



Report to the Secretary of State for Communities and Local Government

By **Michael Ellison MA(Oxon)**

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

**Assisted by Colin Ball Dip Arch, Dip Arch Cons,
RIBA, FRSA**

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 8000

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TOWN AND COUNTRY PLANNING ACT 1990

SOLIHULL METROPOLITAN BOROUGH COUNCIL

APPEALS by

**SWAYFIELDS LTD in connection with the proposed development of a
motorway service area adjacent to the M42 at Catherine de Barnes**

and

**SHIRLEY ESTATES (DEVELOPMENT) LTD in connection with the proposed
development of a motorway service area on land at Junction 4 of the M42**

Inquiries opened on 12 February 2008

File refs: APP/Q4625/A/98/1013084 and

APP/Q4625/A/06/1199380

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CASE DETAILS

Appeal ref: APP/Q4625/A/98/1013084

APPEAL A

Site adjacent to the M42 Motorway, Catherine de Barnes, Solihull

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal was made by Blue Boar Motorways Ltd and the Executors of Sir John Gooch (“the Applicants”) against Solihull Metropolitan Borough Council (“the Council”). By letters dated 24 August 2006 and 31 August 2006, the Applicants agreed that their appeal could be pursued by Swayfields Ltd.
- The application (ref: 97/1930) is dated 19 December 1997.
- The development proposed is comprehensive motorway service area.
- The appeal was originally considered with two others which also related to proposed motorway service areas on the M42 at a public inquiry held between November 1999 and June 2000. The other two appeals were dismissed, but the then Secretary of State indicated in March 2001 that he was minded to allow Appeal A and to grant planning permission, subject to conditions and to the satisfactory resolution of a number of specific outstanding issues.
- In the light of material changes in circumstances which had taken place since 2001, the Secretary of State decided, in September 2005, to reopen the inquiry into Appeal A to allow all concerned an opportunity to give further evidence on the changed circumstances which now apply to this appeal.

Summary of Recommendation: That the appeal be dismissed.

Appeal ref: APP/Q4625/A/06/1199380

APPEAL B

Site at Box Tree Farm, Junction 4, M42 Motorway, B93 8NJ

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Shirley Estates (Development) Ltd against the Council.
- The application (ref: 2001/1943) is dated 23 August 2001.
- The development proposed is motorway service area.

Summary of Recommendation: That the appeal be dismissed.

1. INTRODUCTION AND PRELIMINARY MATTERS

- 1.1 These appeals concern applications to build a Motorway Service Area (“MSA”) to serve the M42 motorway in the area of Solihull. Both
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potential sites lie along the stretch of the M42 between Junction 3A (“J3A”) and Junction 7 (“J7”), a length of the M42 which forms the eastern section of the motorway ring around the Birmingham conurbation.

- 1.2 **Appeal A** concerns an outline application with all matters reserved for subsequent approval apart from means of access. The appeal was recovered for determination by the then Secretary of State by direction dated 19 February 1999, because the proposals would involve significant development in the Green Belt.
 - 1.3 The report of the Inspector who held the public inquiry into this and other appeals in 1999 and 2000 will be found at Document CD212. The Secretary of State’s decision indicating that he was minded to grant outline planning permission for a MSA at the Appeal A site, excluding the use of Walford Hall Farmhouse as a training centre, is contained in a letter dated 6 March 2001, a copy of which forms Document CD211.
 - 1.4 That minded letter was expressed to be subject to:
 - a. appropriate conditions;
 - b. the execution of a signed agreement under Section 278 of the Highways Act 1980 between the Appellant and the Highways Agency and the completion of any additional procedures required under the same Act necessary to enable the Highways Agency to reach a final decision on whether auxiliary lanes should be constructed;
 - c. consideration of the views of the parties on the omission of the use of Walford Hall Farmhouse as a training centre;
 - d. consideration of the views of English Heritage and of any further representations received in respect of the impact of the proposed MSA on the setting of that listed building; and
 - e. the entering into of a new Deed of Planning Obligation by Undertaking which binds all owners of the land and off-site land in respect of each obligation in the Deed.
 - 1.5 The minded letter made it clear that the Secretary of State had noted the Inspector’s view that the best option for Walford Hall Farmhouse would be a reinstatement of residential use. He agreed with the Inspector that the MSA development would harm the setting of the listed building, and, not finding it possible to reach a balanced decision on this matter without further consultation with English Heritage (“EH”), invited views from EH on the impact of the proposed MSA development on the setting of Walford Hall Farmhouse.
 - 1.6 EH set out their views in a letter dated 26 March 2001, and also agreed that reinstatement to domestic use would be the best option for the house. EH expressed concern that subdivision of the farmstead might
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threaten the survival of the outbuildings, and indicated a preference for the whole farm group to fall within a single curtilage as part of the overall application site (Document CD235).

- 1.7 Following subsequent correspondence with the parties to the inquiry held in 1999/2000, the Secretary of State decided by letter dated 6 September 2005 that, in the light of material changes in circumstances since the original public inquiry, a fair way of proceeding to a decision in order to serve the interests of natural justice would be to reopen the inquiry. The Secretary of State considered that the changes in circumstances were sufficiently wide ranging and complex to indicate that it would not be appropriate to proceed to a decision without the relevant evidence being tested at a public inquiry.
 - 1.8 In the same letter, the Secretary of State gave notice of the following matters on which he particularly wished to be informed for the purposes of consideration of the appeal:
 - a. the extent to which the proposed development is consistent with West Midlands Regional Planning Guidance 11;
 - b. the extent to which the proposed development is consistent with the emerging Solihull Unitary Development Plan (“UDP”), including consideration of the weight to be attached to it;
 - c. the extent to which development of a MSA on the appeal site would conflict with national policies, as set out in the White Paper “The Future of Air Transport”, published on 16 December 2003, on the development of Birmingham International Airport (“BIA”) as the West Midlands’ principal international airport;
 - d. to what extent development of a MSA on the appeal site would be prejudicial to the review of Airports policies set out in Regional Planning Guidance for the West Midlands (published 15 June 2004, and which now forms the Regional Spatial Strategy (“RSS”)) to be undertaken against the framework set out in the Government White Paper, “The Future of Air Transport”;
 - e. to what extent proposals for a MSA at Catherine de Barnes should be regarded as prejudicial to the completion of the Master Planning of Birmingham International Airport currently being undertaken in accordance with the Government White Paper, “The Future of Air Transport”, having particular regard to the Master Plan’s role to inform the regional and local planning process, facilitate engagement with a wide range of stakeholders, identify long term land requirements and any consequential revisions to safety surfaces and public safety zones so that relevant areas within and outside the airport boundary can be shown on an updated safeguarding map;
 - f. an updated assessment, in the light of any changed circumstances since the earlier inquiry, on the extent to which the proposed
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development is consistent with the policies in the MSA Policy Statement;

- g. the extent to which the proposed development would be consistent with paragraph 3.30 of PPS6 in respect of any retail proposed;
- h. the extent to which the revised proposals for Walford Hall Farmhouse and its outbuildings as set out in the new Deed of Planning Obligation dated 27 August 2004 and entered into by the new developer Roadchef CdB Limited, and the owners of the land and off site land, are consistent with advice in PPG15: Planning and the Historic Environment;
- i. in the light of the tests in ODPM Circular 05/2005, whether the new Deed of Planning Obligation by Undertaking dated 27 August 2004 and entered into by the new developer, Roadchef CdB Limited, and the owners of the land and offsite land is necessary, relevant to planning and directly related to the development proposed, and whether the obligations set out in it are fairly and reasonably related in scale and kind to the proposed development, and that it is reasonable in all other respects;
- j. in the light of any changed circumstances since the earlier inquiry, the extent to which the Environmental Statement (“ES”) produced in accordance with the Town and Country Planning (Assessment of Environmental Effects) Regulations 1998, as amended, remains adequate for the purpose of giving proper consideration to any likely significant environmental effects of the proposed development; and
- k. any other significant changes in circumstances since the earlier inquiry that are material to consideration of the appeal.

1.9 Since that Statement of Matters was drawn up, changes have taken place in relation to a number of the documents referred to in the Statement:

- a. The Development Plan now includes the RSS with its recently approved Phase 1 revision of January 2008 (Document CD109) and the adopted UDP of February 2006 (Document CD102).
 - b. The Master Plan for BIA to 2030 has now been published (Document CD106).
 - c. A new policy statement on the provision, standards and signing of MSAs and roadside facilities was published on 2 April 2008 in Department for Transport (“DfT”) Circular 01/2008. The Circular provides in paragraph 3 that it will apply to signed roadside facilities on the strategic road network which did not have a planning application registered prior to 2 April 2008. The applications subject to appeals at this inquiry were both registered before that date, so the new policy does not directly apply to them, but it still represents a material consideration in these inquiries, because it indicates the direction of travel of the Government’s MSA policy. Moreover,
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paragraph 57 of the Circular indicates that all existing MSAs together with new facilities provided subsequently (including those registered in the planning system before the date of publication of the Circular but which later receive planning permission) will be required to provide the facilities demanded by the Circular.

- d. Listed building consent for works to Walford Hall Farmhouse to make it habitable as a single dwelling with modern facilities and services was granted on 13 October 2006 (Document CD601). Listed building consent for repair works to bring the farm outbuildings into a stable and weatherproof condition was granted on 11 April 2007 (Document CD602).
 - e. The Deed of Planning Obligation by Undertaking dated 27 August 2004 has (together with an earlier Undertaking) been revoked by clause 9.1 of a new Agreement under Section 106 of the Town and Country Planning Act 1990 (Document CD734). A further Unilateral Undertaking made under Section 106 also needs to be considered in relation to this appeal (Document CD736).
 - f. The ES submitted to the 1999/2000 inquiry was resubmitted to the present inquiry (Documents CD405 to CD413 inclusive). It was supplemented by updated environmental information contained in Documents CD414 and CD415, which followed a request dated 13 December 2005 from the Planning Inspectorate pursuant to Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the EIA Regulations”).
- 1.10 The passage of time since the 1999/2000 inquiry has seen other changes in both policy guidance and in the physical environment in which the site of Appeal A is located. In particular, the M42 as it passes the site (and generally between J3A and J7) is now lit, with motorway lighting columns some 15 metres tall located in the verge; and gantries and Emergency Refuge Areas (“ERA”s), associated with the Active Traffic Management Scheme (“ATM”) which has been implemented in the area, have been introduced. The ATM scheme involves hard shoulder running within the section of the M42 between J3A and J7 during periods of traffic congestion.
- 1.11 Against that background, the scheme put forward by Swayfields has been amended. Whilst Appeal A is in respect of an application for outline planning permission (including detail only of the proposed means of access), at the 1999/2000 inquiry the Inspector and the Secretary of State considered the content of an illustrative proposed layout for the appeal site (drawing no 301.A-5.C). Swayfields now ask the Secretary of State to consider drawing no DH.301.A-5.F as the illustrative layout. It is contained in Document SWA2/3 as Figure 9. The other application plans are the site location (“red line”) plan and the illustrative proposed lighting layout (Figure 11 of Document SWA2/3). These are listed in Document SWA0/2, together with a number of other drawings showing on and off site mitigation works and proposed works to the M42 motorway on Crown
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land outside the application site, which the Appellants ask to be also taken into account on an illustrative basis. They include Drawings 98092/426 to 429, which will be found in Appendix 6 to Document SWA3/3, and which show proposed carriageway widening between J5 and J6 of the M42. These were produced in December 2007. They update Drawings 98092/262 to 272, on which the Highways Agency (“HA”)’s evidence to the inquiry is based. It is the scheme produced in December 2007 which Swayfields wish to have considered at the inquiry. The scheme shown on earlier drawings is withdrawn. For reasons which are set out at paragraph 16.7 below, I have considered Appeal A on the basis of Revision F and drawings 426 to 429 as the Appellants request.

- 1.12 A revised Transport Assessment for the Swayfields scheme was submitted in July 2007. It comprises Document CD508. It relates to the scheme in the form shown by Drawings 98092/262 to 272.
 - 1.13 In this report, Appeal A is considered against current relevant policies, documents and circumstances.
 - 1.14 A signed Statement of Common Ground (“SCG”) between Swayfields and the Council describing the site and surroundings of Appeal A and the proposed development, identifying the appeal plans and covering the planning background of the site is dated 12 February 2008 and comprises Document CD729. That document accepts that the updated illustrative layout in Drawing DH.301.A-5.F should be considered, and it also accepts the updated Drawings 98092/426 to 429. This SCG also identifies agreed elements of national planning policy guidance and the Development Plan which have a bearing on the appeal, with particular reference in both cases to the changes which have taken place since the Secretary of State’s minded to approve letter of 6 March 2001. The extent of the agreement between Swayfields and the Council in relation to issues concerning Walford Hall Farmhouse, landscape considerations, ecology and retail development is also set out in the SCG.
 - 1.15 An agreed statement between Swayfields and BIA relating to aerodrome safeguarding and public safety zones comprises Document CD714.
 - 1.16 There is also a signed SCG between Swayfields and the HA (Document CD702A). This is dated 4 June 2008, and sets out the extent of agreement on issues as at November 2007. It proceeds on the basis that the relevant plans are 98092/262 to 272 inclusive. It also specifies the issues on which agreement had not been reached between Swayfields and the HA at that time. During the course of the inquiry, agreement was also reached between Swayfields and the HA on the internal layout proposed for the MSA, subject only to a continuing difference on the level of parking provision required (explained at paragraph 6.17 below).
 - 1.17 In dealing with Appeal A, I had the advantage of being assisted by Mr Colin Ball in relation to issues concerning Walford Hall Farmhouse. Mr Ball had been the Assistant Inspector at the 1999/2000 inquiry. I am grateful to him for his advice and assistance in preparing for and hearing the inquiry and in the preparation of this report. I have accepted his
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conclusions and recommendations in connection with listed building matters, and have incorporated them in my report. Responsibility for the report and its recommendations rests with me alone, however.

1.18 **Appeal B** concerns an outline application with all matters reserved for subsequent approval. The appeal was made on 12 June 2006. By letter dated 14 July 2006, the Planning Inspectorate confirmed that discretion had been exercised on behalf of the Secretary of State under Article 23(2) of the Town and Country Planning (General Development Procedure) Order 1995 to extend the time limit for making the appeal so that the appeal could be considered.

1.19 By letter dated 17 July 2006, the Secretary of State directed that the inquiry into Appeal B should be conjoined with the reopened inquiry into Appeal A. Appeal B was recovered for determination by the Secretary of State by direction dated 11 February 2008, because the appeal could most efficiently and effectively be decided together with Appeal A, over which Inspectors had no jurisdiction.

1.20 At the second Pre Inquiry Meeting (“PIM”) held in connection with the appeals on 11 September 2006, the then Inspector, Mr M Hill (who had been the Inspector at the 1999/2000 inquiry) identified the following issues to be addressed in the evidence in relation to Appeal B:

- i. The extent to which the proposed development is consistent with the RSS for the West Midlands and the adopted Solihull UDP.
 - ii. The extent to which the proposed development would conflict with national policies as set out in the White Paper “The Future of Air Transport” in relation to the development of the BIA.
 - iii. The extent to which the proposal would prejudice the review of airports policy in the RSS.
 - iv. The extent to which the proposal would prejudice the completion of the Master Plan for the BIA.
 - v. An assessment of the consistency of the proposed development with policies set out in the 1998 MSA Policy Statement.
 - vi. Whether the proposal is consistent with paragraph 3.30 of PPS6 (Planning for Town Centres) in respect of the retail element of the proposal.
 - vii. Whether the Environmental Statement and the Supplementary Environmental Statement distributed in November 2006 is adequate for the purposes of giving proper consideration to any likely significant environmental effect of the proposed development.
 - viii. The impact of the scheme on the safety and free flow of traffic on the local road network and the M42 motorway.
 - ix. Whether the scheme would be inappropriate development in the Green Belt, and, if so, whether there are very special circumstances that outweigh the harm by reason of inappropriateness and any other harm.
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- x. Whether the scheme would cause unacceptable light pollution.
- xi. Whether the scheme would cause unacceptable air pollution.
- xii. The impact of the scheme on the countryside, the openness of the Green Belt and the purposes of including the land in the Green Belt.

These issues are listed at paragraph 24 of the note of the PIM (Document CD803).

1.21 Following my appointment to hear the appeals, I confirmed that list of issues in relation to Appeal B at the third PIM (paragraph 15 of Document CD804).

1.22 On 9 January 2008, the Council resolved that, had they still been in a position to determine Appeal B, they would have refused to grant planning permission on the following grounds:

- a. *“The proposals would amount to inappropriate development in the Green Belt and there is a need for the Appellant to demonstrate that there are very special circumstances sufficient to overcome the harm arising from inappropriateness and the harmful impact on the Green Belt and the purpose for it. Development at Junction 4 would have an adverse impact and urbanising effect on the narrow and vulnerable Green Belt gap that exists between Solihull and Knowle/Dorridge. The MSA would result in encroachment of built development into the countryside and would seriously erode the gap between these settlements. This conflicts with the purposes for including land in Green Belts, namely to check unrestricted sprawl of large built up areas, to prevent the coalescence of neighbouring towns and to assist in safeguarding the countryside from encroachment. The proposal will not assist in the use of land for access to open countryside for outdoor recreation near urban areas, or retain attractive landscape. No very special circumstances of sufficient weight have been identified to overcome the harm to the Green Belt. The proposal would therefore be contrary to Policies C1, C2, C4 and C8 of the Solihull UDP 2006, RSS and PPG2.*
- b. *It has not been demonstrated that the revisions to Junction 4 will allow the junction to operate safely and adequately with the operation of the MSA and committed developments.”*
- c. The Council added that they would also wish to include in paragraph b above a reference to a shortfall in parking spaces.

In addition, the Council delegated authority to their Head of Design and Development to vary or amend the grounds on which the appeal was to be contested (Document SMBC0/15). Document SMBC0/17 states that in practice this authority was exercised by the officer through involvement in the preparation of the case and attendance at conferences when the content of the proofs of evidence was finalised.

- 1.23 The illustrative layout for Appeal B considered at the inquiry is that shown on Plan 50292_MSA_001 Revision F (Document SEL0/8). Other illustrative plans which the Appellants ask to be taken into account are listed in Document SEL0/2. For reasons which are set out at paragraph 16.9 below, I have considered Appeal B on the basis of Revision F as the Appellants request.
 - 1.24 The appeal application was the subject of an ES submitted in February 2004 (Document CD418). Supplementary environmental information was submitted by the Appellants, Shirley Estates, in November 2006 (Document CD419). A revised supplementary ES was submitted in September 2007 (Document CD416, with related drawings in Document CD417) to provide additional information requested by the Council and to reflect changes to the layout of the proposed MSA which would extend the car and caravan parking area on to a field to the east of the originally identified car parking area (though still within the identified site boundary).
 - 1.25 A Transport Statement was submitted with the Appeal B planning application in 2001, but a further Transport Assessment was prepared in June 2007 (Document CD505) in order to bring the analysis up to date with current traffic conditions, approved future developments in the area, and changes to the highway network.
 - 1.26 A signed SCG between Shirley Estates and the Council describing the site and surroundings of Appeal B and the proposed development, identifying the appeal plans and covering the planning background of the site is dated 12 March 2008 and comprises Document CD730. This SCG also identifies agreed elements of national planning policy guidance and the Development Plan which have a bearing on the appeal. The extent of the agreement between Shirley Estates and the Council in relation to issues concerning landscape and ecology is also set out in the SCG.
 - 1.27 There is also a signed SCG dated 19 March 2008 between Shirley Estates and the HA in relation to Appeal B (Document CD732). At the time Appeal B was submitted, the application was the subject of a direction to refuse by the HA (Document CD240). Having regard to the matters dealt with in Document CD732, however, and subject to the caveats and conditions identified in clause 16 of that Statement, the HA withdrew their objection to Appeal B. In doing so, the HA made the point that, while they are the highway authority (on behalf of the Secretary of State for Transport) for the M42 and its slip roads, the Council are the highway authority for the A34, the A3400 and for the operation of J4 of the M42. There is no concluded agreement on highways and transportation matters between the Council and Shirley Estates.
 - 1.28 An executed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 in relation to Appeal B was submitted as Document CD735. On the last sitting day of the inquiry, Shirley Estates asked that a revised and updated Unilateral Undertaking (Document CD737) should be substituted for Document CD735. On behalf of the Council, the point was made that, since Document CD737 was in the form
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of a Unilateral Undertaking, it could not operate to revoke Document CD735. The Council were, however, content to make it clear that, so long as it was confirmed in writing that the information on title to land supplied with Document CD735 had not changed (which was done – see Document CD738), the Council would seek to enforce only Document CD737 in the event that planning permission was granted in relation to Appeal B.

1.29 **In relation to both Appeals**, a total of six PIMs was held. The first two, on 3 July 2006 and 11 September 2006, were conducted by Mr M Hill with Mr Ball. The remaining PIMs, held on 27 November 2006, 19 March 2007, 11 June 2007 and 17 December 2007, were conducted by Mr Ball and me. One significant reason for the large number of PIMs was that, despite the fact that the two applications dated from 1997 and 2001 respectively, it proved necessary to postpone the inquiry from two originally planned dates (28 November 2006 and 12 June 2007) having regard to the need for the highway proposals in relation to each of the appeals to be concluded in time for them to be properly considered by all parties before statements of evidence needed to be finalised. The importance of that matter was emphasised at successive PIMs, culminating in an offer made at the sixth PIM (paragraph 15 of Document CD807) for the Assistant Inspector to chair a round table discussion to identify outstanding issues and to set a format and a timetable for their resolution so far as possible. That offer was not accepted by the parties.

1.30 The notes of the various PIMs will be found at Documents CD802 to CD807 inclusive.

1.31 The inquiry sat at the Council Chamber, Civic Centre, Solihull on

- 12, 13, 14, 15, 20, 21, 22, 26, 27 and 28 February 2008
- 4, 5, 6, 7, 11, 12, 13, 14, 18, 19, 20, 25, 26, 27 and 28 March 2008

at the SIMTR Conference Centre, 1A Damson Parkway, Solihull on

- 28 April 2008
- 12 May 2008 and
- 3 and 5 June 2008

and at the Alpha Room, Renewal Conference Centre, Lode Lane, Solihull on

- 4 June 2008.

1.32 I was present at all sessions of the inquiry. Mr Ball was present at the opening of the inquiry on 12 February and on 18 and 19 March 2008, when, by agreement between the parties, the evidence in relation to listed building issues was taken.

1.33 Mr Ball and I visited Walford Hall Farmhouse and the surrounding area in the company of representatives of Swayfields, the Council and third parties on 18 March 2008; and, again by agreement with the parties, Mr

Ball made an unaccompanied visit to sites which had been referred to during the giving of listed building evidence on 19 March 2008. Maps showing these locations will be found at Document CD706C. I carried out accompanied site visits to the appeal sites and the surrounding area on 31 March and 1 April 2008, and also carried out unaccompanied site visits (which were referred to at the inquiry) on 26 March 2008 during the hours of darkness and on 12 May 2008 after the adjournment of the sitting of the inquiry held on that day.

- 1.34 The inquiry was originally expected to be completed by 20 March 2008. When that was not achieved, sittings continued during the week after Easter. It was still not possible to conclude the inquiry during that week, however. Because of the commitments of the advocates involved, it was then necessary to arrange the additional sitting days listed above during April, May and June in order to complete hearing the evidence in the case.
 - 1.35 At my suggestion and with the agreement of the parties, a programme was settled to allow closing submissions to the inquiry to be delivered in writing, along with any applications. If this had not been done, the period necessary to hear closings and applications would have extended well beyond the summer given the competing commitments of the advocates appearing at the inquiry.
 - 1.36 Having received the written closing submissions of the parties who appeared at the inquiry in accordance with the agreed timetable, the inquiry was formally closed in writing by letters dated 16 July 2008 (Document X9).
 - 1.37 During the course of the inquiry, a request was made by the Solihull Against Motorway Service Areas Group (“SAMSAG”), a Rule 6(6) party, for the right to cross examine witnesses of the Council and the HA, both of which bodies were at the time fellow objectors to the two appeals. (The HA subsequently withdrew their objection to Appeal B as noted above.)
 - 1.38 It was claimed on behalf of SAMSAG that a Rule 6 party has a right under Rule 15(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to cross examine all persons giving evidence at an inquiry, so long as that cross examination is not irrelevant or repetitious. The full submission of SAMSAG on this matter is contained in Document SAM0/2.
 - 1.39 My ruling in response to this application is set out in Document X4. I pointed out that, although a Rule 6(6) party is a person entitled to appear at the inquiry under Rule 11(1)(h) and therefore has the right to call evidence, only statutory parties have the right to cross examine under Rule 15(5). The definition of a statutory party in Rule 2 does not include Rule 6(6) parties. Cross examination by SAMSAG was therefore a matter at my discretion. I had allowed SAMSAG to cross examine the witnesses of the two Appellants, to whose cases they were of course opposed. The witnesses of fellow objectors, however, could in my view only properly be
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questioned where the case of SAMSAG against the two appeals differed from the cases of the other objectors concerned. I asked for a note of the questions which SAMSAG wished to put to objectors' witnesses to be provided for me in advance, so that I could establish whether in fact they related to issues on which SAMSAG's case differed from the case of the objector concerned. That practice was followed for the balance of the inquiry. Following that approach, I allowed questions to be put to objectors' witnesses by SAMSAG where SAMSAG's case was opposed to the case of any fellow objector, and on some occasions I pursued any issue of uncertainty by asking a question on the matter myself, but I refused to allow questions on issues where the same point was being raised by a fellow objector.

- 1.40 This report contains a brief description of the two appeal sites and their surroundings, the gist of the representations made at the inquiry and in written representations, and my conclusions and recommendations. Copies of the proofs of evidence of those witnesses who provided them are included as accompanying documents, but my report covers the evidence as given (including responses to matters dealt with in cross examination).
- 1.41 Appendix A lists those who appeared at the inquiry. Appendix B contains a list of documents. Appendix C contains the conditions which I recommend should be imposed on any planning permission granted in respect of Appeal A, and Appendix D contains a list of the conditions which I recommend should be imposed on any planning permission granted in respect of Appeal B. Appendix E comprises a list of the abbreviations used in this report.
- 1.42 Solihull MBC made an application for an order for payment of their full costs against Shirley Estates Limited in relation to the Council's preparation for and attendance at the inquiry to address Appeal B. I have reported separately on this application.
- 1.43 I take this opportunity to record my high appreciation of the work of Ian Kemp, who acted as Programme Officer for the inquiry. His contribution to the smooth running of the inquiry was appreciated by all participants.

2. THE APPEAL SITES AND THE SURROUNDING AREA

- 2.1 The motorway box around the Birmingham conurbation is well illustrated at page 119 of the RSS incorporating the Phase 1 review (Document CD 109). This shows the M42 providing both the southern and the eastern sections of the box, with the M5 providing the western section and the M6 the northern section. The two appeal sites are both located on the length of the M42 between J3A and J7, which forms the eastern section of the motorway box.

The site of the proposed MSA at Catherine de Barnes (Appeal A)

- 2.2 The appeal site is shown edged red on Plan 4 within Document CD409.
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A site description agreed with the Council is contained in Section 2 of Document CD729, and a description agreed with the HA will be found in Section 2 of Document CD702A.

- 2.3 The site is located approximately half way between J5 and J6 of the M42. J5 links to the A41, which is part of the local road network, providing access to Solihull and Birmingham to the northwest and Knowle and Warwick to the southeast. J6 provides access to BIA and to the National Exhibition Centre (“NEC”) via the A45, which also offers links into Birmingham to the west and Coventry to the east.
 - 2.4 The site lies in an area of open countryside around 2km east of Solihull, within part of the West Midlands Green Belt. It is located partly to the west and partly to the east of the M42, between the villages of Catherine de Barnes, some 500m to the west, and Hampton in Arden, around 1,250 m to the east. This area of Green Belt separates Coventry from the urban area of Birmingham. It is known as the Meriden Gap, and is approximately 10km wide at this point.
 - 2.5 The larger part of the appeal site lies to the west of the M42, and the smaller part to the east. The site is roughly triangular in shape, and has an overall area of 26.6ha. It consists primarily of arable farmland, and currently forms part of Walford Hall Farm.
 - 2.6 The site falls by approximately 17m from a ridge of high ground on its north western boundary to the M42, and then by a further 3m to its eastern boundary.
 - 2.7 The northern boundary of the appeal site is defined by the B4102 Solihull Road/Hampton Lane, a two way, single carriageway road, bridging the M42 and linking Solihull and Catherine de Barnes village with Hampton in Arden. Aspbury’s Copse, an ancient woodland divided by the construction of the M42 (which lies in cutting at this point) falls partly into the western and partly into the eastern section of the appeal site. It represents a prominent woodland feature along the Solihull Road boundary of the appeal site.
 - 2.8 The north western boundary of the site comprises a private access lane leading from Solihull Road to Walford Hall Farmhouse. The access road follows the line of a ridge, and gives access to the whole of the farm complex. The appeal site boundary is drawn to include Walford Hall Farmhouse and some of its outbuildings.
 - 2.9 Walford Hall Farmhouse, originally built in the 15th century as an open hall house, is a particularly significant example of the nation’s built heritage and is listed Grade II* for its outstanding architectural and historic interest. Although altered over the years, much of its medieval fabric survives. The farmhouse has not been lived in since the early 1990s and has deteriorated since the 1999/2000 inquiry. Although the roof is sound, the building is now in a seriously dilapidated condition. Vandalism and the attempted theft of floor tiles have led to the boarding up of ground floor doors and windows.
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- 2.10 The adjacent group of associated farm buildings form an enclosed yard. They probably date from the late 18th and early 19th centuries and are protected as curtilage structures by the farmhouse listing. While the threshing barn and stable block are in reasonably good condition, the other buildings are in substantial disrepair. The yard, and the land around the house, is overgrown and unkempt. Two large modern agricultural buildings adjoin the enclosed yard. A third modern building recently burned down, and the remains have been razed to the ground.
- 2.11 The listed farmstead sits in a prominent position on a ridge of land overlooking its original farmland of hedged fields and woodland. The wider historic farmland setting of the building group has been seriously disrupted by the construction of the M42 motorway through the fields to the east of the house. The adverse visual impact of the motorway on the farmhouse and its setting has increased significantly since the last inquiry by the introduction of the ATM scheme resulting in an additional lane of traffic at peak times, regularly spaced signal gantries and continuous motorway lighting.
- 2.12 The Farmhouse stands in a commanding position, overlooking a large pond and the surrounding farmland. It is prominent on the skyline in middle distance views from the south and from the east. There are high voltage overhead electricity power lines crossing the north western corner of the site, with pairs of pylons beside the Walford Hall Farm access track and across Solihull Road. In addition, a high pressure underground gas main runs roughly east to west across the site, crossing beneath the motorway.
- 2.13 The south western boundary of the site crosses two open arable fields, which are themselves bounded to the east by the two way, single carriageway road known as Friday Lane.
- 2.14 The smaller portion of the appeal site to the east of the M42 consists of two small fields alongside the motorway, lying generally below the level of the motorway and falling away to the eastern boundary of the site.
- 2.15 The southern tip of the site adjoins the motorway cutting and lies adjacent to the Barston Water Treatment Works.
- 2.16 The landscape in the wider area of the appeal site is characterised by a gently undulating landform and a well defined field pattern, with hedgerows, copses and small woodlands. Because of the presence of the motorway, the vista includes appropriate signage and gantries, recently extended as indicated in paragraph 1.10 above to include lighting and ERAs as a result of the introduction of the ATM system.
- 2.17 To the north of the appeal site lies Barber's Coppice, a prominent woodland, and Hampton Lane Farm. From here, Footpath M123 crosses agricultural land, allowing occasional filtered views of the site to the south. To the east of the M42, for the most part the mature parkland of Hampton Manor and the roadside hedgerows screen the site from view, though there are distant views of parts of the site from Eastcote Lane and beyond, with Walford Hall Farmhouse prominent on the ridge line.
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- 2.18 Views of the site from the M42 itself are only possible between the two overbridges which mark the northern and southern limits of the appeal site. The farm buildings are visible on the skyline.
- 2.19 Aerial photographs of the appeal site will be found in Document CD3 (photographs 11 to 15 inclusive), but it should be borne in mind that these photographs were taken in 1999, and therefore predate the installation of the ATM system on this section of the M42.

The site of the proposed MSA at Junction 4 (Appeal B)

- 2.20 The appeal site is shown edged red on Figure 1 within Document SEL1A&B. A site description agreed with the Council is contained in Section 2 of Document CD730, and a description agreed with the HA will be found in Section 2 of Document CD704.
- 2.21 The site extends to some 23ha, and is located at J4 of the M42. It consists of three fields immediately to the north east of the Junction on a gently rounded spur between two shallow valleys. Part of the site falls broadly north west towards the motorway and the River Blythe, and part falls broadly eastwards towards a tributary that flows northwards through Moat Coppice, a woodland to the east. The western and northern parts of the site slope at gradients between 14% and 5% towards the river and the motorway. A ridge runs in a south west/north east direction through the central part of the appeal site, and the land to the east of this ridge slopes away from the motorway at gradients of between 4% and 3%. The fields which make up the appeal site are mainly used for grazing, but are occasionally put to other short term uses.
- 2.22 The site is within the West Midlands Green Belt, which is about 1.5km wide in this location. The site lies about 3.5km from the centre of Solihull.
- 2.23 J4 of the M42 is a grade separated, signalised roundabout, which joins the M42 to the A34, the A3400 and Blythe Gate, the access to the Blythe Valley Business Park (“BVBP”).
- 2.24 The appeal site is bounded by farmland and woodland to the north, with the River Blythe, the M42 and the residential settlement of Monkspath beyond. The eastern edge of the housing development at Monkspath lies at a distance of about 500m from the appeal site. To the east of the appeal site there is woodland. Within that area to the east, a hotel and conference centre has been developed, and the area also contains an equestrian centre, including a large building housing an indoor riding school, a golf driving range and further farmland and woodland. Beyond, at a distance of about 1km, are the urban areas of Bentley Heath and Dorridge. Further farmland and woodland areas (Monkspath Wood and Little Monkspath Wood) lie to the south of the appeal site.
- 2.25 The A3400, known as Stratford Road, extends directly south from the appeal site, and provides a link to Henley in Arden and Stratford upon
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Avon. To the south west, on the opposite side of the M42, the land is occupied by BVBP, a large office park. To the north west, on the opposite side of the M42 carriageway is the Provident Park or Aspire site (another proposed office development site) and a Tesco superstore and a major garden centre (“Notcutts”), with the southern tip of the settlement of Monkspath behind the A34 (also known as Stratford Road) adjacent. The A34 provides connections to another employment development site, known as the TRW site, to Shirley Town Centre and ultimately to the centre of Birmingham.

- 2.26 On the southern boundary of the appeal site, Gate Lane forms a signalised T-junction with the A3400 to the south of the motorway junction, and provides access to the settlement of Dorridge to the south east of Birmingham. The only exit road from BVBP also forms a signalised T-junction with the A3400, just to the south of the Gate Lane junction, via a bridge over the M42.
- 2.27 The Trans Solihull Link public footpath (Footpath SL56) crosses the central part of the appeal site in an east-west direction. Another footpath (SL55) runs to the south of the appeal site from Four Ashes to Gate Lane, giving views of the site between the blocks of woodland.
- 2.28 An aerial photograph of the appeal site will be found at Appendix L2 to Document CD416, but it should be borne in mind that it was apparently taken in 2000, and therefore predates the installation of the ATM system on this section of the M42, as well as further development at BVBP and changes to the road alignment at J4.

3. THE PROPOSED DEVELOPMENTS

Appeal A

- 3.1 An agreed description of the proposed Appeal A development will be found at Section 3 of Document CD729 and Section 4 of Document CD702A.
 - 3.2 Briefly, the Appeal A proposal is for an on line comprehensive MSA facility to be constructed on the western side of the M42. Access would be gained directly from the motorway via new slip roads and an overbridge providing access to and from the southbound carriageway. There would be no vehicle access to and from the site from the local road network.
 - 3.3 The MSA would provide a canopied fuel filling station forecourt for both cars and heavy goods vehicles (“HGV”s), a single storey amenity building with retail, restaurant and lavatory facilities, and a linked two storey overnight lodge. There would be a picnic area within a comprehensively landscaped setting, including earth modelling and substantial tree planting. Parking spaces for cars, HGVs and coaches would be provided.
 - 3.4 The proposals submitted by the original Applicants included the
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proposed conversion of Walford Hall Farmhouse and its outbuildings as a training centre to be operated in association with the adjacent MSA, but the Swayfields proposals before this inquiry proceed on the basis of the restoration of Walford Hall Farmhouse and certain of its outbuildings to residential use in accordance with the listed building consents referred to at paragraph 1.9d above. The farmhouse would be repaired and upgraded to make it habitable as a single dwelling, with modern facilities and services. The works would be carried out in accordance with a detailed specification and schedule of works agreed with EH. The farmhouse and outbuildings would all be within a single curtilage, with the outbuildings used for purposes ancillary to the use of the house. The access track previously included between the MSA car park and the Farmhouse has therefore been removed from the proposals, and screen planting between the two features would be improved.

- 3.5 The original scheme at Catherine de Barnes was designed to accommodate the proposed widening of the M42. This proposal is no longer being pursued by the HA, and this has led to detailed amendments to the original application, culminating in the proposals now shown on Drawing DH.301.A-5.F.
- 3.6 The revised highway proposals would create a permanent fourth lane between J5 and J6 of the M42, by adjusting the existing lane widths, deleting the hard shoulder, and replacing it with a hard strip of at least 1m. Swayfields propose that this four lane section of the motorway would be operated in synchronisation with the ATM scheme on the adjoining links. When ATM was in operation, traffic on the four lanes between J5 and J6 would be restricted to the same speed as traffic on the adjoining sections. With ATM not in operation, traffic in all four lanes between J5 and J6 would be permitted to operate at the national speed limit (70mph). In contrast to adjoining sections of the motorway, the fourth lane would be permanent, and would not revert to hard shoulder when the ATM system was turned off. The existing ERAs provided as part of the ATM system would be retained as part of the proposals.

Appeal B

- 3.7 A description of the proposed Appeal B development agreed with the HA will be found at Section 4 of Document CD704.
 - 3.8 The development would provide an off line comprehensive MSA, with a canopied fuel filling station forecourt for both cars and HGVs, a single storey amenity building with retail, catering and lavatory facilities, a picnic area and a Police post. Parking spaces for cars, HGVs and coaches would be provided. The MSA would lie within its own landscaped setting. An existing footpath which crosses the site (FP SL56) would be partially diverted, and a new footpath would be created from it to provide a better link to the rest of the local rights of way network.
 - 3.9 Unlike the application considered at J4 at the 1999/2000 inquiry, Appeal
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B does not include a lodge providing overnight accommodation. The landscaping treatment of the site and the location of buildings proposed to be erected within the site also differ substantially from the J4 scheme considered at the earlier inquiry.

4. PLANNING POLICY

- 4.1 The Development Plan for the area includes the RSS for the West Midlands, published in June 2004 (Document CD101) and the Solihull UDP, adopted in February 2006 (Document CD102).
- 4.2 When the RSS was published, various areas for further work on the document were identified. The first phase of this work involved a sub regional revision covering the Black Country. That was completed following consultation and examination in public, and the RSS including the first phase revision was published in January 2008 (Document CD109). It is that version of the RSS which I have primarily used in evaluating the appeals since it is the latest published document, although the changes made as compared with Document CD101 have no direct relevance to the subject matter of the appeals.
- 4.3 A second phase of the revision of the RSS was launched in November 2005, and covers housing issues, employment, retail and centres, waste and certain issues of transport policy. The phase 2 revision preferred options were submitted to the Secretary of State, following consultation, in January 2008 (Document CD108); but further consultation and an examination in public remain to be undertaken. In that situation, I have attached limited weight to relevant policies in the phase 2 revision draft if they differ from the present published RSS.
- 4.4 There is agreement between the Council, the HA, Swayfields and Shirley Estates on the relevant policies of the RSS and the UDP which bear on the decisions to be taken in relation to these appeals. Those policies are listed at Section 7 of Document CD729, Section 6 of Document CD730, Section 6 of Document CD702A and Section 6 of Document CD704.
- 4.5 Relevant national planning policy also forms part of the background to the consideration of the appeals, in particular:
- PPS1 (Document CD201)
 - Planning and Climate Change: the Supplement to PPS1 (Document CD242)
 - PPG2: Green Belts (Document CD202)
 - PPS6: Planning for Town Centres (Document CD203)
 - PPS7: Sustainable Development in Rural Areas (Document CD204)
 - PPS9: Biodiversity and Geological Conservation (Document CD205)
 - PPG13: Transport (Document CD206)
 - PPG15: Planning and the Historic Environment (Document CD207)
 - PPS23: Planning and Pollution Control (Document CD209)
 - PPG24: Noise (Document CD210)
 - PPS25: Development and Flood Risk (Document CD244)
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- ODPM Circular 05/2005: Planning Obligations (Document CD245)
- ODPM Circular 06/2005: Biodiversity and Geological Conservation (Document CD246)
- ODPM Circular 11/2005: The Town and Country Planning (Green Belt) Direction
- Roads Circular 1/94 (Document CD222) and the MSA Policy Statement of 1998 (Document CD213) together with the new DfT Circular 01/2008 referred to at paragraph 1.7c above (Document CD256)
- DfT Circular 02/2007: Planning and the Strategic Roads Network
- Expanding Choice and Cutting Congestion on our Motorways (Document CD257) and various references to the use of ATM as a system to increase effective capacity on motorways, for example, Strategic Roads 2010 – the Highways Agency 10 Year Strategy (2000) (Document CD252), Towards a Sustainable Transport System (Document CD254) and a Ministerial Statement by the Secretary of State for Transport of 25 October 2007 (Appendix 4 within Document HA1A/2).

4.6 Reference will be made to those policies of the Development Plan or contained in national policy guidance which I regard as of particular importance to the determination of these appeals in my report of the cases of the parties and in my conclusions.

5. THE ISSUE OF NEED

5.1 At the 1999/2000 inquiry, the three Appellants then involved put forward a joint case on the need for MSA facilities on this section of the M42. It was a complex and detailed case, because of the variety of potential routes served by the Solihull section of the M42, with links to the M40, M54, M5 and M6. The Inspector concluded that the then existing gap on the routes between certain of the existing facilities represented a significant unmet need (paragraph 19.24 of Document CD212).

5.2 The Inspector considered that a new MSA on this section of the M42 would primarily serve as a site helping to complete the Government's desired network of MSAs at 30 mile (48km) intervals; but that it was also relevant to have some regard to issues required by Government policy to be considered when infill sites for MSAs are proposed (paragraph 19.16 of Document CD212). In relation to certain of the routes which would pass either appeal site, any MSA approved would be, in effect, an infill site.

5.3 Although a large proportion of the traffic on this part of the M42 was considered to be local or commuter traffic, the number of long distance journeys remained substantial (paragraph 19.25 of Document CD212). The Inspector considered that a MSA facility would make a contribution to road safety by providing an opportunity for drivers to stop on journeys which involved an excessive gap between existing MSAs (paragraph 19.36 of Document CD212), though he was not convinced

that the evidence of fatigue related accidents would have been sufficiently conclusive to provide justification for an infill facility (paragraph 19.46 of Document CD212). Similarly, the Inspector was not convinced that an inadequate level of facilities provided (or which could be provided) at nearby MSAs would justify the provision of an infill MSA on the M42 (paragraph 19.40 of Document CD212).

- 5.4 On balance, however, he concluded that there was significant unmet need for one additional MSA serving traffic travelling in both directions on the M42 between J3A and J7 (paragraph 19.47 of Document CD212).
- 5.5 Both that conclusion and the reasoning which led to it were specifically endorsed by the Secretary of State at paragraphs 8 to 10 of the minded decision letter of 2001 (Document CD211).
- 5.6 The issue of the need for MSA facilities on the M42 between J3A and J7 was not a topic specifically identified by the Secretary of State as requiring to be revisited in the list of matters set out in the letter reopening the 1999/2000 inquiry into Appeal A. It could be argued to be encompassed in both paragraphs (f) and (k) of the Statement of Matters, however; and certainly the issue of need was raised in the Statements of Case of the Council (Document CD727) and of Welcome Break Group Ltd (Document CD720). The issue was also raised in many of the written submissions of interested parties to the inquiry contained in Document CD801.
- 5.7 The issue has a bearing on both appeals, which is why I deal with it first as a general issue.
- 5.8 At the 1999/2000 inquiry, the Inspector found that six long distance motorway routes used the M42 between J3A and J7:
- the M40 to M6 north (via M6 J4 to J8)
 - the M40 to M54 (via M6 J4 to J8)
 - the M40 to M42 north
 - the M40 to M6 east
 - the M5 to M42 north and
 - the M5 to M6 east.

In addition, there is now the M40 to M6 north via the M6 Toll Road.

- 5.9 The spacing of MSAs on these routes is shown on Appendix 5 to Document HA1A/2. As set out in section 3 of the SCGs between each of the Appellants and the HA (Documents CD702A and CD704), whilst three of the routes concerned have gaps in MSA provision within or close to the Government's 30 mile spacing target set out in the 1998 MSA Policy Statement (Document CD213), there are significant gaps in provision between:
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- the M40 to M6 north – Warwick to Hilton Park 49 miles (79km)
- the M40 to M54 – Warwick to the end of the M54 68 miles (109km)
- the M40 to M42 north – Warwick to Tamworth 38 miles (61km).

In addition, there is a gap of 45 miles (72km) between Warwick and Norton Canes on the M6 Toll Road.

5.10 Concern at these gaps was shared by the Secretary of State as indicated in paragraph 9 of the minded decision letter of 6 March 2001, and the HA accept that there has been no material change in the provision or availability of MSAs taken into account in the 2001 decision letter.

The material points made in evidence by those parties who raised the issue of need are set out below:

5.11 **Swayfields** argue that there is no onus on applicants to go to great lengths to demonstrate need in safety terms for a 30 mile MSA, since the MSA policy statement of 1998 specifically reaffirms at paragraphs 2 and 3 that MSAs spaced roughly 30 miles apart are considered to strike the balance between the inevitable environmental impact of a MSA development and the fundamental safety benefits which accrue for drivers from such provision. That policy approach is substantially maintained in paragraph 55 of the new Circular on roadside facilities (Document CD256). This indicates that the Government will continue to seek the availability of MSAs within 30 minutes travelling time of each other on the motorway network. Having regard to the introduction of speed limiters for HGVs, which restrict the distance a HGV can travel in 30 minutes, in future applications for core MSAs should be considered on the basis of a 28 mile (45km) distance.

5.12 Paragraph 53 of the new Circular indicates that research has shown that up to 20% of accidents on monotonous roads (especially motorways) are caused by tiredness. DfT Road Safety Research Report No 57 (“Effectiveness of Motorway Service Areas in Reducing Fatigue Related and Other Accidents” – April 2006) compared accident occurrences on a 16km section of motorways prior to the opening of an MSA with a 16km section following the opening of the MSA, and concluded that there was a 14% reduction in road traffic crashes. That included a 22% reduction in sleep related crashes.

5.13 Although a large proportion of the traffic on the Solihull section of the M42 is engaged in local or commuter trips, the number of long distance journeys on the section is substantial, and further growth in traffic has occurred since this issue was considered in 1999/2000. Moreover, in addition to the increased volume of traffic, there has been an increase in journey times on this part of the motorway network while the ATM system is in operation. It was found at the earlier inquiry that HGVs made up 23% of the traffic travelling on the 79km gap between the Hilton Park and Warwick MSAs. On the routes in the area generally, previously 15% HGVs was assumed in the overall flow, but that figure

has now increased to 16.6% according to HA data. Regulations require drivers of HGVs to take regular stops to rest.

- 5.14 **Shirley Estates** contend that the need for a MSA on the Solihull stretch of the M42 was established at the previous inquiry, and that such need, in the interests of safety, has only become more pressing since then as overall traffic levels have grown. Between 1998 and 2006, the two way annual average daily traffic (“AADT”) flow between J3A and J4 has increased from 114,110 vehicles per day (“vpd”) to 124,810 vpd.
- 5.15 On the other hand, **Solihull Council** underline the point that, in policy terms, need is a consideration rooted in safety. That is the basis upon which the spacing criterion for MSAs is put forward in Government policy. Any changes in the evidence regarding road safety on the M42 since the last inquiry should be taken into account in reassessing the situation now. That is particularly the case because (as noted at paragraphs 5.2 and 5.5 above) the Secretary of State and the Inspector at the previous inquiry considered it appropriate to include an assessment against the tests relating to infill MSA sites in evaluating the case for a MSA on the M42. Some existing MSAs on other motorways would only be a short distance away from a MSA constructed on either of the sites before this inquiry. Those infill tests include the incidence of accidents relating to fatigue and the amount of long distance traffic on the route in question.
- 5.16 Since the last inquiry, the ATM system has been introduced between J3A and J7. This provides for variable mandatory vehicle speed limits on the existing three lanes of the motorway, and for the possibility of allowing in addition the controlled use of the hard shoulder as a fourth running lane at times of traffic congestion. Controlled use of the hard shoulder commenced on 12 September 2006. Overhead gantry signs provide advice to drivers about the availability of the hard shoulder, and cameras along the route allow operators at a Regional Control Centre (“RCC”) managed by the HA to close the hard shoulder if it is needed to accommodate a broken down vehicle or an accident.
- 5.17 A report was prepared for the HA by Mott MacDonald on conditions on the M42 before the introduction of the ATM system (Document CD515). The information it produced on personal injury accidents (“PIA”s) suggested that, over a period of five years, only 2 accidents out of a total of 372 for which specific causes were suggested were identified as fatigue related.
- 5.18 An evaluation of the first six months of full operation of the ATM system was also carried out for the HA by Mott MacDonald (Document CD512). This indicates that the system successfully reduced congestion, reduced delays and also reduced PIAs on the stretch of motorway involved from an average of 5.3 accidents per month on the M42 mainline between J3A and J7 to an average of 1.5 accidents per month. Although these results are derived from only a relatively short period of observation, the Council contend that the reduced level of accidents has continued at the same level over the following four months for which data are
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available. The success of the system has been such that the Secretary of State has already announced plans for the extension of hard shoulder running to the rest of the Birmingham motorway box, and for the undertaking of a feasibility study to see whether the scheme can be used elsewhere on the motorway network (Appendix 4 to Document HA1A/2).

