of the changes within the site which allow the GMEU to accept this enhancement as a proper “impact” of the proposal. If that is the applicant’s fault for losing this “benefit” in the welter of other documentation then we apologise. For the record, I set out how that benefit is forged here.

### **Detail.**

232. The existing park is unmanaged as to ecology. This means that its ecological value is on the decline. Mr H is clear that this is the case now and that the site’s ecological diversity will decline in the absence of intervention.

233. 52% of the Parkland trees are either dead dying moribund or have a limited life (red or amber).

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<sup>35</sup> Greater Manchester Ecology Unit ("GMEU") provides specialist advice to, and on behalf of, the ten district councils that make up Greater Manchester on biodiversity, nature conservation and wildlife issues. Although hosted by Tameside Metropolitan Borough Council, GMEU works across the whole of Greater Manchester.

<sup>36</sup> Statement of Common Ground on Ecology and Arboriculture, dated July 2019 (CD.13.11)

234. The proposal through careful ecological management will result in ALL of the sites SBI being enhanced as a result of the proposal and a number of them achieving a step change in value upwards as a result of the nature and scale of the enhancements proposed.
235. The habitats of bats, newts and toads will be significantly enhanced and there is no indication from Natural England that there is any likelihood of any licencing provisions being refused- (thus satisfying the Morge test).
236. An extensive and expensive programme of habitat enhancement and management of the woodlands and pleasure gardens areas etc will be implemented and secured by the ILHMP.
237. There are to be 3,226 additional specimen trees. An increase in woodland of 1ha on site and equivalent of 5.36ha now offsite at an identified location in Gorse wood<sup>37</sup>- giving the Secretary of State certainty as to the nature and scale and impact of the provision.
238. In order to substantiate the findings of the ecological assessment, the Applicant commissioned an objective biodiversity assessment to appraise the degree of net gain delivered by the proposal. The appraisal was undertaken by the independent market leaders in the field (Environment Bank<sup>38</sup> partly responsible with government for constructing the methodology). That work was overseen by the GMEU. It establishes as mentioned above a net biodiversity gain of “an incredibly high degree” according to Ms Copley.
239. Two observations were made by HEART in relation to ecology. The first, which took up large parts of Mr H xx was that if you altered the inputs, then the outputs of the model altered too.
240. But since there was no evidence or even suggestion that the inputs were incorrectly identified, this position goes nowhere. Indeed Mr H's evidence on this direct point was that the relevant inputs were NOT likely to alter in terms of the classification of grasslands or woodland.
241. The second was that there was some element of harm in the very short term occasioned by the construction phase of the proposal. Please look at the evidence on this and the limited nature of the impact. Of course such impact if you wish to weigh it will be overwhelmingly swallowed up in any balance by the significant enhancement of the proposal.

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<sup>37</sup> See Paragraph 6.84 to 6.89 of the Proof of Evidence of Francis Hesketh

<sup>38</sup> The Environment Bank is the leading ecological consultancy in the UK specialising in biodiversity accounting, metrics and offset brokerage. Environment Bank works with developers, planning authorities, conservation NGO's and landowners to provide consultancy, support and delivery services around all elements of net gain.

242. For the record, the semi ancient woodland on and about the site will be enhanced by proper management and the reduction of trespass and accidental harm. No veteran trees will be lost or harmed by the proposal. Rather their significance as ecological assets will grow.
243. This element of the case represents a very clear and present public benefit of the proposal. Failure to weigh it in the balance in significant favour of the proposal would lead to error in the balancing exercise.
244. But that of course is what HEART have done. Ms Copley accepted that none of the benefit of the proposal in this respect had been taken into account as part of the overall balancing exercise. (see below).

#### **Conclusion on Ecology Matters.**

245. When added to the heritage led regeneration and the socio- economic benefits of the proposal, the VSC case already sufficiently powerful is yet further enhanced.