- 5.19 With reduced delays and fewer accidents, the Council argue that the need case for a MSA on the Solihull stretch of the M42 has reduced since the 1999/2000 inquiry. The planned extension of the ATM system which has delivered these benefits and the opening of the M6 Toll Road since the earlier inquiry provide further material changes in circumstances affecting the need for a MSA.
- 5.20 In addition, since the previous inquiry, advances in data collection and technology mean that it is possible to obtain a more accurate understanding of the proportion of traffic using the Solihull stretch of the M42 which has not recently joined the motorway or passed a MSA (given that it is acknowledged by all that a significant proportion of the traffic on this route is local and commuter traffic).
- 5.21 Data collected by Mott MacDonald and presented in Document SMBC2A/2 (as interpreted in the light of changed circumstances by Document SMBC2/0) show that only 33% of traffic on this stretch is long distance traffic, with only 26% of total through traffic travelling between MSAs more than 30 miles apart.
- 5.22 If 26% of traffic passing either of the appeal sites travels more than 30 miles between MSAs, this means that 74% of passing traffic does not. Introducing a MSA gives rise to a new risk of accidents, because of the need for additional lane changing manoeuvres by vehicles wishing to enter and then to leave the MSA. This new risk must be weighed in the balance with any possible reduction in the incidence of fatigue related accidents. Evidence for the likely achievement of such reductions is minimal.
- 5.23 At the last inquiry, the Inspector concluded that some 25,000 to 30,000 vpd on the M42 between J3A and J7 would be travelling between excessive gaps in MSAs (paragraph 19.27 of Document CD212). He also considered that increased pressures on the M1 would lead to a shift in volumes of longer distance traffic using the M40 and the M42. But subsequent capacity improvements on the M1 no doubt provide the reason why the research reported in Document SMBC2A/2 indicates that there has been no significant reassignment of traffic to the M40 and the M42 from the M1 to date.
- 5.24 **The Warwickshire Branch of the Campaign to Protect Rural England** ("CPRE") suggest that the need which was identified at the 1999/2000 inquiry was primarily for a MSA to serve traffic travelling between the M40 and the M6, using the M42 to travel east around Birmingham. The opening of the M6 Toll Road has provided a new MSA at Norton Canes. The relatively low levels of traffic on the M6 Toll Road
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mean that this MSA can be reached (at a consistent speed of 70mph or 112kph) in about 23 minutes from J6 of the M42. As to the accessibility of other MSAs to traffic on the Solihull stretch of the M42, the introduction of ATM has reduced the time which elapses for a driver passing between existing MSAs because of the reduction in effective congestion and therefore delays on the M42.

- 5.25 For private cars, therefore, the need for a MSA on the M42 is less in practice than it was in 1999/2000. HGVs operate for longer distances than private cars without the need for refuelling. In the event of HGV drivers requiring rest halts, they are able to use the M42/M5 route to travel west around Birmingham, where the Hopwood and Frankley MSAs provide rest areas. The distance to the next services is now signed on the M40 for northbound traffic between J15 and J16. The sign offers the alternative of travelling north west via the M42 west and the M5 (in which case a MSA will be found at a distance of 15 miles (24km)) or via the M42 north and the M6 (in which case the distance will be 43 miles (69km)).
- 5.26 This signage reduces the extent of the need for a MSA on the Solihull M42, because through traffic in need of a MSA is informed which route has the nearer services. The same point is made by both **Caroline Spelman MP** and **Lorely Burt MP**. In addition, **SAMSAG** make the point that many drivers now use satellite navigation systems, which can be programmed to show fuel and rest stops without the need for signage.
- 5.27 **Ms Burt** notes that, in the 2001 decision, the Secretary of State considered that the option of encouraging drivers to travel west rather than east would not be viable because of the additional strain it would place on the junction of the M5 and the M6; but she considers that that would be less than the strain created on the Solihull M42 by developments at J6 with the extension of the runway at BIA and developments at the NEC.
- 5.28 **Councillor Cresswell** points out the proximity of certain existing MSAs such as Corley and Hopwood to the Solihull stretch of the M42. He also points out that, at J4, there is a Tesco supermarket located some 90m past the end of the northern slip road and within around 275m of the southern slip road. This store is open on a 24 hour basis for six days each week, and has a large car park, a café, a petrol filling station, and lavatory facilities. Both the Tesco store and the adjacent Notcutts Garden Centre (which also has similar facilities apart from a petrol filling station) were visited on the accompanied site visit. Councillor Cresswell considers that the Tesco store in particular could cater very adequately for most north and south motorway travellers. The same point is made by **Mr and Mrs Train**. These points are also taken up in the written representation received during the inquiry from **Mr Peter Fletcher** (Document FLE1B) and in many of the **written representations received from interested parties** contained in Document CD801.
- 5.29 **The CPRE** argue that there is no evidence that MSA facilities are so
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essential on the M42 in the Solihull area that the many policy and operational reasons against providing a MSA should be overridden. Indeed, **Lorely Burt MP** makes the point that there is no evidence showing an expression of demand for a MSA from drivers who use the motorway. **SAMSAG** say their aerial photographs (Document SAM1A&B/5) show that there is normally plenty of available space at adjoining MSAs. A planning permission to provide additional parking at Hilton Park MSA has not been implemented. Moreover, **SAMSAG** suggest that the normal considerations for spacing MSAs only make sense when traffic is free moving. On the M42 between J3A and J7, traffic is always busy and regularly congested. While it makes sense for drivers to take regular rest breaks, it is unlikely that many drivers would wish to do so on a stretch of motorway which might be congested when they wish to resume their journeys.

- 5.30 In their written representation on the issue of need, **Welcome Break** make the point that they are the operators of the existing MSAs on routes which join the Solihull stretch of the M42 – Warwick on the M40, Hopwood on the M42, Corley on the M6 and Telford on the M54. Telford, together with the MSA at Norton Canes on the M6 Toll Road, have opened since the previous inquiry, but each was anticipated at that inquiry. Apart from some investment in refurbishment at existing MSAs, therefore, the level of provision remains as anticipated in 1999/2000.
- 5.31 There is nothing to indicate that existing facilities are unable to cope with the need for services, despite traffic growth since 2000. Usage of the existing facilities remains much in line with the position in 1999/2000. Nor is there any evidence of a higher than normal incidence of fatigue related accidents on the M42 between J3A and J7.
- 5.32 A MSA on that stretch would be justified solely in order to contribute to the Government's preferred spacing of MSAs, rather than because of any evidence of a particular need. The level of need now is no greater than it was in 1999/2000, and this should be the basis on which need is considered when the planning balance is struck in relation to the current proposals.
- 5.33 **Swayfields respond** that the most noticeable improvements in journey time reliability have occurred during peak periods, when ATM is in operation and 50mph speed control is in force. But, as the MSA policy is based on an assumption of 30 miles being covered in 30 minutes (at an average speed of 60mph), the improvements in journey time reliability have no impact on the need case. Section 4.5 of the report on the operation of the ATM system (Document CD512) shows that, despite the improvement in journey time reliability, actual journey times have increased with ATM in operation. The need case for the MSA is therefore strengthened. Outside of peak times, ATM has had no effect on journey times, and therefore no effect on the need case.
- 5.34 The accidents most likely to be reduced as a result of ATM are rear end shunts, which would have happened in stop start conditions. A MSA would be aimed at reducing sleep related crashes, which would be
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unaffected by the ATM system. Fatigue related accidents could well be under recorded in Document CD515. A driver would not readily volunteer that an accident had been caused by him or her falling asleep. Accidents recorded under headings such as “inattention, following too closely, carelessness or error of judgement” could often have arisen as a result of fatigue. The DfT Road Safety Research Report referred to at paragraph 5.12 above adopted a more sophisticated approach to identifying fatigue related accidents.

- 5.35 Moreover, both **Swayfields and Shirley Estates** question the relevance of accident rates adjacent to a proposed site for a MSA. They contend that it would be more significant to consider fatigue related accidents close to the end of a gap without a MSA, where fatigue would be greatest, rather than in the middle of the gap. In fact, Swayfields point out that, during the first six months of ATM operation, the accident rate on other parts of the network (including parts that are included in the excessive gaps referred to by the Inspector at the last inquiry and by the Secretary of State) has gone up. For example, the accident rate on the M6 in the period from October 2002 to June 2005 was 12.18 per month, while in the period from September 2006 to July 2007 the accident rate had risen to 13.64 per month (Table 4 in Appendix 1 to Document SMBC2A/3). Shirley Estates also make the point that, to be regarded as a reliable indicator, accident statistics covering at least a three year period would normally be required. But whatever the true position in relation to fatigue linked accidents, the provision of an opportunity to rest about every half hour for a driver travelling at normal motorway speeds remains a central feature of Government policy, and is confirmed in DfT Circular 01/2008.
- 5.36 In relation to the proportion of long distance traffic, **Shirley Estates** contend that the data on which the Council's figures are based has been collected from a small sample (some 0.36% of the vehicles using the Solihull stretch of the M42), and the sample is not a representative one, because it is concentrated on fleet vehicles, both HGVs and hire cars. In any event, applying the Council's claimed percentage of through traffic to the up to date traffic flow along the route produces a figure in excess of the last Inspector's estimate of 25,000 to 30,000vpd travelling between excessive gaps in MSAs. The number of vehicles travelling an excessive distance between gaps (currently assessed at 34,995vpd) is a much more important figure than the percentage of the total of vehicles passing along the motorway which they represent. Notwithstanding the consideration given by the Inspector at the earlier inquiry to the issues raised in paragraph 5 of the MSA Policy Statement regarding the potential justifications for accepting infill MSA sites, both the Inspector and the Secretary of State concluded that there existed a significant need for the provision of a MSA on this stretch of the M42.
- 5.37 **Swayfields** suggest that the submissions from Welcome Break indicate that the latter have a virtual monopoly of MSAs in the area, and that their representations are based solely on commercial interests. A detailed assessment of capacity at adjoining sites has not been undertaken, though it is clear that nearby MSAs do not provide sufficient
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parking for HGVs at times of peak demand, because trucks can be observed parking on internal roads and on external slip roads. But capacity at adjacent MSAs does not in any event overcome the problem of excessive gaps between facilities. Spare capacity 65 miles away does not help when you are seeking to complete a 30 mile network.

- 5.38 Traffic flows have increased since 1999/2000, so it cannot be said that the position on need has stayed the same. Evidence from the HA about the way in which ERAs between J3A and J7 are being misused by drivers needing to stop on the motorway underlines the extent of the need for a MSA on this section.
- 5.39 The facilities at Tesco adjacent to J4 are not signed from the M42. They are not intended for motorway users, and the level of car parking provided at the site is not designed to accommodate motorway traffic. The same is true of other facilities near the motorway which might be shown on a satellite navigation system. Reliance on such facilities would take motorway traffic on to the local road system.
- 5.40 **The HA** state that there has been no material change in the provision of MSAs since the 2001 interim decision of the Secretary of State, and that they do not therefore dispute the need for a MSA between J3A and J7 of the M42 based on the 30 mile spacing criterion which forms part of Government policy. The weight to be attached to that need is, however, a matter of contention, given the safety implications of the proposals in relation to Appeal A.

6. THE CASE FOR SWAYFIELDS, THE APPELLANTS IN APPEAL A (apart from the issue of need)

The material points are:

Introduction

- 6.1 Following the 1999/2000 inquiry, the Inspector recommended and the Secretary of State concluded that the scheme for a MSA at Catherine de Barnes was acceptable. The two competing schemes at J4 and J5 of the M42 were rejected as being unacceptable. They were found to be unacceptable in their own right. Even without the proposal for a MSA at Catherine de Barnes, neither of the other two schemes would have been approved (paragraph 19.176 of CD212 and paragraph 31 of CD211).
- 6.2 A minded to grant letter was issued by the Secretary of State principally because of uncertainty about the impact of a proposal for the widening of the M42 in the area, the detailed implications of a proposal to introduce auxiliary lanes, and the impact of the MSA proposal on the setting of Walford Hall Farmhouse.
- 6.3 Following the successful introduction of the ATM system between J3A and J7 of the M42, the widening of the motorway in this location is now unlikely. Swayfields have therefore taken the opportunity to reduce the
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span of the proposed overbridge giving access to the site from the northbound lanes of the motorway, and to pull in the eastern slip roads, allowing more scope for landscaping on that side of the appeal site. The introduction of ATM has also brought with it a review of the proposed access arrangements. Instead of the auxiliary lane scheme (together with full hard shoulder) that was proposed previously between the MSA and J6, it is now proposed to introduce two auxiliary lanes (together with a hardstrip at each side of the motorway and the retention of the recently constructed ERAs) between J5 and J6. The harmful consequences of widening the motorway, including the visually intrusive “green walling” of the land to the side of the additional running lanes which would have been required as part of the former proposal would be avoided.

- 6.4 The current access scheme would also give greater scope for beneficial off-site landscaping works, with a more comprehensive planting proposal. This planting, in particular that on the embankments near Bickenhill, would help to make good some of the erosion in landscape and visual quality which has arisen as a result of the ATM scheme and the intrinsic impact of the motorway. The benefit of planting on the Bickenhill embankment was recognised at the 1999/2000 inquiry (paragraph 19.66 of Document CD212), though the scheme then being considered would have been limited by the narrowness of the land available. This problem would be partly overcome by the new scheme. Whilst the present scheme proposes vertical concrete barriers in the central reserve in place of the normal form of motorway crash barrier, this would have little visual impact on what is already an urbanised motorway (with all of the ATM infrastructure), and would deliver significant safety and maintenance benefits.
- 6.5 The balance which fell in favour of the scheme at the last inquiry therefore falls more heavily in favour of the scheme now. The already significant need for MSA provision in this location has grown, whilst harm caused by the proposal has diminished in terms of the Green Belt (less land would be taken for built development including the access arrangements); landscape and visual interests (because the access arrangements would cause less harm than previously, in circumstances where the baseline against which that impact must be judged has become more urbanised with the introduction of ATM); and the listed building (because the scheme now proposes its residential re-use and guarantees delivery of a wholly acceptable renovation scheme for both farmhouse and outbuildings).
- 6.6 In circumstances where the balance now falls more heavily in favour of the proposal when compared to the position in 2001, the minded to grant letter should be confirmed.

Consistency with the RSS

- 6.7 In terms of the strategic guidance provided by the RSS, there is only one area of significant change in regional policy asserted by the Council to have taken place since the 1999/2000 inquiry. The Council refer to
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paragraph 3.1 of the RSS, which identifies reversing the decentralisation of population and investment from the Major Urban Areas (“MUA”s) as a key issue for the region. The Council contend that the appeal proposal would fail to accord with that policy.

- 6.8 Clearly, the site for the proposed Catherine de Barnes MSA is not located within a MUA, but no part of this section of the M42 (identified by the Secretary of State as needing a MSA) runs through a MUA. As a consequence, the Council advance no alternative site within a MUA which would be suitable for the development of an MSA and would meet the significant need identified by the Secretary of State for a MSA on this section of the M42.
- 6.9 In any event, it is not easy to see how the RSS objective of preventing decentralisation of the population would be affected in any way by the development of an MSA at Catherine de Barnes. This “fundamental change” in regional strategy since the last inquiry is therefore of limited relevance to the proposal for a MSA to serve the needs of motorists on this part of the national motorway network.
- 6.10 As for policies directed at the protection of the countryside (the “QE” policies within the RSS) they afford no greater or lesser protection than the policies of either the Regional Planning Guidance or the UDP considered at the time of the earlier inquiry.
- 6.11 RSS policies relating to transport and accessibility are of relevance. The Strategy’s “key objective” within the transport chapter (set out at paragraph 9.2) is to, “improve significantly the Region’s transport systems to a quality comparable to that of competitor regions”. Policy T1 aims to improve access within and across the Region in a way that not only tackles congestion (amongst other things), but also improves safety. The policy records that this aim will be achieved by a series of measures including the improvement of the national road network (of which the M42 is part) and the improvement of the safety of the transport system.
- 6.12 The significance of the M42 as part of the national and regional road network is recognised within the RSS, as are the important regional assets which it serves (such as the NEC, and the BIA). Policy T9 requires the HA and local authorities to give high priority to the improvement of the network, and requires consideration to be given to the improvement of motorways as part of the national transport network. Policy T12 identifies priorities for investment, including the ATM pilot project on the M42, and highlights the need to avoid undermining those priorities.
- 6.13 The appeal proposal accords entirely with those policies and objectives.

Consistency with the UDP

- 6.14 Although there is a new UDP as compared with that which applied at the time of the 1999/2000 inquiry, there has been no significant change in
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the UDP policies considered before the minded to grant decision was made.

- 6.15 The Council do not point to any particular change in UDP policy, but suggest that changes in circumstances have occurred which mean that the planning balance of benefit against harm in relation to the proposal should be reappraised. The Council refer to:
- a reduction in the level of need for an MSA in this location,
 - the ability to achieve safe and satisfactory access to the scheme, and,
 - a change in the level of impact on Green Belt openness caused by alterations to the internal layout of the scheme.
- 6.16 The issue of need is dealt with in Section 5 of this report. The access arrangements proposed are considered in detail from paragraph 6.99 below. The change to the proposed MSA layout which causes concern to the Council is not in fact promoted by Swayfields. Swayfields have confirmed that they wish the illustrative layout in drawing DH.301.A-5.F to be the one considered at the inquiry. The Council accept that that drawing is the subject of the environmental information submitted by Swayfields in September 2007 (Document CD415), and they do not suggest that the environmental information in relation to that illustrative scheme is in any way deficient.
- 6.17 A further plan (301.A-5. Rev G) was prepared and circulated in early January 2008, but it was accompanied by a letter that confirmed that this plan had been prepared solely in order to demonstrate how the level of parking provision contended for by the HA (which was not accepted by the Appellant) could be accommodated on the Catherine de Barnes site. It was explained that no reliance was to be placed upon that plan as forming the illustrative layout for consideration at the inquiry.
- 6.18 In fact, by reference to the Revision F plan, the level of impact of the proposal on the Green Belt has diminished since the last inquiry, as indicated at paragraphs 6.3 and 6.4 above.
- 6.19 The proposed MSA on the Appeal A site would still represent a major incursion of built development into the Green Belt and the Appellants accept that it would be inappropriate development, but the Inspector's findings at the previous inquiry continue to apply:
- the site falls within a 10km Green Belt gap;
 - the development would lead to no merging of neighbouring towns;
 - the MSA would be perceived clearly as a motorway related development;
 - the scheme would not cause serious harm to the effectiveness of the Meriden Gap;
 - the proposal would not give rise to any conflict with the purpose of checking the unrestricted sprawl of large built up areas; and
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- the proposal would cause no harm to the setting of Hampton in Arden;

in addition to which, the level of encroachment into the Green Belt would in fact be reduced to a limited degree by the reduction in built development mentioned above.

- 6.20 During the course of the inquiry, the Council raised a further issue relating to the alleged harm which would be caused by the Appeal A development, namely its impact on the trees on the appeal site. In fact, no evidence was produced by any party that there has been any material change either to the number or condition of trees on the site since the time of the 1999/2000 inquiry. Nor has there been any change to the status of any of those trees (none has become either an “aged” or a “veteran” tree in the period since the earlier inquiry). In particular, the ecological value of the trees on the site has not changed. The trees proposed to be lost to development (five in number as agreed in the SCG – Document CD729) are the same as those proposed to be lost when the scheme was considered at the earlier inquiry. At that inquiry, the Council called specialist ecological evidence. In the light of that evidence, as well as ecological evidence from other parties, the Inspector found that the development would not cause any serious harm to the ecology of the area (paragraph 19.70 of Document CD212). The impact of the Appellants’ proposals was discussed with the County Ecologist, who raised no objection; nor did Natural England.
- 6.21 The Council do not suggest that the ecological interest of the site (and in particular the trees) has increased since that time, nor do they suggest that the loss of trees is any greater now as compared with 2001. What has occurred in the intervening period is the publication of PPS9, paragraph 10 of which refers to the importance of retaining veteran or aged trees within development proposals.
- 6.22 On 8 February 2008, the Council were content, however, to sign up to a SCG (Document CD729), recording at its paragraph 5.21 that the scheme gave rise to no breach of PPS9. That agreement was reached after the parties had exchanged correspondence on the subject of a “veteran tree assessment” (Document SWA 0/5), and, importantly, after the ecologists acting on behalf of both the Council and the Appellants, had met on site in order to inspect the trees. The express and only purpose of that meeting was to resolve concerns raised by the Council in correspondence over the possible veteran status of any trees. Thereafter the SCG was signed off.
- 6.23 The trees have been surveyed comprehensively. The Appellants’ ecologists conducted that survey. That assessment has been conducted with reference to the factors indicative of veteran trees. Although the “form” of recording the survey findings was not that appearing in a Veteran Trees Initiative document (Document SMBC 0/5), the process of survey considered all relevant matters. It is notable that no complaint was made about the Appellants’ form of survey by the ecologist who
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inspected the trees on behalf of the Council. It is also notable that the Council did not choose to call that ecologist.

- 6.24 In reality, no additional harm is caused by the scheme that might affect the outcome of the planning balance as compared with the situation considered by the Inspector and the Secretary of State in 1999-2001. Where the planning balance has altered, it has done so in favour of allowing the proposal.
- 6.25 In light of increased benefits and a reduced level of harm, the very special circumstances that were established clearly in 2001, are more firmly established on this occasion. The balance of factors on the last occasion led to a finding by the Secretary of State that the benefits of the proposal clearly outweighed the harm, thereby giving rise to the very special circumstances required to allow this development in the Green Belt. The consequence is that there is accord with the Green Belt policy and with all other relevant policies of the UDP.

National Airports Policy, the RSS and the BIA Master Plan

- 6.26 The White Paper on Air Transport (Document CD214) was published in December 2003, and set out a framework for the development of air travel over the following 30 years. It recognised that BIA had achieved strong growth in recent years, and indicated that it was expected to increase its passenger throughput from the then current 9 million passengers per year ("mppa") to between 32 mppa and 40 mppa by 2030 (paragraph 9.11). The capacity of BIA with only its existing runway is approximately 20 mppa.
- 6.27 Following consultation, BIA had published a proposal for a second, shortened, wide spaced runway to provide the additional capacity to 2030 and beyond, and this proposal was accepted by the Government at paragraph 9.16 of the White Paper. BIA were therefore invited to safeguard the necessary land for this second runway, and to produce a Master Plan as an input to future revisions of the RSS and appropriate Local Development Frameworks.
- 6.28 Policy T11 of the published RSS provides that BIA will continue to be developed as the West Midlands' principal international airport. Development Plans in Solihull and neighbouring authorities should include proposals for the expansion of BIA. Satisfactory provision should also be made for improved surface access to the airport.
- 6.29 The RSS itself makes it clear that Policy T11 should be reviewed as a consequence of the Air Transport White Paper. This review is taking place as part of the second phase of the revision of the RSS mentioned at paragraph 4.3 above. The preferred options draft of the Phase 2 Revision (Document CD108) speaks of the need for an extension to the main runway at BIA, but considers the provision of a shorter second runway to be a possible development beyond the period of the RSS (to 2021).
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- 6.30 That reflects the fact that in the BIA Master Plan (Document CD106) the traffic forecasts for BIA have been scaled back from the levels assumed in the Air Transport White Paper. The Master Plan envisages traffic throughput of 27.2 mmpa in 2030, with priority given to an extension of the main runway, but with a second runway not being needed before 2030.
- 6.31 The Airport Surface Access Statement has also been published (Document CD105), and proceeds on the basis of long term improvements to J6 of the M42, with no new dedicated junction for BIA from the M42.
- 6.32 In their Statement of Case for the inquiry (Document CD716), BIA simply required the MSA proposal to be considered in the context of future development of the Airport, and in particular in the context of three specific issues, namely public safety zones, aerodrome safeguarding, and surface access.
- 6.33 An agreed statement between BIA and Swayfields (Document CD714) records that
- (i) BIA are content that, subject to conditions being imposed on the grant of consent, there is no basis upon which the appeal should be dismissed by reference to the issue of aerodrome safeguarding, and,
 - (ii) BIA confirm that there is no public safety zone conflict caused by the development of an MSA at Catherine de Barnes.
- 6.34 As for the remaining issue of surface access, the HA, BIA and the operators of the NEC have issued a joint statement (Document CD504), confirming that none of its authors (including BIA) advance any objection against the appeal proposal by reference to the surface access requirements of the Airport.
- 6.35 The Council's Statement of Case (Document CD727) asserted possible prejudice to the BIA master-planning process, surface access strategy, and public safety zone, but those assertions were not pursued by the Council either in their evidence or at the inquiry. Shirley Estates' Statement of Case (Document CD726) alleged prejudice to BIA's expansion plans, but paragraph 2.11 of the closing submissions made on behalf of Shirley Estates (Document SEL0/12) makes it clear that, in the event, no airport issue is taken against the Appeal A proposal. CPRE's Rule 6 Statement (Document CD724) asserted conflict between the proposed second runway at the Airport and the MSA, but again that objection has not been pursued. It is not even mentioned in the closing submissions on behalf of CPRE (Document CPRE0/1).
- 6.36 Given BIA's own satisfaction with the scheme, it is no surprise that those objections have not been pursued in evidence to the inquiry. The only party to appear at the inquiry and to have pursued an objection
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based upon prejudice to the operation of the Airport is SAMSAG. Their objection proceeds on the basis that BIA have failed to address properly the issue of public safety zones. That premise is not sound. BIA were assiduous in their examination of the effects of the proposed MSA on their operations (both present and future), as is clear from Document CD714, which describes the process followed to assess the effects in some detail. BIA's expression of satisfaction with the scheme came only after careful consideration of that impact. There is no reason to go behind BIA's conclusions.

- 6.37 The result is that there is no credible evidence to suggest that any prejudice would be caused by the MSA at Catherine de Barnes to either the existing or future operation of the Airport. The Airport operators, BIA, advance no objection to the appeal scheme, and suggest no conflict with any policy provision (whether at national, regional or local level) that touches upon the Airport's operation.

Consistency with the 1998 MSA Policy Statement

- 6.38 This issue has substantially been addressed in Section 5 of this report in dealing with the issue of the continuing need for MSA facilities on the M42. The appeal development would be consistent with the 1998 Policy Statement by completing a network of 30 mile (48km) MSAs in this part of the motorway network. Such provision would deliver important road safety benefits, a fact recognised in DfT Circular 01/2008, which, while it is not of direct application to the determination of this proposal, still informs the debate on the Government's approach. That Circular also includes for the first time (at paragraph 97) a clear indication of a presumption for on-line, as opposed to off-line, sites for MSA development.

Consistency with PPS6 – Planning for Town Centres

- 6.39 Paragraph 3.30 of PPS6 provides that

“Shops may be proposed as an ancillary element to other forms of development (for example,...motorway service areas...). Local planning authorities should ensure that in such cases the retail element is limited in scale and genuinely ancillary to the main development, and should seek to control this through the use of conditions.”

- 6.40 The level of retail facilities proposed within the Catherine de Barnes MSA has not changed since the last inquiry. Although the last inquiry pre-dated publication of PPS6, Government policy in respect of town centres in 2001 sought to promote their vitality and viability (just as it does now). Given that objective, and in the context of MSAs in particular, it is the aim of Government policy to avoid MSAs becoming destinations in their own right. That aim is linked with a recognition that MSAs should avoid the generation of undesirable additional trips on both the motorway and the local highway network. Consequently, in the context of conditions to be imposed on any grant of consent, the last Inspector
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recommended reasonable restrictions to be placed upon the retail offer at the proposed MSA.

- 6.41 In the final draft conditions that accompanied the Secretary of State's minded decision letter, conditions 23 and 24 restricted the level of retail floorspace within the amenity building as well as the range of goods that could be sold from that floorspace. In particular, draft condition 23 restricted the area of net retail floorspace within the amenity building to 465 sq m. The Inspector and the Secretary of State were satisfied that those conditions would prevent the retail facilities at the MSA from encouraging the MSA to become a destination in its own right. In addition, the floorspace restriction imposed by draft condition 23 was consistent with MSA policy advice within the 1998 Statement. In fact, the limit on the level of net retail floorspace in that draft condition also complies with the new national policy advice in respect of MSAs now contained in Circular 01/2008; at its paragraph 105 there is specified a maximum level of net retail floorspace of 500 sq m.
- 6.42 It is accepted in paragraph 112 of the Circular that, in addition to the retail facilities within the amenity building, ancillary retail sales would also take place from within the kiosk serving the petrol filling station. It is assumed that this is the point raised in the closing submissions of the CPRE at Section 5. However, those sales would only be ancillary to the petrol filling station's main trade of dispensing fuel. They could not convert the MSA as a whole into a destination in its own right.
- 6.43 It is no part of the case put by the Council at the inquiry that the vitality and viability of any town centre would suffer as a result of the retail facilities proposed at the Catherine de Barnes MSA.

Consistency with PPG15 – Planning and the Historic Environment

- 6.44 The SCG between Swayfields and the Council (Document CD729) indicates that concerns about the use and subdivision of Walford Hall Farm have now been met. Detailed discussions with the Council and EH facilitated a proposal for the full restoration of the farmhouse and its outbuildings for residential use. The new Section 106 Agreement (Document CD734) would ensure that the works for the repair and restoration of the farmhouse to habitable use and for the repair and restoration of its outbuildings in accordance with the drawings and specification of works granted listed building consent would be complete before operation of the MSA commenced.
- 6.45 Although other parties seek to re-open the debate about the impact of the MSA scheme on the setting of Walford Hall Farmhouse, that issue was determined by the decision following the last inquiry. The issue on which the Secretary of State now wishes to be informed relates to the consistency of the proposed residential re-use of Walford Hall Farmhouse with PPG15 advice.
- 6.46 As well as the proposal for residential use of Walford Hall Farmhouse, there have been other changes since the last inquiry. The ATM scheme has led to an urbanisation of the motorway corridor in the location of the
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MSA site. The extent of built development associated with the MSA scheme has been reduced. The pedestrian linkages originally proposed between the farmhouse and the MSA have been deleted from the proposals, and earth modelling and landscaping have been amended accordingly. The enhanced mounding now proposed would give greater separation between the MSA and Walford Hall Farm, improving the relationship between them. Walford Hall Farmhouse and its outbuildings would have their own entirely independent vehicular access to and from the highway network. While the original objection regarding the impact of the MSA on the setting of Walford Hall Farm remains, that impact would be lessened by the current proposals.

- 6.47 The Council suggest that revisions to the MSA scheme, if implemented, would mean that harm to the listed building would increase as compared with the position considered at the 1999/2000 inquiry. That assessment is, however, based on the Revision G illustrative layout. As explained at paragraph 6.17 above, that drawing is provided simply to demonstrate that the level of parking contended for by the HA could (if it can eventually be proved to be necessary) be accommodated on site. Swayfields do not agree that it is or will be necessary, and the Revision G drawing forms no part of the illustrative scheme for which they seek approval. In any event, there is very little difference indeed between the Revision F proposal and the Revision G proposal as regards the setting of or the impact on the listed building. The changes which would definitely take place (that is, those shown on the Revision F drawing) would all reduce the adverse impacts of the scheme on the setting of the listed building as compared to the proposal which was weighed in the balance and considered to be acceptable following the 1999/2000 inquiry.
- 6.48 The MSA proposal, by way of the Section 106 Agreement, would deliver the benefit of the residential re-use of the farm. Without the MSA scheme, renovation of the farmhouse and its outbuildings would not be viable and would be unlikely to proceed. Failure to pursue the consented schemes of renovation would be detrimental to the long-term prospects of an important listed building.
- 6.49 The certainty of restoration to residential use is a clear benefit of the MSA proposal. The price of that certainty is some reduction in quality of the setting of the listed building. That harm would be no greater than that which was accepted at the last inquiry. The prospect of the delivery of Walford Hall Farm to an acceptable use is the most significant change since the last inquiry. The restoration of the farmhouse to residential use accords directly with paragraph 3.10 of PPG15 (Document CD606).
- 6.50 There is no argument that the house should be comprehensively and properly repaired and restored. The outbuildings also need to be properly repaired as they are close to the farmhouse and contribute significantly to the quality of its setting. A detailed costing of the specification of the works approved in the listed building consent shows that the minimum cost to return the farmhouse to habitable use would be £493,938.59 and to repair the barns £410,265.37, a total of
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£904,203.96. Given the nature of the work, it would be prudent to add a contingency sum of 10%, giving sums of £543,332.45 for the farmhouse and £451,291.91 for the barns, a total of £994,624.36. The addition of fees and VAT where applicable together with the cost of works to the driveway and the provision of services would result in an overall cost of about £1.3 million (Document CD607).

- 6.51 Because of the poor condition of the buildings, the cost and difficulties of refurbishment, the high proportion of outbuildings to house and the poor quality of the location under the airport flight path and next to the motorway, the property in its current state would have a negative value. If the refurbishment works to the house and outbuildings were carried out without the MSA, the likely sale value of Walford Hall Farm would be in the region of £500,000 (CD607).
- 6.52 While a comparable refurbished property of this size might be expected to realise about £750,000 in the open market, the value of Walford Hall Farm would be substantially reduced because of its noisy location, the proximity of electricity pylons, the poor arrangement of the accommodation (which is difficult to alter because of the Grade II* listing), future maintenance obligations for the house and future costs for re-using the extensive outbuildings.
- 6.53 The Council overestimates the value of the property on the assumption, without any basis, that the outbuildings could be converted to permanent or holiday dwellings (SMBC0/12). These separate uses would divide the outbuildings from the house, contrary to EH advice, and be detrimental to their integrity as a group. Adding a greater area of land and retaining a modern barn would not lead to any great increase in the value of the property, certainly not enough to make it a viable proposition, but it might increase the range of buyers. However, the identified advantage of the removal of unattractive modern buildings in close proximity to the listed group would be lost. The local house sale examples put before the inquiry in an attempt to justify a higher estimate of value all concern either larger properties, properties which are better located, have outbuildings which have been converted, or which have permission to be converted, or have superior accommodation. None is directly comparable to Walford Hall Farm (Documents CD607B1-B7).
- 6.54 The proper repair of such a valuable building needs specialist craftsmen and proper supervision, and this is expensive. The works to the house are complex and would need to be carried out as one contract. The outbuildings work could be done in stages, but the overall cost would remain. The outbuildings work is specified as repair sufficient for basic ancillary accommodation – additional work and costs would be necessary for upgrading to habitable domestic accommodation. It is quite clear that the cost of the restoration work would far exceed the sale value of the buildings. Simply carrying out 'urgent works' to make the outbuildings wind and weather tight would not comply with the terms of the listed building consent. The buildings are only likely to be properly repaired and brought back into residential use if their restoration is funded by the construction of the MSA, in accordance with
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the Section 106 Agreement. The property would be saleable at the right price when completed, notwithstanding proximity to the MSA. The proper repair and restoration of the Grade II* listed building group would be a considerable benefit of the MSA scheme.

- 6.55 The Council and Shirley Estates both suggest that, even without the MSA proposal at Catherine de Barnes, there is a likelihood that the listed building would be properly renovated and reused for residential purposes. They argue that the planning benefit of the renovation of Walford Hall Farm which would be delivered by acceptance of the Appeal A proposal should therefore attract no weight.
- 6.56 In the light of the valuations (for the unrenovated and renovated Farm) submitted on behalf of the Council (Document SMBC0/12), it is apparent that the prospect of a restoration scheme unconnected with the current development proposal is not a viable one. There is no dispute in respect of the costs of the works to bring both house and outbuildings up to an acceptable standard for residential use (paragraph 6.50 above). When added to the Council's assessment of the unrenovated value of the house (£600,000 to £650,000) one reaches a figure of around £2 million.
- 6.57 Clearly, that cost is very substantially above the end value that the Council attributes to the completed project (approximately £1.5 million). It is inconceivable that a sensible purchaser would be willing to undertake a project, the cost of which is £2 million, when the end result would be an asset worth in the order of £1.5 million.
- 6.58 Consequently, even on the basis of the Council's own valuation evidence, there is no prospect of Walford Hall Farm being successfully renovated in the absence of the MSA project.
- 6.59 Shirley Estates next suggest that no weight should attach to the "planning good" of renovating the Farm for residential use, since it has not been demonstrated that the MSA is the minimum development necessary to achieve that end (i.e. that the MSA does not fall within EH's definition of "enabling development").
- 6.60 It is no part of the Swayfields case that the proposed MSA at Catherine de Barnes is the minimum level of development necessary to secure renovation of Walford Hall Farm. However, that fact cannot render irrelevant the planning benefit that would flow from the MSA proposal in its renovation of this listed building. Swayfields do not promote an "enabling development" argument to justify development of the MSA, but rather contend that the material benefit, of securing renovation of an important listed building for its preferred use (in PPG15 terms), adds weight in the planning balance in favour of allowing the appeal proposal. Without the MSA proposal the evidence before this inquiry (relating to valuation) demonstrates that it is most unlikely that renovation of the listed building and its outbuildings would be secured with its future assured by residential occupation. There is no sound evidence before this inquiry to demonstrate that such an outcome is likely to be secured by any other means. Even if such evidence did exist, the guarantee of proper renovation and appropriate re-use of a nationally important
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heritage asset that would be provided by the MSA development deserves to be given considerable weight.

- 6.61 Finally, Shirley Estates allege that the impact on the setting of the listed building has not been considered properly in the landscape and visual impact assessment of the MSA proposal. Shirley Estates confirm however, at paragraph 1 of Document SEL0/5 that they endorse the views on the setting of Walford Hall Farmhouse expressed by the Inspector and Secretary of State following the last inquiry. There is no suggestion from Shirley Estates of ways in which the impact of the MSA on the setting of the listed building has worsened since 2001 (in fact the level of mitigation of that impact has been enhanced), or of ways in which the appraisal of the Inspector or the Secretary of State of the MSA's impact on the landscape was deficient. Save for the removal of the track (and consequential enhancement of mounding and planting), and the worsening of the baseline (as a result of the introduction of the ATM infrastructure), there has been no change to the assessment of impact on the setting of Walford Hall Farm since the last inquiry.
- 6.62 The last Inspector found in favour of the appeal proposal despite the harm that would accrue to the listed building (including harmful alterations designed to allow its use as a training centre). The Secretary of State issued the minded decision letter on the basis of a proposal simply to exclude the listed building from the scheme. Now that the proposal includes both the assured and appropriate restoration of the listed building and its outbuildings, the planning balance must swing more heavily in favour of the grant of consent.

Planning Obligations and ODPM Circular 05/2005

The Swayfields Section 106 Agreement

- 6.63 As indicated at paragraph 1.9e above, the Unilateral Undertaking referred to in the Statement of Matters has been overtaken (and, in fact, revoked) by a new Agreement under Section 106 of the Town and Country Planning Act 1990 (Document CD734). As indicated at paragraph 6.44 above, the new Section 106 Agreement would ensure that the works for the repair and restoration of Walford Hall Farmhouse to habitable use and for the repair and restoration of its outbuildings in accordance with the drawings and specification of works granted listed building consent would be complete before operation of any permitted MSA commenced.
- 6.64 The new Section 106 Agreement contains within it obligations in respect of mitigation works directed at ecology, landscaping, drainage and pollution as well as the comprehensive renovation of Walford Hall Farm.
- 6.65 There is no suggestion from the Council or any other party that the Section 106 Agreement falls foul of any of the policy tests contained within Circular 05/2005.
- 6.66 There can be no doubt that the obligations proposed in respect of Walford Hall Farm are relevant to planning. Through those obligations it is proposed to renovate the farmhouse and its outbuildings for
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residential use. That use was described by the Inspector and the Secretary of State as the best option for the buildings. The proposed renovation scheme has received the support of both the Council and EH, and is in compliance with policy advice contained within PPG15.

- 6.67 As for the necessity of those obligations, following the earlier inquiry, the Secretary of State recorded (in agreement with the Inspector) that use as a training centre would be harmful to the character of the listed building, in particular, by reference to internal alterations. By contrast, the renovation of the Farm for its residential re-occupation would represent the best option in accordance with PPG15. As a result, whilst it is accepted that the MSA would cause harm to the setting of the listed building (as already found by the last Inspector), the works for its renovation for an appropriate use would represent an important step in mitigating that harm. As a significant part of the mitigation package (in terms of the MSA's impact), the works to the listed building (and therefore the planning obligation) are necessary within the terms of Circular 05/2005.
- 6.68 On that same basis, it is apparent that the obligation securing the renovation works is directly related to the proposed development.
- 6.69 Although the cost of those works would be considerable (and outstrip the end value of the Farm to a considerable degree), it is accepted that the level of obligation contained within the Agreement is fairly and reasonably related in scale and kind to the development of an MSA at Catherine de Barnes.
- 6.70 There is no basis upon which the proposed obligations could be found to be unreasonable.
- 6.71 In relation to ecology, landscaping, drainage and pollution control, Clauses 6 and 7 of the Section 106 Agreement oblige Swayfields and the landowners to submit to the Council two management plans, directed at ecological and landscaping works and drainage and pollution control works.
- 6.72 As far as the ecological and landscaping management plan is concerned, this will cover both on site and off site works over a period of 40 years, with provision for regular reviews, and will deliver significant and beneficial mitigation measures both in terms of landscaping and ecology.
- 6.73 The drainage and pollution management plan will contain measures to accommodate drainage from the site and ensure that any unacceptable pollution is avoided.
- 6.74 The impact of the appeal proposal has been assessed (within the environmental information relied upon by Swayfields) on the basis that all of these measures are achieved. The mitigation measures are relevant to planning, necessary, directly related to and proportionate with the proposal, and are, in all other respects, reasonable.
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The Swayfields Unilateral Undertaking

- 6.75 Swayfields have also executed a Unilateral Undertaking (Document CD736) that makes provision for the payment of a sum of money in order to finance additional HA resources claimed to be required as a consequence of the alterations to the running arrangements on the M42 between J5 and J6 as part of the Appeal A proposals. However, in relation to that Undertaking, Swayfields' position is that;
- there is no need for the obligation in order to render the MSA proposal acceptable,
 - the obligation is not fairly and reasonably related in scale and kind to the proposed development, and
 - the obligation is unreasonable for those reasons.
- 6.76 Nevertheless, this Unilateral Undertaking has been executed in response to the way in which the HA's case has evolved during the course of the inquiry. It would oblige the landowners and Swayfields to pay to the HA the sum of £950,000 in respect of the funding of resources to monitor that section of the motorway between J5 and J6 on condition that such a payment is found to be necessary by the Secretary of State.
- 6.77 The timing of the execution of this Undertaking is related directly to the manner in which this issue emerged as part of the HA's case. The HA made no suggestion in discussions or in correspondence ahead of the inquiry, or in its proofs of evidence (served in January 2008) to the effect that additional resources would be required in order to fund monitoring as a result of the access arrangements associated with the proposed MSA.
- 6.78 Only in a rebuttal proof (Document HA3A/3) did there appear, for the first time, a suggestion that additional resources would be required in order to monitor that part of the M42 between J5 and J6 as a result of the MSA proposals. The suggestion was a general one, and neither contained nor referred to any detailed assessment.
- 6.79 In the light of this suggestion, and shortly after receipt of the rebuttal proof, Swayfields made a request of the HA in an email dated 13 February 2008 for a detailed justification of the alleged additional resources claimed. No response was received ahead of Swayfields' highways witness giving his evidence in the fourth week of the inquiry. In fact, it was not until well after the HA had called all of their witnesses to give evidence in respect of the Catherine de Barnes proposal that any detail was forthcoming from the HA in support of a general assertion that additional resources would be required. This was contained in Document HA0/9, which was produced on 19 March 2008.
- 6.80 That document represented the HA's first attempt at supporting the general assertion regarding the need for additional resources. Its premise is that the same level of monitoring as applies to ATM operation (with hardshoulder running) for the entire section of the motorway between J3A and J7, would be required for the monitoring of the
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proposed auxiliary lanes between J5 and J6 outside of the periods when ATM was in operation. That premise is misplaced.

- 6.81 It transpired at the accompanied site visit to the RCC which took place on 1 April 2008 (referred to at paragraph 1.33 above) that the author of Document HA/09 had not in fact been asked to consider the actual consequences for the HA of the MSA's operation, but rather had been requested to extrapolate ATM resources over a 24 hour period.
[Inspector's Note: All active parties to the appeal were represented at the accompanied site visit. The visit to the RCC was intended to provide an opportunity to see how the ATM system was put into operation and how its operation was monitored. It provided factual information rather than any discussion of the merits of the appeals. It led, however, to the production of the Document HA0/15, referred to in the next paragraph, which was then considered at the inquiry.]
- 6.82 A second attempt at advancing details in respect of the HA's general allegation of additional resource requirements was produced on 21 April 2008 (Document HA0/15). Within that revised assessment, the HA appear to accept that, even on their own case, it is not appropriate to require the same level of monitoring for the motorway between J5 and J6 outside of ATM operation, as is necessary for the entire ATM section (J3A to J7) during ATM operation. Consequently, in the revised note, the HA continue to propose 24 hour monitoring, but with one operator as opposed to two outside of ATM operation. However, unlike the assessment contained within Document HA0/9, the HA now consider it necessary to make provision for an additional "road crew" (two employees plus a vehicle) in order to manage the operation of the proposed auxiliary lanes between J5 and J6.
- 6.83 The HA's assessment of the cost of the additional resources had also undergone change. Assessed at approximately £13,000,000 in Document HA0/9, by 21 April 2008 that assessment had risen to approximately £21,000,000. Both attempts by the HA to substantiate the claim for additional resources require a sum to be paid in order to meet costs over a 30 year period.
- 6.84 The safety of Swayfields' proposed access proposals for the MSA and the operation of the proposed auxiliary lanes is addressed below from paragraph 6.99, but the following points are made here:
- (i) The section of motorway between J5 and J6 (as part of the ATM section of the M42) is already closely monitored.
 - (ii) The section of motorway between J5 and J6 would not only continue to benefit from the presence of ERAs, but would also contain a MSA and full hardshoulders between the MSA's slip roads.
 - (iii) The likelihood that vehicles would stop on the auxiliary lanes under the Swayfields proposals is no greater than their stopping
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in the running lanes of the existing motorway (or any other motorway).

- (iv) Although ERAs would be used during the operation of “unrestricted” speed limits on the section of motorway between J5 and J6, there is no reason to believe that that use would give rise to any unacceptable safety consequence. Speed data demonstrates that actual speeds on the auxiliary lane are unlikely to be as high as 70mph. The HA are already trialling hardshoulder running at 60mph, and that approach is intended to be followed in the roll out of ATM on other parts of the motorway network. In any event, the national road network (including trunk roads maintained by the HA) contains many examples of lay-bys on rural dual carriageways where a 70mph speed limit applies.

- 6.85 On the basis of Swayfields’ analysis of the safe operation of the auxiliary lanes (dealt with in greater detail below), there is no need for any additional resources to be devoted to the monitoring of this part of the motorway network as a result of the MSA proposal.
- 6.86 The HA do not dispute that traffic flows on the motorway throughout the night fall to very low levels. Four road crews are sufficient to patrol the whole of the region’s road network (including 500km of motorway) from 10pm to 6am in light of those low traffic levels. Given those levels of traffic flow (as well as the facilities that would be provided along the 4km stretch of motorway between J5 and J6 – namely the ERAs, the MSA itself, and the hardshoulders between MSA slip roads) there is no compelling evidence that suggests either the need for an additional road crew or additional monitoring at the RCC during the night time period.
- 6.87 As a consequence, even if some additional monitoring of the auxiliary lanes is accepted as being necessary, such monitoring should not be extended into the 8 hour period between 10pm and 6am.
- 6.88 As for the on-road patrols during the daytime hours, Document HA0/15 confirms that at present between the hours of 6am and 10.25pm there are 16 traffic officer patrols operating within the West Midlands motorway network. As matters stand, ATM does not operate throughout the whole of that 16 hour period. As a consequence, the number of on road traffic officers is the same (16 patrols) during that 16 hour period of the day whether or not ATM is in operation. In other words, the HA do not suggest that it is necessary to increase the number of on road traffic officers within the West Midlands motorway network in order to be able to cope with ATM operation where a hard shoulder is absent not just between J5 and J6, but on the whole of the current ATM section between J3A and J7.
- 6.89 If the absence of a hardshoulder did justify the provision of another on road patrol, then the HA would have provided one for periods of the day when ATM is in operation between J3A and J7. The HA has not done so, and thus there is no reason to believe that the existing level of on road
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officers would be insufficient to serve the motorway network with the MSA in place.

- 6.90 Even if it is concluded that some additional resources are required, the contention that provision should be made for a period of 30 years is untenable. It is apparent from the HA's own material (at SMBCO/10 figure 15) that ATM operation will in the future extend for longer periods of the day in response to traffic growth. The HA predict that by 2015 ATM could be operating for 13 hours a day on the M42. As a result, additional monitoring of the M42 (including the section between J5 and J6) will take place in any event. In the longer term, there is even less certainty about the operation of the motorway. It may be that ATM operation is extended over longer periods, or alternatively that a different system of operation of the motorway supersedes the current ATM regime. To suggest that a commuted sum be paid in order to provide for monitoring based on current conditions but extended over a 30 year period ignores those changing circumstances and inherent uncertainties.
- 6.91 A more realistic approach, and one that fits with the assessment period for highway improvements affecting the strategic road network, would be to require provision for the next 10 years (if any additional resources were found to be necessary). On the basis of the provision of one operative for an 8 hour period (i.e. the period of the day when ATM is not operational but excluding the night time period) for a 10 year period, Swayfields have calculated a total cost of £950,000, and that is why that sum is included in the Unilateral Undertaking (Document CD736).
- 6.92 That Unilateral Undertaking, however, is unnecessary, disproportionate, and unreasonable. It does not meet the requirements of Circular 05/2005, and Swayfields seek a finding to that effect. On the basis of such a finding, and by reference to the terms of the Unilateral Undertaking, it would not take effect.

The adequacy of the Environmental Statement

- 6.93 As indicated at paragraph 1.9f above, the ES submitted to the 1999/2000 inquiry (Documents CD405 to CD413 inclusive) has been supplemented by updated environmental information contained in Documents CD414 and CD415. These reflect the fact that both the current proposal and the baseline against which it is judged differ from the proposal and baseline considered at the last inquiry in that
- (i) The proposal now includes auxiliary lanes between J5 and J6. The proposed auxiliary lanes differ from those advanced between the MSA and J6 at the last inquiry in that they are to be constructed without significant widening of the carriageway. As a consequence, the proposal avoids any cutting into existing motorway embankments and the associated (and visually intrusive) retaining walls.
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- (ii) In order to achieve the proposed auxiliary lanes without cutting into the embankment, a narrowed central reserve is required that will incorporate a vertical concrete barrier (“VCB”).
- (iii) The decision of the HA not to pursue widening of the M42 means that the span of the MSA’s overbridge can be shortened and the extent of highways works to the east of the motorway reduced. In effect, slip roads and the eastern roundabout are pulled closer to the mainline motorway, allowing greater scope for landscaping along the eastern part of the site.
- (iv) The renovation for residential re-use of Walford Hall Farm is now proposed as opposed to its use as a training centre associated with the MSA. Landscaping works that divide the Farm from the MSA can be enhanced.
- (v) Since the last inquiry, the motorway has undergone significant physical change. It is now lit and contains infrastructure associated with ATM (in particular, the gantries and their signage, and lit ERAs built into the motorway embankments). As a consequence, the baseline against which the impact of the MSA is to be judged has been degraded.

6.94 Only two parties contend that the environmental information provided in connection with Appeal A is deficient.

6.95 The Council argue that the layout shown in Revision G should have been assessed. As explained at paragraph 6.17 above, that drawing is provided simply to demonstrate that the level of parking contended for by the HA could (if it can eventually be proved to be necessary) be accommodated on site. Swayfields do not agree that it is or will be necessary, and the Revision G drawing forms no part of the illustrative scheme for which they seek approval. As such, it does not require assessment pursuant to the EIA Regulations.

6.96 The Welcome Break Group state in their written representation (Document WBG1) that legal representations made during the 1999/2000 inquiry and in their letter of 25 November 2004 remain relevant. Those representations included two assertions associated with environmental impact assessment. The first of those assertions suggested that the impacts of the scheme including, in particular, off-site highways works to the motorway had not been assessed. The second suggested that important aspects of the development (such as off-site landscaping works) had not been the subject of appraisal.

6.97 Welcome Break’s letter of 25 November 2004 was written ahead of the issue of the Regulation 19 request of December 2005 (referred to in paragraph 1.9f above) and well ahead of the publication by Swayfields of the Further Environmental Information of June 2006 and September 2007. The assessment contained within those documents addresses the impact of both on site and off site works, and answers Welcome Break’s concerns in their entirety. In the written representation of 14 January

2008 (Document WBG1), Welcome Break make no mention of that further environmental information.

- 6.98 Accordingly, the Secretary of State is invited to find that the environmental information submitted in support of the Appeal A MSA proposal is adequate, and complies with the requirements of the EIA Regulations.

Other material changes in circumstances – Active Traffic Management and access to the proposed Motorway Service Area

- 6.99 The ATM project for the section of motorway between J3A and J7 of the M42 was announced by the then Minister for Transport in July 2001 (Appendix 16 to Document HA3A/2). Scheme design had commenced by March 2002, and the project's construction began in early 2003.

- 6.100 Introduction of ATM operation was phased. In June 2005, advisory variable speed limits were displayed across the 3 running lanes. In November 2005, mandatory variable speed limits came into operation across those 3 lanes, and in September 2006 hardshoulder running (again with mandatory variable speed limits) was introduced.

- 6.101 ATM's chronology is significant. A year and a half after construction of ATM had commenced, the HA wrote to the Government Office for the West Midlands ("GOWM") stating that, "...*the HA have assessed the auxiliary lanes [then proposed between the Catherine de Barnes MSA and J6] in respect of highway safety, buildability, and environmental implications. The level of detail undertaken has enabled the HA to accept the principle of the auxiliary lanes*" (Appendix 1 to Document SWA3/3).

- 6.102 A later letter from the HA to GOWM (dated 11 November 2004 and included at Appendix 3 of Document SWA3/3) did not withdraw the HA's in principle acceptance of the MSA's access arrangements on this part of the motorway. Instead, the HA simply recorded that, in light of ATM, alterations would be required to the then proposed access arrangements in order to integrate ATM and the MSA.

- 6.103 The HA's acceptance of the principle of an MSA at Catherine de Barnes and within ATM was maintained within its Statement of Case for the inquiry (Document CD717), where it stated that, "*The Agency's evidence will be that its position on the acceptability "in principle" of an MSA in this location has not changed, subject to the satisfactory integration of the proposed MSA with the operation of the ATM*".

- 6.104 The substantive areas of disagreement between Swayfields and the HA are limited to two as recorded in the Highways SCG (Document CD702A). They are the acceptability in highway safety terms of the omission of a hardshoulder between J5 and J6, and the ability to integrate satisfactorily the MSA access arrangements with ATM in terms of safety and operational efficiency.
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- 6.105 Where the HA suggest that the scheme is unsafe, it is incumbent upon the Agency to identify the specific cause of the risk and its degree, and to support that analysis by demonstrating that mitigation could not overcome that risk to an acceptable degree. The HA have consistently failed to approach the proposal for this MSA in that way. Instead, the HA have maintained a position that they remain to be satisfied that the scheme is safe and will achieve satisfactory integration with ATM. In their letter of 15 October 2007 (Appendix 5 of Document SWA3/3) the HA confirmed that they had received the Highway Design Statement including Relaxations and Departures, and the Safety Case document (Documents CD 506 and CD509). An assessment of those documents had, however, not been completed. Notwithstanding the absence of such an assessment Mr Hansen of the HA felt able to write in that letter that, *“The omission of a hardshoulder between Junctions 5 and 6 is a significant Departure from standard. The Agency is not satisfied, on the basis of the information you have provided that this arrangement is safe”*.
- 6.106 What is absent from the 13 pages of Mr Hansen’s letter, however, is any explanation of why the absence of hardshoulders is unsafe on this section of M42.
- 6.107 Swayfields have undertaken a process of the submission of successive access schemes to the HA, to be told simply that the HA remain to be satisfied. Necessarily, that pattern had to be brought to an end, and, in the absence of specific analysis by the HA, Swayfields determined that the scheme appearing in drawings at Appendix 6 to Document SWA3/3 should be the scheme to be considered at this inquiry, as confirmed in Document SWA0/2. That is the December 2007 variation of the scheme as outlined at paragraph 1.11 above. It includes VCBs and changes to the widths of the lanes and hard strips. It was prepared after the SCG between Swayfields and the HA had been discussed in November 2007. The changes made in the December 2007 revision are minor and cannot have disadvantaged any party.
- 6.108 It is accepted that no separate Transport Assessment was produced for the December 2007 revised scheme, but the original Transport Assessment remains relevant and is supplemented by the evidence given at the inquiry in relation to the variations contained in the December 2007 proposals. It remains the case that neither the HA nor its consultants has ever responded to the documentation provided in September 2007 that comprises the Safety Case, and the Design Statement including Relaxations and Departures (Documents CD506 and CD509). Nor have the HA ever provided Swayfields with a response to the Technical Note addressing the issue of integration of the MSA proposals with ATM submitted on behalf of Swayfields to the HA in December 2007 (Document CD511). The HA’s reluctance to engage constructively with Swayfields in addressing the highways aspects of this MSA proposal can be contrasted with the Agency’s approach to the Shirley Estates J4 proposal. The SCG agreed between the HA and Shirley Estates (Document CD732) records the HA’s satisfaction with the J4 proposal on the basis that it will not have a detrimental impact on the
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safe and efficient operation of the M42. However, as far as the operation of the local road network is concerned (i.e. anything beyond the top of the slip roads), which was central to the HA's objection to the J4 scheme at the last inquiry, the HA's position is merely that it would not wish to see the resolution of the HA's concerns achieved at the expense of that local road network.

6.109 In addition, whereas the HA demand of Swayfields a full Departures application and detailed signing strategy for the Catherine de Barnes scheme, no such similar demand is made of Shirley Estates in relation to the J4 scheme.

6.110 It is incumbent upon the HA to co-operate even-handedly and constructively with all developers. However, the response made to Swayfields' submissions has simply been a statement that the HA remain to be satisfied by the scheme. Such a response is neither constructive nor co-operative. It is a response which is unacceptable, particularly in light of the compelling need for MSA provision in this location identified by the Secretary of State as long ago as 2001.

6.111 What is required of the parties is an exercise of analysis and judgment. That was the process employed by the HA in its promotion of ATM, and it is the process that is generally applied in the assessment of highways schemes that are yet to be implemented. The HA assert that the MSA proposal has not been subjected to the same level of safety analysis as the ATM system, but, given the difference in scale, that is not surprising. It is impossible to "prove" the safety of any particular highways proposal (the test that the HA seem now to require in respect of the MSA scheme). There is, however, sufficient information before the inquiry on which to judge the safety of the proposals in connection with the MSA at Catherine de Barnes. As in the case of ATM, it is a question of reaching a properly informed engineering judgment on the merits of the MSA's proposed access arrangements.

6.112 The access solution proposed for the MSA has as its starting point an acceptance by both Swayfields and the HA that the weaving width required to accommodate the MSA between J5 and J6 on the M42 is four lanes. It would be unacceptable (in terms of both environmental and financial costs) to widen the motorway between J5 and J6 to four running lanes plus a hardshoulder. No party to the inquiry has suggested that such a step should be taken. As a consequence, the solution advanced at the inquiry makes provision for four lanes of traffic without requiring a full scale widening operation along this stretch of motorway (all of which runs through the Green Belt).

6.113 Four lanes would be provided without significant widening by narrowing the central reserve together with the introduction of a VCB and introducing a hardstrip (as opposed to hardshoulder) along the outside of both the northbound and the southbound carriageways. A consequence of the scheme would be to provide for permanent lane gain and lane drop arrangements at the south-facing slips of J6 and the north-facing slips of J5. At present, such lane gain and lane drop

arrangements at those locations exist for only those parts of the day when ATM hardshoulder running is in operation. The appeal proposal's permanence would mean that a greater level of certainty (and ease of merge and diverge) would be introduced. The permanence of that arrangement would deliver a benefit to two busy junctions, including J6, which serves both the NEC and BIA.

- 6.114 Cross-sections of the motorway incorporating the appeal proposal will be found at Appendix 7 of Document SWA3/3. They show that for the majority of its length between J5 and J6 both northbound and southbound carriageways would incorporate lane widths of 3.65m (auxiliary lane), 3.7m (lane 1), 3.45m (lane 2), and 3.25m (lane 3). In addition to those running lanes, a hardstrip of 2m is provided along the majority of the motorway between the two junctions (including past the ERAs), together with a central reserve of 2.54m (including a VCB 0.54m wide, with 1m off-sets to either side). In front of the MSA (i.e. between the access and egress slip roads on both sides of the motorway) a full hardshoulder would be provided in addition to the auxiliary lanes.
- 6.115 By contrast, the current cross-section of the M42 between J5 and J6 contains generally a hardshoulder of 3.45m, and 3 running lanes with widths of 3.5m, 3.5m, and 3.2m. Save for the existing lane 2 (for which there is a 5cm reduction in width), all lane widths would increase as a result of the appeal scheme. Save for the ERAs at the location of the MSA itself, the existing ERAs between J5 and J6 would be retained within the appeal proposals.
- 6.116 Each of the proposed four slip roads has been designed to accord fully with current standards specified within TD 22/06 of the Design Manual for Roads and Bridges (DMRB) (Document CD229).
- 6.117 The layout drawing (Rev F) shows parking space provision for 600 cars, 8 caravans, 85 HGVs and 25 coaches. Such provision is entirely adequate. The HA's proposed reliance on central growth figures for motorway traffic all the way through to 2025 has not been reflected in the measured growth of traffic on the M42 since 1999. A calculation based upon measured flows produces an estimated parking requirement for 2025 that is extremely close to the level of provision proposed within the scheme. Even if it is accepted that the measured growth in traffic was depressed during construction of the ATM, this assessment is robust, since it assumes that Government policies aimed at reducing car-borne travel together with constraints on the capacity of the motorway itself will have no effect. If, however, the HA's assessment of the eventual parking required proves to be accurate, such a level of parking could be accommodated on the site, and the method of moving to that level of parking could be addressed by an appropriate condition.
- 6.118 The operation of ATM on the M42 has been a success, and has resulted in confirmation that it will be rolled out across other parts of the motorway network. They include parts of the network containing existing on-line MSAs (such as Frankley on the M5). The successful operation of ATM along the M42 between J3A and J7 demonstrates that
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drivers (even those unfamiliar with this part of the highway network) have been able to negotiate very successfully the novel arrangements that are included within ATM. The most novel of those arrangements is the use of the hardshoulder as a running lane. Although ATM has operated for well in excess of 12 months, there is no evidence to show that hardshoulder running has given rise to any significant safety concern. In addition, drivers have been able to address variable road conditions under existing arrangements on this part of the motorway network, because this section of the M42 operates with and without ATM at different times of the day; it operates with and without hardshoulder running and with and without variable speed limits; and different sections of the motorway between J3A and J7 can operate under different conditions at the same time.

- 6.119 There has been no incident during hardshoulder running where a vehicle has stopped on the hardshoulder (as opposed to an ERA), and no record of any accident attributable to hardshoulder running. The ERAs have been used successfully by drivers who have needed to stop. The evidence to date demonstrates that some drivers who have entered and exited the ERAs successfully have done so for inappropriate reasons (e.g. in order to make a mobile telephone call). Clearly, with the MSA in place, it is likely that the frequency of inappropriate ERA stops would fall. Where drivers have exited the section of motorway under ATM control, they have not been confused about reverting to more conventional motorway arrangements.
- 6.120 By contrast to the ATM arrangements, which require drivers to cross a solid white line in order to drive along the hardshoulder, the appeal proposals would include an auxiliary lane that is clearly marked as a conventional auxiliary lane. It would be separated from lane 1 by a dotted line, and would appear to motorists like any other of the auxiliary lanes which are a common feature of our motorway network. Signing would inform drivers that there is no hardshoulder available over the sections of motorway between J5 and J6 and the MSA; that the inside lane should be used for access to services; and, at a point beyond the MSA, that the auxiliary lane should be used for exit at the next junction only (i.e. J6 northbound, and J5 southbound).
- 6.121 As a consequence, the only “novel” element of the motorway arrangement between J5 and J6 with the MSA in place would be the ERAs in place of a permanent hardshoulder, and evidence before this inquiry demonstrates them to work successfully.
- 6.122 The Technical Note on Integration with ATM reproduced as Appendix 11 within Document SWA3/3 demonstrates the straightforward nature of the scheme proposals. When ATM is non-operational, drivers entering the section of the motorway between J5 and J6 would have been travelling through a conventional motorway save for the presence of ERAs. Between J5 and J6 those drivers would continue to travel through a conventional motorway (with a conventionally marked auxiliary lane) save for the presence of ERAs. The same situation would apply during 3 lane ATM with variable speed control. Drivers entering the section of
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motorway between J5 and J6 would have just experienced a conventional motorway save for the ERAs and 60 or 50mph speed limit displayed on overhead gantries. That position would continue through the section of motorway between J5 and J6, which would appear as a conventional motorway save for the ERAs and the 60 or 50 mph speed limit displayed on the overhead gantries. There need be no different speed limit imposed between J5 and J6 as compared with the rest of the ATM section of motorway. Finally, during hardshoulder running, drivers travelling northwards towards J5 or southwards toward J6 would have been told to use the hardshoulder only for exit at the junction. Traffic which remained on the motorway (having passed through the junction) would then experience a conventional motorway, subject only to the speed limit of 50 mph displayed on the gantries and the ERAs.

- 6.123 In the face of the evidence showing how the appeal proposal would function successfully, the HA's position (that the Agency remain to be satisfied that the MSA can integrate successfully with ATM) cannot be maintained. The HA must demonstrate how the driver would be confused and therefore put at risk as a result of the MSA proposal.
- 6.124 The only evidence in support of the allegation of driver confusion came from the HA's witness, Mr Patey. Having stated at paragraph 11.2 of his proof that, *"Consideration would need to be given to the effects that the introduction of a MSA would have on driver behaviour"*, Mr Patey then conducted no detailed analysis in his proof of how drivers would be likely to react if the MSA was to be built. His evidence amounted to no more than a general assertion that the change in environment for the driver between J5 and J6 could lead to driver confusion. The closing submissions made on behalf of the HA refer at paragraph 18 to Mr Patey's *"detailed technical assessment"*, but, in reality, Mr Patey's evidence contained neither a detailed technical assessment nor the application of judgment. The HA's closing submissions, consistent with the HA's evidence, contain no explanation (detailed or otherwise) as to why drivers would become confused when faced with the MSA and its access arrangements.
- 6.125 Within his rebuttal proof (HA3A/3), the only reference to potential driver confusion in terms of any specific concern entertained by Mr Patey appears at his paragraph 2.58.2. In that one paragraph, he refers to the fact that the proposed auxiliary lane would continue throughout the length of motorway between J5 and J6, i.e. running between the MSA slip roads. Mr Patey asserts that because hardshoulder running does not continue through junctions, the fact that the proposed auxiliary lane would continue through junctions would be likely to give rise to driver confusion. He also appeared to level a criticism at Swayfields that no "driver simulation" had been conducted. The driver simulator for ATM is in the hands of a HA contractor, and, prior to Mr Patey's evidence, Swayfields had not even been told of its existence. In discussions and correspondence with the HA, Swayfields were never told that a driver simulation exercise would be required. In fact, the HA were right not to make such a suggestion, since the successful integration of the MSA with ATM may be judged on the evidence before this inquiry.
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- 6.126 It is assumed that the concern of the HA is that, having driven along the proposed auxiliary lanes (i.e. past the MSA), drivers will then seek to stay on the hardshoulder at other junctions along the ATM section of motorway. However, at other junctions along the ATM section of motorway during ATM operation, drivers are informed by signs (displayed on two gantries ahead of the junction) that the hardshoulder is to be used for exit at the next junction only. Evidence demonstrates that those signs are understood by drivers and work successfully. Similar signs (fixed if necessary) could be introduced after the MSA (both northbound and southbound), informing drivers to use the auxiliary lane for exit at the next junction only. The HA accept that in practice at present sometimes only certain sections of the ATM system are turned on. This does not then provide a consistent driver experience between J3A and J7.
- 6.127 Self evidently, the proposed auxiliary lanes upon which drivers would be able to pass the MSA in the appeal scheme are not hardshoulders. As a consequence, there is no inconsistency between the notion of remaining on an auxiliary lane past a junction (i.e. at the MSA), and being required to leave a hardshoulder past a junction (i.e. under ATM at other junctions).
- 6.128 The HA are themselves considering through junction running of the hardshoulder in the "roll-out" of ATM on other parts of the network, as indicated at paragraphs 3.17 to 3.21 of Document SMBC0/10. The HA there confirm that, *"Both 60mph hardshoulder operation and through-junction running are being pursued in the designs for Phase 1 and 2 of the roll out of ATM on the M42/M6 route around Birmingham as they are considered, on balance, to be beneficial."*
- 6.129 At paragraph 10 of the 2001 minded decision letter (Document CD211), the Secretary of State found that a MSA on the Solihull section of the M42 would make an important contribution to road safety by providing drivers with an opportunity to stop and rest, and that there existed a significant need for a MSA on this stretch of motorway. It is against that background that the safety of the access arrangements proposed for the Appeal A development must be considered.
- 6.130 The HA suggest that there are "potential new hazards" which may arise as a result of the introduction of the proposed MSA. It is suggested that drivers would mistake the MSA entry slip for a motorway junction exit slip. It is hard, however, to see why there would be any greater prospect of that happening at the Catherine de Barnes MSA when compared with any other on-line MSA in the country. It is also suggested that drivers exiting the MSA during 4-lane running would not realise that the hardshoulder had opened since entering the MSA, but no hardshoulder running would take place at any time on the section of motorway between J5 and J6; vehicles exiting the MSA would join the proposed auxiliary lane using a standard slip road. To the suggestion that traffic on the auxiliary lane would be travelling too fast to allow exit from the MSA, again the position would be no different from that which
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applies at any other on-line MSA around the country. In this case however, the slip roads would be designed to the latest standards set out in TD22/06 (Document CD229). As a result, they would be superior in safety terms to many slip roads serving more dated MSAs around the country.

- 6.131 Moreover, the evidence demonstrates that vehicle speeds on the auxiliary lanes would be likely to be well below 70mph. Appendix 13 within Document SWA3/3, confirmed by Document HA0/7 shows that, outside of ATM control, average speed on lane 1 between J5 and J6 is of the order of 55 mph. There is no evidence to suggest that speeds within the proposed auxiliary lanes would be any higher than that average.
- 6.132 The HA also suggest that drivers might misjudge the entry into the MSA and as a result enter too fast, make a late decision to enter the MSA, or brake late on entering the MSA, or that they might change their mind at the last second about whether or not they wish to enter the MSA. But insofar as this is a hazard (and again, the HA adduce no empirical evidence in order to make good the allegation), it must be a feature of all MSAs as well as all motorway junctions. Yet Government policy continues to support the principle of MSA provision at regular intervals, with, now, an expressed preference (in DfT Circular 01/2008) for on-line MSAs.
- 6.133 These criticisms are tantamount to an objection to the introduction of a MSA anywhere on the motorway network, and especially on parts of the network governed by ATM. That position is at odds with the HA's stated position of having no in principle objection to either the scheme, or the compatibility of ATM with on-line MSAs. The immediate roll-out of ATM around the Birmingham motorway box (as well as elsewhere) will necessarily accommodate on-line MSAs (for example, at Frankley on the M5).
- 6.134 Insofar as the connection of the proposed auxiliary lanes to J5 and J6 is concerned, the scheme would introduce, on a permanent basis, lane gain and lane drop arrangements that would simplify the current position (whereby during hardshoulder running a lane gain/drop arrangement applies but not at other times).
- 6.135 There is no basis upon which to conclude that the slip roads at both the proposed MSA and at J5 and J6 would operate in anything other than an acceptable way.
- 6.136 The weaving lengths between the MSA slip roads and the slip roads serving J5 and J6 are set out within the SCG between the HA and Swayfields (Document CD702A). At the last inquiry (and subsequent to it), the HA advanced no objection to the proposed weaving lengths. In all but one case (MSA to J6, i.e. northbound) the lengths now proposed have increased as compared with the provision found acceptable at the time of the last inquiry. It is not apparent from the HA's evidence why those weaving lengths should have become unacceptable in the period between the last inquiry and the present one. All that is alleged is that
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the proposed weaving lengths will remain substandard. They will require a Departure from standard application, but that does not amount to evidence of unsafe operation.

- 6.137 This part of the motorway network now operates for long periods (when it is at its busiest) with mandatory speed limits of 50 or 60mph. The period over which those speed limits are applied is set to increase as ATM is extended through the day. When operating under those conditions, this section of the M42 is akin to an urban motorway. The required weaving lengths for an urban motorway are exceeded very substantially by the weaving lengths available at Catherine de Barnes. By contrast, at the last inquiry, when weaving lengths shorter (in three out of four cases) were accepted by the HA, a 70mph speed limit operated throughout the day.
- 6.138 In terms of weaving widths, the scheme would provide four lanes between the MSA and J5 and J6 in accordance with the weaving width calculation contained within the SCG agreed with the HA (paragraph 8.8 of Document CD702A). The scheme incorporates not only the auxiliary lanes, but also hardstrips adjacent to those lanes.
- 6.139 This section of motorway between J5 and J6 is closely monitored. There are frequent and regular cameras (both fixed and moveable) that allow operators in the RCC to observe and respond to any incident that might occur. The ability to respond includes the capacity to illuminate clear signs on the regular gantries that have been constructed on this section of the M42 in connection with the introduction of ATM. That ability is superior to the position that prevails on many of the country's motorways. Additionally, the motorway has the benefit of ERAs spaced every 500m. The ERAs have the facility of telephone contact with the RCC. Operators can take action, if required, to facilitate the exit of vehicles from an ERA. Traffic in the auxiliary lane is likely to be only some 17% of the total flow along the motorway, and traffic speeds in the auxiliary lane would be lower than on other running lanes. As a result, headway allowing traffic to exit an ERA would be greater than on any of the other running lanes of the motorway.
- 6.140 Between the MSA slip roads and J5 and J6, a hardstrip would lie adjacent to the auxiliary lane. That hardstrip would now be at least 2m in width for the majority of its length. (In the drawings in Document CD510, the hard strip was proposed to be 1m wide, but the variation submitted in December 2007 (Document CD511) provides for a variable width hard strip.) An agreed note (Document HA0/11) records that a 2m hardstrip can be accommodated for 57% and 63% of the northbound and southbound carriageways respectively between J5 and J6. These figures increase to 74% and 82% if a 100mm tolerance is applied.
- 6.141 That hardstrip would continue past all of the retained ERAs. As a consequence, vehicles within an ERA would have the benefit of the width of the retained ERA at approximately 3.8 metres, in addition to the width of the hardstrip at approximately 2 metres as an additional buffer
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between them and passing traffic. That overall width of nearly 6 metres compares with the position on hardshoulders on the motorway network in general, where vehicles stop on hardshoulders that are in the order of 3.3 metres wide in conditions of unrestricted speed control.

- 6.142 A clear width of 2 metres would be sufficient to allow access to the hardstrips for police vehicles. The width accords with the standard in TD27/05 (Document CD228), which refers to hardstrips down to an absolute minimum of 1m in width.
- 6.143 Where additional width is required (for example, to allow access for a 2.5m wide fire engine in conditions where the entire motorway is blocked and the RCC has not been able to close and clear a lane), there is scope in the widths of running lanes that the scheme would provide for traffic in the auxiliary lane to move towards the adjoining running lane.
- 6.144 That position must be compared with circumstances that prevail currently under ATM. During hardshoulder running there is no hardstrip available in order to allow access for emergency vehicles. As a consequence, if the entire motorway becomes blocked during ATM operation, it is necessary first to clear a lane of traffic before emergency vehicles can get through. Under the appeal proposals, and with the provision of a hardstrip, it would be far more likely for an emergency vehicle to be able to gain access to any incident where the entire motorway had become blocked as compared with the position that would prevail during ATM. It is accepted that no consultation regarding the proposed hard strips has taken place with the emergency services as is required by paragraph 2.6.4 of Annex B to TD27/05 (Document CD228). If ATM is acceptable to the emergency services, the appeal proposals should also be acceptable, because they would represent an improvement.
- 6.145 It is also notable that, even on non-ATM sections of motorway, there are many occasions where no hardshoulder is provided (as opposed to a hardstrip). Examples are listed in Appendix 5 to Document CD506, the Highways Design Statement submitted in support of the appeal scheme. They include a section of motorway where, in both directions, there is no hardshoulder for distances of 2.34 and 2.41 km. There is no suggestion from the HA that either that section of motorway is unsafe, or that it should have failed in achieving approval of a Departure from standard application. By comparison, vehicles travelling along this stretch of the M42, and having passed either J5 (northbound) or J6 (southbound) would not have to travel any distance greater than either 1.6km (northbound) or 1.8km (southbound) before reaching the MSA. Even within that distance, travellers would have the benefit of the ERAs (2 between J5 and the MSA northbound, and 3 between J6 and the MSA southbound). The same position applies to vehicles having passed the MSA heading either northbound towards J6, or southbound towards J5.
- 6.146 It is accepted that at three locations, the Coptheath Canal Bridge, the Henwood Lane Bridge, and the Henwood River Bridge, a hard strip of 2
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metres is not achievable. These locations were all identified in the Highway Design Statement including Relaxations and Departures from Standard (Document CD506) which was submitted to the HA in September 2007, and to which no response from the HA has ever been received. At those locations, there is reduced forward visibility in respect of the northbound carriageway only. Whilst the relevant standard (TD9/93, Document CD249) requires forward visibility of 295m (stopping sight distance), 215m is available at the Coptheath Canal Bridge, and 160m is available at the other two locations. These available distances are 1 and 2 steps below the desirable minimum. But the stopping sight distance is to be measured 1m in from the edge of the carriageway to allow for the possible position on the road of a motorcyclist. In reality, for most vehicle drivers, their forward visibility would be much better than that, and when combined with the likely lower speed of travel on the auxiliary lane (about which there is undisputed evidence), there is no reason to believe that the stopping sight distances at the three locations would be unsafe.

- 6.147 The stopping sight distances would in any event be no different in the appeal proposal from those that are available during hardshoulder running under current conditions. The motorway operates safely in those locations and under those conditions, and the HA are trialling hardshoulder running on this part of the M42 subject to a 60mph speed limit. All available speed data demonstrates that traffic on the proposed auxiliary lanes would be unlikely to be travelling at 70mph, and, as a consequence, there is no reason to believe that the available stopping sight distances at those three locations on the northbound side of the motorway would be unsafe.
- 6.148 The existing steel barrier in the central reserve of the M42 would be replaced by a VCB. The suggestion made by the CPRE that VCBs have in some way a more urbanising effect than steel barriers is not accepted. VCBs would provide a largely maintenance free safety facility, that is resilient to the risk of “crossover” accidents in a way that the existing steel barrier is not. A set back of 1m would be achieved from the running lanes on both sides of the VCB which would comply fully with the requirements of the relevant design standard, Annex B, page B/7 of TD27/05 (Document CD228). The width requirement for the proposed central reserve is 0.54m for the VCB, plus a 1m stand-off on each side, giving an overall width of 2.54m. That width of central reserve will be provided throughout the length of motorway between J5 and J6.
- 6.149 The absence of a hardshoulder over the weaving lengths set out in the SCG is balanced by the existing and proposed physical arrangements of the motorway between J5 and J6. The ERAs, the proposed MSA (and hardshoulders at its location), the hardstrips, the permanent lane gain/drop arrangements at J5 and J6, the capacity to monitor and inform drivers of incidents using the gantry signs, the ability to communicate with drivers within the ERAs, and the proposed VCB all support a finding that the proposed access arrangements would operate safely. Notably, a very similar arrangement was promoted by the HA
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on sections of the M1 and M62 (as indicated at Appendix 16 within Document SWA3/Reb/App). Although the proposal outlined there is no longer being pursued, the HA were confident enough in the arrangement to publish the proposal for public consultation. There is no suggestion from the HA in Document HA0/3 that a decision no longer to pursue that scheme was taken on the basis that the proposal was considered to be unsafe. It is simply stated that, "*for operational reasons*", the HA have focused on two other options for improving capacity on these motorways.

- 6.150 Those physical features which would contribute to the safety of the scheme are supplemented by evidence of actual driver behaviour on this part of the road network. The likelihood of vehicles stopping on the proposed auxiliary lanes is no greater than their stopping in the running lanes of the existing motorway (or any other motorway). The important difference between this section of the M42 and other parts of the motorway network is the enhanced ability of the HA to respond to such an incident as a result of the many cameras and gantry signs installed as part of the ATM system. In the event of a vehicle coming to a stop in any of the motorway's running lanes (including the proposed auxiliary lanes), those signs could be used to inform drivers of an obstruction, and to close the affected lane.
- 6.151 During hardshoulder operation of the ATM (which has now taken place for almost two years), there has been no incident of stopping on the hardshoulder. That position has prevailed not just on the section of motorway between J5 and J6, but along the entire section of ATM motorway between J3A and J7. Vehicles that need to stop have been able to do so in the ERAs. Under the appeal proposal, those ERAs would be supplemented by the MSA and hardshoulders between its slip roads.
- 6.152 The suggestion that, in the event of an electrical failure, drivers would not be aware of difficulties ahead is no different from the position that currently prevails on all parts of the motorway network throughout the country. On the vast majority of motorways, there are no gantry signs and if a vehicle comes to a halt in a live running lane, the HA must respond by taking action in the absence of the facilities which are present within the motorway between J5 and J6. Document HA0/19 seems to suggest an unusually high number of technical breakdowns in the ATM infrastructure between J5 and J6. Whatever the cause of those failures (and they are not detailed), the remedy lies in the hands of the HA, and the HA is presumably taking steps to overcome any technical deficiencies associated with ATM.
- 6.153 Although the auxiliary lanes and ERAs would be used during the operation of "unrestricted" speed limits on the section of motorway between J5 and J6, the periods over which that unrestricted speed limit will be available would continue to decrease. It is the HA's own view that ATM will be operational for up to 13 hours per day during weekdays on the M42 (as shown in Figure 15 of Document SMBC0/10). The available evidence also demonstrates that actual speeds on the auxiliary
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lane are unlikely to be as high as 70mph (Appendix 13 to Document SWA3/3 and Document HA0/7).

- 6.154 The likely speed of traffic on the proposed auxiliary lanes is significant since the HA are already trialling hardshoulder running at 60mph. The HA have stated (in Document SMBCO/10) that they intend to roll out ATM on other parts of the motorway network on the basis of 60mph hardshoulder running. In any event, the national road network (including trunk roads maintained by the HA) contains many examples of lay-bys on rural dual carriageways where a 70mph speed limit applies. Those lay-bys are used daily without the benefit of emergency contact with a RCC, and without the benefit of monitoring and signage that apply to this section of the M42.
- 6.155 When ATM is not operating, a driver emerging on to an auxiliary lane from an ERA would do so when traffic flows would be relatively low, and, on the basis of the available evidence, into traffic whose average speed would be in the order of 55 to 60 mph. In any event, the introduction of a MSA at Catherine de Barnes would be likely to lead to a reduction in the use of ERAs. Drivers would instead be able to utilise the MSA in order to stop and rest, make telephone calls, check vehicles and so on.
- 6.156 The HA next argue that the absence of a hardshoulder might increase the danger to maintenance workers dealing with infrastructure contained within the motorway verge. Such work is, however, not undertaken either immediately before or during hardshoulder running. As a consequence, there is no reason to believe that maintenance operations along the motorway verge between J5 and J6 could not continue to take place during periods of low traffic volumes, and, in particular, over-night. At those times, there is no reason why the proposed auxiliary lane could not be closed off in order to provide maintenance personnel with the required level of buffer between them and traffic on the motorway.
- 6.157 Where maintenance is required other than to the verges, for example to the gantries above the carriageway, lane closures already take place in order to facilitate that work. The HA contend that difficulties would be faced in providing signage for such lane closures due to the proposed width of the central reserve between J5 and J6. The HA assert that a wicket sign showing a lane closure on a four lane motorway must be approximately 2.4m wide, and that a 2.54m wide central reserve is inadequate in order to accommodate such a sign.
- 6.158 VCBs require less maintenance than the normal deformable steel barriers currently used on most of the M42, so the incidence of maintenance work should reduce under the Appeal A proposals. But, as noted in Document SWA0/9, the Traffic Signs Manual allows signs only 1.7m wide to be deployed in conjunction with a speed limit of 50 mph where maintenance works are expected to last for less than 24 hours. The Manual also allows signs to be angled in order to accommodate them within a restricted area of a central reserve, and makes reference
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to the use of gantry signing which would be available here to support either static or mobile traffic management.

- 6.159 In response, the HA insist that a sign of at least 2m wide is required (as opposed to 1.7m) on the basis that there is not “full visibility” between J5 and the MSA (in the northbound direction). The three locations at which the desirable minimum stopping sight distance is not available (referred to at paragraph 6.146 above) concern forward visibility on the auxiliary lane only (i.e. from a point on the auxiliary lane to another point on the auxiliary lane). There is no limitation on achieving visibility to the central reserve (where a wicket sign might be located) from any of the running lanes of the motorway.
- 6.160 Between J5 and J6 there is sufficient space in the proposed central reserve to accommodate a wicket sign of 1.7m width. Wider signs could be deployed in advance of maintenance works and lane closures just outside of the section of motorway between J5 and J6 if thought necessary. Wider signs can be accommodated in the verge in addition to those in the central reserve. There is regular and easily controllable gantry signing that can be used in order to assist the static signing of lane closure and to control traffic speeds during maintenance operations.
- 6.161 The HA then question the timing of applications by Swayfields for the approval of Departures from standards in connection with the Appeal A scheme.
- 6.162 In common with many other MSA proposals, the Catherine de Barnes scheme would require an application for Departures from standards to be made to the HA. That requirement is not unusual. It applied to the access arrangements considered by the Inspector and Secretary of State at the 1999/2000 inquiry. It would also apply to the Appeal B proposal before this inquiry. The fact that the Appeal A proposal would need to incorporate Departures from standard does not make it unacceptable.
- 6.163 Similarly, it is not unusual for Departure applications to be made following the grant of planning permission in respect of a proposal. As indicated in Document SWA3/14, that was the position that arose in respect of the MSA proposals promoted for development on the A1(M). Similarly, in the case of the J4 scheme promoted at this inquiry, no application for the approval of Departures has yet been made.
- 6.164 The fact that the HA had formed an “in principle” acceptance of the scheme in those cases does not alter the fact that Departures applications can and do follow the grant of planning permission. In circumstances where the HA agrees that all the information necessary to form a proper judgment on the safety of the scheme is before the inquiry, the fact that the HA has not formed an “in principle” acceptance of the scheme is irrelevant.
- 6.165 Whilst some elements of the HA’s own guidance (Document HA0/2 at paragraph 3.3.5) refer to Departures applications being made at planning application stage, other elements of its guidance (in Document
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SWA3/7) show that an application for and grant of planning permission are often precursors to an application to the HA for Departures from standards. It is accepted that Document SWA3/7 indicates in Note 1 that the chart is only for general guidance, and is not intended to be an exhaustive representation of the full process.

- 6.166 In a letter of 11 August 2004 (Appendix 1 to Document SWA3/3), the HA stated that the related process of executing an agreement pursuant to Section 278 of the Highways Act 1980 would be, a “totally inappropriate” step to take ahead of the grant of planning permission. That comment is consistent with the position adopted by the HA in signing the SCG with Swayfields. It records (at paragraph 9.1) that approval of Departures would follow the grant of planning permission.
- 6.167 No feedback has ever been received from the HA on information submitted in September 2007 in Document CD506 in respect of Departures from standard. No comment was received from the HA on the drawings submitted in December 2007 until receipt of the HA’s rebuttal proofs shortly before commencement of the inquiry. Without knowing the HA’s position on the detail of the proposal, an application for Departures would have served little purpose. With the receipt of the HA’s rebuttal proofs, it was apparent that any Departures application would not have met with approval.
- 6.168 The question of highway safety is an issue before the inquiry. All parties have had the opportunity of advancing their evidence on that issue. It is accepted by all parties that the Inspector and Secretary of State are in a position to determine whether or not the scheme is acceptable in highway safety terms (as well as in all other respects). If the Secretary of State forms the view that the scheme (including its access arrangements) is acceptable, then in due course, a detailed application for Departures from standard would be made to the HA by Swayfields.
- 6.169 That position is no different from the circumstances which prevailed in the case of *R (on the application of Powergen plc) v. Warwickshire County Council [1997] EWCA Civ 2280* (Document SWA0/12A). In that case, planning permission was granted by an Inspector on appeal for a supermarket development. At issue in the appeal was the acceptability of the proposed access arrangements. The HA’s officer (called by the local planning authority) gave evidence contending that the proposal was unsafe. That evidence was rejected, the Inspector finding in favour of the developer. Planning permission was granted subject to a condition requiring specified off-site works to have been conducted ahead of use of the supermarket. Notwithstanding that decision, the Highway Authority refused to execute an agreement pursuant to Section 278 of the Highways Act 1980 on the basis that it still considered the access arrangements to be unsafe.
- 6.170 The refusal to execute a Section 278 agreement was the subject of judicial review. In the Court of Appeal, the issue raised by that challenge was put in short terms, “*is it reasonable for a highway authority, whose road safety objections have been fully heard and*
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rejected on appeal, then, quite inconsistently with the Inspector's independent factual judgment on the issue, nevertheless to maintain its own original view". The answer to that question was put in equally short terms, and described by Simon Brown LJ as, *"a categoric "No"".* The three factors which supported the Court of Appeal's rejection of the Highway Authority's position were; the fact that highway safety was central to the proposal and considered in detail; the fact that the issue had been considered by an Inspector, and not solely by the local planning authority; and the fact that there had been no changed circumstance since the Inspector's grant of consent and the point in time when the developer sought to execute the Section 278 agreement. In that situation, the Court found it unreasonable for a highway authority simply to adhere to its original view, and thereby exercise a right of veto in respect of a development proposal.

- 6.171 In the case of Appeal A, all parties agree that the issue of highway safety is a significant one. All parties agree that the Inspector and Secretary of State have sufficiently detailed information upon which to determine the acceptability of the scheme. In particular, Mr Hansen of the HA accepted that very position in response to cross examination. Swayfields do not suggest that the Appeal A proposal is one which can be approved in safety terms "in principle". Swayfields seek a finding that the proposal is safe in its detail. The HA witnesses accept that the Inspector and Secretary of State can reach informed conclusions on the issue of safety. That acceptance flies in the face of the suggestion at paragraph 45 of the HA's closing submissions (Document HA0/20) that the present case may be distinguished from the position in *Powergen* since in *Powergen* the highway authority's objections had been fully heard and rejected.
- 6.172 Clearly, if the scheme is found to be acceptable, then the HA would not be able simply to resurrect their concerns in addressing an application for Departures from standards. Thus, should the Secretary of State conclude that the absence of a hardshoulder within the proposed access arrangements is safe, that concern could not be repeated at some later stage (whether in respect of a Departures application or execution of an agreement in respect of the works). To do so would demonstrate the same level of unreasonableness as found in the *Powergen* case.
- 6.173 Ultimately, Mr Hansen (on behalf of the HA) appeared to recognise that position. He confirmed that if the Secretary of State decides to grant planning permission for the MSA at Catherine de Barnes, then the HA would have careful regard to that decision and would work co-operatively in helping to implement it. For the same reason, if the Secretary of State finds the Appeal A proposed access arrangements to be both safe and able to integrate adequately with ATM, the HA's contention that they may be in a position where ATM needs either to be scaled back or turned off in this location should be given no weight.
- 6.174 In fact, it is submitted that the MSA's proposed access arrangements would integrate successfully with ATM, and would operate safely.
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Other material changes in circumstances – the revised proposal for a Motorway Service Area at Junction 4

- 6.175 Following the 1999/2000 inquiry, the Secretary of State concluded that there was a significant need for a MSA on this section of the motorway network, but that the Shirley Estates proposal at J4 would have caused such a level of harm that it was unacceptable even if no alternative site for a MSA was available.
- 6.176 The current J4 proposal (Appeal B) suffers from the same central deficiency as the last, rejected scheme, namely the fact that it would cause serious harm to a narrow and vulnerable part of the Green Belt. In that sense, the new scheme at J4 does not represent a change in circumstances as compared with the situation which applied at the last inquiry. In fact, the proposal which forms Appeal B extends further eastwards into the Green Belt gap than was the case with the earlier proposal. As a result, it would cause even more harm to the Green Belt than the earlier proposal.
- 6.177 In assessing the present J4 proposal, Swayfields concentrate on some of the issues identified by the Inspector at the second PIM which are set out at paragraph 1.20 above.

Consistency of the Appeal B proposal with the Development Plan

- 6.178 Following the submission of the planning application which has led to Appeal B, Shirley Estates appeared as an objector at the Solihull UDP inquiry in 2004, seeking to promote a site specific allocation for MSA development at J4. The UDP Inspector rejected the invitation to allocate the J4 site for a MSA, however, on the basis of the harm that would be caused to the Green Belt, to visual amenity, and, potentially to the road network (Document CD103 at paragraphs 5.69 and 5.70). Rather than a site specific allocation, the adopted UDP contains (at paragraph 5.3.2) a reference, recommended by the UDP Inspector, to the Secretary of State's interim decision.
- 6.179 UDP policy on the Green Belt has not changed since the previous MSA inquiry. UDP Policies C1 and C2 remain consistent with national policy contained in PPG2.

Impact of the Appeal B scheme on the Green Belt

- 6.180 The J4 scheme considered in 1999/2000 gave rise to conflict with several of the purposes for including land in the Green Belt. The Secretary of State found that the proposed development would not be perceived as entirely motorway related and self contained, and that it would have an urbanising effect, in conflict with the need to restrict the sprawl of large built up areas. He also found that it would cause serious erosion to the gap between the settlements of Solihull and Knowle/Dorridge, and would result in the encroachment of built development into the countryside (paragraph 12 of Document CD211).
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- 6.181 The Appeal B scheme at J4 would cover a larger area than the proposal considered in 1999/2000 (over 22ha, as opposed to 16.95ha), and the built development would extend further into the Green Belt gap than the earlier unacceptable proposal. The harm to the Green Belt would be increased.
- 6.182 Shirley Estates have sought to justify their current proposal in Green Belt terms on the basis that it would “round off” development at J4 of the M42. There is reference to this in the planning statement which accompanied the appeal application, and also at paragraph 7.8 of the Supplementary Environmental Information (Document CD419). But the M42 motorway marks a clear boundary to the built development to its west. The urban area of Solihull, including the BVBP and Aspire (formerly Provident Park) are all contained by the motorway to its west. As a result, there is no conceivable way that any development to the east of the motorway could “round off” anything. During cross examination of Mrs Davis and Mr Moss for Shirley Estates, the contention was unconditionally withdrawn.
- 6.183 Between J4 and the urban edge of Dorridge at Four Ashes, the Green Belt gap is only some 1,300m wide. That width would reduce to 800m in the event of the J4 scheme proceeding. Within that 800m gap would sit the equestrian centre and the golf driving range. There is no doubt that the addition of a MSA development into the narrow and vulnerable gap between Solihull and Dorridge would undermine its integrity.
- 6.184 It is of no assistance to Shirley Estates that in some views the current proposal for a MSA at J4 is less visible than the previous proposal. Substantial harm is caused to the Green Belt simply by the introduction of significant built development. The introduction of what Shirley Estates referred to as a “*cordon sanitaire*” on western parts of the appeal site does not mitigate the harm caused to the Green Belt as a result of the proposed MSA development. The *cordon sanitaire* would be no substitute for the existing gap between the built up areas of Solihull and Dorridge.
- 6.185 Moreover, the current proposal for a MSA at J4 would be seen from a variety of public viewpoints, including the M42 (southbound), the diverted footpath through the site (SL56), Gate Lane, the footpath to the south of the site (SL55), and from J4 itself.
- 6.186 The proposed *cordon sanitaire* would in any event contain the MSA access road, lighting and signage. Shirley Estates’ proposed treatment of that area is also inappropriate in landscape character and Green Belt terms. The entire area would be re-graded (in effect steepening the slope that faces the motorway to the west), before being planted with an area of extensive woodland. The present open character of the appeal site when seen from the motorway would be lost.
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Harm caused by the Appeal B scheme to landscape and visual amenity

- 6.187 The site proposed for Appeal B is currently aptly described as open pasture farmland. It contains pasture, hedgerows and hedgerow trees, seen against a backdrop of woodland. To describe that character as wooded farmland (in order to justify the planting of large woodland blocks in an attempt to hide the development) is not justified, and ignores the open, rolling pasture that is apparent across the appeal site.
- 6.188 Whilst the motorway, J4 and land to the west of the motorway are urbanised, and have become more so since the last inquiry as a result of the development of BVBP and the J4 improvements, the distinction from the eastern side of the motorway is marked. Views of the appeal site from the motorway or J4 reveal a largely intact pastoral landscape. The value of that landscape to the public extends beyond drivers and passengers in vehicles on the motorway and its junction. Footpath SL56 runs directly through the appeal site. It is a recreational route that has been promoted by the Council as part of the Trans Solihull Link. This attractive area of open countryside, accessible via a public right of way, is the first of such areas available to a large urban population just to the west of the motorway. The appreciation of the distinction between urban edge and countryside increases as the walker travels eastwards across the site. The site's landscape is highly sensitive to the introduction of MSA development.
- 6.189 Against that level of sensitivity, impact on landscape character caused by the Shirley Estates proposal would be severe and adverse. In addition to the built structures and car parking associated with the MSA, the appeal site and its surroundings would have to accommodate significant level changes (together with the extensive use of retaining structures), the total transformation of a 280m stretch of Gate Lane, the re-routing of a footpath, and the introduction of large areas of woodland blocks in an attempt to screen the development. Even Shirley Estates' own landscape witness accepted in cross examination that the result of the Appeal B proposal would be the conversion of countryside into some sort of transition between the urban area to the west and countryside to the east.
- 6.190 That level of impact on landscape character would be mirrored by the scheme's effect on visual amenity. Views of the existing open and attractive countryside of the appeal site from the M42 southbound would be lost. They would be replaced by a view of woodland planting on the regraded western slope, together with the access road, its signage and lighting, and vehicles entering the MSA. Even after ten years, the lighting of the MSA's access road would be visible from the motorway.
- 6.191 Views eastwards from J4 would fare no better. Whether for pedestrians walking towards footpath SL56 or for drivers and their passengers on J4, views of the access road, its lighting and signing would be available, together with views of the canopy of the fuel forecourt.
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- 6.192 Walkers travelling eastwards on the diverted footpath SL56, would be directed through a re-modelled landscape together with its associated planting, across the two lane egress from the MSA, and around the south-eastern perimeter of the site (close to the proposed Police post and recovery bay). The current experience of open rolling pasture would be lost entirely.
- 6.193 From the south and south-east (Gate Lane and footpath SL55), the level of harmful change would be no less significant. The transformed 280m length of Gate Lane from its junction with the A3400 (including the new roundabout), views into the site towards the fuel forecourt from that roundabout, and the visibility of lighting columns (along a long stretch of Gate Lane), would mean that the existing, pleasant rural nature of Gate Lane would be lost along its western extent. Even from the eastern end of Gate Lane (at Four Ashes), the lighting associated with the MSA would be perceived during hours of darkness.
- 6.194 Finally, in views from the west (other than from J4 and the motorway), the visual amenity of occupiers of a number of residential properties in Monkspath would be affected. Whilst the number of individual dwellings affected by the proposal (and the degree of that effect) might have reduced since the last inquiry, other receptors which did not feature at the time of that inquiry now also fall to be considered. Views towards the MSA from the west would also be available from the Aspire development and the proposed country park adjacent to it.
- 6.195 Both in respect of landscape character and visual amenity, Shirley Estates' own landscape witness accepted that the MSA proposal would cause a fundamental and harmful impact.

Harm caused by the Appeal B scheme to the free flow of traffic and highway safety

- 6.196 J4 of the M42 is an important part of the strategic road network. It serves regionally important employment sites as well as linking the motorway to other significant parts of the road network. It is also a complicated junction. Its complexity is compounded as a result of being part of a series of linked junctions, all in close proximity and all enjoying a relationship with each other. In practice, this series of junctions function as one, and queuing at one part of this network of linked junctions impinges upon the operation and efficiency of other parts of that network. Increased queuing, both as a result of natural growth and additional traffic from committed development, will mean that this level of interaction will increase, quite apart from the Appeal B proposal.
- 6.197 At the last inquiry, the Inspector concluded that the complicated nature of the junction could result in drivers who were unfamiliar with the busy junction becoming confused to the detriment of road safety (paragraph 19.168 of Document CD212). The Secretary of State was in complete agreement with that conclusion (paragraph 20 of Document CD211).
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- 6.198 There is no less complexity in the access arrangements proposed for the current MSA scheme at J4. However, in contrast with the proposal considered at the last inquiry, under the current arrangements, all traffic entering the MSA must do so via the gyratory system itself. Similarly, under the current proposal, having visited the MSA all traffic seeking to return to the motorway would need to do so via the J4 roundabout. The previous proposal would have allowed traffic to enter the MSA from the M42 southbound via a dedicated slip road, and would have allowed traffic to return to the M42 southbound from the A3400 by way of a dedicated left turn lane.
- 6.199 The complexity of those arrangements is most pronounced for northbound vehicles. In order to gain access to and egress from the MSA, northbound drivers are faced with extensive use of the gyratory, and are required to make a significant number of decisions in order to ensure that they are positioned correctly on the roundabout. Shirley Estates place considerable reliance on proposed signage in order to ensure correct use of lanes. However, in the absence of any proposal for gantry signs on the circulatory carriageway, the Appellant is reliant upon road markings. Those road markings would frequently be obscured by queuing traffic.
- 6.200 In addition to the complex layout of the junction itself, the potential for confusion is compounded by three other factors.
- 6.201 The first concerns the likely level of familiarity with the junction arrangements amongst many users of the proposed MSA. Whilst standards of design do not distinguish between drivers who are familiar with the local road network and those who are not, in any consideration of the safety of a scheme, the existence of unfamiliar drivers must not be ignored. Both the Inspector and the Secretary of State following the 1999/2000 inquiry considered the potential for confusion amongst unfamiliar drivers, and they were right to do so. It is of no comfort that the existing arrangements at J4 may have been deemed appropriate in order to accommodate development such as BVBP (both phases I and II). The MSA at J4 would attract a large volume of traffic in addition to that already using the junction (and due to use it as a result of committed development such as BVBP II). Given the nature of a MSA, many of those drivers would not be familiar with the arrangements at J4. As a result, the potential for drivers to become confused, and cause safety hazards is increased materially.
- 6.202 The second factor that compounds the complexity of J4 is a related point, and concerns the requirement for traffic to re-enter the highway network from the MSA at a different location to the point of exit from the highway network into the MSA. Having re-entered the highway network at a point some 250m along Gate Lane, those drivers then approach J4 at a particularly complex location, namely where the southern circulatory carriageway splits into two separate bridges.
- 6.203 The third factor that compounds the complexity of J4 is the level of its use. At the moment, only about a third of the approved BVBP
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development has been built out and occupied. Other committed developments (including Aspire) are yet to be developed. Use of this junction is set to grow very considerably in the years to come. The potential for confusion amongst unfamiliar drivers visiting the MSA would be enhanced with the increase in traffic. Traffic markings on the road would be even more likely to become obscured by growing queues of vehicles. The likelihood of late and dangerous lane changes on the circulatory carriageway would increase.