#### **Transport and Environmental Matters.**

246. Correctly, local residents are concerned about congestion in the area generally and in the Chequerbent roundabout area. Concerns that the proposal will make the situation worse are understandable. But not supported by the evidence.
247. A range of highway works is proposed to mitigate the likely effect of the proposed development, principally consisting of the construction of a new link road between Chequerbent Roundabout and Platt lane<sup>39</sup>. The new road is agreed by the highway authorities including HE (who for a long time were minded to direct refusal until they were satisfied as to the position) to result in significantly less congestion and reduced driver delays.
248. That analysis adopting appropriate and robust modelling techniques is technically accurate and conceptually understandable given the problems of the roundabout at the minute and the way Mr E explained they would be resolved.
249. Mr E proved to be a very considered and considerate witness in the round table discussion taking the time to understand the residents' concerns as well as to explain the very substantial benefits flowing from the development.
250. The full benefit of the link road enhancement should flow to the development since without its provision or a contribution to its provision via the

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<sup>39</sup> See Paragraph 4.5 of the Poof of Evidence of Steven Eggleston

HIF<sup>40</sup> it simply will not be provided, nor will the enhancements mentioned above. Thus the Link Road is necessary for the proposal to take place in the sense that without it traffic conditions would be likely to be worsened. But the provision of the necessary Link Road brings additional benefits to the area as a whole<sup>41</sup>.

251. Benefits which by the sound of it are sorely needed.
252. Suggestions that the provision by the HIF in the absence of contribution from the site might be possible or should have been sought, go nowhere. The HIF is a fund to ensure that sites which are marginal can be delivered. The HiF funding for the Link Road is not guaranteed at all, even if applied for at its present level. There is no evidence at all that an even greater HIF bid would even pass the stage 1 element<sup>42</sup> of the process achieved thus far or even that the making of such a bid would be possible.
253. The only evidence before the inquiry as a matter of fact is that the proposal will finance and deliver the Link Road by itself or via a necessary contribution to any successful HIF bid, which by itself would be £3M short. Either way the benefits only accrue in the real world if the proposal is granted permission.
254. In these circumstances, full weight should be given to the enhancement of the local network as part of the overall proposals. It is a benefit which accrues only as a result of the proposal.
255. Given the real and obvious concerns which have been expressed about the existing position during the inquiry, this clear benefit of the proposal which is a necessary requirement of the highway authorities but goes further than just burning its own smoke has probably on reflection been undervalued by both the applicant and the local authority.
256. The enhancement of the highway network, the reduction of congestion and waiting times and the freeing up of one of the key junctions in the area particularly in peak hours is a very powerful and weighty public benefit of the proposal<sup>43</sup>.

### **Meeting Housing Needs.**

257. The Housing element of the proposal provides essential cross funding for the proposal. It represents both a minimum safety net for the Peel organisation which is prepared to proceed with this project despite the overall deficit on the development

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<sup>40</sup> The Government's Housing Infrastructure Fund ("HIF"). The £5.5 billion Housing Infrastructure Fund is available to local authorities for infrastructure to unlock housing. It will help to unlock up to 650,000 new homes by helping to fund much needed infrastructure in areas of greatest housing need.

<sup>41</sup> See Paragraph 4.6 of the Poof of Evidence of Steven Eggleston which deals with Impacts of the Link Road

<sup>42</sup> Stage one: 'Expressions of interest' as set out in the Housing Infrastructure Fund Supporting Document for Forward Funding, published July 2017

<sup>43</sup> See Paragraph 4.6 of the Poof of Evidence of Steven Eggleston

as a whole and the maximum level of cross subsidy that the applicant's advisers and the Council felt appropriate having regard to the constraints of the site.