- 6.204 The complexity of the junction, the interaction of queues, the junction's interaction with the linked junctions nearby, the random nature of traffic, and the behaviour of unfamiliar drivers could all have been properly assessed by the preparation of a micro-simulation model such as PARAMICS or VISSIM. These are well-developed tools which would have allowed consideration of each of those factors to have been taken into account together with the operation of the traffic signal software MOVA and the introduction of ramp metering on the J4 motorway on slips. Shirley Estates over estimate substantially the potential contribution of MOVA to the efficiency of the junction. In a series of linked junctions such as that which applies here, the beneficial impact of MOVA may only be around 2%. Micro-simulation would have removed any argument. The need for micro-simulation has been highlighted by the continual process of analysis of J4 utilising TRANSYT. That protracted exercise has led to the performance of over 100 TRANSYT runs that have been conducted in the preparation for and throughout the entire course of this inquiry.
- 6.205 Ultimately, even with the limitations of TRANSYT, analysis of the operation of J4 demonstrates that, with the MSA, it would not work in an acceptable way, especially in the light of its strategic importance.
- 6.206 The TRANSYT analysis carried out on behalf of Shirley Estates themselves (Appendix NJA/R of Document SEL3B/18) shows that with the MSA (whether under the normal case or the sensitivity case contended for by the Council) the operation of the junction would be seriously impaired, with congestion, long queues and associated delay. That assessment shows that, with the MSA in place, the part of the junction where the southern circulatory carriageway meets the northbound off-slip (node 4 in the TRANSYT analyses) would suffer from degrees of saturation of over 90%. That is despite the queue limits being set at 75%, which was described by the Inspector at the 1999/2000 inquiry as "excessive" (paragraph 19.166 of Document CD212). The HA argued for a queue limit of 67% or 50% at the last inquiry (ibid. paragraph 10.41).
- 6.207 The queues shown in the Shirley Estates TRANSYT outputs (as is the case with all of the TRANSYT assessments), are "mean maximum queues" ("MMQs"), and, by definition, would be regularly exceeded. In addition, those queues would not always clear during one green phase of the traffic signals. As a result (and even on the basis of MMQs) there would be a risk that queues would build, and begin to interfere with other parts of the junction upstream. That result is achieved even with
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intergreen times reduced from their current on-site timings. Whilst the analysis in NJA/R of SEL3B/18 uses intergreen times that are closer to the on-site timings of the existing junction, they are still shorter than those which have in fact been set by the highways engineers as part of the current arrangements. The appeal proposal would add carriageway width to the junction. If anything, intergreen timings are likely to go up in those circumstances. There is certainly no justification for their reduction.

- 6.208 The same picture emerges when the impact of the proposed MSA is considered in circumstances when occupation of the development at BVBP has not reached 103,060 sq m (1.4 million sq.ft), and the new access arrangements and the Travel Plan provisions have therefore not been implemented. In those circumstances, the junction arrangements (i.e. incorporating the improvements associated with BVBP Phase II) assumed originally by Shirley Estates would not be in place. Moreover, Shirley Estates have no ability to advance those junction arrangements (involving, as they would, the use of land outside their control and in the control of BVBP). Document SEL3B/23 shows links 42, 44, and 45 all approaching a 90% degree of saturation in the “MSA Normal Case” (AM peak), with over 90% being achieved in both the Council’s and the HA’s sensitivity tests. In those sensitivity tests, the degree of saturation at link 49 is at 100% or more. These outputs demonstrate that the MMOs at certain of the circulatory links would exceed even the 75% queue limiter, and those MMOs would be exceeded frequently.
- 6.209 The Council’s TRANSYT results in Document SMBC2B/10 are consistent with those from Shirley Estates. Those results are also achieved in the “post-BVBP II world” where the junction improvements associated with that development have been undertaken, and more significantly, where it is assumed that a very significant modal shift from car borne traffic has taken place in relation to users of the BVBP development. That assumption is unrealistic. It is inconceivable that a major regional business park (in the order of 2 million sq.ft. when complete) containing 5,200 car parking spaces, accessed from the motorway network, in an out of town location, without a nearby rail station, and poorly related to residential areas would achieve anything like a 20% level of modal shift away from the car. Even when the limited bus services required by the Section 106 Agreement for BVBP Phase II (Document SMBC0/19) are provided (and their introduction is to be staged and financed by the developer for only 5 years), such a modal shift will be unachievable given how few residential areas will be serviced by those buses.
- 6.210 On the basis that the post-BVBP Phase II traffic flows assumed by both Shirley Estates and the Council for the purposes of their TRANSYT analyses are optimistically low, then, by the use of more realistic flows, the results of those analyses (already unacceptable, as shown above) would be materially much worse. The analyses all proceed on the basis of no allowance for growth in traffic on the local road network.
- 6.211 A far more realistic approach would be to allow for a 5% modal shift away from current car use levels at the Business Park in the post-BVBP
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Phase II world. But even that level of modal shift would call for the introduction of a pedestrian phase at the traffic signals on the A3400. Neither Shirley Estates nor the Council has included a pedestrian phase at those signals. Even if a pedestrian phase is called on only every other cycle, or not at all, congestion at Junction 4 reaches unacceptable levels. The effect of allowing for no pedestrian phase is simply to allow more traffic from BVBP to get through to the J4 roundabout, increasing congestion at that location as opposed to within the Business Park itself.

- 6.212 A further difference between the most recent TRANSYT modelling undertaken for Swayfields and that undertaken for the other parties concerns lane usage on the southern circulatory carriageway, and the A34 heading towards Solihull and leading away from the J4 roundabout. The basis of Swayfields' analysis arises from the way in which motorists actually use the road network at the moment. Observation of current driver behaviour shows that although three ahead lanes are provided on the A34 (northbound) from the J4 roundabout, those three lanes are not all used by traffic wishing to travel in the direction of Solihull. The third lane is shared with traffic wishing to turn right into the Tesco superstore. The queue associated with the right turning Tesco traffic need only reach three or four car lengths before straight ahead movements along the A34 are blocked in that third lane. As such, A34 traffic is dissuaded from use of the third lane. Instead, and as observed on site during the accompanied site visit, A34 traffic tends to use only the two nearside lanes (thus avoiding the need to attempt to cut back in to the A34 traffic when the Tesco queue blocks the third lane of the A34).
- 6.213 There is no evidence to suggest that driver behaviour would change simply because a MSA had been introduced at J4 or as a result of traffic increases, even substantial ones. Even if three lanes were to be marked as serving the A34 on the southern circulatory carriageway of the roundabout, motorists wishing to travel along the A34 towards Solihull who were familiar with the road network (and the occurrence of the queue into Tesco) would be unlikely to utilise the third lane.
- 6.214 TRANSYT modelling of the junction employing more realistic traffic flows associated with BVBP and the driver behaviour observed on the accompanied site visit show the operation of the junction to be completely unacceptable (see the queue diagrams at Appendix 4 to Document SWA3/4/3rd Supplementary). Signal control software (MOVA) would not overcome that unacceptability, and, in circumstances where long queues form on the motorway off-slips (thereby triggering the off-slip queue loops), signals would be forced to allow that queuing traffic on to the junction. The potential for gridlock and serious delay would be high.
- 6.215 Throughout the inquiry there has been a deluge of TRANSYT analyses aimed at J4, but the results all demonstrate that this important junction, serving regionally important employment sites on a significant part of the strategic road network, is an inappropriate location at which to site a MSA. All the analyses show that the operation of J4 will suffer
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congestion as a result of existing committed development at and around the junction. The addition of MSA traffic would worsen that congestion. Delay would be suffered both by travellers who were visiting the MSA and those who were not. In either case that additional delay would be unacceptable. In the case of the former, it might put off future use of the MSA by drivers in need of a rest. In the case of non-MSA users of the junction and surrounding road network, added delay might harm the attractiveness and success of regionally important developments such as the BVBP. That risk is clearly recognised by the developers of BVBP, who have lodged an objection against development of the proposed MSA at J4 (Documents BVP1 and BVP2).

6.216 Finally, the position of pedestrians and cyclists either going to or returning from the MSA or footpath SL56 and crossing the northern side of J4 needs to be considered. Under the proposed access arrangements for the MSA, those pedestrians and cyclists would be faced with the prospect of negotiating five lanes of traffic on the southbound motorway off-slip. There would be no control of pedestrian crossing at this location, and the answer put forward on behalf of Shirley Estates is to suggest that employees at the MSA who either walked or cycled to work could drive if they found the journey to be unacceptably dangerous, and that the position for recreational walkers would be no worse than that envisaged in the BVBP Phase II scheme.

6.217 That answer is misconceived. It is unacceptable to suggest that employees should simply drive in the face of dangerous conditions created by the MSA for pedestrians and cyclists. Quite apart from the sustainability deficiencies of such an approach, self-evidently that suggestion is of no comfort to an employee who does not have the availability of car transport. The access arrangements proposed are unacceptable for pedestrians and cyclists.

Harm caused by the Appeal B scheme to ecology

6.218 The Inspector and the Secretary of State found that the 1999/2000 J4 scheme caused no unacceptable harm to ecology. Revisions included in the current proposal mean, however, that such harm would now be caused.

6.219 The built elements of the MSA would now spill over into the eastern field of the appeal site. That field is proposed to contain a caravan parking area, other car parking spaces, part of the access road, and the abnormal load bay. Extension of the MSA development into that area would impinge on three important areas of ecological interest. The first is the grassland itself within the field; the second concerns the River Blythe and its status as a Site of Special Scientific Interest (“SSSI”); and the third concerns great crested newts.

6.220 The Revised Supplementary Environmental Statement for the Shirley Estates scheme (Document CD416) indicates that the eastern field (numbered 3) contains a mosaic of two grassland communities, both of which are Biodiversity Action Plan (“BAP”) priority habitats. Shirley

Estates themselves accept that their proposal would lead to the loss of 60% of field 3. They also accept that, in order to retain the value of the remaining 40% (the northern section of the field), current conditions (including drainage characteristics) would have to be maintained. Neither the Revised ES nor Shirley Estates have considered the prospects of maintaining those current conditions. The compensation provisions outlined in the Revised ES are silent on the question of maintaining existing drainage conditions within the 40% balance of field 3 that would escape built development. As a consequence, not only is there a loss of a BAP priority habitat extending to 60% of field 3, but there is no guarantee that the degree of loss would not be greater, extending northwards into the balance of field 3. The prospect of further loss is hinted at in the Appellant's own evidence. At paragraph 2.12 of Document SEL4B/1, it is stated that, "*it is my opinion that the remaining 40% of Field 3 can be managed positively to maintain and possibly enhance the current sward provided that the hydrology is not affected by the works*".

- 6.221 Concern with respect to the absence of a drainage scheme and its assessment within the ecology chapter of the Revised ES also extends to the possible impact on the River Blythe SSSI, which lies just to the north of the appeal site. Despite its proximity to the appeal site, the ecological assessment within the Revised ES contains no mention of the River Blythe SSSI at all. The absence of a drainage scheme associated with the proposal means that it is impossible to assess the degree of impact on that important ecological resource.
- 6.222 Also absent from the ecology chapter of the Revised ES is reference to nearby ponds, lying within only a few metres of the appeal site's eastern field. Whilst those ponds can be seen on the phase 1 habitat survey plan within the Revised ES, Shirley Estates accept that they were not the subject of survey either in the preparation of the Revised ES, or in the preparation of any of the environmental information preceding the Revised ES. However, large parts of field 3 fall well within the potential terrestrial habitat of any great crested newts inhabiting those ponds. Without any survey of them, it is not possible to conclude safely that no harm would be caused to an important protected species.
- 6.223 Finally, while the 2004 ES contains a section directed at flora and fauna (in Chapter 6 of Document CD418), its content appears to have been prepared in 1998/1999. As a consequence, it was prepared in respect of the previous J4 MSA proposal. The difference in treatment of Gate Lane between the previous and the current proposals is marked, and consequently the two schemes enjoy very different relationships with Monkspath Wood, which lies directly to the south of Gate Lane. The Wood remains a Site of Interest for Nature Conservation ("SINC") and is therefore of County value. There is no recognition of that fact in the Revised ES, however, nor has there been any adequate attempt to assess the impact of this proposal on that area of designated ecologically important woodland.
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6.224 In short, the scheme would give rise to ecological harm in the loss of a BAP priority habitat (field 3) in a way that the preceding scheme did not, and it might cause harm to other important ecological interests (the SSSI River Blythe, great crested newts, and the SINC at Monkspath Wood) in respect of which Shirley Estates' current ES is inadequate.

Other material changes in circumstances – issues raised by SAMSAG

6.225 SAMSAG raise three additional issues, namely loss of agricultural land, air pollution and breach of sustainability principles.

6.226 In respect of the loss of agricultural land, although SAMSAG allege breach of current national agricultural policy, there is no objection against the scheme from any Government Department concerned with agricultural affairs. Although the land which would be affected by the MSA proposal is Grade 3, the majority of it is Grade 3b. It is only Grade 3a which is included in the definition of best and most versatile agricultural land. That is why the relevant Government Department did not object at the last inquiry and has not objected at this one.

6.227 As for air pollution, although SAMSAG contend that existing NO₂ levels on the site exceed the national standard, they do not produce any evidence to demonstrate whether or not or by how much the MSA would worsen the position. The Council as Environmental Health Authority raise no issue regarding air quality.

6.228 Finally, with regard to sustainability, Mr Goodall for SAMSAG put to almost every one of the Appellant's witnesses the question, "*do you believe the MSA to be sustainable development*". The answer given on each occasion was that the MSA at Catherine de Barnes would meet sustainability principles because it would avoid the need for drivers to seek services on the local road network.

Conditions

6.229 Draft conditions had been prepared during the 1999/2000 inquiry, and the final draft of those conditions which accompanied the interim decision letter of 6 March 2001 was used as the basis for the conditions originally put forward in Document CD708 in December 2007. These conditions were updated in March 2008 (Document CD708A) and discussed at round table conditions sessions within the inquiry on 20 March, 28 March and 5 June 2008. The conditions put forward were substantially agreed, save in relation to the matters listed in the following paragraphs.

6.230 It is not accepted that there is any need for a parameters plan as suggested by the Council. The subject matter of such a plan is effectively covered in the illustrative drawings in connection with the development listed in Document SWA0/2 and by proposed conditions referring to those drawings.

- 6.231 Nor is it accepted that there would be any need to increase the level of parking at the MSA beyond that envisaged by the illustrative plan DH.301.A-5.F. The traffic projections prepared by the Appellants are robust. If the concerns of the HA about traffic growth are accepted, however, so that provision needs to be made for the extension of the proposed parking area, then the additional parking would be provided as shown on Revision G of the illustrative plan. To the Council's contention that Revision G has not been the subject of environmental assessment, Swayfields respond that there is no difference of any environmental significance between plan F and plan G.
- 6.232 It is not accepted that a condition is necessary prohibiting the opening of the MSA until such time as a signing agreement has been completed. A signing agreement would be necessary whether the condition was included or not, and such conditions have not been imposed on other MSA approvals.
- 6.233 Swayfields would resist the inclusion of a requirement for the Council to consult the HA in relation to certain of the material required to be submitted to the Council for subsequent approval. The Council say that such consultation will take place as a matter of course, so setting a requirement out in a condition is unnecessary.
- 6.234 Swayfields would also resist the suggestions of SAMSAG that there should be conditions removing permitted development rights and restricting the display of advertisements. Paragraphs 86 to 90 of the Annex to Circular 11/95 on conditions lean against the imposition of a blanket removal of permitted development rights without a specific and persuasive case being made for such a limitation, and paragraph 21 of the Annex makes it clear that conditions should not be used to control matters which are dealt with in other systems of control such as the Control of Advertisements Regulations.

7. THE CASE FOR SHIRLEY ESTATES, THE APPELLANTS IN APPEAL B (apart from the issue of need)

The material points are:

Background

- 7.1 Since the Secretary of State's minded letter was issued in 2001, seven years have passed. The issues which the Secretary of State listed in the decision letter of 6 March 2001 as needing to be addressed before planning permission could be given for a MSA at Catherine de Barnes have not been addressed. Changes have taken place since March 2001, notably the introduction of ATM on the M42 between J3A and J7, which make addressing those outstanding issues effectively more difficult to achieve.
- 7.2 It is against that background that Shirley Estates seek approval for their
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current scheme at J4. This is a substantially revised scheme as compared with that dismissed by the Secretary of State following the earlier inquiry. In particular, it is a scheme which seeks to address each of the criticisms made by the Inspector at the 1999/2000 inquiry of the earlier Shirley Estates scheme.

- 7.3 In relation to the J4 site, the Inspector found that the proposed development would cause serious harm to the openness of the Green Belt, and conflict with several of the purposes of including land in the Green Belt. It would also damage the landscape and harm the attractive rural appearance of the area. Unlike the alternative site at Catherine de Barnes, both the Inspector and the Secretary of State concluded that the benefits of allowing development at J4 would not clearly outweigh the harm to the Green Belt which such development would cause, and there were no very special circumstances which could justify the grant of planning permission for the J4 site. The Secretary of State also concluded that Shirley Estates had not demonstrated that their proposal at J4 would allow that junction to operate safely and adequately in the future with a MSA in place. In addition, the proposed lodge included in the scheme had the potential to become a destination in its own right.
- 7.4 Each of those determining issues has been addressed in the revised scheme for J4 before this inquiry. The new scheme for J4 would significantly lessen the harm which the development would cause to landscape and Green Belt interests; it has overcome the reservations of the HA to such an extent that the HA have withdrawn their objection to the J4 proposal; and there is now no proposal to include a lodge in the development.
- 7.5 All the proposed buildings and car parking areas have been moved to the east side of the central ridge of the site referred to in paragraph 2.21 above. They would therefore be well away from the motorway, and located in the lowest and least sensitive part of the site in visual terms. Moreover, the finished levels for development would be about 2m below existing ground levels, further limiting the visual impact of the proposal. The western part of the site would be planted with extensive woodland on the upper slopes, with the lower slopes kept as meadow to maintain an element of openness adjacent to the motorway. This green buffer, varying in width from 140m to 260m, would be encroached only by the access roads to the MSA. The overall view of the site from the motorway would still be one of meadow and woodland.
- 7.6 These changes to the original scheme should be seen against the background of the area around J4 having become much more urbanised since the last inquiry, with both the access road to the BVBP and the access road over the M42 in use. The approved application for what is now called the Aspire Business Park (the designs for which can be seen in Appendix A to Document SEL1A&B) will further urbanise the northern quadrant of the junction.
- 7.7 The omission of the lodge and the reduced parking requirement
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resulting from that omission, together with changes to the proposed access and circulation arrangements, have all served to reduce the development footprint of the scheme, and therefore the impact which the scheme would have on the Green Belt.

- 7.8 On the other hand, in relation to the Appeal A site, the HA objection to that scheme has become much more profound, given the need for the proposal now to achieve satisfactory interaction with the system of ATM which operates on the M42. The fact that no solution to that need has been demonstrated is alone sufficient reason to justify dismissing Appeal A.
- 7.9 Given the need for a MSA on this stretch of the M42, a need which has become more pressing since 2001, a new balance now needs to be struck. The Secretary of State in effect decided in 2001 that the urgent need for a MSA on the M42 in the interests of the safety of the travelling public was sufficient to amount to very special circumstances justifying the permitting of inappropriate development in the Green Belt. It is now only at J4 that this need can be met. If it can be shown that the J4 scheme would now cause no more harm to the Green Belt than the Secretary of State was prepared to accept in relation to the Catherine de Barnes site in 2001, then there is no bar to permission being granted in relation to Appeal B.
- 7.10 Many of the issues listed by the then Inspector at the second PIM (set out in paragraph 1.20 above) have not been pursued at the inquiry by any objector, but they will still be used as a framework for reporting the case for Shirley Estates.
- 7.11 It is noted, however, that the Council identified only two putative reasons for refusal of the J4 scheme – Green Belt and highways implications. The Council identified those reasons only on 9 January 2008 (see paragraph 1.22 above), five days before statements of evidence were due to be submitted for the inquiry. The Council reserved the right to add other reasons for refusal in order to be able to address subsequent alterations to the scheme under consideration (Document SMBC0/17). But no material change made to the J4 scheme since 10 January 2008 has been pointed out by the Council, and Document SMBC0/17 indicates that any addition to the reasons for refusal was authorised only in conferences at which the statements of evidence were finalised.

Consistency with the Development Plan

- 7.12 The RSS does not contain any specific reference to MSA provision in the Region, but paragraph 9.2 states that it is a key objective of the Strategy to improve significantly the Region's transport systems to a quality comparable to that of competitor regions.
- 7.13 Paragraph 5.3.2 of the sub-text to Policy T11 of the UDP provides that any MSA development will need to be compliant with national policy on MSA provision. The minded to grant decision of 2001 is noted, but the
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text makes it clear that the final decision will be dependent on outstanding highways and listed building issues and any other new circumstances which have arisen since the 1999/2000 inquiry.

- 7.14 The J4 site is not the subject of any site specific policy or proposal in either the RSS or the UDP, but it is within the Green Belt, as defined in the UDP.
- 7.15 It is accepted that a MSA would still represent inappropriate development in the Green Belt, but at J4 the resultant harm to the Green Belt would be outweighed by the very special circumstances of meeting the need for a MSA on the M42 in the interests of highway safety.

Consistency with Airports policy

- 7.16 The Shirley Estates proposal for J4 would not affect the national policies set out in the Air Transport White Paper, the airports policies contained in the RSS, or the BIA Master Plan. The proposed MSA at J4 would be located well away from the BIA.

Consistency with the 1998 MSA Policy Statement

- 7.17 The J4 scheme would comply with the requirements of the 1998 MSA Policy Statement in terms of the spacing of MSAs. The removal of a lodge from the scheme would reduce the possibility of the MSA becoming a destination in its own right.
- 7.18 Although DfT Circular 01/2008 does not apply to the consideration of applications for MSAs registered prior to 2 April 2008, paragraph 57 of the Circular indicates that all MSAs will in future be required to provide the facilities demanded of MSAs by the Circular. There would be no difficulty in achieving this at J4, because the appeal application is in outline with all matters reserved. The provision of all the facilities required by the Circular could be ensured at the detailed planning stage.
- 7.19 Although paragraphs 97 and 98 of the new guidance indicate the Government's preference for on-line MSA sites, it is made clear that a junction site such as that proposed at J4 may be considered where it can be clearly demonstrated that the construction of an on-line MSA would have an adverse impact or could not be delivered due to planning, operational or environmental constraints. That is clearly the case in relation to the Appeal A site at Catherine de Barnes given the conflict which would arise with the ATM system, and therefore a junction site can be considered in this case in line with the Government's new guidance.

Consistency with PPS6 – Planning for Town Centres

- 7.20 The level of retail activity proposed for the J4 scheme is consistent with PPS6 and within the guidelines for MSAs contained in DfT Circular 01/2008. Local residents would not be tempted to use the MSA facilities, because there are convenient retail and petrol sales facilities at
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the Tesco store adjacent to J4, which offers goods at prices which would be well below those at which similar purchases could be made at the MSA.

- 7.21 The MSA would be clearly signed as a motorway facility, and would be physically separate from local facilities within its own landscaped setting.

The adequacy of the Environmental Statement

- 7.22 The Revised Supplementary ES produced for the scheme addresses all the impacts of the scheme, including the specific areas of environmental information requested by the Council.

- 7.23 It was claimed by the Council that the proposed widening of Gate Lane to provide the exit from the MSA would have an impact on Monkspath Wood, a SINIC, because of the carrying out of engineering works in close proximity to the existing woodland, and that this issue should have been considered in the ES.

- 7.24 The woodland edge adjacent to Gate Lane comprises a verge, which varies in width from about 5.7m at the junction of Gate Lane with the A3400 to about 1.5m at the eastern end of Monkspath Wood. The boundary of the verge with the Wood itself is marked by either a post and rail or wire fence and a ditch or piped ditch. Between the fence line or ditch and the trees of Monkspath Wood, there is an additional space which varies between approximately 2m and 4m.

- 7.25 The proposed widening of the carriageway of Gate Lane would take place on the north side of the existing highway. The extent of the excavation in the verge on the south side of the existing carriageway would be a width of 800mm along a length of 46m to a depth of 800mm.

- 7.26 For there to be an impact on the trees in Monkspath Wood, the excavations associated with the realigned Gate Lane would have to damage the roots of the existing trees to such an extent that it would jeopardise the uptake of moisture or minerals for the tree to a point where die back would occur. But the root systems of the trees in the Wood are unlikely to have crossed the ditch to enter the verge. The ditch would have presented a barrier to root growth. In fact, there is visible evidence in places that tree roots have grown along the ditch and not across it, a matter confirmed at the site visit. There is therefore unlikely to be a significant root mass north of the ditch, and excavation of 800mm of the verge is unlikely to affect the root system of trees in the Wood.

- 7.27 That is why it was decided not to include consideration of the impact of the proposal on Monkspath Wood in the ES. There would be no such impact.
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Impact on safety and the free flow of traffic

- 7.28 The Inspector at the 1999/2000 inquiry concluded that the traffic arrangements then proposed for the J4 scheme (shown in Figure NJA1 of Document SEL3B/1) would not allow the gyratory system at J4 to operate without causing undue congestion, and that the proposed access layout to the MSA would be so complicated that it would lead to confusion to drivers who were unfamiliar to the area. This would account for a significant majority of the drivers using the proposed MSA. The Secretary of State placed considerable weight on these points in dismissing the J4 appeal (at paragraph 20 of Document CD211).
- 7.29 The revised J4 scheme before this inquiry (shown on Document SEL0/8) seeks to address these problems by providing access to the MSA for both northbound and southbound traffic directly from the traffic signal controlled roundabout above the M42 at J4. This would make signage more straightforward and therefore easier for drivers to follow. The access to the MSA would become just another destination off the roundabout, like the A34 and the A3400. All traffic would then leave the MSA by a link road to the A3400 south of J4 along the line of Gate Lane, which would be widened to accommodate the substantial additional traffic flow which it would bear between the MSA exit and the A3400, a distance of about 230m. The junction of Gate Lane and the A3400 would be controlled by traffic signals. Motorway traffic would then turn right to return to the J4 roundabout. At the roundabout, southbound traffic would turn left to join the M42, while northbound traffic would travel around the roundabout to reach the northbound on slip.
- 7.30 The proposed MSA would not generate any new traffic in its own right (apart from a relatively small number of staff and delivery vehicles), but would increase the number of vehicles entering or leaving the motorway at J4. It is agreed with the HA that this would require an improvement to the southbound off slip diverge, which should be improved to a two lane diverge. In fact, this improvement would be necessary in any event to accommodate adequately the level of traffic from developments in the area which have already been granted approval. No provision has been made in any of the planning permissions granted to secure funding to carry out the required improvements to the southbound diverge, so the improvement which would be provided as part of the MSA scheme would produce a net benefit, in that it would address an existing potential problem.
- 7.31 The J4 MSA proposals would have no impact on the operation of ATM in the area. There would be a need to replace one exiting gantry with a longer gantry to span the widened southbound slip road, but that could be constructed immediately behind the existing gantry, and be ready to commission immediately the existing gantry was taken out of action.
- 7.32 Having carefully considered the impact which the J4 proposals would have on the roads for which they are responsible, the HA have withdrawn their objection to the J4 appeal.
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- 7.33 In relation to the impact which the J4 proposal would have on the local road network, this was modelled, both with and without MSA traffic, using the TRANSYT computer program. On behalf of Swayfields, it was argued that, with such a complex junction, micro simulation would have been a more appropriate modelling tool than TRANSYT. The use of TRANSYT was, however, agreed as appropriate by both the HA and the Council. It is the method which has been used to assess previous applications in the area. The impact of that committed development was included in the modelling undertaken.
- 7.34 The modelling shows that the alterations to the existing network proposed in connection with committed developments, plus the improvements proposed as part of the Appeal B proposals, would deliver a network which could accommodate the existing traffic, plus traffic generated by committed developments, plus the traffic movements associated with the proposed J4 MSA.
- 7.35 On the J4 roundabout, none of the stop lines would be over capacity, and the roundabout could accommodate the modelled internal queue lengths. At the 1999/2000 inquiry, much weight was placed on the Transport Research Laboratory's ("TRL") advice that MMQs should not exceed two thirds of the available standing capacity. It is now accepted that it is not the length of the queue that is critical, but when that queue occurs in relation to traffic movements from upstream signals. If a queue was of a length that extended to the upstream signals but cleared again before the opposing traffic moved, it would not impact on the operation of the junction. The analysis in Appendix NJA/D to the Shirley Estates Supplementary Traffic Information (Document CD505) indicates that the J4 roundabout can accommodate the internal queue lengths.
- 7.36 In fact, the operation of J4 and the surrounding traffic signals are to be significantly improved by the installation of a computerised linked traffic signal control system. This is already committed as part of the works connected with an approved development in the area. The MOVA system, which has been developed by the TRL, analyses data from vehicle detectors on the junction approaches and adjusts the durations of green signals to maximise throughput at the roundabout. It has been found to reduce delays on large signalised roundabouts by about 19%. The modelling of the junction presented in Document CD505 takes no account of the benefits that will accrue from the MOVA system, so the operating conditions at the junction would be significantly better than those demonstrated by the modelling.
- 7.37 The Council argue that the modelling of J4 should be based on that which was carried out to support the approved planning application for BVBP Phase II. This was not initially done on behalf of Shirley Estates because the base data on which the BVBP survey was prepared could not be made available. Moreover, the traffic surveys for BVBP were carried out in July 2005, before the ATM system on the M42 had been fully implemented. More appropriate survey data collected in October 2006 was used in the original modelling work for Shirley Estates.
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- 7.38 The Council also argue that growth in traffic should be allowed for in the modelling in line with the National Road Traffic Forecast (“NRTF”). Significant and more specific growth has, however, been included in the Shirley Estates modelling by the allowance for the traffic which would arise from committed development in the area. The HA monitoring report for the ATM scheme (Document CD512) in fact suggests that traffic flows on local roads around J4 have significantly reduced since ATM became fully operational. Daily traffic on the A34 reduced by 36% and on the A3400 by 11%, which underlines the inappropriateness of using traffic data collected before the ATM system was fully operational, and then increasing the figures produced by nationally assumed traffic growth.
- 7.39 During the inquiry, however, supplementary TRANSYT runs were undertaken which picked up all the parameters demanded by the Council (see Appendix NJA/R in Document SEL3B/18).
- 7.40 The Council suggest that links in the system where there is a saturation percentage in excess of 80% and a MMQ over 75% of the available storage space (or simply a saturation percentage over 90%) would indicate that the road system could not cope with traffic from the proposed MSA. It is not accepted that these criteria definitely suggest problems (particularly when the MOVA system is going to be introduced). Saturation percentages provide a useful indicator of when a link might need further investigation, but they offer no more than that. It is how increased saturation manifests itself in increased queues which is important. TRANSYT as a program would show whether queues would build during the modelling period, but the TRANSYT results produced on behalf of Shirley Estates show that queues would not in fact build up.
- 7.41 It is necessary to compare the position “with MSA traffic” with that which would apply with “no MSA traffic”. Only where the “with MSA” scenario shows a MMQ in excess of 75% and the “no MSA” scenario does not is there a valid concern to be raised.
- 7.42 Using the worst case assumptions, Appendix NJA/R only shows this situation arising at Link 21 during the PM peak period applying the Council suggested sensitivity test. Link 21 is in fact a link for which the HA rather than the Council are the responsible authority, and the outcome of that test has not caused the HA to alter its position of withdrawing its objection to the J4 proposal. That is not surprising because the turn in rates used in the sensitivity test required by the Council were accepted by all parties as unlikely to arise. The modelling accepted by the Council in relation to the BVBP Phase II development had links with saturation percentages of 101%.
- 7.43 Swayfields contend that the overall impact on traffic at J4 of the Appeal B proposal plus committed development in the area remains underestimated. They say that the impact of travel planning measures within the Transport Assessment for BVBP Phase II has been overestimated. Swayfields argue that the assumed reduction of 20% in
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the level of traffic generated from the BVBP site as a result of Travel Plan initiatives is unrealistic, and that Travel Plans elsewhere have struggled to achieve 5% reductions. On this point, Shirley Estates rely on what the Council characterised as the careful consideration given to the BVBP development. The Council say that the Travel Plan for BVBP was carefully drafted to ensure that the development would be as sustainable as possible. Both the Council and the HA as the responsible authorities were clearly satisfied that the 20% reduction envisaged by the Travel Plan could be achieved. Notwithstanding this point, the TRANSYT runs in Document SEL3B/19 (the outputs of which are summarised in Document SEL3B/23) assume that the impact of the BVBP Phase II travel plan would be nil, and that NRTF central growth would occur on the slip roads. In the normal case, the flows remain acceptable and within what the HA consider that the motorway will sustain. The only problem with the normal case in the AM peak is on link 43, the access bridge to BVBP on the south side of the junction. This would be one passenger car unit above the 75% limit set as part of the modelling parameters. The queue would not affect other movements on the upstream. It would clear within the cycle because it would be less than 100%. In any event, this would be BVBP traffic rather than MSA traffic.

- 7.44 Swayfields also raised concerns about the impact which the Appeal B proposal itself would have on traffic on the highway network. In their case, the principal concern was the alleged impact which the development would have on traffic queues on the M42 northbound off slip and the A3400 in the AM peak and the BVBP exit road during the PM peak. But this arose from the modelling on behalf of Swayfields of traffic flows on the southern circulatory bridge. There were assumed to be only two of the four available lanes which would be used by traffic wishing to go straight ahead. In reality, it is not sensible to suppose that drivers would use only the two inside lanes, when there would be one and ultimately two further lanes which could be used to travel ahead rather than reserving them for access to the MSA and for other locations requiring travel around the roundabout. Moreover, no base case was assessed, and without undertaking that stage of the procedure it is not possible to establish how the position would change as a result of the introduction of the MSA. Logically, the introduction of a MSA would have little impact on AM peak traffic arriving at BVBP or on PM peak traffic leaving the BVBP development.
- 7.45 In any event, it should be noted that neither the Council nor the HA adopted this approach when considering the traffic modelling for BVBP Phase II. They clearly regarded the use of more than two lanes of the J4 roundabout by traffic moving ahead to be acceptable when considering that scheme. Similarly, neither the Council nor the HA assumed that a pedestrian crossing phase should be included in the modelling for BVBP Phase II as Swayfields have done in their TRANSYT modelling. Queue lengths on the motorway slip roads could also be satisfactorily accommodated without queuing back on to the motorway, even in the peak traffic hours.
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- 7.46 It is accepted that there would be extra traffic on J4 because of a MSA, and that this extra traffic would increase the time taken to negotiate the junction. But the question is whether that delay would be perceptible, and whether it would damage the reputation of the junction. The evidence shows that it would not.
- 7.47 Swayfields also suggest that the proposed layout of the J4 MSA would mean that vehicles using it would travel an additional 1,568,577 km per year to access and leave the MSA as compared with the distance which would be travelled by vehicles accessing and leaving the proposed MSA at Catherine de Barnes (see Document HA0/8). That figure needs to be considered, however, in the context of the total of 40,800 million km travelled by vehicles each year. It would represent an additional 0.0038% distance travelled.
- 7.48 In relation to other highway issues raised by the Council, Shirley Estates respond as follows:

a. *The proposed MSA would provide an inadequate level of parking.*

The level of parking required has been agreed with the HA, together with a means of updating the provision as necessary should additional growth in traffic occur by the implementation of a condition.

b. *The layout of the southbound off slip would be inadequate to deal safely with the type and nature of traffic associated with a MSA facility without conflicting with local destination traffic.*

The proposed layout of the southbound off slip has been the subject of a Stage 1 Road Safety Audit and is approved by the HA. Clear signage would be provided to direct drivers to the correct lane.

c. *The swept path analysis for the layout of J4 does not confirm that the additional lane proposed on the circulatory carriageway would enable HGVs to manoeuvre safely.*

A further swept path analysis has been provided to the Council, and minor adjustments have been made to the road markings and the kerb line. These successfully address the issues raised.

d. *The network alterations proposed do not make adequate provision for cyclists and pedestrians to connect with major residential areas, and no facilities are provided to encourage public transport.*

The purpose of a MSA is to serve motorway traffic, which does not include cyclists and pedestrians. Improvements to cycleway, footway and public transport connections are only appropriate to influence the mode choice of a limited number of people – staff who would be employed at the MSA. There is very little cyclist or pedestrian activity around J4 at present. Measures to encourage public transport use are discussed in the Framework Travel Plan (Appendix NJA/E of Document SEL3B/1).

- e. *There is currently a 2m vehicle width restriction on Gate Lane which has not been addressed in the Transport Assessment.*

Gate Lane is currently a narrow lane, but the MSA proposals include widening the first section between the proposed MSA exit roundabout and the junction with the A3400. When that widening has taken place, it would be possible to move the width restriction to the east of the new roundabout. That section of the road would not be affected by vehicles leaving the MSA to return to the motorway.

- f. *The turn in rates applied by the Appellant do not replicate the agreed turn in rates used at the 1999/2000 inquiry. They have been factored to allow for peak hour traffic. The turn in rates should be applied to peak hour traffic.*

The turn in rates used at the 1999/2000 inquiry were applied to daily traffic flows, not to peak hour flows. Peak hour activity at a MSA does not coincide with peak hour use of the motorway by traffic.

- g. *A junction MSA would be likely to be used by local traffic and to become a destination in its own right. The signing strategy proposed, which would sign the MSA from the local highway network, would encourage this.*

All the facilities proposed at the J4 MSA would be aimed at motorway users. There would be no lodge to attract visitors, and the Tesco facility on the Solihull side of the M42 provides a convenient retail facility and petrol sales at prices well below the charges likely to be imposed for the same goods at a MSA. The signing strategy is a matter of detail which could be dealt with at that stage if outline permission is granted.

- h. *The increase in the complexity of J4 and the potential increase in users unfamiliar with the junction would increase the potential for accidents at the junction and elsewhere in the local road network, for example at Gate Lane.*

The Council accept that, at the moment, J4 has an exemplary safety record. Changes at the junction have been approved to accommodate the BVBP development. These are also regarded as safe. The only difference which would arise from the addition of a MSA development would be the provision of signs and a lane to access the MSA. The Council have not suggested that there is any inherent unacceptability related to safety in the proposed new arrangement at the Gate Lane/A3400 junction, which would be controlled by traffic signals. In fact, their highways witness agreed that there was nothing unacceptable or hazardous about the proposals for that junction. From that junction, road conditions would be the same for a MSA user as for a BVBP user. Those conditions were found to be acceptable by the Council when they gave planning permission for BVBP Phase II. There are not two standards of road design for “familiar” and “unfamiliar” drivers.

- i. *The layout provided for the northern bridge on J4 does not provide a*
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safety barrier in front of the lighting column or the lane allocation signage required. A set back distance of 600mm is required, and it has not been shown that this could be provided.

When the bridge is strengthened and the edge beam is replaced, supports for lighting columns can be provided on the outside of the beam behind the parapet. Alternatively, the bridge could be lit from the ends, as one of the existing southern bridges is.

- j. *Shirley Estates have not provided information on the impact on highways which their proposed MSA would have without the mitigation which they propose. This is required by the Government's Guidance on Transport Assessments ("GOTA") (Document CD248).*

There is no specific requirement in GOTA for the provision of information regarding the impact of the proposed MSA without mitigation. There is no intention or aspiration to provide a MSA at J4 without the planned mitigation. The information would therefore be irrelevant. GOTA simply requires (at paragraph 4.30) an assessment of the proposed development's impact "with development" and "without development". Those assessments have been provided.

- 7.49 In summary, the Appeal B proposal can now claim that highway objections have been overcome, and that the present proposal would deliver the very special circumstance of benefiting driver safety which the previous J4 proposal could not.

Impact on Green Belt

- 7.50 The RSS makes it clear that the strategic importance of the Green Belt around the West Midlands conurbation is to separate the conurbation from other major towns.
- 7.51 Within the Green Belt, the Meriden Gap separates Coventry and Birmingham, and paragraph 7.12 of the UDP indicates the particular importance of the Meriden Gap.
- 7.52 A MSA on the M42 between J3A and J7 would inevitably be located in the Green Belt. The site at J4, however, would be peripheral to the gap between Birmingham and Coventry, and therefore less threatening to the strategic purpose of that gap.
- 7.53 The five purposes of Green Belts are set out in PPG2 and included in Policy C1 of the UDP. They are:
- to check the unrestricted sprawl of large built up areas
 - to prevent neighbouring towns from merging into one another
 - to assist in safeguarding the countryside from encroachment
 - to preserve the setting and special character of historic towns and
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- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The first three of these are relevant to Appeal B.

- 7.54 In terms of sprawl, the footprint and the site boundary of the J4 site are physically separated from the built up areas of Solihull, Hockley Heath, Stratford-upon-Avon and Dorridge by land protected by a Green Belt designation in the UDP. The Green Belt designation has successfully contained urban sprawl to date, and the revised J4 scheme would not contribute to urban sprawl. There would be a clear field between the MSA and the junction. The proposal would not create a precedent which would affect the continuation of the planning policy to resist sprawl, because the development would be allowed only to satisfy a particular need. The boundaries of Bentley Heath and Dorridge are clearly defined in the UDP, and the existing developments to the east of the appeal site (the riding centre and the golf driving range) are in relatively open land. They do not contribute to sprawl. Nor would the appeal development.
- 7.55 In terms of coalescence, Dorridge and Solihull would remain physically distinct even with the appeal development in place. The MSA would be a self contained development, specifically related to the needs of users of the motorway. It would not make a significant contribution to coalescence. By placing the proposed MSA further away from the western edge of the gap between Solihull and Dorridge, it would have an increased separation from the built up edge of Solihull (as compared with the earlier scheme) while still being separated from Dorridge. The remainder of the gap would continue to be protected by planning policy.
- 7.56 The Council consider that the built edge of the Aspire Business Park will represent the western edge of the Green Belt and the eastern edge of Solihull. The J4 MSA would not advance Solihull eastwards towards Dorridge, or advance Dorridge westwards towards Solihull.
- 7.57 There is currently no intervisibility between Solihull and Dorridge, and that would remain the case with the J4 MSA. Compared to the previous scheme at J4, there would be a substantially reduced western intervisibility between the eastern edge of Solihull at Monkspath and the MSA. Those houses on the eastern edge of the residential development at Monkspath from which a view of the MSA site would be available would only have that view from their first floor windows.
- 7.58 The narrow gap between Solihull and Dorridge has been eroded by the permissions for the Aspire Business Park and the BVBP, but the Council has insisted on a *cordon sanitaire* of 200m alongside the motorway. A similar set back for the current J4 scheme would mean that the MSA would appear as a non motorway use. It is justified by the very special circumstances which apply in this case. It is the need for a MSA for safety reasons which provides the very special circumstances. The Council could confidently continue to resist development in the Green Belt which was not justified by very special circumstances. Many proposals for housing in the area were rejected at the UDP inquiry. The
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gap was protected. A MSA would be a one off scheme. It would not provide a precedent for allowing housing.

- 7.59 In relation to encroachment, the revised J4 scheme has a significantly reduced overall development footprint compared with that of the original J4 scheme. It has been set to the east of the central ridgeline across the appeal site in order to reduce encroachment. In approving the BVBP and the Aspire Business Park on land which was formerly designated as Green Belt, the Council have indicated a preparedness to locate development which is needed for strategic purposes on former Green Belt land. A clear gap would remain between the activities on and around the motorway junction and the appeal site. This clear, open gap would reduce the impact of encroachment. It would provide a clear setting for a one off motorway related development.
- 7.60 The MSA now proposed for J4 would be much less prominent than the previous proposal. It would be better accommodated in the landscape and less apparent. The harm it would cause to the Green Belt by inappropriateness would therefore be less.
- 7.61 That is not to suggest that the harm by reason of inappropriateness is removed, or to suggest that reduced impact itself can provide very special circumstances to justify inappropriate development in the Green Belt. It is accepted that inappropriate development will harm the Green belt and urbanising development will harm the countryside even if invisible. It will need more justification than invisibility if permission is to be granted. But when it comes to weighing benefit against harm, the balance is influenced by how that harm makes itself felt.
- 7.62 It is wrong to suggest that the Green Belt gap at J4 is somehow more important than that at Catherine de Barnes. Green Belt policies apply equally to all parts of the Green Belt. Such an argument also does not square with the importance placed in the UDP on the Meriden Gap, within which Catherine de Barnes is centrally placed, whereas the site at J4 is peripheral.
- 7.63 The impact of the motorway, the busy roundabout and the development which has already taken place at J4 already eradicate the amenity value normally associated with Green Belt land. There is no peace or tranquillity associated with the appeal site at present.

Impact on light pollution

- 7.64 Since the 1999/2000 inquiry, new lighting has been introduced along the M42 in this area. While it is accepted that the Appeal B proposals would take the lighting further into the countryside, further light sources associated with the proposed MSA must now be considered in the context of the widespread lighting which is already found in the area of J4. That lighting is associated with the junction itself, with the nearby golf driving range, which operates until 10pm each evening, and with the major employment developments which have taken place and those which have been approved since the earlier inquiry. It is possible to
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walk on the appeal site at night without needing to use a torch. The gestation period of the Appellants' sheep is affected, because the animals cannot distinguish night from day. The impact of any new lighting introduced to the site as a result of the siting of a MSA at J4 should be assessed in this context.

Impact on air pollution

- 7.65 Air quality data have not been measured at the appeal site. The levels which would be associated with the operation of the proposed MSA have been predicted against the requirements of the Air Quality Standards Regulations 2007 using the appropriate DMRB methodology. That is the correct approach. The assessment shows that the air quality which would apply during both the construction and operation of the proposed MSA would be well within the limits required by the Regulations. The Council as Environmental Health Authority raise no issue regarding air quality.
- 7.66 In response to a question raised by SAMSAG, levels of air pollution in the town centre of Solihull were quoted in the revised supplementary ES of September 2007 (Document CD416) because this was the nearest national automatic monitoring network station to the appeal site. The distance from the appeal site is irrelevant. The predicted levels of pollution at the appeal site are compared with the requirements of the 2007 Regulations rather than with the nearest national monitoring site.

Other material considerations

Visual and landscape impact

- 7.67 No visual sensitivity analysis was undertaken in relation to the J4 proposals put before the 1999/2000 inquiry. This time, however, a careful visual sensitivity analysis was carried out before any design work began. It was that approach which resulted in the decision to locate the buildings and the parking areas of the proposed MSA further to the east, behind the central ridge line of the appeal site. With that approach and the earth modelling and woodland planting proposed for the site, the local landscape would be capable of accommodating the type and scale of development envisaged without unacceptable detrimental effects on its character. The proposed earth modelling would be concentrated in the western part of the site, and the gradients proposed (typically 10%) reflect those already found in that part of the site (which vary between 5% and 14%).
- 7.68 Photomontages from four different viewpoints illustrating views as existing, on completion of the proposed development and after ten years (when planting has begun to make an impact) will be found in Appendix AM6 to Document SEL2A&B/1B. They illustrate what would be the winter view of the J4 proposal. This represents the worst case scenario, because deciduous trees would not be in leaf. Whilst it is accepted that photomontage techniques have their limitations, the genuine efforts which have been made in this case to illustrate the
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effects of the proposal indicate the limited visual and landscape impact which the current J4 scheme would have. The approach which was followed in preparing the photomontages is outlined in Document SEL2A/12. Compared with the original proposal for J4, the visual impacts of the core development of the MSA and its parking areas have been significantly reduced. The access roads from the M42 and from J4 have also been carefully coordinated with the ground modelling and landscaping in the western part of the site to produce a less intrusive and more natural appearance.

- 7.69 Together, these changes substantially address the concerns expressed by the Inspector in 2000 about the view of the site for southbound travellers on the M42. There would still be potential glimpses of the northern part of the development from the motorway between existing trees immediately on completion of building. That would, however, be limited to a short section of the M42 (less than 450m). Once the new woodland planting took effect, the core development would be completely hidden from view.
- 7.70 That position is very much in contrast with the situation in relation to the approved business park development on the Aspire site on the opposite side of the motorway. That development will involve the erection of three, four and five storey office blocks which are much more likely to dominate the views of motorway users than any residual glimpses of the proposed MSA.
- 7.71 The Inspector at the last inquiry was also concerned that the proposed development would be obtrusive and poorly screened from the north. He considered that the residents of Monkspath would perceive the development extending over the top of the undeveloped ridge which presently helps to separate Solihull from Dorridge. The scheme now promoted would overcome this problem, providing a soft and natural outlook from the residential properties in Monkspath.
- 7.72 Taking account of the considerable changes which have taken place in the local landscape both recently and historically, field severance and hedgerow removal, and the many discordant features which now exist on the fringe of the urban area, the local landscape around the Shirley Estates site can only be regarded as of low to moderate quality.
- 7.73 Swayfields suggest that the landscape and visual assessment provided to the inquiry in relation to Appeal B (Document SEL2A&B/1A) is vague as to vegetation loss along Gate Lane, but full details of tree and hedgerow loss along Gate Lane are provided on Drawing 1263.02 Appendix 4 within SEL2A&B/1B), and this vegetation loss is included within the loss of existing landscape features reported at page 36 of the landscape and visual assessment.
- 7.74 The character of the appeal site would inevitably change if the development were to take place, but the extensive woodland planting and the areas of meadow proposed around the development would help it to integrate into the surrounding landscape to achieve an appropriate
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landscape fit.

Impact on the Trans Solihull Link

- 7.75 Footpath SL56 crosses the Appeal B site. As part of the J4 scheme it would be partially diverted through the development. While the open aspect from the footpath would be lost, the diverted route would be made as attractive as possible by taking it through areas of existing and proposed woodland. Shirley Estates do not have an absolutely fixed line for the proposed diversion, and, as indicated in Document SEL2B/5 would be pleased to consider the helpful suggestions made on behalf of SAMSAG in relation to a possible alternative diversion route. A new footpath would also be created to provide a better link to the rest of the local rights of way network.
- 7.76 The Council make much of the fact that Footpath SL56 is part of the Trans Solihull Link. This was apparently a one-off way marking exercise carried out by the Council in the late 1990s. The legal status of the Trans Solihull Link is in fact just the same as that of any other statutory footpath. The Solihull Tourist Information Centre hold no information concerning the Trans Solihull Link. Unlike the Heart of England Way, the North Worcestershire Path and the Solihull Way, it is not shown on the Explorer series of the Ordnance Survey map of the area. Nor is it referred to in the UDP, even though the Heart of England Way and the Blythe Valley Walkway are mentioned there. The Trans Solihull Link, in so far as it exists as a separate entity runs for a total of 25km. The Appeal B development would affect perhaps 500m to 850m of this total length. The footpath surveys undertaken in connection with the appeal revealed only two users of footpaths SL55 and SL56 during the entire survey period.

Land lost to agriculture

- 7.77 The proposed MSA at J4 would lead to the net loss of some 18.95ha of land from agriculture. All the land is within Grade 3. The proportion which would be within Grade 3a (and therefore part of the best and most versatile agricultural land) is very small. It is the least productive part of a large farm holding of 364ha, which is why other temporary, non agricultural uses take place on it from time to time. It would not affect the viability of the balance of the agricultural holding.

Impact of the scheme on trees

- 7.78 Building the proposed MSA at J4 would involve the loss of 12 existing trees (including 3 not worthy of retention) together with the loss of 483m of existing hedgerow. One of the trees which would be removed is covered by a Tree Preservation Order ("TPO"). A detailed arboricultural survey to BS 5837:2005 was carried out by ADAS to ensure that trees to be retained would have adequate root protection areas. The survey is included as Appendix L9 in Document SEL2A&B/1A.
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7.79 A full survey of the site for veteran trees was also conducted (Document SEL0/3). No veteran tree was found.