258. But the provision of homes will also convey other significant benefits.
259. It is common ground with the local planning authority that the housing provided will make a meaningful contribution to meeting the needs of the local housing market both in the short term and in the longer term. (see SOCG Housing).
260. The country as a whole is in a national housing crisis. There is a national imperative significantly to boost the supply of new homes. Against the context of that crises, Bolton has an even deeper and very urgent need for new housing.
261. As explained above, it does not have close to a 5YLS. Indeed there is a clear substantial and serious shortfall against this most basic provision: the most basic of requirements for a planning system.
262. Past provision in Bolton is poor with a shortfall of well over 2,000 dwellings in Bolton over the last 11 years<sup>44</sup>. Housing delivery has fallen well short of the minimum CS requirement in every single year without exception in that period.
263. I mentioned above that the absence of even a 5YLS is not simply a matter of dry statistics or tables it is a real world issue with real world consequences for real people.
264. The symptoms of a broken housing market are very real and are experienced by the people of this area. Thus:
- a. House prices in the area have been rising by in excess of 10.6%
  - b. 3,261 households in Bolton are on the Council's housing waiting list in a reasonable preference category
  - c. 43,477 households cannot access the housing market at all<sup>45</sup>.
265. These consequences are socially divisive and unsustainable in economic and in transport terms. A step change in housing provision is needed.
266. Both the local planning authority and the applicant are clear that the evidence supports the fact that the development will help address the absence of a 5YLS. On either the council or the applicant's figures (c 200 units) that contribution is a significant one: and one to be given substantial weight in the overall planning balance. Even if the commencement of development is delayed by a year, then the contribution which the site makes is a meaningful one<sup>46</sup>.

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<sup>44</sup> See paragraph 10.4 of the proof of evidence of Stephen Bell

<sup>45</sup> See paragraph 10.5 of the proof of evidence of Stephen Bell

<sup>46</sup> See paragraph 2.15 of the Statement of Common Ground on Housing Issues, dated August 2019 (CD.13.9)

267. So too is the contribution which the site will make to the longer term housing provision in the Borough, helping to address the shortfall of land at a sustainable location against Bolton's identified needs. (see Bell section 10 and in particular para 10.25).
268. The proposal thus assists in meeting both short and long term needs. It is a matter of common ground that the Council needs to identify new sources of supply to those contained in the emerging plan to meet OAN and that the site will make a meaningful addition. (see Bell: SOCG on housing<sup>47</sup>)
269. The qualitative aspect of the proposed housing mix at the site will also help to attract footloose working age households who are better able to drive economic growth in the area<sup>48</sup>.
270. The quality of the housing is further secured by the design parameters. No point is taken as to the quality of the design or to the applicant's case that the housing will be of high quality.
271. All of these housing delivery matters add to the overall case establishing VSC in the context of this case.
272. The Secretary of State will understand more than most the pressing local, regional and national need for housing and will accordingly place weight upon the housing provision proposed.
273. Overall of course, it is settled ground that the proposal is located in a sustainable location and in overall transport terms would give rise to more sustainable patterns of transport and travel.

### **Affordable Housing.**

274. The application at the time of its determination by the local planning authority did not contain affordable housing. It was common ground that given the viability analysis presented to the inquiry<sup>49</sup>, the development could not viably provide any affordable housing.
275. Policy SC1 of the CS<sup>50</sup> is very clear that 35% of housing on greenfield developments should be affordable BUT ONLY if financially viable. In the event that it could be demonstrated that financial viability did not allow of that provision then lower levels of provision or different tenure mixes to the 75/25 could be acceptable.

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<sup>47</sup> See the Statement of Common Ground on Housing Issues, dated August 2019 (CD.13.9)

<sup>48</sup> See para 10.30 of the Proof of Evidence of Stephen Bell

<sup>49</sup> See Proof of Evidence of Derek Nesbit and Statement of Common Ground on Viability, dated 14 August 2019 (CD.3.15)

<sup>50</sup> Bolton's Core Strategy Development Plan Document Adopted 2 March 2011