7.80 The trees which would be lost to the scheme need to be considered in the context of the extensive planting proposals which the scheme also includes.

Noise impact

7.81 A comprehensive noise measurement survey was undertaken to determine existing background noise levels at the nearest residential property to the appeal site. The result shows that the noise climate is dominated by noise from the M42. It was confirmed at the accompanied site visit that although the traffic noise reduces as a pedestrian moves further away from the motorway, there is still perceptible traffic noise at the eastern extremity of the appeal site. The construction and operation of the proposed MSA would provide no significant change in the level of noise experienced at nearby sensitive receptors.

Ecological impact

7.82 In response to issues raised by Swayfields, the extension of the appeal development into the eastern field of the appeal site would not affect 40% of that field, which could be managed positively to maintain and enhance the current sward. A management plan to achieve that end, secured by a condition, would be preferable to the current treatment of the whole field. Under a continuation of the current grazing management regime, the existing interest in the field could be lost entirely.

7.83 None of the ponds on the site would be directly affected by the proposed development. They are, in any event, of low ecological value. The ponds in the woodland to the north of the appeal site are shaded, dry out in late summer, and do not support aquatic vegetation because of the lack of permanent water.

7.84 Seven separate surveys for great crested newts were undertaken, including bottle traps, torching, egg searching and pond dipping. The search area included the permanent ponds to the north. Only two adult newts were observed, with no evidence to suggest that they were anything more than exploratory, non-breeding individuals detached from an existing colony. The appeal site represents a sub-optimal terrestrial habitat for great crested newts, with low quality polluted water in the ponds. If permission for the proposed development is granted, conditions could require further survey work at the time of construction, with mitigation work to improve pond quality and provide access to a higher quality of terrestrial habitat for great crested newts.

7.85 The same transformation could achieve an improved habitat for bats in the area. There is no doubt that bats use the appeal site to forage, but there is no evidence of breeding on site. There may be low level solitary roosting in certain of the trees on site, only one of which is proposed to

be felled. The bats using the site are likely to be the common pipistrelle, which is the commonest British bat. The impact of the appeal proposals on bats would therefore be low, and could be mitigated as a condition of planning permission.

7.86 Natural England raise no objection to the J4 scheme.

Comparison with the present position in relation to Appeal A

7.87 The J4 scheme would be smaller and more compact than the proposed scheme at Catherine de Barnes. It would intrude to a smaller degree into the Green Belt. It is also situated in a less sensitive part of the Green Belt, because the area around J4 is already substantially urbanised, whereas the Appeal A site, despite the construction of the motorway and the presence of the water treatment plant adjacent to the site, is otherwise in what remains a substantially rural location. It is a site of higher landscape quality than that around the Appeal B site. The development at Catherine de Barnes would thus bring about a greater magnitude of landscape change than the Shirley Estates scheme, on a site which is more sensitive to change. The harm caused to the Green Belt by the present Appeal B proposals would now be less than the harm which would be caused by the proposal at Catherine de Barnes.

7.88 There is no strategic highway objection from the HA to the J4 proposal, but the position is very different in relation to Appeal A. The HA consider that to introduce the proposed MSA at Catherine de Barnes would be to create danger for motorway users which would outweigh any safety benefits of having a MSA. The evidence given by the HA is that if, through a planning appeal they are obliged to accept a MSA at Catherine de Barnes, the HA would not shrink from closing down the ATM system if it was considered that the M42 in this location could not operate safely under the road system proposed as part of the Swayfields scheme for a MSA at Catherine de Barnes.

7.89 The Appeal A development would add a further junction to the M42 in a section of the motorway which already contains four junctions within a distance of 11km.

7.90 The J4 scheme does not include a lodge. The lodge proposed at the Appeal A site would be close to BIA and to the NEC. It would probably be used by visitors to the area as well as by users of the M42, making it a destination in its own right.

7.91 The current scheme for Appeal B is better contained visually than the Appeal A scheme, and has more scope for mitigation by woodland style planting. The Appeal B scheme compares favourably with its competitor in terms of its effect on visual amenity.

7.92 The gradients of the earth modelling proposed as part of the J4 scheme reflect the existing landform of the part of the site concerned, while the earth modelling proposed at Catherine de Barnes would include gradients varying from 33% on the inner face of the screening to Friday

Lane to 9% on the outer face. On the east of the motorway, the abutments to the proposed bridge would rise up to 10m above existing ground level, and the earthworks proposed would vary in gradient from approximately 33% on the inner face to 22% on the outer face at the steepest points in an area where the natural gradients are around 1.5%.

- 7.93 The J4 scheme would have no adverse impact on any listed building. On the other hand, the Appeal A proposal would have an accepted adverse impact on the setting of a Grade II* listed building. This is something which must be taken into account in any assessment of the landscape value and the landscape sensitivity of the Catherine de Barnes site. The setting of Walford Hall Farmhouse has a landscape value at a national level. Landscape quality and landscape value should now be considered separately under the arrangements contained in the second edition (2002) of "Guidelines for Landscape and Visual Impact Assessment" (Document CD230). That is not a procedure which was followed in the preparation of the landscape assessment submitted in relation to Appeal A. Yet much of the historical farmland setting of Walford Hall Farm would be lost if a MSA were permitted at site A. The farmhouse is currently surrounded by fields, hedgerows and natural topography, but a substantial proportion of that agricultural land would be replaced by roads, car and lorry parking, the MSA buildings, lighting columns and other substantial alterations to the natural landform. In fact, the very mitigation works proposed to lessen the impact of the MSA on the listed building would themselves harm its currently authentic open field setting, as noted by EH in their letter of 21 March 2001 (within Document CD235).
- 7.94 Swayfields claim that granting planning permission at Catherine de Barnes would produce the advantage of the restoration and re use of Walford Hall Farmhouse, but no evidence was produced that this is the only means by which this end could be achieved. EH have produced detailed guidance on "Enabling Development/Managing Heritage Assets", which asks local planning authorities to be vigilant to ensure that works permitted to "enable" the restoration of a heritage asset are themselves not going to be so harmful to that asset as to outweigh the benefits. That would clearly be the case here.
- 7.95 The MSA at Catherine de Barnes would have an effect described by EH (in Document CD235) as "significantly injurious" to the listed building. It would only be if the MSA could be shown to be the only practical means of saving Walford Hall Farm that this level of harm could be contemplated as a benefit. Swayfields have not undertaken the exercise of assessing the options for the restoration of Walford Hall Farm without the building of a MSA and the very material harm that this would bring to the listed building.
- 7.96 The scale of the new lighting proposed is similar on both schemes, but the Catherine de Barnes site must be regarded as more sensitive to the introduction of a major new light source because of its darker and more rural location and having regard to the presence on the site of an important listed building.
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Obligations and conditions

- 7.97 Paragraph 1.28 above explains the circumstances in which the executed Unilateral Undertaking dated 29 May 2008 (Document CD737) was put forward to replace Document CD735. The Council accepted that it would be the later document that they would seek to enforce in the event of planning permission being granted for the MSA development at J4.
- 7.98 Document CD737 would provide for an ecological and landscape management plan to be prepared covering areas both within and beyond the appeal site which are in the control of the parties to the obligation. This would address issues such as woodland and hedgerow protection and improvement and protection and mitigation of the impacts on protected species.
- 7.99 A drainage and pollution management plan would address those issues both during the construction and during the operation of the proposed development.
- 7.100 The Undertaking also commits the parties to it to provide for the diversion of footpath SL56, to provide a new footpath link between footpath SL56 and footpath SL55, and to provide a new footpath link running along the south side of Little Monkspath Wood to the diverted Gate Lane.
- 7.101 In relation to conditions, proposed conditions were prepared in December 2007 (Document CD709). These conditions were updated in March 2008 (Document CD709A) and discussed at round table conditions sessions within the inquiry on 20 March, 28 March and 5 June 2008. They were also covered in evidence given on 12 May 2008. The conditions put forward were substantially agreed, save in relation to the matters listed in the following paragraphs.
- 7.102 Shirley Estates do not accept that there is any need for a parameters plan as suggested by the Council. The subject matter of such a plan is effectively covered in the illustrative drawings in connection with the development listed in Document SEL0/2 and by proposed conditions referring to those drawings.
- 7.103 It is not accepted that a condition is necessary prohibiting the opening of the MSA until such time as a signing agreement has been completed. A signing agreement would be necessary whether the condition was included or not, and such conditions have not been imposed on other MSA approvals.
- 7.104 In relation to parking provision at the proposed MSA, Shirley Estates would be happy to provide the suggested level of parking identified as necessary at the opening of the facility and shown on plan SEL0/8, and to accept a condition for future surveys to establish whether it is necessary to add to that level of parking, up to a maximum provided for by a condition, as set out in Section 13 of the SCG with the HA, and as
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shown on plan NJA 5A Revision A (within Document SEL3/B5). The ES related to a layout plan providing 599 car parking spaces, 74 HGV spaces 21 coach spaces and 9 caravan spaces. The drawing showing this is 50592_MSA_001 Revision E (within Document CD417). Plan SEL0/8 shows the layout now proposed for the opening of the MSA to meet the initial requirements of the HA. This would involve 619 car parking spaces, 85 HGV spaces, 24 coach spaces and the same 9 spaces for caravans. Helpfully, Plan SEL0/8 also shows the area for expansion to accommodate the HA's possible eventual requirement for 688 car parking spaces, with the same level of provision for other vehicles. The Plan makes it clear that all the expansion which might take place would be within the bounds of the MSA's proposed circulation road. In response to the Council's claim that this revision needs to be the subject of an additional environmental assessment, Shirley Estates contend that the amendment is a very small one, with no environmental consequences.

- 7.105 It is not accepted that there is a need for a condition restricting vehicular access or egress solely to accesses or egresses referred to in the permission. The Council contend that this is necessary because the landowner owns other land around the site, and some of that land has in the past been put to a variety of uses, some of them involving substantial degrees of public access.
- 7.106 Like Swayfields, Shirley Estates would resist the inclusion of a requirement for the Council to consult the HA in relation to certain of the material required to be submitted to the Council for subsequent approval. The Council say that such consultation will take place as a matter of course, so setting a requirement out in a condition is unnecessary.
- 7.107 Shirley Estates would also resist the suggestions of SAMSAG that there should be conditions removing permitted development rights and restricting the display of advertisements for the reasons outlined by Swayfields which are set out at paragraph 6.234 above.
- 7.108 Condition 51 of the conditions originally put forward by the Council would have committed the Appellants in certain circumstances to carry out work at J4 some of which is required by condition 15 of planning permission 2006/1461, the permission for BVBP Phase II (Document SMBC0/20). That work is required of the developer of BVBP when 130,060 sq m of the BVBP development is occupied. If the MSA development were to take place before that level of occupation of BVBP, then the Council wished to be sure that the works at J4 would nevertheless be completed, hence the proposal to fix Shirley Estates with the responsibility for undertaking the works.
- 7.109 Having raised the issue, the Council then questioned whether Shirley Estates would be able to carry out the necessary work, given that not all the land involved is highways land. Some of it is under the control of the developers of BVBP, who are opposed to the J4 MSA for their own reasons (see Documents BVP1 and BVP2).
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7.110 The delayed inquiry provided the opportunity to model the impact of MSA traffic on the road system without BVBP built beyond 103,060 sq m and also with BVBP built beyond that limit and their conditional works undertaken (see Document SEL3B/23). This showed, again having regard to the Council's most stringent parameters, that the scheme would be acceptable under either scenario. Consequently, a revised form of condition was suggested, which dealt with the situation whether or not BVBP's conditional works had been completed. The form of condition suggested would be:

"Prior to the opening of the MSA, a scheme of the highway works shall be submitted to and approved in writing by the local planning authority which provides for the construction of the works shown in blue on Plan NJA9 Revision A, unless or until the works required by condition 15 of planning permission 2006/1461 granted by Solihull MBC on 6 October 2006 in relation to land adjacent to the Blythe Valley Business Park between Cheswick Green and Illshaw Heath have been carried out, whereupon the scheme shall provide for the construction of the works shown in blue on Plan NJA10 Revision A."

7.111 On that basis, there would be no shifting of the responsibility for BVBP works on to Shirley Estates, as might have happened under the Council's original condition. The question of carrying out works on land other than Shirley Estates land or highway land would therefore not arise. No party objected to the efficacy of the wording of that condition.

8. THE CASE FOR SOLIHULL METROPOLITAN BOROUGH COUNCIL (apart from the issue of need)

The material points are:

APPEAL A – CATHERINE DE BARNES

Consistency with the Development Plan

- 8.1 The proper functioning of the M42 is important not just from the transportation point of view, but also from the point of view of the regional economy of the West Midlands. The RSS (Document CD109) points out at paragraph 9.66 that this part of the motorway network gives access to the key regional assets of BIA and the NEC. The M42 plays an important part in securing Solihull's reputation as a good strategic location for developments such as the BVBP.
- 8.2 In broad terms, the RSS encourages development to take place within the MUAs, particularly on previously developed land. The appeal site is not within the MUAs of Solihull, and development at the site would not involve the use of previously developed land. It is accepted that, given the route of the M42, a site could not be found for a MSA within the MUAs. In fact, however, the site lies within the Green Belt.
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- 8.3 The Green Belt in the area performs an important function in keeping separate the Birmingham conurbation and Coventry. Both the RSS and the UDP seek to protect the Green Belt and the countryside. The proposal at Catherine de Barnes remains a major proposal for development in the Green Belt, within the sensitive Meriden Gap, and within an area which is presently open countryside. That area is accepted as relatively undeveloped and as having a rural character in the Appellants' own ES of 2007 (Document CD415, paragraphs 2.4.55 and 56 and 2.1.13 and 15). Those judgements were made at a time when the ATM system and the lighting, gantries and signage associated with it had already been put in place. UDP Policies C1 and C2 seek to protect Green Belt and the countryside within the Borough, in line with national planning policies on these matters.
- 8.4 There is nothing about MSAs which exempts them from the normal constraints which apply to development in the Green Belt or in the countryside.
- 8.5 The introduction of a MSA into this Green Belt countryside would inevitably have a detrimental impact on the landscape character and visual amenity of the area. Regardless of any mitigation measures, it would be impossible to counter the urbanising effect of the traffic and the lighting which the MSA would bring. Policy C8 of the UDP is a new policy which seeks to safeguard the countryside and its distinctive character. Policy C9 is another new policy which seeks to protect those parts of the countryside which retain a "dark sky" from the impact of lighting schemes associated with new development. *[Inspector's Note: On my unaccompanied site visit during the hours of darkness it was clear that, although the appeal site lies alongside a stretch of the M42 which is now illuminated, as one moved away from the line of the motorway, the land quickly became dark, with only a sky glow from the motorway.]*
- 8.6 The appeal site is in an area near to where people live, and is of value in terms of paragraph 26 of PPS7 in giving access to the countryside, an approach reflected in Policy C10 of the UDP (Document CD102). The MSA scheme would fail the crucial PPS7 test of respecting and, where possible, enhancing local distinctiveness and the intrinsic qualities of the countryside. It would significantly increase the present urbanising effect of the M42 corridor.
- 8.7 Although there are no rights of way across the site itself, there is a fairly extensive network of rights of way in the immediate area, from which views of the appeal site are available.
- 8.8 UDP Policy ENV6 states that the Council will safeguard and encourage the enhancement of the special character of listed buildings.
- 8.9 Policy T1 of the UDP requires all development proposals that generate traffic to contribute positively to the safe, efficient and easy movement of people and goods throughout the Borough. The UDP was modified to include reference to the Secretary of State's interim decision regarding
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the need for a MSA in the area, but that reference raises no presumption in favour of the grant of planning permission for a MSA at Catherine de Barnes or elsewhere. Permission for a MSA in the Green Belt would require the justification of very special circumstances.

Consistency with Airports Policy

- 8.10 The latest Master Plan proposals from BIA (Document CD106) and the agreed position of BIA on the Appeal A proposal (Document CD714) mean that no issue arises in conflict with the Air Transport White Paper or the future operation of BIA, so long as there is no interference with the continued operation of satisfactory access to BIA via the M42. In this respect, however, it is important that the benefits of the ATM system should not be compromised. The proposed MSA must not have an adverse impact on the successful operation of the ATM system and the link to BIA at J6 of the M42. The HA consider that the Appeal A proposal would have an adverse impact on the operation of ATM, and that is a matter which must be taken into account in the planning balance in connection with the Appeal A proposal.
- 8.11 The Council took advice on the content of the agreement on public safety zones (Document CD714). On the basis of that advice, the Council raise no issue on the matter.

Consistency with the 1998 MSA Policy Statement

- 8.12 As demonstrated by the report of the 1999/2000 inquiry (paragraph 19.15 of Document CD212) and by the interim decision letter (paragraph 8 of CD211), both the general policy test and the infill policy test contained in the MSA Policy Statement should be considered in dealing with a proposal for a MSA on the Solihull stretch of the M42. Even the existence of a gap of more than 30 miles (48km) between service facilities raises no presumption in favour of a grant of planning permission. The existence of such a gap is simply an element of the need argument which must be balanced against the harm which would arise from allowing a MSA development to take place.

Consistency with PPS6 – Planning for Town Centres

- 8.13 The size of the retail element of either of the appeal proposals could be controlled in an acceptable way by a suitable planning condition.

Consistency with PPG15 – Planning and the Historic Environment

- 8.14 In relation to Appeal A, Swayfields claim a significant additional benefit for their proposal as compared with that which came before the earlier inquiry with regard to the restoration and re use of Walford Hall Farmhouse.
- 8.15 Works authorised by the grant of listed building consents in relation to the Farmhouse and the outbuildings (Documents CD601 and CD602) would be secured by a Section 106 Agreement if planning permission were to be forthcoming for the MSA. EH have indicated that the revised
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proposals for Walford Hall Farm are consistent with the advice in PPG15, and that the integrity of the historic farmyard group would be maintained.

- 8.16 It is accepted by all parties that the MSA at Catherine de Barnes would harm the setting of the listed building. That harm would remain but, having considered the alterations to the layout as shown in plan 301A-5F, the Council consider that these alterations would not materially change the level of harm to the setting of the listed building over that considered at the last inquiry (CD604).
- 8.17 However, the Council consider that the proposed repair and restoration of Walford Hall Farm to residential use cannot be considered to be an additional significant planning consideration in favour of allowing the Appeal A MSA proposal. The Appellants' evidence does not show that the MSA is needed to bring Walford Hall Farmhouse back into beneficial and sensitive residential use. There has been no market testing to assess the current value of the property or whether its future as a residence could be secured without the MSA. If the building when restored would be worth more than the cost of restoration, there is no benefit to be claimed from the MSA proposal. The owner should not be allowed to profit from allowing the building to fall into disrepair.
- 8.18 In order to explore the possibility of the restoration of the listed building without the proposed MSA development, the Council have valued the property and considered the prospects for its successful disposal and restoration. A public auction would be recommended as the best way of achieving the highest open market price. Properties given as examples were auctioned in this way (SMBC0/12 appendices (i) – (iv)).
- 8.19 The Appellants have control of the surrounding land and, to obtain the fullest sale price, additional land should be added to the Walford Hall Farm site. This would barely affect the farm's land value, but would add significant value to the building complex. The large modern farm building adjacent to the yard should be retained for possible use as an indoor riding school.
- 8.20 The most likely buyer would be an entrepreneurial individual, looking to make a lifestyle purchase and to create a family home, improving and developing the property over a lifetime. The outbuildings would need a long-term beneficial use in order to ensure they were maintained. The purchaser could look to converting them to additional accommodation for the house, such as a granny or guest annex close by in the threshing barn. Other buildings could be used for games rooms, personal office and business purposes and the purchaser could assume that, at the very least, he could secure planning permission to convert some of the outbuildings to holiday lets. At least three and possibly five permanent dwellings could be created within the outbuildings.
- 8.21 On this basis, in its existing condition, and assuming some potential for ancillary use of the outbuildings as outlined above or obtaining up to five residential units or letting accommodation, the value of the property
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would be £600,000 - £650,000. With the main farmhouse repaired up to second fix stage with the need to complete external works, and with hope value as above, the value would be £750,000. With the property fully restored with the outbuildings as annex, games rooms, offices, domestic letting units, storage, stabling and ménage, it would be worth between £1.4 million and £1.6 million (SMBC0/12).

- 8.22 It is accepted that substantial investment would be needed to bring the buildings up to a good standard and to turn the house into a comfortable home and the outbuildings into useable space to complement and support the residential unit. The Council do not disagree with the cost estimates totalling £1.3 million for the professional restoration of the house and barns, but argue that there are other ways to do it (SMBC0/12). It would be possible to reduce the cost of repairing the farmhouse by staged completions and owner-managed work over a period of time.
- 8.23 The estimated cost of repairing the outbuildings is reasonable if the end result is to bring the buildings up to a standard where they can be used for ancillary domestic accommodation. However, it would be preferable to find a permanent use for the outbuildings before spending money on them.
- 8.24 The current proposals would include works of restoration which, although desirable, are not strictly necessary to ensure the long-term future of the barns until a more suitable use is found. The works specified go beyond the minimum required to make the buildings wind and weather tight. Sufficient work, equivalent to that which would be required under an 'Urgent Works Notice', would serve as a holding exercise until more substantial funds were available for a full repair and restoration scheme. A cost of around £43,578 is indicated for 'Urgent Works' to make the outbuildings wind and weather tight and to ensure that they would be protected from any further deterioration, pending a more detailed and costly restoration scheme. This would substantially reduce the initial outlay (SMBC0/13).
- 8.25 It is ludicrous to suggest that, without funding from the proposed MSA development, no one would wish to buy a substantial, interesting listed building, in open countryside near to Solihull, in its own land and with a range of interesting curtilage buildings around it.
- 8.26 The MSA proposals therefore represent a significant and harmful element in relation to the listed building, the restoration of which could be secured without the damage which the development of the proposed MSA would cause to its setting.

Planning obligations and ODPM Circular 05/2005

- 8.27 The Council raise no issue on this matter.
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The adequacy of the Environmental Statement

- 8.28 Plan 301.A-5.Revision G shows how increased parking space would be provided on the appeal site if it could be shown to be required. In order to create that parking, it would be necessary to remove areas of landscaping around the existing planned parking areas, and the plans would also change the balancing pond and reed bed arrangements to the east of the lorry park, including those on the eastern side of the motorway. The additional parking would increase the built footprint of the site by 0.1622ha, as indicated in Document SWA2/8, and inevitably worsen the impact of the proposals on both the landscape quality and the openness of the Green Belt. It would take the MSA development closer to Walford Hall Farmhouse, increase still further the night time illumination associated with the MSA, and have an impact on the surrounding area which has not been properly assessed in the ES. It would also have an impact on the cut and fill operation, increasing the gradients of the slopes and limiting the scope for landscaping mitigation.
- 8.29 Landscape features of the site, in particular ancient woodland and planting, now have a heightened importance in the light of the guidance contained in PPS9 (Document CD205). This refers in particular to veteran trees and their importance. Five trees would be lost as a result of the appeal proposals. Trees 5 and 6 (as identified in Document SWA1/7) would be amongst those lost. They are particularly impressive specimens, a fact confirmed at the accompanied site visit. The survey of trees carried out for the Appellants was more like a BS5873 survey than a veteran tree survey. It discounted, for example, dead trees. The Council do not say that any veteran tree would definitely be affected by the proposal, but two trees showing veteran characteristics would be affected. Trees have been inadequately surveyed by the Appellants, without paying full regard to aesthetic factors and matters such as prominent position. It is the Appellants' responsibility to provide such a survey. The Council would not accept a detailed layout which would cause damage to an important tree (such as Trees 2 and 3, which the proposed layout of the MSA appears to put at risk).
- 8.30 The Council considered the issue of air pollution. They were satisfied with the information on that issue provided by the ES, and concluded that there would be no basis for concern on that issue if the MSA were to be built.

Other material changes in circumstances – Active Traffic Management

- 8.31 Since the last inquiry, ATM, an innovative traffic management system which successfully cuts journey times and helps keep motorway traffic moving, has been introduced on the M42 between J3A and J7. It enables the hard shoulder to be used as a running lane when overhead gantry signs indicate that it is acceptable to do so. The signs are managed by an operator at the RCC, who is able to view the motorway through a closed circuit television system, and to close the hard shoulder (or any other lane) if an accident occurs.
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- 8.32 A six monthly report on the operation of the ATM system (Document CD512) has shown the system to be a considerable success in improving journey time reliability and reducing accidents, so much so that the Secretary of State for Transport has announced that the system is to be implemented across the Midlands Motorway Box.
- 8.33 The HA consider that the Appellants' proposals for the integration of the access arrangements to the proposed MSA with the ATM system would put at risk the safe and successful operation of the ATM system. The Council rely on the evidence of the HA in support of that proposition.
- 8.34 On the basis that damage would be done to the ATM system, and that, in fact, it may not be possible to allow it to continue to operate between J5 and J6 if the Appellants' proposals were implemented, there would clearly be a very significant additional adverse effect to take into account in balancing the harm which the Appeal A proposal would cause against the benefit which it would deliver.

Appeal A – Overall Assessment

- 8.35 In 1999/2000, the Inspector concluded that the benefits which a MSA at Catherine de Barnes could deliver would marginally outweigh the harm to the Green Belt in that location. Since then, the changes in the need for a MSA in the location (referred to in Section 5 of this report) have taken place. There have also been changes in the layout planned for the MSA, with an increase in the area of the lorry and coach park to provide additional spaces. The HA have a concern that still further land will be required for parking in the future, and the Appellants propose to deal with this by way of a condition. Clearly, the need for additional areas of hardstanding would increase the overall harm to the openness of the Green Belt as compared with the position in 1999/2000.
- 8.36 Paragraph 3.13 of PPG2 states that, when any large scale development of land occurs in the Green Belt, it should as far as possible contribute to the achievement of the objectives for use of land in the Green Belt. The appeal proposal would provide little opportunity for access to the open countryside for the urban population, provide no opportunity for outdoor sport and recreation, would not retain an attractive landscape, not improve damaged or derelict land, have some limited provision of nature conservation interest, and would not retain land in agricultural use. Such benefits as may exist would therefore be of little consequence against the overall harm of the proposals in respect of these objectives. The proposal would therefore be directly contrary to this aspect of Green Belt planning policy.
- 8.37 The appeal proposals would seriously compromise the purposes of including land in the Green Belt. They would create additional areas of hardstanding in the Green Belt to accommodate additional parking. They would still cause harm to the setting of Walford Hall Farmhouse. They would prejudice the operation of the successful ATM system on the M42, which is important in securing the economic health of the region and the success of important investment sites, together with access to
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the BIA and the NEC.

- 8.38 Given that the test to be met by the proposals is for the need for the development clearly to outweigh the harm it would cause, it is contended that the balance has shifted compared with that undertaken when the then Secretary of State made his preliminary assessment in 2001. That test can no longer be met, and Appeal A should be dismissed.

Conditions

- 8.39 Notwithstanding their opposition to the proposed development, should it be approved, the Council would suggest that conditions should be imposed as set out in Document 708A. Although the Council intend to consult the HA on relevant reserved matters, the Council would resist the inclusion in the conditions of an obligation to consult the HA.

APPEAL B – JUNCTION 4

Background

- 8.40 In 2001, the Secretary of State decided that the harm which would be caused by development of a MSA on the site at J4 would not be outweighed by the benefits which the proposed development would provide. The site involved in Appeal B is in the same location as that considered at the previous inquiry. While the site boundary and the disposition of the buildings proposed within the overall site have changed, along with the ground modelling proposed for the site, development would take place within the same location, in the same vulnerable and narrow part of the Green Belt between Solihull and Dorridge.
- 8.41 The Inspector's report on the earlier inquiry (Document CD212) makes it clear (at paragraph 19.176) that such was the harm arising from the J4 proposal that, even if no other MSA site had been available, it would have been inappropriate to grant planning permission for the site at J4.
- 8.42 Despite what was said on behalf of Shirley Estates in evidence at the inquiry (paragraphs 3.7 and 3.8 of Document SEL1B/3), an attempt was made at the subsequent inquiry into the UDP to secure a site specific allocation for a MSA at the current proposed J4 site. The statement of evidence put to that inquiry includes the words

"The Plan should include a site specific policy This objection seeks to promote the site in the ownership of Shirley Estates (Developments) Limited ..." (paragraph 8.1 of Document SMBC1B/3A).

That attempt to secure a site specific allocation was unsuccessful, despite the Appellants' contention that it addressed all the points of concern from the previous inquiry.

- 8.43 The Inspector's report on the UDP (Document CD103) makes it clear at paragraphs 5.16 and 5.17 that he rejected the proposal on the basis
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that he did not believe that it was capable of overcoming the fundamental objections, particularly with respect to Green Belt, which had caused the original appeal to be dismissed. The Inspector at the UDP inquiry was asked to consider this specific site, and was in fact asked to consider the merits of essentially this specific proposal. No basis has been advanced by the Appellants on which the Secretary of State could effectively justify putting to one side the UDP Inspector's conclusions.

- 8.44 The current appeal scheme attempts to address the visual deficiencies of the original proposal, but at a landscape cost, and with no answer to the Green Belt difficulties which were at the heart of the rejection of the original scheme.

Compliance with the Development Plan

- 8.45 The points highlighted in paragraphs 8.1 to 8.5 above apply equally to the J4 site.
- 8.46 The appeal site lies to the east of the M42. Development is proposed to the west of the motorway in the area of J4. The south west quadrant is occupied by the BVBP, which is proposed to be extended under Proposal E1/3 of the UDP. The north west quadrant is proposed to be occupied by an office development at the Aspire Business Park (Proposal E2/7). No development is envisaged by the UDP in the area to the east of the motorway, which is protected by Green Belt and countryside policies.
- 8.47 The Appellants make the point that development proposed for the western side of the motorway will be clearly visible from the motorway, but that fact offers no support or justification for a proposal to build within the Green Belt on the other side of the M42.
- 8.48 The appeal site is a prominent and attractive area of farmland, located near to where people live, and with a public footpath running through the middle of it, which currently provides access to open fields and the wider open countryside.
- 8.49 The nearby golf driving range and the equestrian centre are discreet countryside recreation facilities, of a contained nature, which do not have a particularly urbanising effect.
- 8.50 The appeal site, however, is currently open pasture farmland, and is protected by the countryside policies of the UDP. The appeal development would not respect or enhance the distinctive character of the countryside, and is therefore at odds with Policies C8 of the UDP and QE6 of the RSS.

Consistency with Airports Policy

- 8.51 It is accepted that the proposed development of Appeal B would not offend any aspect of airports policy relating to the area.
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Consistency with the 1998 MSA Policy Statement

8.52 The Government wish to see a network of MSAs within 30 minutes travelling time of each other; but also of relevance are the other factors which link the gap to road safety – the ability of existing MSAs to meet demand; the number of accidents related to driver fatigue; and the amount of long distance traffic on the route. These factors need to be present and to be of such weight, as well as the gap element, to allow for development in a sensitive Green Belt location.

Consistency with PPS6 – Planning for Town Centres

8.53 It is accepted that PPS6 allows for ancillary retail development at MSAs. The extent of any retail provision at Appeal B should be within the maximum provision allowed in Government policy for MSAs, and this could be assured by an appropriate planning condition. At J4, however, because it would be an off line site, the opportunity would be provided for local traffic readily to access the site. There is substantial local traffic in the area, and the MSA would clearly therefore have the potential to become a destination in its own right. There could be an adverse impact on existing retail facilities in town centres within the area. No evidence has been produced by the Appellants to deal with the potential impact of the retail element of their proposals.

The adequacy of the Environmental Statement

- 8.54 Since the ES was produced for this appeal, the Appellants have produced two further plans dealing with the provision of additional parking on the site. One of them aims to show that additional future levels of parking requested by the HA, but which the Appellants do not consider to be justified currently, could be accommodated on site if a proposed condition were to bring the requirement for such parking into operation. The other would provide an additional level of parking accepted by the Appellants.
- 8.55 Both plans would remove additional areas of landscape around the existing proposed parking areas. That additional parking would have an impact on the surrounding area which has not been properly assessed in the ES.
- 8.56 The ES has also failed to consider the impact of the proposals on Monkspath Wood. This is a large and important ancient semi natural woodland, which is designated as a SINC. Gate Lane in its current form immediately abuts the northern and eastern edge of the woodland. The widening of Gate Lane included in the appeal proposals would encroach on the root protection zone of the woodland. The current rural context of the ancient woodland would also be radically degraded along the northern and the north eastern boundaries. These impacts on the heritage value and physical condition of Monkspath Wood have not been addressed in the ES.
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Impact on safety and the free flow of traffic

- 8.57 On any sensible view, J4 is a complicated motorway junction already. It is important because it gives access to the regional employment sites at BVBP and the Aspire development. This importance to the success of the regional economy is recognised in the RSS and the UDP, and also in the West Midlands Regional Economic Strategy (Document SMBC1B/4).
- 8.58 The Appellants propose to introduce to the immediate area of J4 a form of development which by its nature would attract a significant quantity of additional traffic, with many drivers who would be unfamiliar with the location. J4 would require further modification, with additional signage and illumination which would add to the existing complications of the junction. Because of the importance of the regional employment sites in the vicinity of the junction, it cannot run the risk of developing a reputation of being congested or difficult to navigate.
- 8.59 It is clear from paragraph 20 of the 2001 decision letter (Document CD211) that the Secretary of State was concerned at the prospect of added complications at J4 which would require drivers, many of whom would not be familiar with the layout of the junction, to make a large number of decisions in a short space of time. Document SMBC2B/13 demonstrates, on a basis consistent with that used at the earlier inquiry, that the number of decision points which would be involved with the current proposals would in substance be the same as that which was regarded as unacceptable on the last occasion. There is no reason for reaching any other conclusion on that matter from that reached at the previous inquiry. If anything, the position is now of more concern because of the emphasis given by the RSS to the importance of the highway network in supporting economic regeneration. Many of the important regional employment sites rely on J4 for access.
- 8.60 This last point is reflected in the obvious care which was taken in connection with the access arrangements for the BVBP Phase II development. Consideration of the planning permission (Document SMBC0/20) and the Section 106 Agreement (Document SMBC0/19) shows the attention given in relation to matters such as the travel plan, corrective measures, car parking, the highway works and the bus services. These issues were dealt with in that way both to ensure that the BVBP development was as sustainable as possible, and to ensure that what the UDP refers to as the benefits of its location were secured by not having access to it adversely affected by increased difficulty and congestion at J4.
- 8.61 It is clear from the TRANSYT runs undertaken in connection with the proposed MSA at J4 that the introduction of MSA traffic at J4 would increase delay at the junction and reduce its overall performance. On many links, the Ratio of Flow to Capacity ("RFC") is greater than 85% and/or the MMQ length is 75% or over on links with limited queue space. Queue lengths are particularly important where, as here, the network being assessed has anti gridlock loops on the circulatory carriageway and queue detector loops on the approaches. Anti gridlock
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loops are located on the circulatory carriageway of J4 and on the Tesco roundabout for safety purposes. When two loops are triggered on the same roundabout, the anti gridlock system comes into operation, and all roundabout internal gyratory signals turn to green. This frees the queues on the circulatory carriageway, but the consequence is that the amount of green time given to the approaches to the roundabout is reduced. The capacity and efficiency of the local network as a whole is, however, reduced, and delay on the network increases. In this location, delay would be unacceptable. It is a substantial matter, and would be a reason justifying refusal of planning permission. The development proposed could not be achieved without any detriment to the existing situation.

- 8.62 The introduction of a MSA at J4 would bring many drivers to the complex and highly trafficked J4 roundabout who would be unfamiliar with the roundabout. This would also reduce the efficiency of the roundabout, as a result of driver confusion and uncertainty. Lane occupancy would vary as drivers relocate their vehicles to the appropriate lane or enter the wrong lane and make erratic movements to rectify their errors.
- 8.63 In addition, there is no signing strategy agreed for the development. Road surface signing is not visible when traffic is stationary on it or passing over it, but there is no information provided by the Appellants as to whether gantry signing would be provided or as to how it could be accommodated. Similarly, it is clear that additional lighting would be required at J4, but the solutions suggested by the Appellants for its provision (set out at paragraph 7.48(i) above) would be unacceptable, because it would require any maintenance or repair work on such lights to take place over a live motorway, or, alternatively, for lighting columns to be erected in positions which would be unsatisfactory.
- 8.64 The Appellants have not demonstrated that their proposed mitigation works would be the most appropriate to address the impact of the additional traffic at J4, because their modelling does not show the operation of J4 with a MSA in place as proposed but with no mitigation.
- 8.65 The Appellants take the view that the performance of the junction might be assisted by the introduction of a LINK MOVA system, but such proposals have never been implemented in any location where there have been five interlinked junctions such as is the case here.
- 8.66 Just as was concluded in 2001, the proposal for J4 would make a junction which currently has an exemplary safety record much less safe. The complicated manoeuvres which would be required, the increased amount of traffic, the increase in the proportion of unfamiliar drivers using the junction, and the nature of the junction all point to a serious difficulty being created, just as substantial as that which was regarded as unacceptable when the matter was last considered. The junction is not under pressure now, but it would become under pressure with the MSA in place. Even with the mitigatory measures proposed, J4 and the surrounding junctions would operate with greater delay to vehicles than
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would occur without the MSA. The development of the MSA would lead to a greater risk of the queue loops and anti gridlock loops on J4 being triggered. This would have a consequential negative impact on the operation of the junction, and would adversely affect the perception and operation of J4 in terms of its role as a strategic junction for the local and regional economy.

Impact on Green Belt

- 8.67 One of the purposes of the Green Belt in Solihull, set out in the explanatory paragraphs to Policy C1 of the UDP, is to prevent neighbouring towns from merging into one another. This is particularly important at the J4 site because of the small distance (some 1.5km) between the edge of Solihull at Monkspath and Dorridge.
- 8.68 The introduction of development on this site would lead to an increased risk of merging between the settlements because it would breach the current Green Belt boundary provided by the M42. It would make it harder for the local planning authority to resist other attempts to introduce development into the Green Belt between the appeal site and Dorridge.
- 8.69 The appeal development would also increase the perception of a merger between the settlements experienced by travellers along the A3400 and by residents of Knowle and Dorridge. Neither the risk nor the perception would be changed by the inclusion by the Appellants of landscaping, mounding or the redistribution of elements of the development around the site. The presence of a development of the scale proposed within this small gap between settlements would have a very significant impact on the openness of the Green Belt in the area. The special character of Dorridge and Knowle as individual settlements away from the built up area would be eroded by the reduction in the present gap between them and Solihull.
- 8.70 Although the Appellants have tried to reduce the impact of the scheme by reducing the overall landtake and moving major elements of the development behind the ridge which runs across the site, the perception of development would still be apparent from Monkspath and from the motorway because of the provision of an intrusive access road into the site.
- 8.71 Screening of the development, even if eventually substantially achieved, would not make the proposal acceptable because the openness of the Green Belt would still be reduced. It would be further reduced if the additional car parking referred to above were to be provided.
- 8.72 The proposed development would have an adverse impact on an area of open countryside which still maintains a clear rural character. The provision of car parking areas, buildings, lighting and roads would inevitably harm the character of the area through the provision of such intrusive elements in open countryside where the predominant character of the landscape is agricultural.
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Impact on light pollution

8.73 The proposals would result in an extension of light pollution in a sensitive gap where there is little presence of lights at the moment. To the east of the Gate Lane ridge adjacent to the existing woodlands, the site is predominantly dark at night times at present. *[Inspector's Note: a fact which I confirmed on my unaccompanied site visit during the hours of darkness.]* While the roundabout at J4 was lit, as was the A3400, after passing The Red House (moving away from the A3400) Gate Lane quickly becomes a dark country lane with dark land to both sides. There is a distinct sky glow from J4 and the M42 beyond, but the requirement for safe levels of lighting within the MSA together with attendant vehicle lights would extend the lit corridor of the M42 into open countryside for a significant distance. The top of the light columns at the Gate Lane roundabout would come into view about 120m from the junction of Gate Lane with Four Ashes Lane. This would erode night time tranquillity and extend the urbanising influence of the M42 corridor. The proposals therefore do not accord with Policy C9 of the UDP.

Impact on air pollution

8.74 The Council as Environmental Health Authority raise no issue regarding air quality.

Visual and landscape impact

8.75 The Appellants' own ES (Document CD416) characterises the appeal site and the wider area of which it is part as an attractive undeveloped landscape, with a clear rural character, used for rural purposes, and not degraded or run down. The Appellants' witnesses did not demur from those statements. The appeal site is not in a transitional zone between town and country. It is the M42 which marks the clean break between the developed, built up part of the conurbation and the countryside.

8.76 The Appellants say that there would be a clear gap between the proposed MSA and the motorway, but this would be on the rural side of the M42, within the Green Belt. There would be adverse impacts in terms of tree loss, hedgerow loss and earthworks, and, as the ES accepts at page 36, substantial change. The proposed mitigation by way of planting, some of it described as ornamental, would result in the suburbanisation of an otherwise pleasant open area of countryside.

8.77 A comparison of the current aerial view of the site in Appendix L2 to CD416 with the historical map at Appendix L6 shows that the landscape is substantially unchanged. It is not a landscape where there has been significant change during a period of more than 120 years. The fact that it is recognisable as an intact historic landscape adds value to the landscape area.

8.78 The Appellants are proposing to introduce to that area a massive and urbanising form of development, which will not only intrude on the gap between Solihull and Dorridge, but also totally change the landscape

character and appearance of the area. Far from framing the conurbation with an attractive and historic landscape, the development would instead provide an effective bridge between two built up areas, which would not be disguised or lessened in its impact by the fact that there would be planting associated with it. There would be a seriously detrimental impact on the character and appearance of the area.

8.79 Solihull's Countryside Strategy (Document CD308) has been adopted as Supplementary Planning Guidance. The appeal site falls within the Motorway Corridor Zone, within which recommended management strategies include:

- *Encourage further planting along the motorway corridor to screen the view from surrounding settlements and facilities*
- *Resist new developments in the gaps between settlements*
- *Protect and enhance important ecological features, including the River Blythe corridor*
- *Enhance recreational activities appropriate to the area.*

8.80 The MSA proposals are fundamentally at odds with these management strategies. The development would occur in what is probably the most vulnerable of gaps between settlements. It would erode rather than enhance the River Blythe corridor. It would significantly degrade the recreational value of the Trans Solihull Link. While new planting would be introduced along the M42 corridor, this would be at the expense of what is currently an attractive area of open countryside with a clear rural character.

8.81 One of the characteristic features of the Arden landscape type between Birmingham and Warwick is its country lanes. Gate Lane is such a lane. Although it is currently used by a good deal of traffic, it retains its characteristic Arden features. It is proposed that Gate Lane should provide the only exit from the proposed J4 MSA. This would necessitate a substantial widening of the western end of Gate Lane, with a substantial and permanent adverse impact. That stretch of the Lane would cease to be a narrow, hedged, rural lane and become instead a four or five lane urbanised highway, with footways on either side, terminating in a large, lit roundabout in the open countryside, immediately adjacent to Little Monkspath Wood. The northern hedgerow would be lost, together with a number of fine mature oak trees, and further trees would be lost on the eastern side of Gate Lane where the roundabout approach road merges back into Gate Lane.

8.82 The combination of substantial earth modelling, tree and hedgerow loss, the interference with the footpath across the site and the impact on Gate Lane indicate that no amount of alteration to the disposition of buildings on the site and no amount of landscaping could render this fundamentally unacceptable location acceptable for a development of this kind.

Impact on the Trans Solihull Link

8.83 Footpath SL56 is part of the Trans Solihull Link, and runs across the site over open fields, providing access to the open countryside. The Trans Solihull Link connects the North Worcestershire Path to the Heart of England Way, covering a total distance of 25km. In the area of the appeal site, it provides a convenient and accessible countryside route between Monkspath and Dorridge. It is consistently waymarked, and (as confirmed on the accompanied site visit) the waymarkers appear to have been in position for some time. They had not (as one witness suggested) “been erected in the past two weeks”. The idea that providing a replacement footpath through the MSA would offer anything like an attractive route of the kind that currently exists demonstrates a lack of realism on the part of the Appellants. The replacement route would be an enclosed, constricted path, providing close range views of the MSA petrol filling station, the Police post and the elevated MSA spine road.

Land lost to agriculture

8.84 The site includes some agricultural land which is within the category of “best and most versatile agricultural land”. The proposals therefore do not accord with Policy C4 of the UDP.

Impact on trees

8.85 There would be an acknowledged loss of 12 individual trees, and there would be loss and fragmentation of the existing hedgerow. In practice, it would be highly likely that the long term viability of the remaining trees within the hedgerow would be severely compromised by the substantial cut and fill exercise which would occur to both sides of the hedgerow. Around 15 trees would be at risk, many of them fine specimens with high amenity and ecological value.

Ecological impact

8.86 In addition to the loss of mature trees, other ecological assets would be lost, such as the unimproved lowland meadow and species rich hedgerows, with the further possibility of disruption to protected species such as great crested newts.

Noise impact

8.87 The Council as Environmental Health Authority raise no issue regarding noise.

Obligations and conditions

8.88 It is confirmed that it would be the Unilateral Undertaking of 29 May 2008 (Document CD737) which the Council would seek to enforce in the event of planning permission being granted for the MSA development at J4.

- 8.89 Notwithstanding their opposition to the proposed development, should it be approved, the Council would suggest that conditions should be imposed as set out in Document 708A.
- 8.90 In relation to the proposed Grampian condition designed to ensure the carrying out of the highway works necessary to allow the MSA to come forward, the proffering of that condition necessarily and appropriately raises the ability of the Appellants to implement all the highway works which are assumed to be part of the MSA even if BVBP Phase II and its associated highway works does not come forward. Proffering a Grampian condition in those circumstances makes it inevitable and necessary to consider whether or not the Appellants have control of the land or areas within which the BVBP II works are proposed to take place. If they do not then, having regard to the way in which the BVBP II Section 106 Agreement is structured, the only consequence of allowing them to proceed would be to shift the burden of undertaking those works to the BVBP II occupiers as a consequence of the operation of the Section 106/Travel Plan. Irrespective of any position taken by the Council, the Secretary of State would need to satisfy herself that the Appellants have control of the necessary land and that the consequence of their approach was not simply to shift the burden for carrying out work from themselves to the BVBP II occupiers/owners in circumstances where the performance of BVBP as a whole is material to the performance of the regional economy.

Appeal B – Overall Assessment

- 8.91 Green Belt considerations alone ought to be sufficient to conclude that, even without any alternative location, development of a MSA in this location is unacceptable and inappropriate. Equally, the evidence surrounding J4, its importance and the impact on its functioning and safety, represents a further ground which is alone sufficient to conclude that this is simply the wrong location for a facility of the kind proposed. The location is simply unsuitable, as it was found to be in 2001, and again when the issue was raised with the UDP Inspector.

9. THE CASE FOR THE HIGHWAYS AGENCY (apart from the issue of need)

The material points are:

General

- 9.1 On behalf of the Secretary of State for Transport, the HA act as the responsible highway authority for the M42 and its slip roads. SMBC are the highway authority for the local road network, and this includes the J4 roundabout.
- 9.2 The primary concern of the HA is to ensure that the safe and efficient operation of the strategic road network would not be compromised by
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the development proposals. This requires assessment of the impacts of the proposed MSAs both in terms of the safety of highway users and the capacity and free flow of the M42.

- 9.3 The RSS highlights the importance of the M42 to both the transportation needs and the economic prosperity of the region. It makes specific reference in Policy T12 to the ATM system as a regional priority.
- 9.4 The HA do not dispute that a need for a MSA on this part of the network has been established in respect of the 30 mile spacing criterion set out in Circular 1/94, or that the provision of a MSA at either proposed site would, in principle, meet this technical need. Paragraph 4 of the 1998 Ministerial Statement makes it clear, however, that there is no presumption in favour of MSAs that would contribute to the 30 mile network. This contribution needs to be weighed against other factors.
- 9.5 Proposals for such sites will continue to be subject to not only the normal operation of the land use planning system (although where there is a gap of greater than 30 miles it is necessary to give greater weight to the needs of motorists) but also to the need to comply with relevant standards and to ensure that the safety and the capacity of the network is not adversely affected.
- 9.6 Government policy in relation to both the strategic highway network in general (Circular 02/2007 Document CD224) and MSAs specifically (Circular 01/1994 Document CD222), places significant emphasis on traffic flow and safety considerations. These matters also need to be weighed against the contribution a MSA would make to the 30 mile network.

APPEAL A – CATHERINE DE BARNES

- 9.7 At the 1999/2000 inquiry, the HA originally objected to the grant of planning permission for the site at Catherine de Barnes. There was concern about the potential adverse impact on safety and the failure of the then Appellants to demonstrate infrastructure improvements which would provide a 15 year design life. During the course of that inquiry, a package of mitigation measures (including auxiliary lanes) was proposed, which enabled the HA to withdraw their objection. By the close of that inquiry, the HA had no objection in principle to the MSA proposal for the site at Catherine de Barnes, subject to the requirements set out in the Secretary of State's interim decision letter.
 - 9.8 Following the interim decision, the HA continued to discuss with the proponents of the Catherine de Barnes site the proposals for the introduction of auxiliary lanes. There was no objection to these proposals in principle in respect of highway safety, buildability and environmental implications. Subsequently, however the HA pointed out the changes to the M42 brought about by the introduction of ATM. The auxiliary lanes proposed at the last inquiry would not be compatible with ATM, and for the MSA at Catherine de Barnes to be acceptable it would therefore be necessary to identify an alternative solution. The letter of
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11 August 2004 referred to at paragraphs 6.101 and 6.166 above was written in the situation before ATM was operating.

- 9.9 It is the responsibility of the developer to design and submit an acceptable highway solution in support of the development proposal. The role of the HA during scheme development is to offer advice in relation to the clarification of policy and standards and to agree the scope of any technical analysis. This enables the developer, using standards that are clearly set out in published documents, to design a highway scheme for formal submission and assessment by the HA. Once a scheme has been formally submitted, the HA review it and provide detailed feedback on the acceptability of the design solutions put forward. It is not the role of the HA to design the scheme for the developer or to identify potential solutions.
- 9.10 A succession of alternative approaches was put to the HA on behalf of the Appellants, but in June 2007 the Appellants provided a full set of plans for what the HA refer to as Scheme 4, and confirmed that this was the scheme which would be promoted at the inquiry (see Document CD510A). It was the subject of the Transport Assessment which forms Document CD508, and it is that scheme which has been formally submitted and reviewed by the HA in the preparation of their evidence to this inquiry. The HA need a fixed scheme which can be evaluated; but they also need all the relevant supporting documents.
- 9.11 On 4 December 2007, the Appellants submitted a further set of plans proposing a variation to Scheme 4. These plans proposed changes to the widths of the carriageway and hard strips, along with the provision of a VCB along the central reserve. At the sixth PIM on 17 December 2007, the HA were presented with a technical note which addressed the integration of the proposed MSA with ATM (Document CD511). This note had been awaited for some time, but it was found not to relate to Scheme 4 but to the December 2007 variation of it. As with the revised plans submitted on 4 December, this material arrived too late for the HA to consider it in the preparation of evidence, and it was made plain at the PIM that this would be the HA's position. Statements of evidence were required to be submitted by 15 January 2008. There has been no Transport Assessment submitted in relation to the December variation, nor is there an updated design statement. There is no list of Departures, no application for consideration of Departures, and no safety audit. There is no signing strategy. The signing strategy is important because it feeds into the assessment of the safety risk and has an impact on forward visibility. Response was made to some of the issues raised in the December 2007 plans, however, in the rebuttal evidence presented at the inquiry.

Active Traffic Management

- 9.12 Since 1998, Government policy has given top priority to improving the maintenance and management of existing roads over building new ones. In pursuit of this policy, ATM was introduced on the M42 between J3A and J7 as an alternative to widening the motorway. The system was
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introduced as a pilot scheme, at a cost of almost £100m, some 80% less than the cost of a full road widening scheme. It currently normally operates between 6.45am and 10am and between 3.15pm and 6.30pm on Mondays to Thursdays, and between 7.30am and 10am and 1pm and 7.30pm on Fridays. ATM is also opened outside those times when there are major events at the NEC. This happens perhaps twelve times each year.

- 9.13 Whilst ATM on the M42 remains termed a 'pilot', recent policy documents and Ministerial statements have made it clear that the ATM trial on the M42 has been a success, and that its expansion to other parts of the network will form an important part of the Government's future transport approach (see Appendix 4 within Document HA1A/2). Each different location will, however, be subject to its own individual safety assessment.
- 9.14 ATM was introduced only after a careful and extensive examination of the safety case. The system includes not only physical components, but also a sophisticated operating regime utilising monitored CCTV in the period prior to opening ATM and thereafter throughout the period during which ATM remains open. If there is any difficulty in any running lane (particularly lane 1 – normally the hard shoulder when ATM is not in operation), then the operator at the RCC can make the decision to turn off the ATM system, whereupon lane 1 will revert to its normal state as a hard shoulder and not as a running lane.
- 9.15 This would not be an available feature under Swayfields' proposed permanent 4 lane running. If there was a difficulty in Swayfields' proposed lane 1, it could not revert to hard shoulder. Indeed, its closure to traffic in the event of any form of emergency could only be secured by the use of the overhead gantry signage to indicate that change specifically. In the event of any form of electrical failure, making the signs unusable, approaching traffic would not be aware of the existence of any difficulty with the auxiliary/lane 1 save by their own visual awareness when the problem came into view. System failures preventing the operation of the ATM system are not unknown, as can be seen from the details given in Document HA0/19.
- 9.16 The appeal proposal would provide only the 1m to 2.5m hard strip as a refuge (apart from the ERAs, located only at 500m intervals). TD27/05 (Document CD228) states that the hard shoulder may be reduced to 3.0m without significantly reducing effectiveness and safety for breakdown and emergency use. Widths of less than 3.0m should be regarded as discontinuities of the hard shoulder, and therefore not for public use. TD27/05 allows consideration of Departures for hard strips over short distances only. The Appellants' proposals are for very long lengths of between 1.5km and 1.85km. Where the width is even 2m, this would be less than the width of fire appliances and ambulances, and just marginally wider than police cars. This could result in considerable delays for emergency vehicles reaching an incident on the motorway.
- 9.17 Moreover, the proposal is that the hard strip would continue across the
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length of the ERAs. This would have the effect of reducing the width of the ERAs. A reduced width for the ERAs would significantly increase the risks to vehicles and pedestrians within an ERA at times when the hard strip is being used as an emergency access route. The effect of reducing the width of the ERA would be to provide a narrower place of refuge than is currently afforded by a standard hard shoulder. One of the important safety measures introduced by ATM was the ERA with a standard width of 4.6m, the width being sufficient to accommodate a HGV with room for access to either side during any recovery operation.

- 9.18 Paragraph 2.6.4 of Annex B to TD27/05 provides that the Appellants should consult the emergency services and the operators of major venues and airports in the vicinity (such as the NEC and BIA), but no evidence was produced that this had been done by the Appellants.
- 9.19 The part time use of the hard shoulder at a maximum speed of 50mph for ATM was evaluated by a rigorous hazard and safety analysis. Under “normal” operation of the motorway at present, any motorist wishing to enter an ERA would be able to use the hard shoulder in advance of the ERA to facilitate entry. During ATM operation, the maximum speed limit would be 50mph, so that a driver would be entering the ERA at a speed no greater than 50mph. Under the Appellants’ proposed arrangement, the speed limit would be 70mph, so the arrangement with a hard strip and reduced ERA would appear to be less safe than at present. Similar considerations would apply to drivers leaving an ERA.
- 9.20 While hard shoulder running may appear to be similar to an auxiliary lane in some respects, there are three important differences:
- The hard shoulder is only used as a running lane with mandatory speed limits in operation (currently 50mph).
 - The hard shoulder is only used as a running lane on a part time basis, and is available for emergency use outside peak periods.
 - If the hard shoulder is occupied where traffic conditions require it to be used as a running lane, it is not opened by the RCC operator, since to do so would be unsafe.

Thus, the hard shoulder is available for its original purpose first and foremost, and as a part time running lane in a secondary capacity.

- 9.21 Even if the very serious concerns regarding the hard shoulder could be overcome, the HA have further difficulties in terms of the integration of the MSA with ATM. The need to demonstrate integration with ATM has been made clear to the Appellants throughout the design process, and was identified by the HA in a letter to the Appellants’ designer on 16 August 2006 (Appendix 2 to Document HA1A/4).
- 9.22 The ATM scheme imposes an entirely new set of operating regimes on motorists, and asks them to do things that may previously have been
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prohibited (such as drive on the hard shoulder). The operational environment of ATM also appears to be very different from that of a traditional motorway. It is important to the success of ATM that drivers understand the environment they are in, including the different operating modes, and adjust their driving behaviour accordingly. Drivers need to be given clear and unambiguous guidance to that end.

- 9.23 The initial results from the ATM pilot as reported in the 6 month report (Document SMBC0/10) indicate a very good level of driver understanding and compliance with the system. This is undoubtedly due to the work put into the highly detailed and comprehensive safety case prepared for ATM, which amounted to many volumes of assessment and analysis and attempted to predict in detail driver reaction and behaviour. The considerable extent of the work done to consider safety issues as part of the design of ATM is shown by Appendix 12 to Document HA3A/2.
- 9.24 The proposals now being put forward by the Appellants would introduce discontinuities and inconsistencies in the way that ATM operates that have not been subjected to the same rigorous degree of safety analysis. The change of environment from ATM (J4 to J5) to permanent four lane (J5 to J6) and back to ATM (J6 to J7) could lead to driver confusion regarding where hard shoulder running is applicable. It could reduce compliance on the adjacent sections where ATM is operated, and ultimately it could undermine the credibility of ATM.
- 9.25 The provision of the auxiliary lane through the MSA junction would operate differently from the other junctions within the ATM scheme. The other junctions operate with a lane gain/lane drop arrangement. The proposal for the MSA junction, however, is for through junction running, which would present drivers with a fundamental change to the “rules” for ATM, as compared with all other junctions within the ATM system. Such a variation would introduce a significant risk in terms of driver understanding and behaviour. There is no approved safe design for through junction running anywhere in the UK as yet, though some designs were being worked up at the time of the inquiry.
- 9.26 It has not been demonstrated by Swayfields that what is being proposed is intrinsically safe and compatible with the established ATM operation. Because of the different arrangements which would apply between J5 and J6 under the Appellants’ proposals, they would introduce a discontinuous driver environment within the section of motorway between J3A and J7 currently subject to ATM, which would be likely to lead to driver confusion, an increased potential for accidents and reduced overall compliance with the operational regime.
- 9.27 In that situation, the signage strategy proposed by the Appellants would be crucial to the provision of adequate driver information. This strategy was formally requested by letter dated 29 May 2007. However, no details of signing outside the J5 to J6 area have been submitted, and the limited information provided on signing between J5 and J6 with the Technical Note submitted on 17 December 2007 relies substantially on
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the use of ATM signing equipment. The gantry signs are provided to show variable messages. They are not intended to be used for permanent directions to drivers as the Appellants suggest. It does not comply with the requirements of the Traffic Signs Manual. No signing is proposed to tell the driver that there is no hard shoulder. The proposals submitted are assessed in detail in Appendix 4 to Document HA2A/2.

- 9.28 If the proposals were approved on the basis of the information submitted, the ATM scheme could not continue to operate within the bounds of its established safety case. If the proposals were approved, the ATM scheme would have to be revised or even switched off. This would have clear implications for the free flow of traffic and congestion on the M42, and for achieving the economic goals set out in the RSS. If ATM could no longer be safely operated, this might also require the reopening of the issue of future widening along this section of the M42.

Safety and Departures from standards

- 9.29 DfT Circular 02/2007 (Document CD224) sets out how the HA is to participate in all stages of the planning process. Safety and capacity considerations are of paramount importance for the HA. In accordance with this policy approach, the HA have in place rigorous procedures for assessing the safety implications of road designs. Any proposal for highway works that does not fully accord with published standards has to be the subject of a formal application for a 'Departure' from standard. Such a process draws on the HA's extensive experience of motorway operating conditions and safety records across the country.
- 9.30 Departures are only approved in exceptional circumstances, where the impact of a design fully in accordance with standards would be disproportionately high in terms of factors such as construction cost, whole life cost, environmental impact or effect on programme. The process to be followed is set out in the HA's Guidelines for Designers (Document HA0/2). Paragraph 2.3.3 of that document makes it clear that the organisation designing the scheme must fully assess the risks, impacts and benefits of any requested Departure. Paragraph 3.3.5 goes on to provide that Departures associated with developer funded Section 278 schemes must be identified and resolved at the planning application stage. Previous Departure approvals (such as those which were granted in relation to the Catherine de Barnes scheme advanced in 1999/2000) will normally be considered invalid after a period of three years or where there is a material change to the scheme design parameters. Both those situations pertain in the present case.
- 9.31 If the outcome of the Departures process is a view that the proposal is unsafe, then the particular Departure will not be approved and will not be permitted on the network.
- 9.32 No application for Departures has been made in this case; nor have the HA indicated that they are satisfied, in principle, that the large number of Departures required, many of which would be highly significant Departures from standards, would be acceptable. Indeed, the reverse is
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the case. The HA have made clear their acute concerns and objections to Swayfields' proposals, which include the elimination of the hard shoulder for some 4km of the M42, and its replacement by a hard strip of between 1m and 2.5m in width.

- 9.33 The HA underlined to the Appellants at a meeting on 5 December 2006 the need to ensure that sufficient time was allowed in the design process for the submission of a Departures application and any necessary scheme modification and re submission. In a letter dated 15 October 2007 (Appendix 5 to Document SWA3/1), the Appellants were asked to submit applications for Departures as a matter of urgency. In 1999/2000, a prior application for Departures had been made for the Catherine de Barnes site, and the Departures applied for had been approved by the HA (paragraph 6.18 of Document CD212).
- 9.34 Proposals for a 4 Lane Dual-Motorway were originally submitted in July 2007 and accompanied by a Transport Assessment. The subsequent highway layout plan (for three lanes and an auxiliary lane) that was submitted in December 2007 was not supported by a revised Transport Assessment so as to enable it to be considered fully by the HA. Nor was the new plan accompanied by a safety assessment, a Departures analysis or any safety audits. The proposal for three lanes and an auxiliary lane, incorporating through junction running has significant implications for safety. If the auxiliary lane is being used with a lane drop arrangement, simply as an entrance lane for the MSA, then only about 5% of traffic would be using it. If it is being used for through running, then perhaps 17% of traffic would be using it, which has implications for the assimilation of traffic rejoining the motorway after the MSA. That is why a revised Transport Assessment and a proper safety risk analysis is necessary.
- 9.35 In addition to the Departure which would be necessary to allow a 4 km stretch of motorway without a full size hard shoulder, Departures from standards would also be required relating to lane widths, the width of the central reserve, weaving lengths and forward visibility. A number of these Departures would occur in combination along the same section of the motorway. Sufficient information has not been submitted to demonstrate that these Departures would be safe and acceptable to the Agency. It is for the developer to demonstrate why a Departure is acceptable; it is not for the HA to justify the standard.

No Hard Shoulder – Hard Strip/Reduced Hard Shoulder Width

- 9.36 The Swayfields proposals are predicated upon the omission of the hard shoulder for the length of motorway between junctions 5 and 6 on the M42. It is acknowledged that there would be a full width hard shoulder in front of the MSA itself, and there would in addition be a number of ERAs (though 4 of the existing ERAs would be removed in order to provide for the MSA). However, there would be substantial lengths of the motorway with hard strips less in width than the acceptable level under TD27/05 (Document CD228). Document HA0/11 sets out an agreed statement of the proportion of the M42 between J5 and J6 within
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which a hard strip of 2m would be achievable – 57% of the northbound carriageway and 63% of the southbound carriageway. These figures increase to 74% and 82% if a 100mm tolerance is applied.

9.37 The Appellants suggest that discontinuities in the hard shoulder or hard strip are commonplace, but, on the scale envisaged by Swayfields, this is not correct. They are accepted only in relation to limited areas where there are for instance obstructions or bridge parapets running for short distances of, at most, a couple of hundred metres. In Document CD506, Swayfields list eighteen locations in which there are motorways without a hard shoulder. However, in all but three of these locations the discontinuity is less than 500m. The longest length quoted is the A6144(M) between the A56 and the Carrington Spur, at a length of 2.4km. This road is in fact a single carriageway road linking the A6144 to the M60, and it is only designated a motorway because the only connection at the northern end is to the motorway. At two other locations on the M60, there is physically a hard shoulder, but it has been hatched out. The space is still available for use by emergency vehicles and other drivers in an emergency. The example of the car share lane trial on the M62/M606 relates to a very different animal (namely, a car share lane) and in any event relates to a stretch of motorway with a 50 mph speed limit in force and where ERAs have been provided. That provides no justification for the radical Departure suggested by Swayfields. The hard shoulder discontinuities between M62 J25 and J26 will be limited to isolated structures where the cost of replacing the bridge to provide a full width hard shoulder cannot be fully justified; they are limited to relatively short lengths (70m and 110m). In addition, there will still be approximately 2.4 metres of hard strip width at these structures which will allow emergency vehicles to pass relatively easily.

Lane widths

9.38 The running lane widths proposed for a dual four lane motorway would be substandard. The Appellants’ proposals are compared with minimum width standards below:

	Existing (metres)	Standard (metres)	Proposed (metres)
Hard shoulder/hard strip	3.45	3.30	1.00 to 2.50
Lane 1	3.70	3.65	3.60
Lane 2	3.50	3.70	3.60
Lane 3	3.20	3.70	3.50
Lane 4	No Lane 4	3.65	3.25
Central reserve	4.50 to 5.50	3.10	2.54

As indicated at paragraphs 6.114 and 6.115 above, the Appellants claim that for the majority of the length between J5 and J6 their scheme would provide widths of:

Lane 1 - 3.65m

Lane 2 - 3.70m

Lane 3 - 3.45m

Lane 4 - 3.25m

With all of the proposed lanes being at least in some places narrower than the standards suggest, the safety distance which travelling vehicles have between them is reduced and therefore increases the chance of a side swipe collision.

Vertical Concrete Barriers

9.39 This suggested device by Swayfields has to be considered along with the proposed narrowing of the central reserve. This, once again, would be substantially below the standard provided in TD27/05. That standard provides that the distance between the outside edge of the northbound fourth lane and the edge of the southbound fourth lane should be 4.50m, compared with the Appellants' proposal of 2.54m.

9.40 The Appellants had given no consideration to the need for maintenance and the necessity to utilise warning wicket signs in accordance with the requirements set out in the Traffic Signs Manual (relevant extracts in Document HA0/12). That document makes it clear that the reduced size signs suggested by Swayfields (in paragraph 6.158 above) simply could not be used on the M42. While it is accepted that a concrete barrier requires less maintenance than a conventional steel barrier, it is equally the case that the operational regime introduced by ATM requires a significantly greater concentration of equipment on the motorway, with a consequent increase in levels of maintenance. In addition, the lightweight gantries used in connection with ATM do not have maintenance access or walkways, and therefore require lane closures in order to provide safe access to the equipment. In short, this section of highway could not be safely maintained without the potential for physical closure of lane 4 under the Appellants' proposed operating regime - and possibly lane 3 as well in order to accommodate the positioning of the wicket signs.

Weaving lengths

9.41 The weaving lengths proposed between the MSA and J5 and J6 would be substandard. They would range between 1.54km and 1.85km, against the required standard for a rural motorway of 2km. The lengths proposed would achieve the standard for an urban motorway (for speeds of 60mph or less), but under non ATM operation the national speed limit of 70mph would apply.

Forward visibility

- 9.42 DMRB TD9/93 (Document CD249) sets out desirable stopping sight distances at various speed limits. A 70mph motorway should have 295m of clear forward visibility.
- 9.43 For the northbound carriageway from J5 to the proposed MSA, the forward visibility would be reduced by moving lane 1 to the current hard shoulder. There would be three positions in which forward visibility would be reduced because of existing structures. At the first point, visibility would be reduced to 215m, which is one step below the desirable minimum; at the next two points, visibility would be reduced to 160m, two steps below the desirable minimum. Currently, the hard shoulder is only used as a running lane under ATM operation at a speed of 50mph. At 50mph, the forward visibility requirement is 160m, but the Appellants' proposals would involve 70mph running in lane 1.
- 9.44 On the southbound carriageway between the MSA and J5, there would be three locations at which forward visibility would be reduced to 215m.

Consideration of Departures in combination

- 9.45 The process of seeking Departures from standards involves their evaluation, not only individually, but also in combination with all other Departures in order to see whether the resultant combination of factors is nonetheless satisfactory and safe. That has not occurred in this case, nor has there been a safety audit of the proposed Departures in order to see whether they are safe and satisfactory. As is made clear in Document HA0/2 (paragraph 4.7.1):

“Departures must not be considered in isolation. Account must be taken of any associated Departures and Relaxations (whether existing or proposed), nearby novel or distracting features, and the nature of the route in the area in question. The influences and effects of such other aspects adjacent to, or likely to interact with, a Departure must be fully assessed and identified in the application. Any Departures approved previously must be included in this assessment”.

- 9.46 In a number of locations, the Appellants' proposals would cause Departures from standards to arise in combination. For example, between the J5 merge and the northbound MSA diverge, the forward visibility would be reduced to nearly half the desirable minimum, the lane widths would be substandard, the weaving length would be nearly three quarters of that required, the central reserve would be narrow, and there would be no hard shoulder.
- 9.47 Given the status of the M42 as a high speed, high volume part of the strategic road network, the process followed by the Appellants does not provide anything near an appropriate justification for the Departures from standards proposed.
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- 9.48 Despite the fact that the Guidance for Designers makes it clear at paragraph 2.3.9 that the approval of a Departure at one site should not be construed as a general approval for use elsewhere, the Appellants sought to place reliance on previous dealings with the HA regarding Departures from standards in other locations and at other inquiries. These do not, however, provide any justification in relation to this case.
- 9.49 The first example quoted concerned a case at Cobham. It is clear, however, that in that case that the HA's Safety Standards and Research Division ("SSR") were specifically consulted upon the features proposed (none of which include the sort of features proposed at Catherine de Barnes). During the course of the Cobham inquiry, SSR expressed themselves content with the highway proposals including the principle of the proposed Departures (see Inspector's report 2.437, 2.443- 2.445, 2.453 –2.455 within Document SWA3/14). This is in marked contrast to the circumstances in this case, where the reverse is the case: there is no demonstrated safe and satisfactory proposal for Departures from standards, and there is total opposition from the HA upon, among other things, safety grounds.
- 9.50 The second example quoted was in North Yorkshire on the A1(M) and M1 MSAs. Once again, the example provides no justification for adopting a relaxed approach to issues of Departures from standards. As the Inspector in that case reported at paragraph 10.6.29 *"...the Agency also said that they saw no insuperable difficulty in terms of Departures and relaxations, and I conclude that there is every chance that the necessary approval would be forthcoming in this case"*. That is not the case at Catherine de Barnes.

The Powergen Case

- 9.51 In relation to the implications of the decision of the Court of Appeal in the case of *R (on the application of Powergen plc) v. Warwickshire County Council [1997] EWCA Civ 2280* (referred to from paragraph 6.169 above), that case may be readily distinguished because the local highway authority's road safety objections had been fully heard at the inquiry and rejected on appeal.
- 9.52 In the present case there has been no road safety audit, there has been no application for Departures from standards made to the HA's designated team who deal with such matters, and, in so far as discussions have taken place, the HA have expressed themselves not satisfied in highway safety terms with the Appellants' proposals. Hence, the HA would, upon the present basis of information, not be prepared to sign off the present scheme such that Departures could be approved. In consequence, if action were taken in order to challenge such a decision, it would be against a materially different fact situation from that which existed in the *Powergen* case itself.
- 9.53 However, even if the Courts were prepared ultimately to order the HA to enter into a Section 278 agreement so as to facilitate the carrying out of the Catherine de Barnes MSA, Mr Hansen, in evidence on behalf of the
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HA, made it clear that the HA would have little choice but materially to alter or even to switch off the existing ATM scheme.

- 9.54 Given the very substantial investment of public funds, the substantial identified benefits that have accrued from the operation of ATM, and its importance as an exemplar for the roll out of the ATM system at other locations on the strategic road network nationally, this would be a highly retrograde step.

The resources of the Regional Control Centre

- 9.55 The hard shoulder between J3A and J7 is only monitored during the peak hours when it is open as a running lane. It is available for emergency use when incidents occur outside those hours. The Appellants' proposed auxiliary lane would be operational for 24 hours each day, but no details of the proposed monitoring system were originally provided by the Appellants.
- 9.56 The RCC is not resourced to operate ATM on a 24 hours per day, 7 days a week basis. The RCC has operators who provide continuous coverage of the motorway network, but the allocation of resources changes during the peak periods in order to facilitate the operation of the ATM system. Additional resources will be needed at the RCC if the ATM system is extended to other parts of the motorway system around the West Midlands conurbation.
- 9.57 The HA are firmly opposed to Appeal A for the reasons stated above, but, without prejudice to that opposition, should the Secretary of State be minded to allow the appeal, additional resources would be necessary to place the RCC in a position where it would be possible to address the need for the additional surveillance of the M42 which would be required.
- 9.58 An estimate of the additional resources which would be required is provided in Document HA0/15. There would be a need for one additional RCC Operator and for one additional Traffic Officer patrol crew (two persons plus appropriate equipment). Meeting the salary costs (including National Insurance and pension costs), the cost of recruitment, training, uniforms and the cost of the provision of a patrol vehicle over the assumed 30 year anticipated duration of the service would amount to £20,775,470 (allowing for 2.5% inflation) or £692,515 per year. That is the HA's current best estimate in the absence of a fully considered and developed safety case of the amount which the HA would seek to recover from the developer for additional resources at the RCC. Swayfields have made it clear that they would not be prepared to meet these costs.

Conditions

- 9.59 A specified level of parking at a MSA is a requirement of Circular 01/94 (Document CD222). The provision of adequate parking space for various classes of vehicles is important to avoid tailbacks and queuing on the slip road accesses or even on the motorway main line.
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- 9.60 The HA are content that the level of parking proposed by the Appellants would be sufficient to meet demand in the proposed year of opening. The HA do not consider that it would meet demand in the design year of 2025. That is because the HA believe that allowance should be made for the growth of traffic in line with NRTF central growth projections. Instead of this, the Appellants have calculated traffic growth by continuing the annual growth level on the motorway between 1999 and 2006 and projecting that forward to 2025. This does not make allowance, however, for suppressed demand during ATM construction or for increased demand following the success of the ATM pilot.
- 9.61 A condition which would allow for the monitoring of parking demand in the future and for the provision of additional parking space up to an agreed maximum should demand be shown to exist would provide a fair and appropriate method of responding to the disagreement on likely growth rates.
- 9.62 Conditions which require the approval of matters on which the HA have expertise should require the Council to consult with the HA before approving any submitted document. It is appreciated that the Council have stated that they would consult with the HA in any event; but the inclusion of a specific requirement to do so would represent a useful *aide memoire*. A requirement for such consultation has been included in the conditions imposed on other recent MSA approvals. It provides for a transparent and publicly recognised process, while safeguarding the position that it is ultimately for the local planning authority to reach a conclusion on the issue. Whilst it is recognized that Circular 11/95 does not include any model condition with a requirement for consultation, this does not mean that such a requirement is not permissible.

APPEAL B – JUNCTION 4

- 9.63 Up to and beyond the opening of the inquiry, the HA maintained an objection to the Appeal B proposal on the basis that insufficient information had been provided to demonstrate that there would be no adverse impact on the strategic road network for which the HA are responsible. As a result of the agreement to the SCG of 19 March 2008 (Document CD732), however, that objection was withdrawn. The HA are now satisfied that Appeal B would give rise to no adverse impact on the strategic road network for which they are responsible.
- 9.64 In addition, the HA are reasonably confident that the three new Departures which would be required (when considered together with the seven existing Departures affecting that section of the M42) would raise no issue of principle likely to prevent the approval of the Departure applications. A signing strategy has also been submitted in connection with the appeal, and the HA consider that this is acceptable subject only to minor amendments.
- 9.65 Subject to a number of points of detail which are set out in section 16 of the SCG, the HA therefore raise no objection to Appeal B. They make
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the point, however, that this implies no approval by the HA of the J4 proposal in relation to its impacts on the local highway network for which SMBC are the responsible highway authority.

Conditions

- 9.66 For similar reasons to those outlined at paragraphs 9.59 to 9.61 above in relation to Appeal A, the HA seek a condition in relation to Appeal B providing for the possibility of an increased level of parking at the J4 MSA should demand require it.
- 9.67 For the reasons outlined at paragraph 9.62, the HA seek the inclusion of a requirement for consultation with them by the Council on the consideration of appropriate reserved matters.

10. THE CASE FOR HOCKLEY HEATH PARISH COUNCIL

The material points are:

- 10.1 Hockley Heath Parish Council (“HHPC”) are opposed to Appeal B. Shirley Estates, the Appellants in that case, in effect ask the inquiry to assume that the Government’s policy of enabling the provision of an opportunity to rest about every half hour (30 miles) on motorway journeys, overrules other primary policies which lie at the heart of the planning system. They do this because they ask that the recommendation to the Secretary of State should be based on a comparison of their site, its effects and its operational constraints against those which apply to the site at Catherine de Barnes, with the site being granted planning permission which offends to a lesser extent against the catalogue of relevant considerations.
- 10.2 In fact, this is a wholly incorrect approach. The proper approach is that taken by the Inspector at the 1999/2000 inquiry, when he indicated (at paragraph 19.176 of Document CD212) that, if the Secretary of State found the proposed site at Catherine de Barnes to be unacceptable, neither of the alternative schemes then put forward should proceed, because the harm they would cause would outweigh the benefits they would deliver, even if no other MSA could be sited on the Solihull section of the M42. Any properly undertaken balancing exercise should lead to the same conclusion in relation to the J4 site now.

The Green Belt issue

- 10.3 The Appeal B site lies within the “north-east quadrant” of the J4 motorway junction. That quadrant is not subject to the urbanising development which attends the “other side” of the motorway where the BVBP and the Aspire Business Park mark the extent of built development which ceases at the motorway junction. Shirley Estates accepted through their witness that the appeal site lies within, but at the edge of, the Meriden gap and within the Green Belt gap between the urban edge
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of Solihull and Dorridge. The Development Plan regards the Meriden Gap, within the Green Belt, to be a strategic gap under significant development pressure.

10.4 It is accepted that the current Appeal B proposal is smaller in terms of built or hard development, although it actually spreads over a greater area of land than the previous proposal. The principal differences from the earlier scheme are the location of the built development and supporting car parks within the central and eastern fields of the overall appeal site, with the western field used only for access and landscaping; the omission of the lodge; and the revisions to the access arrangements, simplifying the entrance but extending the egress arrangements to encompass Gate Lane. Gate Lane is currently a narrow, single carriageway, unclassified, country lane, but its western end would be transformed to a four lane highway by the development proposals.

10.5 It is accepted by the parties that the development involved in this appeal does not accord with the Development Plan in respect of Green Belt policy, nor does it accord with those categories of development deemed to be acceptable within the Green Belt by PPG2. It is therefore inappropriate development. The fundamental question then becomes whether there are very special circumstances sufficient to overcome the presumption against inappropriate development. The proper approach to that is set out in paragraph 3.2 of PPG 2:

“Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

10.6 The Court of Appeal in *South Bucks District Council v Secretary of State for Transport, Local Government and the Regions [2003] EWHC Civ 687* made it clear that the need is to establish not merely special but very special circumstances, and the High Court in *R (oao Chelmsford Borough Council) v First Secretary of State and Draper [2003] EWHC (Admin) 2978* underlined the fact that inconspicuousness is not sufficient to overcome PPG2 harm.

10.7 In assessing the harm to the Green Belt, four aspects are most relevant. First, there is the fact that inappropriate development is by definition harmful to the Green Belt. In view of the presumption against inappropriate development, substantial weight must be attached simply to this aspect alone. Secondly, there is the effect that the proposal would have on the openness of the Green Belt: the greater the effect on openness, the greater the harm to the Green Belt. In this context the vulnerability and/or functional importance of the relevant part of the Green Belt is a material consideration. Thirdly, there is the effect that the proposal would have on the purposes of including land in the Green Belt. PPG2 sets out 5 such purposes. The greater the harm to an individual purpose, the greater the overall harm to the Green Belt. Fourthly, there is the extent to which the proposal would conflict with the land use objectives in the Green Belt. PPG2 sets out 6 such

objectives. The effect of the proposal on land use objectives is less important than the effect on the Green Belt purposes; nevertheless it is material in assessing the degree of harm that would be caused by inappropriate development. Again, the greater the harm to individual objectives, the greater the overall harm to the Green Belt.

Green Belt harm through inappropriateness

10.8 The UDP reflects Government policy guidance in PPG2: Green Belts, where it is stated that *“inappropriate development is, by definition, harmful to the Green Belt”*, and that it is *“for the applicant to show why permission should be granted”*. It further states (at paragraph 3.2) that

“In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any application or appeal concerning such development.”

10.9 It is acknowledged by Shirley Estates that their proposal constitutes inappropriate development and, therefore by definition, there is clear and substantial harm in this case simply by reason of inappropriateness.

Harm to openness

10.10 Paragraph 1.4 of PPG2: Green Belts states that

“The most important attribute of Green Belts is their openness.”

The appeal proposal would involve a significant development of buildings and car parking, occupying a substantial area of what is at present open land. The application site itself covers 22.7 hectares, and the ES (Document CD416 paragraph 6.4) notes that the total area of hard surfaces would be 7.23 ha. There would be a facilities building (2246 sq m - 3477 sq m with curtilage) and fuel sales structures comprising a canopy of around 1600 sq m and building of 527 sq m. This would represent a significant loss of openness. The visual effects of the loss of openness would be mitigated to some extent by the location of the main areas of built development and hard surfacing in a less prominent position than was the case with the scheme rejected by the previous inquiry. However, there would still be a significant, physical loss of openness as compared with the present undeveloped state of the site, arising from these elements.

10.11 Moreover, the proximity of the MSA site to the existing built development in the Solihull/Dorridge gap would magnify the impact considerably. Shirley Estates maintain that the impact on the openness of the Green Belt is lessened as compared with the proposal from the previous appeal because the built area would lie further from the motorway corridor and deeper in the Green Belt gap. Such a contention can, however, only be described as perverse. If the previous development, sited as it was *“...would be extremely detrimental to the integrity of the narrow gap between Solihull and Dorridge.”*

(paragraph 19.172 CD212), such detriment could only be exacerbated by encroaching deeper into the gap, adding to and consolidating existing built development in that area (the Four Ashes Golf Centre, the Solihull Riding Club and Hogarth's Hotel).

10.12 It should be self-evident that whilst Green Belt policy is a single tier policy – all Green Belt is susceptible to the same degree of protection – the consequences of breaching that protection will vary greatly depending on the narrowness and vulnerability of the area of Green Belt concerned. The general harm to openness would be exacerbated by the resultant merging of Solihull with Dorridge, Bentley Heath and Knowle. In this regard it is entirely similar in impact and consequence to the previous proposal which was described at paragraph 19.146 of Document CD212 as representing a significant enlargement of the conurbation with a consequent reduction in the important gap between the Birmingham/Solihull conurbation and Coventry. Openness, the most important characteristic of Green Belt, would be lost; the integrity of the Green Belt would be lost and the “offence” would be in an area which the Development Plan regards as important in Green Belt terms.

10.13 Overall, the proposal would cause substantial harm to the openness of the Green Belt, which would be readily apparent, not least from the Trans-Solihull Link footpath, which crosses the site and which would require diversion.

Harm to the purposes of including land in the Green Belt

10.14 Paragraph 7.1.1 of the UDP sets out the specific purposes of the Green Belt in Solihull.

- (i) to check the unrestricted sprawl of large built-up areas
- (ii) to prevent neighbouring towns from merging into one another
- (iii) to preserve the special character of existing settlements
- (iv) to assist in safeguarding the countryside from encroachment
- (v) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.

The appeal proposal would in particular contravene purposes (i), (ii), (iv) and (v).

Checking the unrestricted sprawl of urban areas

10.15 The appeal proposal would extend development beyond the junction with the M42 into a predominantly rural area that contrasts quite markedly with the mostly built-up land to the north of J4. The fact that the buildings and car parking areas of the MSA would be a short distance beyond J4 would not alter the perception of the MSA as being a physical extension of the built-up area because of the roads, lighting, signing and other manifestations of the MSA on the approach to it from the junction. Experience of any off-line MSA reveals that the “paraphernalia” attending a MSA advertises its presence, and the illuminated entrance roadway and very significant earthworks as well as

the illuminated egress roadway would be evident on the west facing slope up to the ridgeline. The significantly urbanised form of Gate Lane would add to this perception.

10.16 The MSA would be only about 400m from the conurbation Green Belt boundary. Within that 400m would be the motorway itself, which is an urban form of development. The remaining narrow gap of some 200m that will be left between Aspire Business Park and the M42 has little visual function in diminishing the perception of urban sprawl as far as the motorway, particularly because the car park for Aspire Business Park will be within this gap. The inner edges of the Green Belt are the most vulnerable to pressure for development that, if not resisted, could lead to a gradual erosion of the Green Belt, as paragraph A2 of PPG 2 advises. This proposal would cause significant harm to the first Green Belt purpose, a conclusion that was shared by the Inspector who dealt with the First Review of the UDP (see paragraph 5.70 of Document CD103).

Preventing neighbouring towns merging

10.17 Both the Inspector at the 1999/2000 inquiry and the UDP Inspector considered that this Green Belt purpose applied to the gap between Solihull and Dorridge. That gap is already very narrow (only about 1.5km), and the appeal proposal would significantly reduce it.

Safeguarding the countryside from encroachment

10.18 Shirley Estates, through their witnesses, have sought to depict the appeal site as an urban fringe location. In fact, the site has a particularly rural character and appearance, notwithstanding the presence of the motorway, the influence of which lessens markedly as one crosses the ridgeline across the appeal site. The very removal of the built elements of the proposed development beyond the ridgeline, which the Appellants pray in aid in terms of reduced prominence and visibility, demonstrates the fact of encroachment into the countryside. It is clearly countryside in agricultural use. The development would result in the spread of the urban sprawl of Solihull, and therefore the appeal proposal would result in encroachment into this valuable wedge of Green Belt land.

10.19 Encroachment into this significant area of land would result in substantial harm to this third Green Belt purpose.

Assisting in urban regeneration

10.20 The need to ensure that MSA provision serves only motorway traffic and does not become a destination in its own right for the local community is particularly important in the sensitive Green Belt location around Birmingham. This has assumed greater significance since the last MSA inquiry (where it was mainly an issue in relation to the proposals for lodge accommodation), because of the adoption of the current RSS, with its emphasis on urban renaissance. The provision of an off-line MSA

would enable and encourage trade from non-motorway traffic which might otherwise be directed to within the urban area. An off-line MSA will always attract traffic as a destination in its own right. The extent of such attraction may be open to debate, but food outlets in the vicinity of business parks and poorly served villages are always likely to draw custom and thus traffic. Although there is a range of shops in Hockley Heath, the village is not so well served with facilities that local residents would not be tempted to use outlets such as a Marks and Spencer's Food Hall if one were located at the proposed MSA. It is expensive to park in the centre of Solihull, where alternative comparable facilities could be found.

Conflict with Green Belt land use objectives

10.21 Significant harm would also be caused to three of the Green Belt land use objectives.

Providing opportunities for access to the open countryside for the urban population

10.22 The present amenity of the Trans Solihull Link as a route across open countryside accessible to the urban population would be lost. The survey of use of footpaths in the area revealed a low level of use because it was undertaken in January. The benefit of retaining access to the countryside on foot is important and should be protected.

Retaining attractive landscapes and enhancing landscapes near to where people live

10.23 The appeal site has at present a rural feel. It is an attractive landscape which would be lost as a result of the MSA development. Even in the revised location, where the site would not be as visible as the earlier proposal would have been, it would still be experienced from the footpaths which cross the area.

To retain land in agricultural, forestry and related uses

10.24 The proposal would take land out of agriculture, and therefore cause harm in that respect.

Highway matters

10.25 While HHPC have not called any professional highway evidence, the area of HHPC lies immediately adjacent to J4, and the local population have experience of the way the junction operates, both before and since improvement and before and since the introduction of ATM on the M42. It is their experience that traffic queues of up to and over 1.6km in length are not uncommon; time consuming, shorter queues are frequent; and driver uncertainty at the junction is, for all except frequent users, a continual and continuing characteristic. The evidence provided by individual objectors who appeared at the inquiry supports that experience. J4 has an excellent safety record, but traffic

negotiating the junction and circulatory is frequently having to travel at such low speeds as a result of congestion that non-reportable low impact accidents are the order of the day. That is the only reason why the effects of driver confusion are not reflected in serious impacts. HHPC's highway concern does not relate so much to safety as to congestion and the impact on the efficiency of the junction and the highway network serving, and served, by it.

- 10.26 HHPC are aware of the committed development to be served by this junction and of the improvement to the junction, highways and signalling equipment to be provided in consequence of that development. The consequence of such development is that the number of drivers unfamiliar with the junction will increase. That situation would be substantially magnified if further drivers were leaving the motorway and entering the junction en-route to a MSA.
- 10.27 A number of the highway issues identified by other parties to the inquiry cause HHPC some concern. The various assessments prepared of the impact which the proposed MSA would have on the J4 roundabout and the local road network suggest that, if increased queues are not inevitable, they would be at least entirely possible. Unless it can be shown clearly that they would not cause significant inconvenience, any development which would give rise to such queues and therefore delays should not be permitted at this location.
- 10.28 The area has a regionally important premium employment location at J4 in the shape of BVBP. Its attractiveness is of paramount importance to the region's economy, workforce and future. The extent of present delays is singularly unfortunate, and there is every possibility that the future holds even greater expectations of congestion.
- 10.29 HHPC share the concern expressed by the highways witness for Swayfields that there is a significant underestimate of the traffic impact of the already permitted development at BVBP. Document HHPC9, the DfT's guidance on the assessment of travel plans, indicates at paragraph 1.2.1 that the most important measure of a travel plan's success is its outcome, that is its effect on employee travel behaviour for trips to and from and during the course of work and also trips by visitors and customers. Paragraph 4.4.2 of the same document states that experience demonstrates that, in order to achieve a 10% modal shift, one must produce an effective plan that has marketing and promotion plus car sharing and cycle measures plus large (30%+) discounts on public transport, together with works buses or additional public transport links.
- 10.30 In the case of BVBP Phase II, the Travel Plan's requirements are embedded in the Section 106 agreement (Document SMBC0/19) relating to the permission. The Section 106 agreement does not require a travel plan to provide anything like the extent of provision envisaged by Document HHPC9 – most particularly the large fare discounts required – to achieve even a 10% shift. Additionally, there is no limit set for traffic generation in the AM peak; maximum traffic generation is defined only
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by PM egress levels, measured as an average during one week of the year. Higher levels are therefore not only possible but almost inevitable. Furthermore there is no effective means of enforcing the plan. As a means of forecasting future traffic flows the arrangement is, in truth, a disaster.

- 10.31 Swayfields' witness assumes a 5% traffic reduction arising from modal shift generated by the travel plan of BVBP II, but even if he is wrong by 100%, the traffic flows used by Shirley Estates to forecast the working of the network rely on a 20% reduction. Even Shirley Estates' own witness did not actively support such a supposition, saying only that the Council and the HA must have been satisfied of the integrity of the assumptions.
- 10.32 It seems to HHPC highly probable that the real flows will be higher, delays greater and consequences for the motorway most serious. The HA have reacted to the possibility of increased queue lengths on the off-slips by stating that queue loops could be fitted. The immediate consequence of that approach would be decreased green time on the circulatory and local network links, with resultant gridlock.
- 10.33 As indicated at paragraph 5.22 above, there is a firmer indication at this inquiry, because of improved technology, that 74% of traffic passing the appeal site would not need a MSA on the M42. The Appellants' Transport Assessment (Document CD505) notes at paragraph 6.4 that the TRL report on turn-in flows at MSAs established that the further a MSA is from an earlier facility the higher the turn-in percentage. This supports the argument that the optimum position for a MSA is the midpoint between existing facilities.
- 10.34 The Catherine de Barnes MSA would be closer to the midpoint for 80% of the possible routes between MSAs than the J4 site. More importantly, this would be the case for most of the routes highlighted at the previous inquiry as important because of current lack of facilities.
- 10.35 Being an on-line facility, the Catherine de Barnes site would also serve the needs of drivers better than would an alternative at J4. A MSA at J4 would require drivers to leave the motorway and negotiate the traffic-signal controlled junction. The Catherine de Barnes site would provide a more attractive and inviting facility because of the shorter distance to be travelled between it and the motorway. In objecting to the MSA proposal at J4, HHPC are not positively encouraging development of the alternative site at Catherine de Barnes. In the event, however, that alternative location performs better than the J4 site in every functional respect.

Conclusions

- 10.36 HHPC contend that the proposed MSA at J4 would cause significant harm to the Green Belt in a large number of respects. If very special circumstances are to exist, then the positive arguments for the proposed MSA must clearly outweigh this harm. The site lies in a particularly
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narrow wedge of Green Belt land that separates the settlement of Dorridge from the main built-up area of Solihull. The appeal proposal would represent an inappropriate form of development which is, by definition, harmful to this narrow Green Belt wedge.

10.37 The appeal proposal would also result in a significant loss of openness and a significant encroachment into the countryside. The development of a MSA at this location would significantly harm the pleasant rural character of this area, contrary to UDP Policy C8. The development would also harm the rural quality of the landscape in the area, again contrary to UDP policies. There would be significant conflict with four of the specific purposes of including land within the Green Belt, and harm to three of the land use objectives for including land within the Green Belt.

10.38 The need for a MSA would have to be very substantial indeed if these strong Green Belt objections are to be outweighed and very special circumstances demonstrated. In 1999/2000, the Inspector found that the case on need was not sufficient to outweigh the strong objections to the J4 site, even if there were no other site for a MSA on this stretch of the M42. The amendments made since then to the scheme have done nothing to alter the fundamental Green Belt objections. Indeed, the scheme now intrudes further into the gap between Solihull and Dorridge.

10.39 The highway evidence in support of the proposal is unsatisfactory, based on flawed traffic flow assumptions and contradictory in terms of the ability of the network to accommodate the traffic consequences of adding MSA destined traffic to that using the junction for local and motorway entry/exit purposes other than for a MSA.

10.40 The harm which would be caused by the J4 development would far outweigh the benefits delivered by it and thus very special circumstances have not been demonstrated to justify the development at this location.

11. THE CASE FOR THE WARWICKSHIRE BRANCH OF THE CAMPAIGN TO PROTECT RURAL ENGLAND (apart from the issue of need)

The material points are:

As regards both appeals

11.1 The RSS offers no support for an additional MSA in the region. Were MSAs a regional transport need, this would be reflected in policy in the RSS in the same way that park and ride is mentioned in Policy T6.

11.2 Nor is there support for a MSA in the UDP. The UDP explains the position regarding the interim decision in relation to the Catherine de Barnes site, but offers no support.

- 11.3 In terms of national planning policy, neither site would comply with the principles of sustainable development set out in PPS1. Nor would they protect the quality and character of the countryside in accordance with PPS7.
- 11.4 Both proposals seek to provide more than the maximum quantity of retail space allowed in the MSA Policy Statement of 1998, a requirement which has been carried forward to the new policy on roadside facilities set out in Circular 01/2008. This brings both proposals into conflict with PPS6, which must be read with the specific shopping policy regarding MSAs.
- 11.5 Each proposal would be located within the Green Belt if approved; each would represent inappropriate development in the Green Belt in accordance with the UDP and with PPG2; and each would have seriously adverse effects on the Green Belt, which would not be outweighed by the limited level of need demonstrated.
- 11.6 The Secretary of State has, since the minded decision letter of 2001, shown readiness to disagree with Inspectors and to refuse to grant permission for developments within the Meriden Gap. Examples are provided by a decision of 1 March 2005 in relation to a proposed development of four dwellings on a scrapyards site at Becks Lane, Meriden (APP/Q4625/V/04/1145152) and by a decision of 14 March 2005 in relation to a proposed conversion of a farmhouse and barn to twelve dwellings at Hall Farm, Knowle (APP/Q4625/V/04/1142283). Copies of these decisions are attached to Document CPRE1A&B/1. CPRE do not suggest that these cases offer any specific guidance relating to the present appeals, but simply that they show a robust attitude taken by the Secretary of State to protection of the Meriden Gap, even when an Inspector has recommended approval.

Appeal A – Catherine de Barnes

- 11.7 This appeal site lies at the heart of the Meriden Gap. Approval of the development would create a built up area in the middle of the gap.
- 11.8 The RSS has the aim of maintaining and managing the highway system in a way that preserves the utility of the strategic routes (paragraph 9.73 of Document CD109). The addition of a MSA at Catherine de Barnes would cause dislocation to the free flow of traffic at congested times and undermine the utility of the strategic route without meeting any real need because of the number of existing service facilities on the regional system.
- 11.9 The retail facilities at the site would be easily accessible by a short journey along the M42, and would be likely to be used for convenience purchases on Sundays and in the evenings.
- 11.10 The proposed treatment of the M42 to accommodate and integrate the MSA with the ATM system would be visually and environmentally harmful. There would be widening to create four lanes each way, with a
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substandard and intermittent hard strip not amounting to a hard shoulder. There would be the loss of some existing landscaping. There would be a heavy concrete barrier in place of the current crash barrier on the central reservation. This is visually unattractive, as can be seen where it has been used on the M25 in Surrey.

11.11 The urbanising effect of this “hardening” of the motorway would alter its character. The M42 was built as an unlit rural motorway when it was opened in 1976. The ATM system harmed its appearance because of the introduction of lighting columns and gantries. The work proposed by the Appellants would transform the M42 into an urban motorway, despite its location in the Green Belt.

11.12 Walford Hall Farmhouse is an important listed building, being Grade II*. Following the findings of the last inquiry, revised proposals have been developed which would return the farmhouse to residential use (though not as a working farmhouse). The MSA would now therefore affect the setting of Walford Hall Farmhouse as a residential property. The motorway already harms the setting, especially since it was lit as part of the ATM scheme. There is nothing to show that the farmhouse could not be sold as a residential property without the MSA development.

11.13 The MSA buildings and car parking would be relatively close to the farmhouse, so that it would lose much of its context as the centrepiece of an isolated group of farm buildings in open countryside. The MSA would also be a harmful neighbour to the farmhouse because of the potential threat to security, real or perceived. Without the MSA, the farmhouse would be a secluded private residence. If the MSA is built, there would inevitably be security concerns, leading to fencing, lighting and other security measures. The MSA would thus be harmful to the setting of the listed building and could hamper its occupation as a single isolated residence.

Appeal B – Junction 4

11.14 Approval of development at this site would urbanise the eastern side of the M42 north of J4. It would reduce the separation between Solihull and Dorridge, thus undermining PPG2 principles.

11.15 The retail facilities at this site would be particularly likely to be used as a local retail facility for convenience purchases on Sundays and evenings. It is close to Dorridge, Hockley Heath and the Cranmore-Widney area to the north west of J4. The site would thereby become a destination in its own right contrary to the aim of MSA policy.

11.16 Both appeals should be rejected.

12. THE CASE FOR THE SOLIHULL AGAINST MOTORWAY SERVICE AREAS GROUP (apart from the issue of need)

The material points are:

12.1 SAMSAG is an alliance of a number of local organisations opposed to

both appeals. It includes Hampton-in-Arden Parish Council, the Hampton-in-Arden Society, the Residents' Associations of Catherine de Barnes, Dorridge and District and Balsall Common Village and SNAG (the Say No Action Group). SNAG has no formal constitution or membership, but has about 1,000 supporters and a managing committee.

- 12.2 In their closing submissions, SAMSAG refer to the ruling made (referred to at paragraph 1.39 above) that it was not open to them to cross examine fellow objectors on issues which both had raised in their objections. SAMSAG consider that this could lead to a false (and presumably adverse) impression of the strength of the new material they had produced. SAMSAG also complain that they have not been party to the production of many of the key documents considered at the inquiry. They say that is particularly the case in relation to documents concerning the need for a MSA.

General considerations – the Development Plan

- 12.3 SAMSAG consider that four areas of Development Plan policy were inadequately considered at the 1999/2000 inquiry.
- 12.4 The RSS seeks to protect **agricultural land**. MSA development at either site would be contrary to Policy PA14, in that it would be neither consistent with the character and environment of the settlement in which it would be located nor would it involve a business ancillary to farming or forestry. It would not promote agriculture (as required by Policy PA15), but would take land irreversibly out of agricultural use.
- 12.5 Paragraph 8.38 of the RSS underlines the need to consider agricultural land quality when considering development proposals. The Agricultural Land Classification Map produced by the former Ministry of Agriculture, Fisheries and Food makes it clear that both appeal sites are Grade 3 quality land (Annex 1 to Document SAM1A&B). It is accepted that most of the land is within Grade 3b, and that paragraph 28 of PPS7 states that little weight should be given in agricultural terms to the loss of Grade 3b land.
- 12.6 Policy C4 of the UDP indicates that the Council will safeguard the best and most versatile agricultural land in the Borough. It is accepted that PPS7 defines best and most versatile agricultural land as that falling within Grades 1, 2 and 3a.
- 12.7 These policy themes are supported in national planning policy contained in PPS7. The Government's policy for agriculture was further developed, however, by a statement made by the Secretary of State for Environment, Food and Rural Affairs on 3 July 2006 (Document SAM1A&B/1). This statement made it clear that the Government's goals for farming were to build a profitable, innovative and competitive industry; to make a net positive contribution to the environment; and to contribute to the long term sustainability of rural communities. Since the closing of the 1999/2000 inquiry, it is clear that farming has become
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more significant in both policy and land use terms. Similarly, the natural environment has grown in importance. The loss of agricultural land for whatever purpose is against Government policy. Such loss is neither sustainable nor protective of the natural environment. Both local and national agricultural policy is a material consideration which indicates that there should be no MSA development at either of the appeal sites.