276. The absence of affordable housing on the particular evidence of this case was therefore, not contrary to the provisions of the development plan in that sense.
277. Following the call in of the application from the Secretary of State, the applicant had regard to other decisions of the Secretary of State and also to new para 64 of the NPPF.
278. It is important to emphasise that para 64 (and its critical footnote) does not in any way undermine the long standing understanding in policy that affordable housing should not be sought from developments which when objectively assessed are NOT viable as judged by the approach set out in the PPG. In other words properly understood it does not create a collar of 10% below which no housing site should fall (though that was a common misunderstanding in its early months).
279. Rather it requires that where affordable housing is justified on larger sites, **10% of that provision** should be provided in the form of affordable **home ownership**.
280. Nonetheless, as I indicated in opening, the underlying thrust of the policy and the content of a number of decisions by the Secretary of State placing significant weight on the provision of affordable housing has led to the applicant **as part of the application** to offer a minimum 10% affordable housing each of which have to be owned by an eligible person (in the precise terms of the s 106 agreement).
281. Such a provision is not required by the CS policy (nor for the reasons set out above by the NPPF) and is therefore “policy plus” in the terms employed in the inquiry in respect of the CS and the Framework. The applicant is entitled to provide such affordable housing on site as part of the mix of development and for the reasons set out in the caselaw on this matter, the Inspector and the Secretary of State is obliged to take such a material consideration into account as a benefit of the proposal.
282. As to weight, it is common ground that there is a pressing need for affordable housing in the area. Annually in Bolton alone the SHMA<sup>51</sup> identifies a need for 496 affordable housing units (net) (Bell 10.35)<sup>52</sup>.
283. The meeting of this need is accepted now by the local planning authority as a benefit of weight to be added to the VSC which it had already found given the other considerations that clearly outweigh the GB and other harms of the proposal.
284. The ascribing of additional weight to this matter **MUST** be right. And as the Inspector pointed out, the Secretary of State might well have a view on the makeup and tenure split of the housing provision and the impact that has on the overall weight to be given to the additional benefit. As a result the s 106 has been amended

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<sup>51</sup> Strategic Housing Market Assessment , Final Report, dated 2008

<sup>52</sup> See para 10.35 of the Proof of Evidence of Stephen Bell

to allow the Secretary of State to influence the precise nature of the provision and mix on the development as a whole. This allows the Secretary of State to amend the tenure mix and to enhance the weight attributable to the benefit.

285. Hearts refusal by its professional planning witness to accept that the affordable housing is a benefit at all was instructive in the extreme. In fact, although she was given several opportunities to reconsider this matter, she maintained that the ah provision was in fact A HARM!!
286. Clearly the addition of affordable housing where previously there was none is a benefit of the proposal and the refusal to accept that was irrational.
287. That the offer of affordable housing was more than required by the policies, was tested very fully by the analysis required by the inspector.
288. A. comprehensive assessment of the potential scenarios and alternative parameters was ordered by the Inspector in his rulings and during the course of the inquiry.
289. All such analysis established that at present day values and applying objective and anonymised viability techniques required by the PPG and by the new RICS guidance, the scope for a policy requirement for affordable housing simply does not exist. The Council's experts agreed. The contents of that agreement is set out in a comprehensive SOCG<sup>53</sup>.
290. But, but.. as part of that analysis, there are circumstances where housing values increase to reflect the status of being associated with the Ryder Cup and a new golf led resort and where the value of the commercial asset (at present constrained by a red book valuation which can give little "trophy" value to the asset) rises significantly<sup>54</sup>.
291. In such circumstances and in the particular circumstances of Peel as a developer, then as Mr Nesbitt put it, the scheme's viability "doesn't look so daft".
292. Hence the need for a comprehensive set of review mechanisms to establish that, if as anticipated, the values associated with both elements of the proposal rise as Peel anticipates that they will, further public benefit in the form of additional affordable housing will be provided.
293. With the assistance of the inspector, the mechanisms now provided ensure that the provision of affordable housing provided pursuant to any cap is optimised both as to timing and quantum of delivery and location with a view to maximising the potential weight to be given to this additional affordable housing secured on review.

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<sup>53</sup> Statement of Common Ground on Housing Issues, dated August 2019 (CD.13.9)

<sup>54</sup> See Proof of Evidence of Derek Nesbitt

294. By these means, the proposal now provides more than the reasonable maximum provision of affordable housing. At all material times going forward, the proposal will at least provide the reasonable maximum provision by way of the review mechanisms. The detail of the mechanisms including appropriate indexation has been agreed with the local planning authority and is commended to the Secretary of State<sup>55</sup>.