- 12.8 In terms of **land transport** policy, neither the RSS nor the UDP makes any reference to the provision of a MSA in Solihull, though the UDP refers to the 2001 interim decision. The emphasis in both documents is on reducing the need to travel. The absence of any commitment to the provision of a MSA must be a strong material consideration.
- 12.9 The emphasis on reducing the need for road based travel is also reflected in the RSS approach to reducing **air pollution**. A consequence of reducing travel would be a reduction in the need for a MSA. The UDP indicates in Policy ENV15 that development which involves traffic which would generate emissions will only be permitted if it would not hinder the achievement of national air quality objectives. Policy ENV19 indicates that development which would be seriously harmful because of smell, noise or atmospheric pollution will not be permitted. Motor vehicles produce smell, noise and atmospheric pollution, and the development of either MSA would therefore be contrary to Policy ENV19 of the UDP.
- 12.10 Both the RSS and, to a greater extent, the UDP, seek to protect **Green Belt**. Both proposed MSA sites lie within the Green Belt. MSA development at either site would be inappropriate development within the Green Belt, and for each site there are no very special circumstances which would indicate that such development should be approved. One of the five purposes of including land within the Green Belt is to assist urban regeneration. Development at either site would involve the use of agricultural land, which would not assist urban regeneration.
- 12.11 Preserving the Green Belt is an important issue, and a number of attempts to develop in the Green Belt in this area has been refused, even though each of them would have had less impact than either of the MSA proposals. They are listed in Document SAM2A&B/6, and copies of the relevant decision letters form Documents SAM2A&B/6A to 6C inclusive.

General considerations - national planning policy

- 12.12 The major change in national planning policy since the 1999/2000 inquiry has been the introduction of the concept of sustainable development. The cross examination of the technical witnesses for each of the Appellants revealed that little or no account had been taken by any of those witnesses of whether the proposed developments would meet national sustainable development aims. Any decision on whether a MSA is needed on the M42 must now be based on sustainable development principles. If very special circumstances are considered to
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be important, their use should be tested against the sustainable development principle before they are used to reject an existing policy. The development of a MSA in a rural area, on existing agricultural land, is not sustainable development and should be rejected.

General considerations – the 1998 MSA Policy Statement

- 12.13 There was no public consultation on the 1998 MSA Policy Statement. This is now a requirement in accordance with the Planning White Paper of 2007. There has been public consultation as part of the roadside facilities policy review, and therefore it is appropriate that greater weight should be given to the product of that process, DfT Circular 01/2008 (Document CD256).
- 12.14 The new Circular notes that the improvement to safety which a MSA brings by allowing drivers to rest needs to be balanced against the potential risk to safety created by additional points of access and egress. In the case of Appeal A, this would involve new M42 access and egress points. It is certain that the availability of a MSA at this location would cause some drivers to cross from the outside lane to the hard shoulder with ATM in operation.
- 12.15 The inclusion of a lodge at the Catherine de Barnes site would lead to the site becoming a destination in its own right, since there is a lack of hotel provision for the nearby NEC and BIA. There was originally a proposal for a conference centre also to be included at the Catherine de Barnes site. There would be nothing to prevent a future planning application for such development being made.
- 12.16 In relation to the J4 site, there would be a risk that congestion at the traffic controlled roundabout at J4 might cause traffic to back up on the M42 mainline at peak hours.

General considerations – congestion

- 12.17 A MSA on the M42 would increase weaving between lanes, and therefore slow traffic down and add to congestion and delay. When there is congestion on this stretch of the M42, drivers travelling northwards on the M40 or southwards on the M42/M6/M6 Toll are often advised of it, and choose to leave the motorway to avoid the congestion. This causes increased traffic on roads such as the A452, with consequent problems for settlements such as Balsall Common. A MSA on the M42 could be responsible for these problems arising more frequently.

General considerations – PPS6 – Planning for Town Centres

- 12.18 PPS6 policy objectives apply to the provision of hotels. The town centres of Solihull and Shirley have a number of well established hotels. The provision of a lodge at the Catherine de Barnes site would be contrary to Government policy for town centres. Although no lodge is now included in the scheme for the J4 site, there would be nothing to prevent a planning application for a lodge at that site in the future if
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planning permission for the MSA were granted.

General considerations – adequacy of the Environmental Statements

- 12.19 The piecemeal submission of the ESs for each of the appeal proposals makes them unsatisfactory. Moreover, much of the material covered in the ESs was not given in evidence at the inquiry. The witnesses called at the inquiry were not responsible for some of the information contained in the ESs. The result was that it was not possible to cross examine witnesses on these matters.
- 12.20 The air pollution data provided are particularly unsatisfactory. BIA have been collecting air quality data since 1992. This source does not appear to have been used in the updated ESs. There is also information collected by Coventry University on nitrogen dioxide levels at both the appeal sites covering the period December 2001 to February 2002. This survey showed that at that time the levels at each of the sites exceeded the Government's planned 2005 maximum of 21 parts per billion ("ppb"). The 2001/2 level at the Appeal A site was 26.9ppb, and at the J4 site 33.4ppb.
- 12.21 The ES for Appeal A contains no air pollution data. The ES for Appeal B contains nitrogen dioxide data from Solihull town centre which dates from 1997, and 1999 data for Birmingham, Walsall and Wolverhampton. This information is of limited value for assessing the environmental impact of the proposals.
- 12.22 Traffic using the M42 is generally moving, often quite quickly. Traffic entering, parking in and then leaving a MSA would travel more slowly. Engines would need to be restarted. The refrigeration units of HGVs would need to be kept running even while the vehicles were parked. All this extra activity in a small area would inevitably lead to a deterioration of the air quality in the area immediately affected.

Appeal A – Catherine de Barnes

- 12.23 Many letters of objection to this appeal were sent by local people when the appeal was originally considered in 1999/2000. Because this is simply a reopening of the earlier inquiry, those original letters should still be taken into account. The people who wrote them did not consider it necessary to write again to let the reopened inquiry know of their concern.
- 12.24 The site is currently used for arable crop production, with a small part devoted to pasture. The Appellants produced no evidence concerning agricultural policy.
- 12.25 Much of the evidence presented about land transport revolved around the widening of the M42 to accommodate the proposed MSA. If there is concern about safety (which is claimed to be the basis of the need for the proposed MSA), the policies contained in the Development Plan do not reflect that concern.
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- 12.26 The provision of a new junction, with substandard access and egress, variable numbers of running lanes, and a narrow emergency strip would compromise the improvements to accident levels brought about by the ATM system.
- 12.27 During the inquiry, it was revealed that, if planning permission were granted at this site, vehicles would travel more than 2 million additional kilometres each year in accessing and leaving the site (see Document HA0/8). This would make it much more difficult to meet the reducing national air pollution limits at the site.
- 12.28 The concept of very special circumstances, which is nowhere defined, cannot be seen to be of relevance to the proposed use of the site when the Secretary of State has previously turned down appeals for recreational development in the Green Belt.
- 12.29 The operation of the site would require employees to travel to work. The public bus service past the site is infrequent. There is no evening, night time or early morning service past the site on Mondays to Saturdays, and no Sunday service at all (see Document SAM2A&B/5). Potential employees are likely to live in Chelmsley Wood, where there is the highest number of job seekers. No evidence has been produced by the Appellants to show how employees would arrive at the site. SAMSAG believe that employees would arrive by car and either park on the wide grass verge of the B4102 or use the M42 to access the site. Suggestions of cycling or walking along the unlit B4102 (which has no footway) are unrealistic.

Walford Hall Farmhouse

- 12.30 It is unsatisfactory and unnecessary for the future of Walford Hall Farmhouse to be linked to the construction of a MSA as a source of finance. The development of a MSA adjacent to the listed building would provide unsatisfactory living conditions for any residents of the Farmhouse.

Airports policy

- 12.31 An agreed statement between Swayfields and BIA has been produced for the inquiry which purports to deal with aviation issues. No formal consultation on this appears to have taken place with the Civil Aviation Authority. The absence of such consultation must cast doubt on the weight to be attached to the agreed statement.
- 12.32 The extension of the BIA runway would result in two major concerns for a MSA located at Catherine de Barnes. At present aircraft taking off in a south easterly direction make a right hand turn which takes them over the Catherine de Barnes site. With an extended runway, aircraft would be at a lower height when passing over the site, which could compound safety problems for the site. The extension would also increase pollution levels at the site. Data produced by the airport indicate that for the majority of pollutants the airport site is below the National Air
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Quality Strategy figures. Doubling air traffic movements by 2030, however, would almost treble nitrogen dioxide emissions. It would be impossible to meet nitrogen dioxide standards at the Catherine de Barnes site. The site would also suffer from kerosene odours and oily deposits from aircraft. Air pollution is a material consideration, and the site would fail to meet local and national sustainable development criteria.

- 12.33 Aircraft landing are helped by ground lights on the approach to a runway. One of the features of safeguarding maps is to minimise development along the flight path. While MSA development should not involve tall buildings, it would involve a considerable area of bright lighting. This lighting could lead to distraction to pilots approaching to land. The documentation produced with BIA does not appear to consider this potential problem.
- 12.34 The evidence produced by BIA should be treated with extreme caution. At no point has the legal link between the Council and Birmingham Airport Holdings Ltd, the holding company of BIA, been made. This link involves the Council having a shareholding and issuing a lease to allow the airport to operate.
- 12.35 The BIA Master Plan is a non-statutory document. Because of this, very little weight should be given to it. It highlights proposals for future developments at BIA. These include an extension to the existing main runway to be operational after 2012, and a third passenger terminal. Both of these proposals would require specific planning permission, as they are not permitted development. Development at BIA will involve major land traffic movements which will affect the M42, but regional and local policies do not appear to support improvements to J6 to accommodate airport expansion. Congestion will therefore continue to increase on the M42 and affect access to and egress from the Appeal A site.

Appeal B – Junction 4 site

- 12.36 This site is currently used for animal husbandry, and is down to permanent pasture. The Appellants produced no evidence concerning agricultural policy.
- 12.37 There is no support in the Development Plan for a MSA on the M42, despite the fact that the Appellants tried unsuccessfully to obtain a site specific allocation of land in the UDP.
- 12.38 During the inquiry, it was revealed that, if planning permission were granted at this site, vehicles would travel more than 4 million additional kilometres each year in accessing and leaving the site. This would make it much more difficult to meet the reducing national air pollution limits at the site.
- 12.39 The introduction of a MSA to the east of the M42 would reduce the width of the Green Belt separating Dorridge, Bentley Heath and Knowle from
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the M42.

- 12.40 One of the purposes of the Green Belt is to provide recreational opportunities. The proposed development would affect a recreational footpath (SL56), which is part of the Trans Solihull Link. That footpath would need to be diverted in a way which would not maintain its rural nature and would bring walkers into additional conflict with vehicular traffic.
- 12.41 Employees at any MSA approved on the site would need to travel to work. Public transport bus services past the site are infrequent. There is no bus stop on the section of the A3400 which passes the site. The bus route to BVBP does not operate on an evening, at night time or early in the morning, and there is no service on a Saturday or Sunday. No evidence has been produced by the Appellants to show how potential employees would travel to the site. The probability is that private vehicles would have to be used to reach the site, and this would add to the traffic around the J4 roundabout.
- 12.42 That roundabout is complex, and already busy. The combination of the additional traffic to be expected from BVBP Phase II, the Aspire Business Park, other permitted new developments in the area such as the TRW site, and then the traffic which would be generated by the MSA would make the position impossible, though it is accepted that those developments have been permitted by the Council following what is said to have been careful consideration by traffic consultants and by the HA. The mathematical modelling which purports to show that the roundabout would cope is challenged by reputable expert witnesses. It is also challenged by common sense and the practical experience of local people. It does not offer an acceptable prospect for cyclists and pedestrians, who would continue to need to use the roundabout.

Conclusion

- 12.43 The bulk of the written representations from local people oppose the construction of any MSA. It is important that this inquiry is not seen as a beauty contest between two competing appeals. The reality is that both sites are unacceptable, and both appeals should be rejected.

Conditions

- 12.44 Without prejudice to SAMSAG's opposition to both appeals, any planning permission granted should be subject to conditions which remove all permitted development rights, limit light output on the site, remove the ability to display signs without express consent, and require the replacement of any vegetation which dies.

13. THE CASE FOR WELCOME BREAK GROUP LTD (apart from the issue of need)

The material points are:

- 13.1 In the seven years since the initial public inquiry, there have been changes in the primary legislation governing the land use planning system as well as changes in policy at national, regional and local levels. The relevant policies now are, however, substantially the same as those which applied at the time of the 1999/2000 inquiry. In so far as there have been detailed changes in policy, they do not affect the substantive planning issues raised by the two schemes.
- 13.2 It remains the case that both sites are within the Green Belt; both proposals would entail inappropriate development; inappropriate development is by definition harmful to the Green Belt; substantial weight attaches to this harm; and permission can only be granted for either of the proposals if very special circumstances are demonstrated.
- 13.3 As indicated at paragraph 5.32 above, the level of need for MSA facilities in the area is now no greater than it was in 1999/2000.
- 13.4 Because the policy considerations and the need considerations remain substantially as before, the decisive factors in relation to the two appeals must be any changes which have been made to the proposals themselves and any changes in the extent of the harm that they would cause.

Appeal A – Catherine de Barnes

- 13.5 The scheme at Catherine de Barnes remains substantially as it was before. Despite the time which has elapsed since the interim decision, the fundamental question of how access to the site would be secured remains outstanding. To that extent, the legal representations made by Welcome Break during the 1999/2000 inquiry and in writing on 25 November 2004 remain relevant.
- 13.6 The Inspector at the earlier inquiry made it clear in his conclusions (and the Secretary of State agreed) that it would be better if there were no MSA on the Solihull section of the M42 if the outstanding issues in relation to the Appeal A site could not be resolved.

Appeal B – Junction 4

- 13.7 The J4 scheme is a new scheme, which is different in several respects from the one considered at the previous inquiry.
- 13.8 The proposal is for a junction MSA, and so has to overcome the presumption in favour of on-line MSAs now embodied in Circular 01/2008. Welcome Break consider that the scheme would overcome that presumption and accord with the new policy if the Appeal A proposals are found to be unsatisfactory in their impact on the operation of the M42 and the J4 proposals achieve the agreement of the HA.
- 13.9 In those circumstances, the new, more compact J4 proposals would offer advantages over the earlier version of the scheme in having less impact on the narrow Green Belt gap, and because certain elements of the original scheme, such as the proposed lodge, have been deleted.
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13.10 The proposal would, to that extent, be better tailored than its predecessor to the degree of need which exists on the Solihull section of the M42, and it would more closely reflect the principles of the new MSA policy now contained in Circular 01/2008.

Green Belt issues

13.11 Despite this, Welcome Break do not consider that either scheme demonstrates clear benefits sufficient to outweigh the harm to the Green Belt which would be intrinsic to both of them. As paragraph 3.2 of PPG2 emphasises, very special circumstances only exist where the balance is clearly in favour of the development; otherwise the appeals must be dismissed.

14. THE REPRESENTATIONS OF THE INTERESTED PARTIES (apart from the issue of need)

The material points are:

- 14.1 **Lorely Burt** is the MP for Solihull. She is opposed to both appeals, each of which she considers would have an adverse effect on her constituents if it were allowed.
 - 14.2 Planned expansion at the NEC and BIA would generate demand for accommodation at the lodge included within the application for the Catherine de Barnes site. The site would become a destination in its own right. The provision of a lodge would lead to more of the Green Belt being taken up, but it would do nothing to address the increased congestion, noise, light and air pollution which the MSA would bring for local residents.
 - 14.3 Despite the ATM system, the M42 is still sometimes congested, particularly when a major event is being held at the NEC. The added confusion and lane changing which would be generated by traffic leaving the motorway for or rejoining it after the MSA would slow traffic and add to congestion and delay. There are already four junctions in an 11km stretch of the motorway. The proposed MSA would add another, with a consequent increase in lane changing and a potential increase in accidents and reduction in road safety.
 - 14.4 Allowing Appeal B would avoid the replacement of the hard shoulder by an inadequate hard strip, but only at the cost of increasing the complexity of an already confusing and congested J4 roundabout, which is, even at present, a frightening and dangerous place for cyclists and pedestrians.
 - 14.5 If either appeal were to be allowed, increased congestion and delay on the M42 would result. This would cause some drivers to leave the motorway to find other routes to their destinations, with an adverse impact on the local road network in Shirley, Dickens Heath, Monkspath, Solihull, Elmdon or Olton. The quality of life for local residents would be
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poorer.

- 14.6 Noise from the M42 is already a big issue for residents living in the Monkspath and Hillfields areas. Additional vehicles pulling off the motorway would exacerbate the problem.
 - 14.7 A MSA would also have an adverse impact on the wildlife which would be affected. Habitats would be disrupted or destroyed; food sources would be gone; and behaviour would be disrupted by light pollution.
 - 14.8 The greatest area of concern, however, would be in relation to the future of the Meriden Gap, an extremely valuable piece of Green Belt which has effectively served for many years to separate Birmingham/Solihull from Coventry.
 - 14.9 The proposed MSA at Catherine de Barnes would involve covering a substantial area of farmland with tarmac. The J4 proposal would represent an even greater threat to the Green Belt. Building on the eastern side of the M42 at J4 could spell the death knell for the Meriden Gap in that area.
 - 14.10 It is necessary to decide whether the limited demand for either MSA outweighs the detriment which would be caused by building in the Green Belt. Ms Burt contends that it would not.
 - 14.11 Many of these points are endorsed by **Caroline Spelman**, the MP for Meriden, who also opposes both appeals.
 - 14.12 In 1999/2000, the Secretary of State ruled that the benefits provided by a MSA would outweigh the damage to the Green Belt, but only at the Catherine de Barnes site. Now the balance of the benefits as against damage has swung against a MSA at Catherine de Barnes. The imbalance at J4 was already recognised by the Secretary of State, who considered that the benefits of a MSA at J4 did not outweigh the damage it would cause. That position remains the same.
 - 14.13 The proposal for a MSA at Catherine de Barnes would call into question the continuation of the ATM system on the M42. This has already had a major positive impact on accidents along this stretch of motorway. What was originally seen as a pilot project has now proven to be a flagship method of reducing congestion, which minimises the stop/start nature of heavy motorway traffic. This, in turn, produces fewer damaging emissions, and is therefore more sustainable. As things stand, it will have delayed the need to widen the motorway by, at least, a considerable number of years.
 - 14.14 It is imperative that nothing is allowed to affect such a success story, which is proving to be a benchmark for many parts of the national motorway system.
 - 14.15 While the ATM system has relieved congestion on the M42 to an extent, there has been a strategic decision to allow development of business parks along the western side of the M42. This has attracted a significant
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amount of new employment to the area, and has played a major part in the success of the local economy. It is particularly the case at the J4 site, where the BVBP and the Aspire Business Park are located. Anything which might adversely affect this situation would be extremely unwelcome. The extra congestion on the J4 roundabout which a MSA would cause would not add significantly to the local economy, but could very easily detract substantially from it.

- 14.16 The J4 roundabout is difficult to negotiate, even for somebody who is very familiar with it. The additional complication of providing access to a MSA at that point would not be either safe or viable.
- 14.17 In addition, there are proposals for expansion at BIA and for the development of a regional casino at the NEC. Both these developments would bring further congestion to the M42.
- 14.18 The review of the RSS in relation to housing is likely to result in approval to a significant increase in house building in the region, and again this is likely to put extra pressure on the orbital motorway system around the conurbation, with extra congestion.
- 14.19 It is surprising that the process for determining the issue of the possible location of a MSA on the M42 has taken so long. A final decision should have been taken in 2001. Many constituents have suffered blight since then because of the threat of MSA development. A full and final decision should now be made quickly, and that decision should be to dismiss both appeals.
- 14.20 **Councillor Len Cresswell** also refers to the loss of habitat, extra light, noise and air pollution which would arise from the proposed development at J4, and the possibility of contamination from surface water run off from vehicles at the proposed MSA. He considers that this could jeopardise the integrity of the water supply that feeds into the River Blythe, which has SSSI status. Some of this water is tapped off for human needs a little further along the river.
- 14.21 The proposed MSA at J4 would increase air pollution in the area as a result of vehicles accessing the site, parking up, and then eventually leaving the site. The highest level of pollution from a vehicle comes at the point of start up when the engine is cold, as it would be after a stop. In 2007, Heartlands Hospital, Solihull's main hospital had the highest incidence of admissions for child asthma in the UK, which says a great deal about the present level of air quality in the area.
- 14.22 Councillor Cresswell states that presently many drivers travelling north are taking the option of leaving the M42 at J3 and using local lanes as rat runs rather than facing the existing congestion at J4. Drivers of HGVs taking this course are damaging the local infrastructure. That tendency would increase if the proposed MSA were to be built at J4 because of the congestion and delay which would arise at the junction and at the J4 roundabout.
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- 14.23 **Mr and Mrs Train** live near J4, and have day to day experience of the area, the local roads and the motorway. They refer to Green Belt policy, and express concern that, if Appeal B is allowed to the east of the M42, it would establish a precedent for the creeping urbanisation of the A3400 towards Hockley Heath and along Gate Lane towards Dorridge.
- 14.24 At the Council Planning Committee, a representative from Shirley Estates said that the current MSA proposal had been located so that it could not be seen from the M42, the idea being to retain an appearance of travelling through a rural area for drivers on the M42. But this would mean that the built development would encroach further into the surrounding open countryside to the east. It would be more visible from non motorway areas in that countryside.
- 14.25 Mr and Mrs Train also express concern at the damage to the recreational value of countryside footpaths which the J4 proposal would cause, and at the potential increase in air, light and noise pollution. They consider that a MSA at J4 would cause increased weaving on the motorway, where much lane changing already takes place to the north of J4 as drivers travelling south who are familiar with the area prepare for the motorway split at J3A.
- 14.26 The widening of part of Gate Lane could lead drivers to believe that the whole of the road had been widened. The proposal is only that the widening would run to the roundabout at the exit from the J4 MSA. The remaining length of Gate Lane would continue to be a narrow country lane, with ninety degree bends and no footway. This could lead to accidents involving drivers unfamiliar with the road.
- 14.27 On days when the M42 is closed or very busy, the roads between Dorridge and Knowle can become very congested with traffic coming off the motorway. Mr and Mrs Train are concerned that either MSA would cause extra traffic to be added to the narrow local roads as MSA users decide not to return to the motorway, but to find an alternative route to, for example, the A45.
- 14.28 Mr and Mrs Train contend that very special circumstances have not been demonstrated to justify inappropriate development in the Green Belt. The J4 MSA would cause harm to the amenity of the area, especially to the open countryside outside the M42 motorway. The J4 appeal should be dismissed.
- 14.29 **Ms Valerie Just** objects to Appeal B. She is particularly concerned about the impact of the proposed widening of Gate Lane.
- 14.30 A map prepared by the Birmingham and Warwickshire Archaeological Society in 1989/90 (attached to Document VJU1B) shows Medieval Monkspath, with Gate Lane on its still existing line. It is an ancient sunken lane. The adjoining Monkspath Wood is ancient woodland. There are English bluebells in the verge along Gate Lane and in Monkspath Wood. These are protected under the Wildlife and Countryside Act 1981, but they would be affected by the development
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proposals. Another area of old woodland known as Little Monkspath Wood to the north east of Gate Lane would also be affected by the proposed MSA at J4.

14.31 These sites deserve protection because of their historical interest and their wildlife value. The MSA would damage the character and beauty of the local landscape, as well as increasing traffic noise and congestion in the area of J4.

14.32 *Inspector's Note: At the time of the accompanied site visit, bluebells were not in flower. It was possible to identify only one clump of bluebells on the verge at Gate Lane, although there appeared to be very many clumps within Monkspath Wood, beyond any area of the verge which would be affected by the proposed J4 development. I returned to make an unaccompanied site visit to the area after the sitting of the inquiry on 12 May 2008, because I thought it possible that the bluebells would by then be in flower.*

14.33 *That was indeed the case, and I found six small clumps of what I was able to identify as English bluebells (*Hyacinthoides non scripta*) in the verge which would be affected by the J4 proposals. There were also many thousands within Monkspath Wood itself.*

14.34 *I reported this to the inquiry at its next sitting on 3 June 2008, together with my understanding of the level of protection which English bluebells enjoy under the Wildlife and Countryside Act 1981.*

14.35 *English bluebells were not originally listed among the plants protected in Schedule 8 to the 1981 Act. They were added to the protected list by Article 3 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1998 (SI 1998 No 878). But the protection afforded to English bluebells extends to a prohibition on sale only. I consider that effectively that would be irrelevant in its impact on whether or not the J4 scheme could be carried out if approved.*

14.36 *Having shared that view with the inquiry, I invited anybody who had a contrary opinion to share that opinion with me, either during the inquiry or in closing submissions. Nobody did so.*

15. WRITTEN REPRESENTATIONS (apart from those relating to the issue of need)

The material points are:

15.1 **English Heritage** reiterate the view that the proposed MSA development would be seriously harmful to the character and setting of Walford Hall Farmhouse. Nonetheless, EH were fully involved in the development of the Appellants' revised proposals for Walford Hall Farmhouse as a separate residential unit, including the repair of the associated farm buildings, all within a single ownership boundary. The proposals for the restoration of the farmhouse to residential use and the

repair of the farm buildings, as granted listed building consent, would meet EH concerns.

- 15.2 EH are satisfied that the revised proposals for Walford Hall Farm are consistent with the advice given in PPG15. The retention of the farmhouse in residential use would be consistent with paragraphs 3.8 and 3.10, which advise that the best way of securing the upkeep of a listed building is to keep it in active use and that the best use will very often be that for which it was originally designed. While concerns remain about the wider setting, the Appellants' agreement to retain and repair the associated farm buildings would clearly maintain the integrity of the historic farmyard group. EH are fully satisfied that the approved repair works conform to best conservation practice as set out in Annex C of PPG15.
- 15.3 In the event that planning permission is granted for the MSA, EH consider that the terms of the October 2004 Planning Obligation and the works specified in schedule 4 thereto (*now replaced by the March 2008 Agreement Document CD734*) would provide an adequate framework to ensure that the listed farmhouse and its outbuildings would be appropriately restored prior to the opening of the MSA.
- 15.4 **The owners of Blythe Valley Business Park** object to Appeal B because of the potential impact that development would have on the operation of the roundabout at J4 of the M42.
- 15.5 BVBP was brought forward as a Regional Investment Site through a plan led process (the RSS and the UDP), leading to outline planning permission in 1995 (Phase I) and 2006 (Phase II) for the development of 185,800 sq m (2 million sq ft) of high quality Class B1 accommodation. Accessibility to the M42 has always been an essential element to the successful operation of the site. J4 is a difficult junction, the challenges of which have been addressed through substantial investment, including a new bridge over the M42 for Phase I, and careful junction redesign for Phase II, in liaison with the HA and the Council. The level of additional traffic flow around the J4 roundabout which would be caused by the proposed MSA at J4 would be prejudicial to the integrity of the planned junction design. This assumed that there would be no development in the Green Belt, particularly following the Secretary of State's refusal of the earlier application for planning permission on the J4 site.
- 15.6 The capacity for J4 to operate freely in order that access to and from BVBP is quick and convenient is critical to the reputation of BVBP and the long term viability of its future development. The project was conceived and competes as an easily accessible location at the heart of the country's motorway network in order to attract regional and national occupiers. Anything which adversely affects the junction's capacity or which leads to congestion would seriously undermine the reputation and competitiveness of BVBP, and could prejudice the success of that development. If BVBP is not successful, then RSS policy, and indeed confidence in the plan led system, would also be undermined.
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- 15.7 During the course of the inquiry, it emerged that Shirley Estates consider it reasonable to assume that the proposed improvements to J4 associated with the BVBP development would be carried out before any development commenced on their proposed MSA. The trigger point for those junction improvements is the occupation of 130,060 sq m (1,400,000 sq ft) of floorspace across BVBP as a whole. Marketing and commercial considerations will determine the rate at which BVBP develops, and therefore the time frame within which the junction improvements are carried out. Currently, around 52,000 sq m of the floorspace at BVBP is occupied, and it is therefore likely to be some time before the junction improvements need to be undertaken. If planning permission were to be granted for a MSA at J4, it is safe to assume that MSA development would commence well in advance of the BVBP junction improvements.
- 15.8 In that situation, Shirley Estates apparently consider that the owners of BVBP would make available to them the land needed to undertake the highway works at J4 which would be required by the MSA development. This is not the case.
- 15.9 The additional traffic flow and the potential for congestion around J4 which would be associated with the proposed MSA would be seriously prejudicial to the reputation and attractiveness of BVBP. The owners of BVBP would therefore not make land available to facilitate highway works associated with any MSA at J4.
- 15.10 The **other written representations** received before and during the inquiry are contained in Documents CD801 and GNA1. They include representations opposing Appeal B from **Tanworth-in-Arden Parish Council** and the **Hockley Heath Residents' Association**.
- 15.11 The **original written representations in relation to Appeal A** (referred to by SAMSAG at paragraph 12.23 above) are contained in Document 13.1.1 of the documents from the 1999/2000 inquiry. They are summarised in Section 18 of the report of that inquiry (Document CD212).
- 15.12 Also in relation to Appeal A, **Advantage West Midlands**, the Regional Development Agency, wrote on 11 November 2005 to underline the importance of considering fully the implications of the proposals on BIA. In a later letter dated 30 March 2007, however, the RDA state that the position of BIA and the NEC will not impact on the location of a MSA at Catherine de Barnes. The RDA generally support the proposal and encourage infrastructure of this nature, though due regard needs to be given to potential impacts on other regional economic interests.
- 15.13 With the exception of the points raised by EH, the owners of BVBP and the RDA, all issues raised in the other written representations have been covered in the report of the cases of the parties who appeared at the inquiry.
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16. CONCLUSIONS

16.1 Bearing in mind the submissions and representations which I have reported, I have reached the following conclusions, references being made in square brackets to earlier paragraphs where appropriate.

Background

- 16.2 In 1999/2000, a public inquiry heard three appeals for outline planning permission to build a motorway service area (“MSA”) on the M42 at one of three potential sites between Junction 3A (“J3A”) and Junction 7 (“J7”). That stretch of the M42 forms the eastern section of the motorway box around the Birmingham conurbation [2.1]. Each of the appeals had been recovered for determination by the Secretary of State [1.2]. Two appeals were dismissed, but the then Secretary of State indicated in March 2001 that he was minded to grant permission in relation to the third appeal, subject to the resolution of a number of issues [1.3, 1.4].
- 16.3 In 2005, with certain issues remaining outstanding, it was decided that, because of the extent to which circumstances had changed since the interim decision made in 2001, the inquiry into the third appeal (Appeal A for the purposes of this report) would be reopened [1.7].
- 16.4 Subsequently, an appeal was made in relation to the non-determination of a further outline application, made in 2001, for MSA development on the M42. That appeal is Appeal B for the purposes of this report. It was recovered for determination by the Secretary of State, and conjoined with the reopened inquiry into Appeal A [1.19].

Procedural matters

16.5 Given the time which had elapsed since the applications were submitted, each of the Appellants asked that updated illustrative plans should be considered at the inquiry.

The scheme considered in Appeal A

- 16.6 Swayfields, the Appellants in Appeal A, ask for their appeal to be considered on the basis of the illustrative layout shown on drawing DH.301.A-5.F and the proposed carriageway widening between J5 and J6 of the M42 shown on drawings 98092/426 to 429 inclusive. The carriageway widening drawings were produced only in December 2007 [1.11].
- 16.7 Solihull Metropolitan Borough Council (“the Council”) accept (subject to a point which I shall deal with from paragraph 16.90 below) that these are the drawings which should be considered [1.14]. The Highways Agency (“HA”) were not, however, able to prepare their initial statements of evidence on the basis of drawings 426 to 429. In the event, the purport of those drawings was substantially covered on behalf of the HA in the rebuttal evidence submitted as the inquiry progressed. The changes made by drawings 426 to 429 are relatively
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minor, although they have impacts of some significance [6.107, 6.140, 9.11, 11.10]. I was satisfied that ultimately no party would be prejudiced by taking them into account. I have therefore considered Appeal A as the Appellants requested on the basis of illustrative drawing DH.301.A-5.F and drawings 98092/426 to 429 inclusive.

16.8 The current Environmental Statement (“ES”) provided in relation to Appeal A covers the scheme shown in drawing DH.301.A-5.F [1.9], and I have taken it into account in arriving at my recommendations. The current Transport Assessment provided in relation to Appeal A does not deal with the scheme shown in drawings 98092/426 to 429 inclusive; it deals with the scheme shown in the earlier set of drawings 98092/262 to 272 [1.12]. Swayfields contend that the original Transport Assessment remains relevant, and that it was supplemented by evidence given at the inquiry regarding the changes contained in the new plans [6.108]. This is a matter to which I return at paragraph 16.106 below when considering the merits of the Appeal A highway proposals.

The scheme considered in Appeal B

16.9 Shirley Estates, the Appellants in Appeal B, ask for their appeal to be considered on the basis of the illustrative layout shown on plan 50292_MSA_001 Revision F [1.23]. This differs slightly from the plan covered by both their ES and their Transport Assessment [1.24 and 1.25]. It forms part of the basis, however, on which the HA withdrew their objection to Appeal B. The changes made by Revision F to the scheme shown in Revision E (which was the version considered in the ES and the Transport Assessment) are relatively minor. They accommodate some additional parking spaces [7.104]. I was satisfied that no party would be prejudiced by taking them into account. I have therefore considered Appeal B on the basis of the illustrative layout shown on plan 50292_MSA_001 Revision F. The Council contend that the impact of the revision (and a further potential revision to meet a condition) has not been properly assessed in the ES [8.54, 8.55]. This is a matter to which I return from paragraph 16.188 below.

Procedural issues raised by Solihull Against Motorway Service Areas Group (“SAMSAG”)

16.10 During the course of the inquiry, a request was made by SAMSAG, a Rule 6(6) party, for the right to cross examine witnesses of the Council and the HA, both of which bodies were at the time fellow objectors to the two appeals. (The HA subsequently withdrew their objection to Appeal B.) [1.37].

16.11 SAMSAG claimed that a Rule 6 party has a right under Rule 15(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to cross examine all persons giving evidence at an inquiry, so long as that cross examination is not irrelevant or repetitious [1.38].

- 16.12 I ruled that, although a Rule 6(6) party is a person entitled to appear at the inquiry under Rule 11(1)(h) and therefore has the right to call evidence, only statutory parties have the right to cross examine under Rule 15(5). The definition of a statutory party in Rule 2 does not include Rule 6(6) parties. Cross examination by SAMSAG was therefore a matter at my discretion. I had allowed SAMSAG to cross examine the witnesses of the two Appellants, to whose cases they were opposed. The witnesses of fellow objectors, however, could in my view only properly be questioned where the case of SAMSAG against the two appeals differed from the cases of the other objectors concerned. I asked for a note of the questions which SAMSAG wished to put to objectors' witnesses to be provided for me in advance, so that I could establish whether in fact they related to issues on which SAMSAG's case differed from the case of the objector concerned. I allowed questions to be put to objectors' witnesses by SAMSAG where SAMSAG's case was opposed to the case of any fellow objector; and on some occasions I pursued any issue of uncertainty by asking a question on the matter myself; but I refused to allow questions on issues where the same point was being raised by a fellow objector.
- 16.13 Since I allowed SAMSAG to cross examine even friendly witnesses on issues on which their cases differed, I do not see how their case could have been prejudiced by my ruling as they claim [12.2].
- 16.14 SAMSAG also complain that they were not party to the production of what they say were many of the key documents considered at the inquiry, particularly those concerning the need for a MSA [12.2]. SAMSAG have, however, had **access** to all inquiry documents, since an open access library of inquiry documents was maintained by the Programme Officer both before and during the inquiry. In addition, **copies** of all documents introduced at the inquiry were normally provided for SAMSAG. There is no entitlement for any party to insist on being involved in the **production** of documents by another party or parties. In particular, Statements of Common Ground ("SCGs") are negotiated by the signatories to them, and other parties need not be involved in their preparation.
- 16.15 In their closing submissions, SAMSAG suggested for the first time that evidence produced by Birmingham International Airport ("BIA") should be treated with caution because there is a legal link between the Council and the holding company of BIA [12.34]. I do not follow this point. BIA did not sustain an objection to either of the appeals; the Council objected to both of them. I do not see how any link between the Council and BIA could logically have coloured BIA's decision to withdraw from their initial position of objection to the appeals. I have attached no weight to this point.

Policy considerations

- 16.16 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise.
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The Development Plan includes the Regional Spatial Strategy (“RSS”) for the West Midlands, including the first phase revision, and the Solihull Unitary Development Plan (“UDP”) [4.1, 4.2]. A second phase revision of the RSS is in course of preparation, but further consultation and examination in public remain to be undertaken. Where any relevant policy differs in the second phase revision draft from the published RSS, I have attached only limited weight to it [4.3].

16.17 There is agreement between each of the Appellants, the Council and the HA on the relevant policies of the Development Plan which bear on the decisions to be taken on these appeals. There is a similar level of agreement regarding the national planning policy guidance which applies. These agreements are set out in SCGs concerning each of the appeals [4.4, 4.5].

The issue of the need for a MSA

16.18 The interim decision of March 2001 accepted that there was a significant unmet need for one additional MSA serving traffic travelling in both directions on the M42 between J3A and J7 [5.4, 5.5]. The issue has a bearing on each of the appeals. Hence I deal with it first as a general consideration.

16.19 There has been no material change in the provision or availability of MSAs taken into account in the 2001 interim decision since that decision was made [5.10, 5.40]. The new MSAs which have opened since 2001 were known of and taken into account when the interim decision was made [5.24, 5.30].

16.20 Although no specific evidence of demand from drivers for a MSA in this area was produced [5.29], it is Government policy to seek to provide MSA facilities for every 30 minutes of driving time on the motorway system. The aim is to contribute to road safety by providing a chance for drivers to stop and rest [5.3, 5.15]. That approach is considered by the Government to have overall benefits despite the obvious fact that introducing additional lane changing manoeuvres by vehicles wishing to enter and then leave a MSA itself gives rise to a new risk of accidents [5.22].

16.21 The aim of providing a MSA for every 30 minutes of driving time continues to be included in the latest policy statement on roadside facilities [5.11, 5.35]. While some MSAs on other motorways would lie only a short distance away from a MSA on either of the appeal sites, there are significant existing gaps (which such a MSA would fill) between MSAs on the M40 to M6 north; the M40 to M54; the M40 to M42 north; and the M40 to M6 Toll [5.8, 5.9, 5.15, 5.28].

16.22 Drivers travelling north on the M40 can reduce the distance to their next MSA by taking a different route, travelling west around the motorway box. This route is now signed, but for those who use the M42 eastern route the gap remains [5.25, 5.26].

- 16.23 Although a large proportion of the traffic on the M42 between J3A and J7 is local or commuter traffic, the number of long distance journeys on the section is substantial [5.13, 5.21]. While the percentage of drivers travelling more than 48km (30 miles) between MSAs could be as low as 26%, the sample on which this figure is based is a small one. It is common ground, however, that this would represent some 34,995 vehicles per day travelling more than 48km without access to a service station [5.22, 5.36]. This is a figure significantly greater than that on which the then Secretary of State based his interim decision in 2001 that there was a significant unmet need for facilities. In my view, the current need is therefore greater than that which existed in 2001.
- 16.24 The introduction of Active Traffic Management (“ATM”) on the M42 between J3A and J7 has led, initially at least, to a welcome reduction in accidents on that stretch of road [5.18, 5.35]; but the latest research, mentioned in Department for Transport (“DfT”) Circular 01/2008, indicates that up to 20% of accidents on monotonous roads (especially motorways) are caused by tiredness [5.12]. I accept the point made by the Appellants that it is fatigue related accidents close to the end of a gap without a MSA which are more relevant to the case of need than accident statistics from the middle of a gap [5.35]. It is accident statistics from the middle of a gap which the report on the results of the initial operation of ATM provides [5.17, 5.18, 5.35].
- 16.25 Improvements in journey time reliability between J3A and J7 as a result of the introduction of ATM do not impact on the need case. The policy assumes that 45km (28 miles) will be covered in 30 minutes. When ATM is in operation, the maximum permitted speed is normally 50mph (80kph). Even if the whole distance were to be covered at the legal maximum speed of 50mph, it would take almost 34 minutes to cover 28 miles. On that basis, I consider that the need case for a MSA is strengthened [5.18, 5.19, 5.33].
- 16.26 Even if there is space at existing MSAs, as some parties allege [5.29, 5.31], I do not consider that spare capacity at adjoining sites addresses the need on the Solihull stretch of the M42 [5.37]. It is of no assistance to a tired motorway driver to know that there will be space at a MSA located many kilometres away.
- 16.27 Various objectors mentioned the availability of a Tesco store close to J4, which is open throughout the day for six days of the week. It has a large car park, a petrol filling station, lavatory facilities and a café [5.28]. In my view, however, it is not designed to provide services for motorway travellers, particularly those travelling in coaches or heavy goods vehicles (“HGVs”), and it could not be signed from the motorway as it is not open for 24 hours each day on 7 days of the week. Other facilities close to the M42 which might be noted by drivers with satellite navigation systems would result in taking motorway traffic on to the local road network [5.26, 5.39].
- 16.28 **I conclude** that there remains a significant unmet need for one additional MSA serving traffic travelling in both directions on the M42
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between J3A and J7. In fact, that need is somewhat greater than the need which existed in 2001 when the interim decision in relation to Appeal A was made.

APPEAL A – CATHERINE DE BARNES

- 16.29 The appeal site is located approximately half way between J5 and J6 of the M42 [2.3]. It lies within the Green Belt [2.4]. It has an area of around 26.6ha [2.5]. The site includes Walford Hall Farmhouse, a Grade II* listed building together with its associated outbuildings [2.9].
- 16.30 The appeal development would provide an on-line comprehensive MSA, including a lodge [3.2, 3.3].
- 16.31 There are three SCGs in relation to this appeal – between the Appellants and the Council [1.14]; between the Appellants and BIA [1.15]; and between the Appellants and the HA [1.16].
- 16.32 At the time the interim decision letter was issued in March 2001, there was uncertainty about the impact of a proposal for the widening of the M42 in the area of the appeal site [6.2]. Following the successful introduction of the ATM system between J3A and J7, the widening of the motorway in that area is now unlikely [6.3]. Instead of the scheme considered at the 1999/2000 inquiry for an auxiliary lane with a full hard shoulder between the MSA and J6, the Appellants therefore now propose two auxiliary lanes with a hardstrip at each side of the motorway between J5 and J6 [6.3].

The main considerations

- 16.33 In my view, the main considerations in relation to this appeal are those identified in the Secretary of State's Statement of Matters of 6 September 2005. They are set out at paragraph 1.8 above. In view of the passage of time, however, certain of the documents referred to in the Statement of Matters have been updated or replaced. A note of my assessment of the impact of those changes is contained at paragraph 1.9 above. I shall address each of the considerations identified by the Secretary of State in the light of the subsequent events, concentrating on changes in policies or circumstances which might have an effect on the interim decision of 2001. When all of those matters have been addressed, however, it seems to me that the essential consideration will be, as it was in 2001, whether there are very special circumstances which justify the grant of planning permission within the Green Belt in this case. Very special circumstances to justify what is accepted to be inappropriate development [6.19] will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

Consistency with the Development Plan and planning policy

- 16.34 The RSS with its first phase revision has been published [4.1]. It identifies as a key issue reversing the decentralisation of population and
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investment from the Major Urban Areas (“MUA”s) [6.7, 8.2]. The appeal site is not located within a MUA, but there is no alternative site within a MUA which would meet the identified need for a MSA on this section of the M42 [6.8]. It is not easy to see how the objective of decentralising population would be affected in any way by the development of a MSA [6.9]. I do not consider that the appeal proposal would be at odds with the provisions of the RSS which seek to concentrate development within the MUAs. Clearly it is not possible for the entirety of development within the Region to take place within the MUAs.

- 16.35 The key objective within the transport chapter of the RSS is to improve significantly the Region’s transport systems to a quality comparable to that of competitor regions. Policy T1 aims to improve access within and across the Region in a way that not only tackles congestion (amongst other things), but also improves safety. The policy records that this aim will be achieved by a series of measures including the improvement of the national road network and the improvement of the safety of the transport system [6.11]. It seems to me that the provision of a MSA would potentially have the effect of improving the facilities of the road network and improving safety on the network, so long as safe arrangements could be made for the integration of a MSA at the appeal site with the operation of the motorway in the area.
- 16.36 The significance of the M42 as part of the national and regional road network is recognised within the RSS, as are the important regional assets which it serves, such as the NEC and BIA. There are plans for expansion at both the NEC and at BIA [14.17]. The M42 also plays an important part in securing Solihull’s reputation as a good strategic location for important employment sites such as the Blythe Valley Business Park (“BVBP”) which is adjacent to J4. Policy T9 requires the HA and local authorities to give high priority to the improvement of the network, and requires consideration to be given to the improvement of motorways as part of the national transport network. Policy T12 identifies priorities for investment, including the ATM pilot project on the M42, and highlights the need to avoid the undermining of those priorities [6.12, 8.1]. The importance of maintaining the success of the ATM system is therefore supported by the thrust of RSS policy, and it is thus necessary to consider the impact which the appeal development might have on that system in considering whether the proposal for a MSA at the appeal site is supported by the Development Plan.
- 16.37 I note that neither the RSS nor the UDP offers specific support for a MSA in the area [8.9, 11.1, 11.2, 12.8]. Although the issue was raised at the UDP inquiry [6.178], the UDP simply notes the interim decision of the Secretary of State [11.2, 12.8].
- 16.38 The appeal development would take a substantial area of land out of agricultural use [12.24, 14.9]. Policies PA14 and PA15 of the RSS seek to protect agricultural land [12.4]. Most of the land is within Grade 3b, however, and paragraph 28 of PPS7 states that little weight should be given in agricultural terms to the loss of Grade 3b land [6.226, 12.5].
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- 16.39 SAMSAG place reliance on a statement made by the Secretary of State for Environment, Food and Rural Affairs subsequent to the publication of PPS7, the RSS and the UDP, in which the importance of agriculture is emphasised [12.7], but I note that DEFRA have made no adverse comment on the potential loss of the appeal site to agriculture either in 1999/2000 or in relation to the present inquiry.
- 16.40 No substantial change is pointed to in the current adopted UDP as against the policies which applied at the time of the 2001 interim decision [6.14]. There are, however, new policies safeguarding the countryside and protecting countryside areas which retain a “dark sky” [8.5], and to some extent the appeal development would give rise to conflict with those policies in my view.
- 16.41 Both the RSS and the UDP maintain policies for the protection of the Green Belt comparable to those which were in place at the time of the interim decision [8.3, 13.1, 13.2]. The national planning policy in relation to Green Belt continues to be that contained in PPG2.
- 16.42 The appeal site lies within Green Belt [2.4], and the Appellants accept that the appeal development would represent inappropriate development within the Green Belt [6.19]. I concur in that judgement having regard both to the Development Plan and to PPG2. It will be necessary therefore to explore the question whether very special circumstances exist such as to justify the grant of planning permission in the Green Belt. I return to this issue from paragraph 16.126 below.
- 16.43 The Development Plan also includes policies protecting listed buildings, but these are considered below in relation to a particular issue raised by the Secretary of State.
- 16.44 Turning to national planning policy, the Council raised the issue of the impact of the development on the trees on the appeal site, given that PPS9 has been issued since 2001, and in paragraph 10 it underlines the importance of retaining veteran or aged trees within development proposals [6.21]. However, no specific tree was identified as a veteran tree in the various tree surveys carried out, and the Council agreed to a SCG in which they accepted that the appeal development would give rise to no breach of PPS9 [6.22, 6.23].
- 16.45 The Council also point out that the appeal site is in an area where people live, and is of value in terms of paragraph 26 of PPS7 in giving access to the countryside, an approach reflected in Policy C10 of the UDP [8.6]. The CPRE add that the proposed development would not protect the quality and character of the countryside [11.3]. Again PPS7 postdates the 2001 interim decision.
- 16.46 The Council argue that the introduction of a MSA into the countryside would have a detrimental impact on landscape character and visual amenity. It would be impossible to mitigate the urbanising effect of the traffic and lighting which a MSA would bring [8.5]. This is, however, no different from the position considered by the Secretary of State in 2001,
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and since then this section of the M42 has been illuminated as a result of the introduction of the ATM system. As observed on my night time site visit, although the M42 is lit, as one moves away from the line of the motorway, the land in the area of the appeal site quickly becomes dark [8.5]. It seems to me inevitable that the illumination of the immediate area would be bound to increase with the introduction of the appeal development.

16.47 There is also national policy guidance in relation to retail development and in relation to MSAs in particular, but these issues will be considered as separate topics having regard to the specific issues on them raised by the Secretary of State.

16.48 Finally, and importantly in terms of national policy, there is now further emphasis on the need to achieve sustainable development contained in PPS1 and its supporting policy documents [12.12]. SAMSAG refer to the additional distance traffic would travel in total to access and leave the proposed MSA (3,232,805km per year, according to Document HA0/8), and claim that this would not be sustainable and would make it more difficult to meet the reducing national air pollution limits at the site [12.27]. If a MSA is not provided, however, it seems to me that there is the risk that drivers would leave the motorway and travel over longer distances in order to find local service facilities, adding to traffic on the local road network [6.228].

16.49 Overall, in relation to the Development Plan, I consider that there is support for the provision of a MSA at the appeal site offered by the RSS policies to improve facilities and improve safety on the road network, so long as safe arrangements can be made for the integration of the development with the operation of the motorway in the area. The appeal development would, however, be at odds with UDP policies in relation to agriculture, countryside and, on the face of it, Green Belt, though the special considerations relating to development in the Green Belt (including those set out in national policy) are dealt with in more detail below, as are the implications of Development Plan and national policy in relation to listed buildings.

16.50 I do not see that the RSS policy emphasis on reversing decentralisation of population and investment from the MUAs has any real relevance to the appeal proposal.

16.51 In relation to national planning policy, there is some conflict with policy for the countryside. I do not consider that there is conflict with PPS9, and I am not satisfied that there is conflict with PPS1.

16.52 **I conclude** that the appeal development is not entirely consistent with the Development Plan, quite apart from the issue of development in the Green Belt.

16.53 **I further conclude** that there is some conflict with national planning policy in relation to the countryside.

Consistency with national airports policy, the airports policy of the RSS and the BIA Master Plan

- 16.54 On the basis solely of its existing runway, the maximum capacity of BIA is 20 million passengers per year (“mmpa”). The White Paper on Air Transport expected throughput at BIA to increase to between 32 mmpa and 40 mmpa by 2030 [6.26]. Policy T11 of the RSS provides that Solihull and adjoining authorities should include proposals in their Development Plans for the expansion of BIA and for improved surface access to the airport [6.28]. BIA were invited to produce a Master Plan to inform future Development Plan policy [6.27]. In that Master Plan (which was published in 2007), the traffic forecasts have been scaled back from those contained in the White Paper. The Master Plan envisages a throughput of 27.2 mmpa in 2030. Priority is therefore given to an extension to the main runway, with a second runway not being needed before 2030 [6.30].
- 16.55 Having regard to those developments, BIA are content that, subject to the imposition of appropriate conditions to protect operational issues (such as the impact of the lighting of any MSA [12.33]), there is no justification for them to object to the appeal development on the basis of either aerodrome safety or public safety zone conflict [6.33]. In relation to surface access, BIA, together with the HA and the operators of the NEC, have issued a joint statement confirming that none of them advance any objection to the appeal development [6.34]. Advantage West Midlands, the Regional Development Agency, having originally opposed the appeal development, withdrew their expression of concern given that BIA and the NEC were satisfied that no problem would arise for them from the proposal [15.12].
- 16.56 I accept that the BIA Master Plan is a non-statutory document [12.35]. It represents, however, the best evidence available to me of the likely plans for future developments at BIA. It is intended to inform the statutory planning process [6.28].
- 16.57 I also accept that at present aircraft taking off in a south easterly direction make a right hand turn which takes them over the appeal site. With an extended runway, aircraft could be at a lower height when passing over the site [12.32]. However, I am satisfied that the relevant authorities, having given proper consideration to the proposals are content that there is no ground to oppose the appeal development on the basis of the proximity of the appeal site to the BIA, so long as the proposed MSA would not adversely affect the successful operation of the ATM system on the M42 [6.35 to 6.37, 8.10, 8.11].
- 16.58 **I conclude** that the development of a MSA on the appeal site would not conflict with national policies contained in the Air Transport White Paper; it would not prejudice RSS policy for the BIA; and it would not prejudice safety surfaces and public safety zones.
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Consistency with national policy for MSAs

16.59 A new policy statement on the provision, standards and signing of MSAs and roadside facilities was published on 2 April 2008 in DfT Circular 01/2008. The Circular provides in paragraph 3 that it will apply to signed roadside facilities on the strategic road network which did not have a planning application registered prior to 2 April 2008. The appeal application was registered before that date, so the new policy does not directly apply to it, but it still represents a material consideration, because it indicates the direction of travel of the Government's MSA policy. Moreover, paragraph 57 of the Circular indicates that all existing MSAs together with new facilities provided subsequently (including those registered in the planning system before the date of publication of the Circular but which later receive planning permission) will be required to provide the facilities demanded by the Circular [1.9].