295. For all of these reasons, significant weight should be given to the affordable housing provisions (and all of them) in this case. They are weighty additional matters to add to the VSC case already set out above.

### **Delivery and uncertainty: a slight diversion.**

296. The viability session of the inquiry held in round table, also touched upon the issue of the delivery of the proposal.

297. Of course, viability which is an objective test against a set of anonymised benchmarks is a very different creature from the evidence of deliverability which can and should be judged on the evidence in each case.

298. Many developments which on the face of the balance sheet and objective sector wide benchmarks are unviable in a policy sense are built because that type of viability is but one factor in the decision to proceed with a development.

299. Mr Knight explained, that different developers have different models and in fact different ambitions. The objectivised viability of the project in the short term is not one which Peel has ever really treated as determinative in managing its portfolio. He gave the examples of the Trafford Centre and of John Lennon Airport as projects which proceeded and have succeeded notwithstanding negative viability appraisals.

300. The ability of the Peel trust to hold land for long periods of time and to use their very significant asset base to play the “long game” was explained carefully and compellingly.

301. Again as Mr Knight explained, the need for a wider view of business success has driven all of the most recent Ryder Cup successes in Europe: they have all been underwritten by successful individuals, local corporations and/or national governments<sup>56</sup>.

302. There is simply no evidence in this case, but that Peel is other than totally and completely committed to what it sees as one of its Legacy Developments in the region. The bringing of the Ryder Cup to the North West has long been high on its

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<sup>55</sup> The Viability Review Mechanism being contained within the S.106 Agreement.

<sup>56</sup> See statement of Richard Knight provided at Appendix 1 to the Proof of Evidence of Mr Stephen Bell

corporate agenda. It has already spent millions of pounds in seeking to achieve this ambition. It has a remarkable track record of delivering when it says it will. The Trafford Centre was mentioned as a clear example of this approach.

303. The Secretary of State will as a matter of fact already be likely to be aware of the nature of the commitment of Peel as a result of the company's engagement with Central Government and through the involvement of Sport England.

304. More importantly this permission can only be implemented at all in any shape whatsoever, if the Ryder Cup is awarded to the UK at Hulton Park and a binding contract as to delivery is secured.

305. As all of the evidence establishes, that award will only be met if the RCC is entirely satisfied of the complete and comprehensive support of the host nation government. In all recent cases, that has involved the Government and local stakeholders actively becoming involved in the delivery process. Here the local and national stakeholders are all fully supportive and engaged ready to support. The entirety of CD.9.4 and should be re-read. Support from GMCA, GMLEP, Bolton Council, Wigan Council, Marketing Manchester, MIDA, CBI, University of Bolton, England Golf and Sport England.

306. It goes without saying that being awarded the Ryder Cup, is, on the evidence of all modern Ryder Cup venues, a very significant national honour and benefit. The national and local reputational impacts of not delivering would be and are unthinkable.

**The Appropriateness of a s 106 Agreement to secure maximum benefit and to minimise the potential for harm.**

307. At all material times and consistent with Peels absolute commitment to the delivery of the Ryder Cup for the UK and for the NW, Peel has been prepared to abide by a restriction that the planning permission ought not to be capable of being implemented unless and until the Ryder Cup has been secured and conditions securing its delivery have been evidenced.

308. The Counsel (consistent with the preliminary views expressed by the inspector) took the view that because of the connection between the heritage benefits of the proposal, the economic and other benefits and the hosting of the Ryder Cup, such a provision ought to be embedded in the proposal in a way which could not be removed by operation of ss73 or 78.

309. Leading Council advised the Council that a s 106 was the appropriate way to achieve this end. He did so in gist for the reasons now set out in the note on the matter presented to the inquiry in answer to concerns raised by the inspector. They remain valid and are not challenged by any party.

310. Given the centrality of the provision of the Ryder Cup to all aspects of the case presented to the inquiry, the applicant is very clear that the imposition of such a requirement in the s 106 meets all of the relevant legal and policy tests<sup>57</sup>. For the avoidance of all doubt, the drafting of the s 106 has given the covenant more substantive certainty and more presentational centrality.
311. Indeed NO party to the inquiry at all is now saying that the imposition of a s 106 covenant to deal with this matter is unlawful in principle. It is to be noted that CPRE in particular has fundamentally shifted its position in relation to this matter. In an earlier representation it took the position that a s106 was not lawfully appropriate. Now it takes the view that it is essential. We agree.
312. There is nothing unusual either about the principle of a Grampian condition or a Grampian style covenant restricting the use of land unless and until a certain event took place.
313. The policy contained in PPG1 used to say that such a condition ought not to be imposed unless there was a reasonable prospect of such a condition being met. That has all long been swept away by a decision of the House of Lords. The present policy on Grampian conditions (and by implication Grampian clauses) is that they should only be avoided where “there is no prospect at all” of the relevant condition being fulfilled<sup>58</sup>.
314. The purpose of altering the guidance on this issue was at least in part to ensure that the planning system was “big” enough and flexible enough to take the opportunity of making timely decisions in the public interest: to ensure that planning permissions could be granted subject to the provision of infrastructure or some other development in the widest sense.
315. In other words, the courts and guidance make clear that where planning permission can be seen in the public interest in the event of a future event happening, then it is entirely appropriate both to judge the acceptability of the development in the context of that event happening and to grant permission dependant on that event happening unless there “is no prospect at all” of that event occurring during the lifetime of the permission.
316. Of course in the circumstances of this case, that test is easily met. Indeed the earlier reasonable prospect test would also easily be met on the nature of the evidence.
317. As Mr Knight pointed out repeatedly, this application was encouraged by the European Tour , has used its architects, its business plan, has the support of English Golf and Sport England and has been the subject of significant discussion and

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<sup>57</sup> Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and that it is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; or (c) fairly and reasonably related in scale and kind to the development,

<sup>58</sup> As set out in PPG: Paragraph: 009 Reference ID: 21a-009-20140306

negotiation with the Ryder Cup bodies and the European Tour over many years. This very much more than being “not even in the room” a phrase which was constantly mis-ascribed to Mr Knight.

318. Of course the award of the RC is not certain, and it would be wrong to expect the RCC to pre-judge or to pre-announce its preference or choice but as we have seen, the requirement for certainty is simply not the appropriate test to apply here. The planning system can fully and properly judge whether the situation in the light of the conditionality is met would be an appropriate one. If it is then planning permission should follow (along with the relevant restriction).

319. The assertion that it would be wholly unacceptable as a matter of principle to grant a permission now on the basis of a s 106 Grampian obligation is indefensible. It would at a stroke remove the flexibility in the planning system which the PPG rightly ensures exist.

#### **Prematurity**

320. This is not a prematurity case. There are two prerequisites for a prematurity case to have any legs. Neither is close to engaged by this case. Nothing more need to be said.

#### **The Overall Green Belt Balance.**

321. It is agreed between all of the r 6 parties that the overall Green Belt balance is on the basis of the caselaw a very comprehensive one. Thus, the GB harms, definitional and other, and all other harms associated with the proposal fall to be considered against the existence of a set of other consddieraions which are required to clearly outweigh that harm in order to demonstrate the existence of very special circumstances.

322. The content and structure of this closing and indeed all of the evidence provided to the inquiry by the applicant and particularly by Mr Bell has been deliberately structured to address this balance.

323. I have set out the main moving parts of that balance in the text above. The full analysis which contains further elements of VSC is to be found in Mr Bell’s carefully drafted s 11.

324. In such circumstances, it is not necessary for me to restate the balancing exercise in this part of the closing.

325. **Suffice it to say that the applicant accepts that there is considerable harm to the GB in this case. It accepts that such harm must be given substantial weight and has never argued otherwise. The circumstances of this case represent a generational opportunity to stall and reverse the decline of the Hulton Estate, to re-purpose it for the 21stC while at the same time to show confidence in and to**

**attract world attention to this part of the world by allowing it to host and reap the long term benefits of the Ryder Cup and the resort this created**

326. For these reasons and having regard to the other package of benefits set out above, the Green Belt footnote test, properly understood is met.

**The HEART Alternative Balance: the wrong paragraph engaged !**

327. When balance undertaken by HEART's professional advisers, the only rule 6 objector to the proposal is considered, it can be seen to be deficient by comparison.

328. Thus, the finding of substantial harm is legally implausible on the facts of this case. That is hugely important because it goes not only to weight to be given to heritage factors in the overall balance, but it engages a wholly and fundamentally different test. The "substantial harm (or total loss of significance)" test is a wholly and very deliberately different and stiffer test involving requirements of necessity or other detailed parameters to be met. ( Interestingly..... HEART's counsel's own assessment of applicability of the "substantial harm" paragraph was reflected by the fact that he asked no questions at all about its contents or the relevant tests it sets.)

329. Of course, if you err, and go down the substantial harm route not only are you erring in the weight you give to harm, but you are in fact taking yourself down the wrong decision-making path. Your conclusion is bound to be flawed because by definition you are applying the WRONG test.

330. Then, within the framework of the wrong test, we now know that Ms Copley applied hardly any weight at all to the tens of millions of pounds of careful restoration works and enhancements to the Emes features of importance and to the overwritten landscape rescue. Her characterisation of such work as "tinkering" without any written or properly testable analysis was hugely instructive of the flowered approach adopted. The inability of the applicant's team properly to comment on these assessments made long after the closing of the applicant's case deserves special mention again. It limits the weight which can fairly be afforded to these remarkable and unsubstantiated claims.

331. Also again within the framework of the wrong test, Ms Copley accepted that she had given NO weight to the ecological benefit of the proposals despite the fact that there was no evidence to suggest that the ecological benefits were in any way illusory or overblown. No appropriate weight has been given to the highway benefits and on examination, there is no real challenge to the quantum of the economic benefits which would flow from the decision to grant permission if the Ryder Cup were to be secured. And of course, the affordable housing we know was given ADVERSE weight in the overall balance.

332. All of these matters point to a fatally flawed overall assessment and as a result a fatally flawed conclusion.

**The Consequences of both the Footnote sets of Policies providing no clear reason for refusal.**

333. In the event that the Secretary of State accepts the conclusions of the local authority on resolution to grant and of the local authority and the applicant at this inquiry that both the heritage and the Green Belt tests are met, then it is clear from the new wording of the NPPF which makes it crystal clear now that as a matter of law, the presumption in favour of sustainable development is engaged.
334. This means that planning permission should be granted applying a tilted balance which requires decision makers to approve permissions unless the consequences of so doing would clearly and demonstrably be outweighed by the harms.
335. Since the comprehensive nature and extent of the GB test will in these circumstances have been met, there is little logical likelihood of the tilted balance indicating anything other than a grant of permission.
336. But the very fact that the presumption in favour of development is engaged is, and of itself, an important material consideration for the Inspector and the Secretary of State. It is a positive requirement of the planning system to address a deficiency in the development plan process if and when the presumption is engaged.
337. And, as the Inspector pointed out it is in policy (and thus) in legal terms the correct decision making approach for the Secretary of State to take in the light of the wording of the NPPF and relevant caselaw (see para 11 note as agreed with the parties counsel<sup>59</sup>).
338. The Secretary of State will as a result be advised that, in the premises, if the footnote policies show no clear reason for refusal, then the presumption must apply.

**Final Conclusion.**

339. Here is a unique opportunity to make a difference. They come along rarely in a career or in a series of Governments. This opportunity should be taken.

RUSSELL HARRIS QC

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<sup>59</sup> Handed into the Inquiry on 9 October 2019 (Inspector's document number 29)