16.60 SAMSAG contend that it is the new policy to which attention should exclusively be paid, because the 1998 Policy Statement was not subject to any public consultation, which is now a requirement of the 2007 Planning White Paper [12.13]. They say that this means that it is a requirement to balance the advantage of a resting facility against the increased risk of additional points of access and egress on the motorway [12.14]. In fact, I shall consider specifically in due course the safety of the access and egress arrangements for the appeal development.

16.61 The Council contend that both the general policy test and the infill policy test contained in the 1998 Policy Statement should be considered in relation to the appeal development, as the Secretary of State agreed in 2001 [8.12].

16.62 In fact, the Secretary of State accepted the Inspector's approach that the appeal development would be a 30 mile MSA, but agreed that it also met some of the infill site tests. I consider that that remains the position. The appeal proposal would in fact also provide all the facilities which will be required by Circular 01/2008 in the future. It would complete a network of 30 mile (48km) MSAs in this part of the motorway system [6.38].

16.63 **I conclude** that the appeal development is consistent with the policies in the MSA Policy Statement.

Consistency with PPS6 – Planning for Town Centres

16.64 PPS6 advises that the retail element at a MSA should be limited in scale and genuinely ancillary to the main development [6.39]. The level of facilities proposed in the appeal development has not changed since the 1999/2000 inquiry. What was proposed then was found to be acceptable by the Secretary of State, subject to the conditions which accompanied the interim decision [6.40, 6.41].

16.65 The net retail floorspace currently proposed would be within the maximum figure advised in Circular 01/2008 [6.41, 8.13]. The CPRE

contend that the total level of retail space proposed would exceed the maximum area advised by the 1998 Policy Statement, which is carried forward to the new Circular [11.4]. Paragraph 112 of that Circular, however, makes it clear that the maximum figure does not include the area for ancillary retail sales from within the kiosk serving the petrol filling station [6.42].

16.66 SAMSAG argue that the provision of a lodge at the appeal site would be contrary to the policy objectives of PPS6 in relation to hotels [12.18], but the Policy Statement on MSAs makes it clear that a lodge is a normal concomitant of a MSA.

16.67 **I conclude** that the proposed development would be consistent with paragraph 3.30 of PPS6.

Consistency with PPG15 – Planning and the Historic Environment

16.68 Since the last inquiry the proposal for the use of Walford Hall Farm as a training centre has been dropped. The present proposal is for the separate residential use of Walford Hall Farmhouse and its outbuildings [3.4], and the question therefore arises as to whether the revised proposals are consistent with advice in PPG15 [1.8].

16.69 Paragraphs 3.8-3.10 of PPG15 advise that the best way of securing the upkeep of historic buildings is to keep them in active use; that this must mean an economically viable use if they are to survive, which will often necessitate some degree of adaptation; that the use should be compatible with the fabric, interior and setting of the historic building; and that the best use will very often be the use for which the building was originally designed – reinstatement of that use should be the first option when the future of a listed building is considered [15.2].

16.70 The omission from the MSA scheme of the proposal for the use of Walford Hall Farm as a training centre accords with the views expressed by the Secretary of State in the 2001 appeal decision. The proposal for the repair and reinstatement of the farmhouse to residential use and the repair of the outbuildings for uses ancillary to the farmhouse was developed in negotiation with the Council and EH, and meets EH concerns [3.4, 6.44, 8.15, 15.1]. Listed building consents have been granted for the works of repair and restoration [1.9] and EH considers that the approved works would conform to best conservation practice [15.2].

16.71 The reinstatement of the farmhouse to its original residential use would leave the exterior essentially unchanged and would involve a relatively minor degree of internal adaptation to upgrade the house to modern standards. The alterations have been carefully designed to respect the historic fabric and the internal character of the building, although the unprepossessing layout cannot readily be improved. While no specific uses are proposed for the outbuildings, their repair would make them all available for a range of ancillary domestic uses [6.44]. There would be greater separation between Walford Hall Farmhouse and the proposed

MSA, and the Farmhouse and its outbuildings would have their own entirely independent access from the highway network [6.46].

- 16.72 I consider that the repair of the Walford Hall Farm buildings, and their use as a single residence, would maintain the integrity of the farm group and would keep the buildings in active use, thereby ensuring their maintenance and survival.
- 16.73 The Council suggest that revisions to the MSA scheme, if implemented, would mean that harm to the listed building would increase as compared with the position considered at the 1999/2000 inquiry, but that assessment is based on a further revised illustrative layout for the MSA, Revision G. As explained at paragraph 16.90 below, that drawing is provided simply to demonstrate that the level of parking contended for by the HA could (if it can eventually be proved to be necessary) be accommodated on the site. The Appellants do not agree that it is or will be necessary, and the Revision G drawing forms no part of the illustrative scheme for which they seek approval [6.47]. I return to the implications of the Revision G drawing from paragraph 16.89 below.
- 16.74 The Council go on to argue that, nonetheless, the restoration of Walford Hall Farm cannot be considered to be a benefit of the MSA proposal, since the repair and restoration of the farm buildings would be economically viable without it [8.17]. There is a wide disparity in the estimates put forward of both current value and the sale value of the fully restored group [6.51, 8.21]. These are matters of judgement and are difficult to reconcile. While it is hard to believe that the property currently has a negative value, I consider that the Council's current valuation is exaggerated by the inclusion of unrealistic 'hope value' [8.20]. It cannot be assumed that planning permission and listed building consent would be granted for the conversion of the outbuildings, protected by the Grade II* listing, to permanent dwellings or letting units. There has been no investigation of this suggestion or demonstration of how it might be realised without harming the distinctive agricultural character of the buildings. Any separation or subdivision of the courtyard buildings would directly conflict with strong EH advice on the value of the completeness of the farm group [6.53]. I consider the Council's estimate of current value to be particularly flawed.
- 16.75 There is no real challenge to the Appellants' estimated costs of professional repair [6.50, 8.22] but it is argued that works to the farmhouse could be 'owner managed' and staged, and that full repairs to the outbuildings could be put off, in order to save or delay expenditure [8.24]. I consider that the repairs and alterations to the farmhouse in particular require specialist professional execution and supervision. The barns too would need expert repair. While there might be possible reductions in costs, these would be limited - this is by no means a DIY project [6.54]. Although the full repair of the outbuildings could be delayed, it cannot be ignored, and the costs involved would eventually have to be incurred. Even then, this would only put the outbuildings in
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good repair, and further substantial expenditure would be necessary to convert them to the kind of ancillary uses envisaged [8.24].

16.76 While local sales examples indicate that the Appellants' final sale valuation of £500,000 might be underestimated [6.51], it seems to me that, even based on the Council's figures, the repair and restoration of the barns would not be a viable proposition. With a current value of £600,000, and repair expenditure reduced to say £1 million, there would be no allowance for the conversion of the outbuildings to the range of accommodation underpinning the Council's fully restored valuation of up to £1.6 million. Even allowing for an adjustment to more realistic figures, the Appellants' valuations clearly show that there would be a very large discrepancy between the £1.3 million costs of repair and restoration and the probable final value of the repaired farm group [6.69]. I consider that, without a substantial subsidy, the repair and restoration of Walford Hall Farm would not be economically viable.

16.77 The Appellants' estimates of repair and restoration costs relate directly to the listed building consent repair specifications agreed with EH. The Section 106 Agreement would ensure that these works would be properly carried out in a timely fashion. Despite contentions to the contrary [7.94, 8.17], I consider that it is most unlikely that the works necessary to secure the survival of this important listed building would otherwise be carried out [6.54, 6.56 to 6.60], so I consider that the repair and restoration of the Grade II* listed Walford Hall Farm group would be a significant benefit of the MSA proposal.

16.78 All parties accept that the construction of an MSA on the Walford Hall farmland would be seriously harmful to the setting of the listed farm group [6.67, 7.93, 8.16, 11.12, 11.13, 12.30]. However, since the last inquiry, the harmful impact of the motorway on the existing setting of Walford Hall Farm has significantly increased, so the quality of the setting has deteriorated [6.46]. On the other hand, the MSA scheme has been modified, resulting in less built land coverage, and the access lane from the MSA to Walford Hall Farm has been omitted with increased screening between them [6.46]. The retention of the outbuildings within a single farmyard curtilage would maintain the integrity of the farm group, preserving the historic built setting of the farmhouse. I consider that, taken overall, the cumulative effect of these changes mean that the extent of the harm to the wider setting of the listed farm group caused by the introduction of the MSA would certainly be no greater, and would probably be appreciably less, than was found at the last inquiry and that the immediate setting of the farmhouse itself would be greatly improved.

16.79 The MSA proposal would not conserve or enhance the historic farmland which provides the wider setting for Walford Hall Farm [7.93], and nor would it respect the distinctive rural character of the area, in conflict with the aims of RSS Policy QE5. Nonetheless, the repair and restoration of the farmhouse and outbuildings as a single complete group would secure the survival, maintain the historic integrity and

enhance the special character of these important listed buildings, in clear accordance with UDP Policy ENV6.

- 16.80 CPRE concerns about fencing and security lighting could be met by standard landscape and boundary design conditions imposed on any MSA planning permission [11.13]. I consider that no further conditions are necessary, since the listed building consents are fully and stringently conditioned and the Section 106 Agreement requires the works to be complete before the MSA commences operation. This is a sufficient degree of control.
- 16.81 There is a danger that the listed building consents – granted in 2006 and 2007 – could expire before work could commence. However, it is most unlikely that the consents would not be renewed, and, in any event, under the terms of the Section 106 Agreement, the repair works must be completed before the MSA opens for business. This seems to me to provide sufficient spur to ensure that there is no delay to the repair and restoration of Walford Hall Farm.
- 16.82 The wider farmland setting of Walford Hall Farm contributes significantly to its character and, to that extent, the MSA proposal would not preserve the wider setting of the listed building, in conflict with the advice in PPG15 [11.12, 11.13]. However, the reinstatement of residential use would undoubtedly be the best option for the farmhouse. The necessary adaptation and upgrading has been carefully designed to be compatible with its historic fabric, interior and setting.
- 16.83 The works of repair and restoration of the buildings, as a complete group, would greatly improve the immediate setting of the farmhouse and would ensure that all the buildings are put into, and kept in, good order through active use. The works would not be economically viable without a substantial subsidy, so the Section 106 Agreement would provide the certainty of completion of a comprehensive repair.
- 16.84 **I conclude** that the proposed works to Walford Hall Farm would be a significant benefit of the proposed MSA and that, while there would be some harm to its wider setting, the revised proposals for the separate residential use of Walford Hall Farmhouse and its outbuildings, and the consequent improvement of its immediate setting, are fully consistent with advice in PPG15.

Planning obligations and ODPM Circular 05/2005

- 16.85 The planning obligation referred to at paragraphs (h) and (i) of the Secretary of State's Statement of Matters has been replaced by a new obligation [1.8, 1.9, 6.63]. The new Section 106 Agreement, which is dated 20 March 2008, would ensure that the works for the repair and restoration of the Walford Hall Farmhouse to habitable use and for the repair and restoration of its outbuildings in accordance with the drawings and specification of works granted listed building consent would be complete before operation of the MSA commenced [6.44,
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6.63]. It would also provide for mitigation works in relation to ecology, landscaping, drainage and pollution [6.64].

16.86 I consider that the obligations entered into under the Section 106 Agreement of 20 March 2008 are necessary, relevant to planning, directly related to the MSA development proposed, and fairly and reasonably related in scale and kind to the proposed development.

16.87 **I conclude** that the Section 106 Agreement dated 20 March 2008 would meet the tests in ODPM Circular 05/2005.

16.88 As indicated in paragraph 1.9 above, there is a further Section 106 obligation made in relation to this appeal. That obligation is a Unilateral Undertaking dated 3 June 2008, and it relates to an aspect of the highway proposals made in connection with the appeal development [6.75]. I shall reach a conclusion in relation to that obligation in the context of my overall consideration of the appeal proposals below.

The adequacy of the Environmental Statement

16.89 The ES submitted to the 1999/2000 inquiry was resubmitted to this inquiry, updated by environmental information provided in June 2006 and September 2007 [1.9]. The totality of the environmental information covers the scheme illustrated in drawing DH.301.A-5. Revision F [6.93].

16.90 A further revision to the illustrative layout was also prepared and circulated by the Appellants in January 2008 – Revision G. This drawing was prepared solely to demonstrate how the level of parking provision contended for by the HA as potentially ultimately necessary could be accommodated on the appeal site. The Appellants do not agree that such a greater level of parking would ever be necessary, and it does not form part of the scheme they ask the inquiry to approve [6.17]. The Appellants therefore do not consider that the proposal shown on Revision G requires assessment under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the EIA Regulations”) [6.95].

16.91 However, if planning permission were granted for the appeal development including the condition proposed by the HA to increase the level of parking at the appeal site should usage of the parking areas demand it, effectively authorisation would be granted to carry out that further level of development. As will be seen at paragraph 16.142 below, I consider that, in the event of planning permission being granted, such a condition should be imposed. In that situation, I agree with the Council that the environmental impact of the layout shown on Revision G should have been assessed [6.95, 8.28]. In the event of that conclusion being reached, the Appellants contend that there is no difference of any environmental significance between Revision F and Revision G [6.231].

- 16.92 The additional hard area within the development would amount to only 0.1622ha, an addition of just over 2% to the proposed built footprint of the appeal development. It would, however, reduce areas of landscaping around the parking areas shown on the Revision F plan; change the arrangements for balancing ponds and reed beds to the east of the lorry park shown on Revision F; alter the arrangements for the balancing ponds on the eastern side of the M42; and take the MSA development somewhat closer to Walford Hall Farm [8.28].
- 16.93 Whilst these are limited changes, which might never happen if usage of the parking at the MSA did not increase to a level to justify them, I have some concern that the specific impact of these possible changes to the scheme have not been assessed and the results published in accordance with the EIA Regulations.
- 16.94 The Welcome Break Group state in their written representation (Document WBG1) that legal representations made during the 1999/2000 inquiry and in their letter of 25 November 2004 remain relevant. Those representations included two assertions associated with environmental impact assessment. The first of those assertions suggested that the impacts of the scheme including, in particular, off-site highways works to the motorway had not been assessed. The second suggested that important aspects of the development (such as off-site landscaping works) had not been the subject of appraisal [6.96].
- 16.95 Welcome Break's letter of 25 November 2004 was, however, written ahead of the issue of the Regulation 19 request of December 2005 (referred to in paragraph 1.9f above), and well ahead of the publication by the Appellants of the Further Environmental Information of June 2006 and September 2007. The assessment contained within those documents addresses the impact of both on site and off site works, and answers Welcome Break's concerns. I note that, in the written representation of 14 January 2008 (Document WBG1), Welcome Break make no mention of that further environmental information [6.97].
- 16.96 **I conclude** that the updated ES is adequate for the purpose of giving proper consideration to the likely significant environmental effects of the proposed development as shown on drawing DH.301.A-5.F, but I have some concern that the environmental information does not cover the impact of additional works shown on drawing DH.301.A-5.G, which may be required if a condition imposed on any approval is brought into operation by an increasing level of usage of the parking at the proposed MSA.

Other material changes in circumstances – Active Traffic Management and access to the proposed MSA

- 16.97 The ATM project on the M42 was first announced in July 2001. It involves hard shoulder running on the M42 between J3A and J7 during periods of traffic congestion [1.10, 9.12]. Variable mandatory speed limits are applied, and overhead gantry signs provide advice to drivers about the speed limits and the availability of the hard shoulder [5.16].
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The system was implemented in stages between early 2003 and September 2006 [6.99, 6.100]. It was introduced as a pilot scheme as an alternative to motorway widening. The cost was almost £100m, but that is 80% less than the cost of a full road widening scheme [9.12]. The pilot project is regarded as a success, and the Secretary of State for Transport has announced that it will be extended across the Midlands Motorway Box [6.118, 8.32, 9.13].

16.98 In correspondence subsequent to the start of construction of the ATM system, the HA confirmed that they had no objection in principle to auxiliary lanes on the M42 so long as they could be satisfactorily integrated with the operation of ATM [6.101 to 6.103, 9.8]. It is that proviso which lies at the heart of the difference between the Appellants and the HA.

16.99 The Appellants submitted a number of potential schemes for access to the MSA to the HA. In June 2007, they provided a full set of plans for a scheme which they said would be the one promoted at the inquiry. It was supported by a Transport Assessment [9.10]. However, in December 2007, the Appellants submitted a further set of plans proposing a variation to the submitted scheme, and it is this variation which they wish to have considered in this appeal [1.11, 6.107].

16.100 The December 2007 proposals would create a permanent fourth lane between J5 and J6 of the M42 by adjusting the existing lane widths, deleting the hard shoulder, and replacing it with a hard strip of at least 1m. In the drawings in Document CD510, the hard strip was proposed to be 1m wide, but the variation submitted in December 2007 (Document CD511) provides for a variable width hard strip [6.140]. The Appellants propose that this four lane section of the motorway would be operated in synchronisation with the ATM scheme on the adjoining links. When ATM was in operation, traffic on the four lanes between J5 and J6 would be restricted to the same speed as traffic on the adjoining sections. With ATM not in operation, traffic in all four lanes between J5 and J6 would be permitted to operate at the national speed limit (70mph). In contrast to adjoining sections of the motorway, the fourth lane would be permanent, and would not revert to hard shoulder when the ATM system was turned off [3.6]. That scheme differs (though the Appellants say not by much) from the scheme covered by their Transport Assessment [6.118].

16.101 The need for four running lanes is dictated by the weaving width which would be required to accommodate the proposed MSA between J5 and J6 [6.112, 6.138]. It would be unacceptable in both environmental and financial terms to widen the motorway to four running lanes plus a hard shoulder [6.112]. The solution proposed by the Appellants therefore seeks to narrow the central reserve by using vertical concrete barriers ("VCBs") [6.113]. This allows a central reserve of only 2.54m (including a 1m off set to either side) [6.114].

16.102 To allow for hard shoulder running during the operation of the ATM system, emergency refuge areas ("ERAs") have been provided at

intervals between J3A and J7 [1.10]. These would be retained (except for those in the immediate area of the MSA) as part of the Appellants' proposals [3.6, 6.3].

- 16.103 Permanent four lane running between J5 and J6 would mean that lane 1 could not revert to hard shoulder. It could only be closed by the use of overhead gantry signs or the intervention of traffic officers to effect a physical closure [6.139, 9.15]. The appeal proposal would provide only a 1m to 2.5m hard strip as a refuge in an emergency apart from the ERAs, which are situated only at 500m intervals. The Design Manual for Roads and Bridges ("DMRB") allows for hard strips only over short distances. Here, the proposal is for a hard strip to extend for lengths of 1.5km and 1.85km, relieved only by the ERAs [6.140, 9.16]. While I note that there has been, as yet, no recorded incident of a vehicle stopping on the hard shoulder during ATM operation [6.151], this is not a situation which can be relied on to continue indefinitely; outside the times of ATM operation, the first lane between J5 and J6 would be running at 70mph.
- 16.104 I consider that, even where the width of the hard strip is 2m, this would present difficulties for fire appliances and ambulances to proceed along it, and could cause delay in their reaching an incident on the motorway. Contrary to the requirements of DMRB, the emergency services have not been consulted regarding the Appellants' proposals [6.142 to 6.144, 9.18].
- 16.105 The Appellants point out that there are many sections of motorway throughout the network on which hard shoulders are not provided, often for considerable distances [6.145]. I agree with the HA, however, that such discontinuities are generally accepted only in relation to limited lengths, where there are obstacles such as bridge parapets. The examples of longer discontinuities quoted by the Appellants relate to special situations such as the trial of a car share lane on a stretch of motorway with a 50mph speed limit. The limit on the section of the M42 between J5 and J6 would be 70mph when ATM was not in operation [9.37].
- 16.106 The Appellants contend that they have produced their proposals and that it is for the HA to demonstrate that they would not operate successfully [6.105, 6.123]. On the other hand, the HA argue that it is the responsibility of the developer to produce a fixed scheme, which the HA can then evaluate. The fixed scheme for evaluation was submitted in June 2007 [9.9 to 9.11]. My understanding accords with that of the HA. I find it remarkable that a variation of the fixed scheme was put forward on 4 December 2007; that the technical note on the integration of the proposed MSA with the ATM system was produced only on 17 December 2007; and that the scheme the Appellants seek to have considered is not the subject of a revised Transport Assessment, is not the subject of a safety audit, a signing strategy or a list of Departures, and is not the subject of any application for consideration of Departures [9.11].
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- 16.107 It is clear from the evidence that ATM was only introduced after extensive and careful preparation [9.14 to 9.19]. Whilst I accept that the changes to driver behaviour associated with the appeal proposals would not be as far reaching as the ATM changes were at the time of their introduction [6.120], I still consider that there is a need for a much greater depth of study of the implications of the Appellants' proposals for the integration of the running arrangements between J5 and J6 with the operation of the rest of the section of the M42 between J3A and J7.
- 16.108 I agree with the HA that the Appellants' proposals could lead to driver confusion because of inconsistencies with the way that ATM operates on the rest of that section of the M42. The change of environment from ATM (J4 to J5) to permanent four lane (J5 to J6) and back to ATM (J6 to J7) could lead to driver confusion regarding where hard shoulder running is applicable. The provision of the auxiliary lane running through the MSA junction would also operate differently from the situation at the other junctions within the ATM scheme. Those other junctions operate with a lane drop/lane gain arrangement, so the proposal for through junction running would present drivers with a fundamental change in the "rules" for ATM as compared with all other junctions within the ATM system [6.125, 9.22 to 9.26].
- 16.109 The fact that through junction running is being considered as part of the extension of the ATM system to other parts of the motorway system [6.128] does not mean that it will necessarily be introduced, or that it would be introduced on a single section of a route otherwise operating a lane drop/lane gain system. At the time of the inquiry, there was no safe design for through junction running approved for implementation anywhere in the UK [9.25].
- 16.110 I accept that the ATM system operates during only part of the day, and that this requires drivers to operate under variable road conditions on the same part of the motorway at different times [6.118], but that is undertaken in reliance on a comprehensive system of advice to drivers from the overhead gantry signs and a sophisticated monitoring system [9.14]. I consider that the lack of a detailed signage strategy from the Appellants, despite a long outstanding request to produce one, is not a mere technical omission [6.126, 9.27]. It is a matter of some importance. It is inappropriate to assume that gantry signs, intended to be used to deliver variable messages, could be used to provide permanent basic information to drivers [9.27].
- 16.111 The Appellants have also chosen not to submit at this stage formal applications for approval of Departures from standards in connection with their proposals, unlike the procedure followed in relation to the Catherine de Barnes site in 1999/2000 [6.163, 9.32, 9.33]. The HA's Guidelines for Developers provide that Departures associated with developer funded Section 278 schemes should be identified and resolved at the planning application stage [9.30]. Despite the fact that there is contrary guidance in one other HA document [6.165], in a case such as this, where it is clear that there would be a significant
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number of substantial Departures involved, I consider that it is necessary to be satisfied that the safety issues involved in the proposal have been properly explored. The Appellants make the point that, in relation to Appeal B, the HA have withdrawn their objection despite the lack of a formal Departure application [6.109]. In that case, however, sufficient information has been provided to allow the HA to conclude that the three new Departures required would raise no issue of principle likely to prevent approval [9.63, 9.64].

- 16.112 In relation to Appeal A, in addition to the Departure which would be necessary to allow a 4 km stretch of motorway without a full size hard shoulder, Departures from standards would also be required relating to lane widths, the width of the central reserve, weaving lengths and forward visibility. A number of these Departures would occur in combination along the same section of the motorway [9.35, 9.36, 9.38, 9.39, 9.41 to 9.50].
- 16.113 The Appellants say that their scheme would provide lane widths for the majority of the distance between J5 and J6 (some 4km) of 3.65m, 3.70m, 3.45m and 3.25m. The hard strip would be no less than 2m for the majority of its length [6.114, 6.140 to 6.143]. The Appellants claim that this would involve a marginal reduction in width only in their third running lane [6.115]. These figures are not entirely agreed. The HA position is that, at least in some places, each of the proposed lanes would be narrower than standards suggest [9.38]. In my view, the evidence shows that, apart from the replacement of the hard shoulder by a hard strip, the lane widths would not be significantly different from the current level of provision, though the MSA would of course introduce increased manoeuvring between lanes.
- 16.114 In relation to the width of the central reserve, the Appellants contend that this would comply with the design standard [6.148], but it would clearly require a Departure [9.39], and it would have consequences for the signing of lane closures [9.40]. While it is accepted that VCBs provide a largely maintenance free safety facility [6.148], the ATM system relies on a greater than usual amount of equipment on the motorway, with a consequent increase in levels of maintenance. The use of lightweight gantries, with no maintenance access or walkways, means that lane closures are necessary to provide safe access to the equipment [9.40].
- 16.115 In relation to weaving lengths, the Appellants say that the proposals were found to be acceptable at the 1999/2000 inquiry (albeit requiring a Departure), and in all but one case the lengths now proposed have increased since the last inquiry [6.136]. The weaving lengths would be acceptable for an urban motorway running at 60mph, and the M42 is akin to an urban motorway when operating under the ATM regime [6.137]. However, when ATM is not in operation, the section between J5 and J6 would be running at 70mph [9.41], and the weaving lengths would therefore require approval of Departures. I note that DMRB provides that previous Departure approvals cease to apply after a period of three years or where there is a material change to the
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scheme design parameters [9.30]. Both those conditions apply in the present case.

- 16.116 In relation to forward visibility, the Appellants say that the three locations at which minimum stopping sight distances would be available on the auxiliary lanes would provide adequate visibility for anyone other than a motorcyclist, and motorcyclists are unlikely to be travelling in the auxiliary lane, where traffic would, in any event, normally travel more slowly than the permitted maximum speed [6.146]. The stopping sight distance would be no different from those currently available during hard shoulder running [6.147].
- 16.117 The process of seeking Departures from standards involves their evaluation, not only individually, but also in combination with all other Departures in order to see whether the resultant combination of factors is nonetheless satisfactory and safe. That has not occurred in this case, nor has there been a safety audit of the proposed Departures in order to see whether they are safe and satisfactory [9.45].
- 16.118 In a number of locations, the Appellants' proposals would cause Departures from standards to arise in combination. For example, between the J5 merge and the northbound MSA diverge, the forward visibility would be reduced to nearly half the desirable minimum, the lane widths would be substandard, the weaving length would be nearly three quarters of that required, the central reserve would be narrow, and there would be no hard shoulder.
- 16.119 The Appellants refer to the process followed for the approval of Departures in relation to other highway schemes [6.162, 6.163], but the Guidance for Designers makes it clear that the approval of a Departure at one site should not be construed as a general approval to a similar procedure elsewhere [9.48 to 9.50].
- 16.120 I agree with the Appellants that there is no justification for the concern expressed by the HA that drivers would mistake the MSA entry slip for a motorway junction exit slip, or that traffic on the auxiliary lane would be travelling too fast to allow exit from the MSA [6.130]. Nor is there in my view any reason to suggest that a particular safety problem would be caused by drivers entering this proposed MSA too quickly, braking late, or changing their minds at the last minute about whether or not to enter the MSA [6.132]. I can see no reason why those situations should arise in this location any more than at any other MSA location throughout the motorway network.
- 16.121 The scheme for which the Appellants seek approval at the inquiry (the December 2007 revision) would, however, require acceptance of an extended length of the M42 without an adequate hard shoulder; it could lead to driver uncertainty because of the changes in operating regimes which would be involved along different stretches of the motorway; it is not the subject of a detailed signing strategy; there has been no application for the approval of the numerous Departures
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from standards which would be involved; and in a number of places those Departures would be necessary in combination.

- 16.122 I have had regard to the fact that one impact of the Appellants' proposals would be to make the lane drop/lane gain arrangements at the south facing slips of J6 and the north facing slips of J5 permanent [6.113, 6.134], but I do not consider this to be a sufficient advantage to outweigh the significant highway and safety problems which remain associated with the appeal proposals.
- 16.123 It is possible that some of these issues could be addressed by a proper process of negotiation and discussion between the Appellants and the HA, but I consider that there is no certainty or even a high degree of likelihood of a satisfactory outcome. I am conscious of the time which has already elapsed since the original appeal was submitted, and the time which has passed since the interim decision of 2001. I note the point made by Caroline Spelman MP that many local people have already had to live with uncertainty about the possibility of a MSA development for an extended period [14.19]. The Appellants contend that there is sufficient information before the inquiry to judge the safety of their proposals now [6.111, 6.125, 6.168, 6.171].
- 16.124 On the basis of the evidence before me at this inquiry, I am very far from satisfied that the Appellants' proposals can and should be cleared as a safe basis on which detailed planning for a MSA at Catherine de Barnes can proceed.
- 16.125 **I conclude** that the issues arising from the impact of the appeal development on the operation of the ATM system (summarised in paragraph 16.121 above) represent a significant change in circumstances which is material to consideration of the appeal and which militates strongly against approval. I accept the evidence of the HA that, if the proposals were approved on the basis of the information submitted, the ATM scheme could not continue to operate within the bounds of its established safety case. If the proposals were approved, the ATM scheme would have to be revised or even switched off. This would have clear implications for the free flow of traffic and congestion on the M42, and for achieving the economic goals set out in the RSS [9.28]. It would put at risk a scheme which has had a major positive impact [14.13], and which represents a significant investment of public money [9.54].

Green Belt considerations

- 16.126 In 2001, the Secretary of State considered that a MSA at the appeal site would result in a major incursion of built development that would be harmful to the openness of the Green Belt and would represent encroachment into the countryside. Whilst it would not lead to the merger of neighbouring towns, the proposal would reduce to some extent the effectiveness of the Meriden Gap. However, the Secretary of State recognised that the Meriden Gap is some 10km wide in the area of the appeal site, and, since the proposal was for an on-line
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facility, situated in relatively open countryside, the development would be perceived as a motorway related development, which would not set a precedent for further development. The Secretary of State considered that, bearing in mind the substantial and mostly undeveloped gap of about 2km between Catherine de Barnes and Hampton in Arden, and the relatively minor visual impact which the development would have when viewed from either of those settlements, there would be no significant contribution or loss of identity of those settlements arising from a MSA development [6.19]. In my view, all those considerations continue to apply.

- 16.127 The Secretary of State concluded that, although the proposed development would cause harm, the significant need to provide motorway users with an opportunity to stop and rest on this section of motorway, the contribution to road safety which the scheme would make, and the mitigation measures proposed meant that the benefits of the scheme clearly outweighed the harm, and therefore represented the very special circumstances to allow such development in the Green Belt.
- 16.128 I do not consider that the earth modelling proposed as part of the appeal development is any more extreme than that found to be acceptable by the Secretary of State in 2001 [7.92]. Nor do I consider that the conflict of the appeal development with Green Belt objectives or with the purposes of including land within the Green Belt would be any more severe or substantial than that considered by the Secretary of State in 2001 [8.36, 8.37]. In relation to air pollution, the motorway already exists in the area of the appeal site, and there is no evidence on which I can place significant weight which demonstrates that the appeal development would hinder the achievement of national air quality standards [6.227, 12.19, 12.20, 12.22].
- 16.129 The CPRE contend that the proposed use of VCBs would be visually and environmentally harmful, and would “harden” the motorway and alter its character [11.10, 11.11]. I have looked at the use of VCBs on the M25 as the CPRE requested. I cannot see that they make a significant difference to the acceptability of a motorway in a rural location. The existing steel safety barriers on the M42 are not a thing of beauty; they are an essential safety requirement. I do not see that the VCBs proposed as part of the appeal development would cause added harm to the Green Belt of any significance.
- 16.130 CPRE and SAMSAG point out that the Secretary of State has, since 2001, been ready to protect the Meriden Gap from development in a series of appeal decisions, though CPRE make it clear that they do not suggest that the decisions offer any specific guidance for the present appeal [11.6, 12.11, 12.28]. In my view each of these cases turns on its own fact situation. They simply serve to underline the overall strength of the Green Belt policy and the weight attached to it. They do not alter the fact that, in 2001, the Secretary of State weighed the harm which would be caused by the development proposed against the need for the development, and concluded that very special
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circumstances existed which clearly outweighed the harm in the circumstances of this particular case.

- 16.131 The Appellants argue that the only changes to their scheme which have taken place since 2001 have served to reduce the harm that the development would cause to the Green Belt. Their current proposal would give greater scope for beneficial off-site planting than the earlier scheme; it would take less land for built development; and the proposal now also includes the restoration of Walford Hall Farmhouse and its return to residential use within a curtilage which would be separated from the proposed MSA. At the same time, the Appellants argue that the scheme needs to be viewed in the context of a motorway which has become more urbanised following the introduction of ATM because of the lighting columns and gantries associated with that system [6.4, 6.5, 6.24].
- 16.132 In my view, the appeal development would still cause harm to the Green Belt through its inappropriateness, its impact on the openness of the Green Belt, and its encroachment into the countryside, but I accept that, since 2001, the harm which the proposed development would cause has reduced in the respects identified by the Appellants. In terms of additional negative issues which have been identified at this inquiry, the bulk of the land which would be lost to agriculture is not amongst the best and most versatile agricultural land, and the proposal has not proved to be of concern to DEFRA [6.226]. The appeal development would conflict with the new UDP policy to retain areas of dark sky within the Borough [8.5], and it can hardly be claimed to enhance local distinctiveness and the intrinsic qualities of the countryside [8.6]. These last two issues represent new policy emphases since the 2001 decision, but it seems to me that they must clearly have been issues which the Secretary of State had in mind when considering the impact of the MSA proposal in 2001. I do not consider that any of these matters affect the overall balance in connection with the appeal development.
- 16.133 I have concluded at paragraph 16.28 above that the need for a MSA on the M42 has in fact increased. Moreover, as indicated at paragraph 16.35 above, there is potential for the provision of a MSA to improve the facilities of the road network and to improve safety on the network, but that is subject to safe arrangements being made for the integration of a MSA with the operation of the motorway in the area.
- 16.134 That is where, in my view, the appeal proposal runs into difficulties. I have reached the view at paragraph 16.124 above that the Appellants' proposal cannot and should not be regarded as a safe basis on which detailed planning for the appeal development can proceed. I have concluded at paragraph 16.125 that, if the appeal proposal was approved in the form in which it was put to the inquiry, the impact on the operation of the ATM system (summarised in paragraph 16.121 above) would mean that the ATM scheme would certainly have to be revised, and possibly to be switched off. The Development Plan supports the maintenance of the success of the ATM scheme in
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relieving congestion and improving journey time reliability. It also highlights the importance of the effective operation of the M42 to both the transport needs and the economic prosperity of the region.

- 16.135 In my view such substantial harm would arise from the appeal proposal on this account that it outweighs the increased need for a MSA in the area which I have found to exist, the slight reduction in some aspects of Green Belt harm which would arise from the current proposals as against those considered in 2001, and the improved treatment of Walford Hall Farmhouse, to which I have attached considerable weight.
- 16.136 **I conclude** that the appeal development would be inappropriate development within the Green Belt, and that the harm it would cause to the Green Belt, together with the damage which its proposals would entail to the continuing safe operation of the M42 and the continuation of the successful ATM system on the motorway, mean that very special circumstances do not exist to justify the grant of planning permission in this case.

Interim overall conclusion on Appeal A

- 16.137 **I conclude** that the overall balance in favour of the appeal development, which was found to exist in 2001, now no longer exists, and that the appeal should be dismissed.
- 16.138 Although I shall recommend that the appeal be dismissed, the Secretary of State might reach a different conclusion on the issue of the balance of the arguments. I therefore go on to consider the conditions which might be imposed on any grant of planning permission, the relevance of the Unilateral Undertaking put forward by the Appellants and referred to at paragraph 1.9e above, and the impact of the *Powergen* case.

Conditions

- 16.139 The conditions I suggest should be imposed on any grant of planning permission in relation to Appeal A are set out in Appendix C to this report. They are based on those which accompanied the interim decision letter of March 2001, and they were substantially agreed between the parties at the inquiry [6.229]. The matters they are intended to address are indicated by the side headings. I comment on the conditions suggested only where necessary or where they were the subject of disagreement.
- 16.140 Conditions 1 to 4 are necessary to ensure that details of reserved matters are properly dealt with in an appropriate time scale. Conditions 5 to 8 should be imposed to ensure that the development is carried out in accordance with the illustrative plan on which the environmental assessment has been based. Although the siting of the buildings would be largely controlled by condition 5, it seems to me that retaining "siting" as a reserved matter would allow some minor
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flexibility on siting while ensuring that the locations of the buildings did not materially depart from those shown on the illustrative master plan. The nature of the application would therefore not be changed.

- 16.141 I agree with the Appellants that the drawings referred to in the various conditions cover substantially the same ground as a parameters plan [6.230].
- 16.142 In my view, condition 5 needs to be subject to condition 21, because condition 21 could take parking provision outside the areas shown on drawing DH.301.A-5.F. I accept the evidence of the HA in relation to the potential for traffic growth to generate a need for additional parking space at the appeal development. I consider that the use of the National Road Traffic Forecast central growth projections is appropriate in this case. The Appellants' site specific traffic projection does not allow for possible suppressed demand during the period of ATM construction or for possible increased demand following the success of the ATM pilot [6.231, 9.60]. Adequate parking space at a MSA is important in the interests of highway safety [9.59], and I consider that condition 21 provides a fair and reasonable means of protecting against the possible future inadequacy of the original parking provision [9.61].
- 16.143 Condition 13 limiting the impact of lighting is required in the interests of the amenity of the area and in the interests of road safety on the M42. It is concern for road safety which also prompts condition 19. As the Appellants say, there is a general system of control of advertisements, which in the normal event should be allowed to take its course [6.234]. I do not support the blanket restriction on the display of signs without consent sought by SAMSAG [12.44], but I consider that advertisements visible from the M42 should be prohibited in order to avoid the distraction of drivers.
- 16.144 As regards the restriction on opening the development without a signing agreement, that part of condition 16 was included by the Secretary of State in 2001, and I do not see that the fact that a similar condition has not been used elsewhere would justify its removal [6.232]. I have underlined the importance of signing at paragraph 16.110 above on road safety grounds.
- 16.145 The HA wish to have a requirement for the Council to consult them before approval is given to certain reserved matters on which the HA have expertise [9.62]. This would affect conditions 16, 17, 21, 40 and 51. While the Council indicate that they would in practice consult the HA on these issues as a matter of course, the Council would resist the imposition of a requirement to consult, as would the Appellants [8.39, 6.233]. The HA contend that a requirement to consult would serve as a useful *aide memoire*; it would provide for a transparent and publicly recognised process; and such a requirement has been included in conditions on other MSA approvals [9.62]. I note, however, that an obligation to consult was not written in to the conditions approved in 2001. In my view, such a requirement could serve to blur the
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responsibility of the Council to deal with reserved matters. No model condition contained in Circular 11/95 provides a specific requirement for a local planning authority to consult on reserved matters. I have therefore not included the HA's requested requirement for consultation.

- 16.146 Restrictions on the overall size of the proposed lodge and the retail areas are justified by the need to avoid the appeal development becoming a destination in its own right or harming the viability and vitality of adjoining town centres. I agree with the Appellants that SAMSAG's submission that all permitted development rights should be withdrawn is not justified [6.234, 12.44]. Circular 11/95 makes it clear that there should be a specific and persuasive justification for such an approach. If SAMSAG's fear that there would be a move ultimately to turn any permitted development into a conference centre proved to be justified, it would in any event require an application for development which would no doubt be treated on its merits.
- 16.147 The travel plan condition would provide scope for addressing sustainable access to the development by employees [12.29], and the BIA conditions pick up concerns regarding airport safeguarding [12.33].

The Swayfields Unilateral Undertaking

- 16.148 The motorway system in the West Midlands is monitored by operators at the Regional Control Centre ("RCC"). When ATM running is in operation, additional resources are devoted to the monitoring of the use of the hard shoulder as a running lane. If four lane running is to operate between J5 and J6 for 24 hours each day, the HA indicated during the inquiry that further resources would be required at the RCC, and that they would look to the Appellants to meet the cost of the additional workers and facilities that would be required [9.55 to 9.57].
- 16.149 Ultimately, the HA argued that the RCC would need one additional operator and one additional Traffic Officer patrol crew. The HA put the cost of this additional provision over the thirty year anticipated duration of the service at £20,775,470 [6.78 to 6.83, 9.58].
- 16.150 The Appellants indicate that they would not be prepared to meet these costs, but have executed a Unilateral Undertaking making provision for the payment of £950,000 to finance additional RCC resources. However, they contend that the Undertaking is not necessary to make the appeal development acceptable; is not fairly and reasonably related to the proposed development; and is therefore unreasonable [9.75, 9.76].
- 16.151 ATM currently operates for between 6.5 and 9 hours on each weekday [9.12]. It is going to be expanded to other parts of the motorway network in the West Midlands [9.13], and the hours of operation are likely to be increased [6.90]. Logically, there would be a need for some additional monitoring resources in any event to deal with this,
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but I cannot square either the HA's request or the Appellants' Undertaking with my perception of the additional demand which would arise from the appeal development. Four road crews are currently regarded as sufficient to monitor the whole of the region's road network between 10pm and 6am (including 500km of motorway), and sixteen patrols during the daytime [6.86, 6.88]. I find it hard to see that one additional crew would be justified by the change in the operational arrangements of the 4km stretch of the M42 between J5 and J6, or that one additional operator would be required in the RCC.

16.152 Nor am I convinced that it is reasonable to look to the Appellants to provide additional resources for a period of thirty years. I agree with the Appellants that such a period ignores the uncertainties associated with circumstances which will almost inevitably change [6.90].

16.153 The Appellants base the amount specified in their Undertaking on a ten year period, and say that it would cover one RCC operator for an extra eight hours each day [6.91]. I am not convinced, however, that this obligation is fairly and reasonably related in scale and kind to the proposed development, or that it is reasonable in all other respects. I do not see that this obligation is based on the best estimate of the additional resource which would really be required to meet a developing situation in terms of the future operation of the motorway.

16.154 **I conclude** that the Undertaking offered does not meet the requirements of Circular 05/2005.

The Powergen Case

16.155 Should the Secretary of State form the view that the scheme (including its access arrangements and the arrangements for the operation of the M42 between J5 and J6) is acceptable, then it seems to me that the decision of the Court of Appeal in *R (on the application of Powergen plc) v Warwickshire County Council* [1997] EWCA Civ 2280 would bite, and that it would be unreasonable for the HA effectively to exercise a veto by declining to sanction the arrangements upon which the decision would be based [6.169 to 6.173, 9.51 to 9.53]. As indicated at paragraphs 16.121, 16.124 and 16.125 above, however, I do not consider that the scheme arrangements are acceptable.

APPEAL B – THE JUNCTION 4 SITE

16.156 The appeal site is located at J4 of the M42 [2.20]. It lies within the Green Belt [2.22]. It has an area of around 23ha [2.21]. J4 is a grade separated signalised roundabout [2.29].

16.157 The appeal development would provide a comprehensive off-line junction MSA [3.8]. It would not include a lodge [3.9].

16.158 There are two SCGs in relation to this appeal - between the Appellants and the Council [1.26], and between the Appellants and the HA [1.27].

16.159 A scheme for a MSA at J4 was the subject of one of the appeals which were dismissed in 2001, but the present scheme differs from that considered at the earlier inquiry. It seeks to address the criticisms made of the earlier scheme by moving the built development further away from the M42, making improved arrangements to allow J4 to operate safely and efficiently, and omitting the lodge which was proposed as part of the original scheme [7.2 to 7.7].

The main considerations

16.160 At the second Pre Inquiry Meeting held in connection with these appeals, the then Inspector identified a list of issues to be addressed in the evidence to the inquiry in relation to Appeal B. The list is set out at paragraph 1.20 above.

16.161 I shall address each of those issues in turn, but, in the event, many of them were not pursued at the inquiry in any depth [7.10]. As with Appeal A, however, when all of those matters have been addressed, it seems to me that the essential consideration will be whether there are very special circumstances which justify the grant of planning permission within the Green Belt in this case. Very special circumstances to justify what is accepted to be inappropriate development [7.15] will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

16.162 Hockley Heath Parish Council (“HHPC”) argue that in effect the Appellants in Appeal B contend that the Government’s policy of enabling the provision of an opportunity for drivers to rest every half hour on a motorway overrules other planning policies [10.1]. I do not believe that to be the case. Certainly, the Appellants refer to the fact that the Secretary of State in 2001 found that the need for a MSA on the M42 was an “other consideration” sufficient to amount to very special circumstances justifying the permitting of development in the Green Belt. In the light of that, the Appellants claim that, if it is found that Appeal A would now cause greater harm than was the case in 2001, and if it can be shown that the current J4 scheme would do no more harm than the Secretary of State was prepared to accept at Catherine de Barnes in 2001, then there is no bar to permission being granted in relation to Appeal B [7.9].

16.163 I accept the logic of that position, but my understanding is that the Appellants fully accept that a new balance still needs to be struck to establish whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations in relation to development in the Green Belt at J4 (just as is the case at Catherine de Barnes). In any event, that is the approach which I have followed.

Consistency with the Development Plan and planning policy

- 16.164 Many of the policy issues raised in connection with Appeal A arise also in relation to Appeal B. The appeal site is not located in a MUA [8.2], but, just as with Appeal A, for the reasons outlined at paragraphs 16.34 and 16.50 above, I do not see that as having any real relevance to the appeal proposal. The RSS support for improvement to the Region's transport systems is of relevance [7.12], as is the importance attached to the successful operation of the ATM system. These are referred to at paragraphs 16.35 and 16.36 above.
- 16.165 On the other hand, the appeal site is a prominent area of farmland, currently in active farming use, located near to where people live, and with a public footpath running through the middle of it, which currently provides access to open fields and the wider open countryside [8.48]. The appeal development would lead to the net loss of some 18.95ha of land from agriculture. All the land is within Grade 3. I note that some of it is within Grade 3a (and therefore part of the best and most versatile agricultural land) [8.84], but the majority of the land affected is within Grade 3b. Policies PA14 and PA15 of the RSS, along with Policy C4 of the UDP seek to protect agricultural land [8.84, 12.4], but paragraph 28 of PPS7 says that little weight should be given in agricultural terms to the loss of Grade 3b land. I note the emphasis recently given by the Secretary of State for Environment, Food and Rural Affairs to the importance of agriculture [12.7], but the land concerned in this case is the least productive part of a large farm of 364ha. The loss of this area would not affect the viability of the balance of the holding [7.77].
- 16.166 The appeal site is protected by the countryside policies of the UDP. The appeal development would not respect or enhance the distinctive character of the countryside, and is therefore at odds with Policies C8 of the UDP and QE6 of the RSS [8.48, 11.3]. Solihull's Countryside Strategy has been adopted as Supplementary Planning Guidance. Recommended management strategies covering the appeal site include resisting new developments in the gaps between settlements [8.79].
- 16.167 The appeal site is in an area where people live, and is of value in terms of paragraph 26 of PPS7 in giving access to the countryside, an approach reflected in Policy C10 of the UDP [8.48]. Policy C9 of the UDP protecting areas of dark sky in the Borough is also relevant [8.5].
- 16.168 The site is also protected by the Green Belt policies of the RSS and the UDP, and affected by the national planning policy on Green Belt contained in PPG2. I concur in the judgement that the appeal development would represent inappropriate development in the Green Belt [7.15], and it will therefore be necessary to explore the question whether very special circumstances exist to justify the grant of planning permission in the Green Belt. I return to this issue from paragraph 16.224 below.
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- 16.169 An attempt was made at the UDP inquiry to secure a site specific allocation of land for MSA development at J4, but the Inspector rejected that approach, and the UDP contains no such allocation [6.178, 6.179, 12.37].
- 16.170 A full survey of the site for veteran trees was conducted having regard to the guidance contained in PPS9, but no veteran tree was found [7.79]. There would be an acknowledged loss of twelve individual trees from the development, and some others might be at risk from the earthworks involved in the proposal [7.78, 8.85].
- 16.171 There is also national policy guidance in relation to retail development and in relation to MSAs in particular, but these issues will be considered as separate topics below.
- 16.172 Finally, and importantly in terms of national policy, there is now further emphasis on the need to achieve sustainable development contained in PPS1 and its supporting policy documents [12.12]. SAMSAG refer to the additional distance traffic would travel in total to access and leave the proposed MSA (4,801,575km per year, according to Document HA0/8), and claim that this would not be sustainable and would make it more difficult to meet the reducing national air pollution limits at the site [12.38]. If a MSA is not provided, however, it seems to me that there is the risk that drivers would leave the motorway and travel over longer distances in order to find local service facilities, adding to traffic on the local road network [6.228].
- 16.173 Overall in relation to the Development Plan, I consider that there is support for the provision of a MSA at the appeal site offered by the RSS policies to improve facilities and improve safety on the road network, so long as there would be no detriment to the operation of the ATM system. The appeal development would, however, be at odds with UDP policies in relation to agriculture, countryside and, on the face of it, Green Belt, though the special considerations relating to development in the Green Belt (including those set out in national policy) are dealt with in more detail below.
- 16.174 In relation to national planning policy, there is some conflict with policy for the countryside. I do not consider that there is conflict with PPS9, and I am not satisfied that there is conflict with PPS1.
- 16.175 **I conclude** that the appeal development is not entirely consistent with the Development Plan, quite apart from the issue of development in the Green Belt.
- 16.176 **I further conclude** that there is some conflict with national planning policy in relation to the countryside.

Consistency with Airports policy

- 16.177 The Shirley Estates proposal for J4 would not affect the national policies set out in the Air Transport White Paper, the airports policies
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contained in the RSS, or the BIA Master Plan. The proposed MSA at J4 would be located well away from BIA [7.16, 8.51].

16.178 I **conclude** that there is no ground of objection to Appeal B based on airport policy.

Consistency with the 1998 MSA Policy Statement

16.179 The J4 scheme would comply with the requirements of the 1998 MSA Policy Statement in terms of the spacing of MSAs [7.17]. As with Appeal A, the Council contend that both the general policy test and the infill policy test contained in the 1998 Policy Statement should be considered in relation to the appeal development [8.52]. In my view, however, this is a 30 mile site, which would also happen in some respects to provide an infill facility. It happens to meet some of the infill tests contained in the Policy Statement, but essentially I have judged it against the 30 mile tests.

16.180 I accept that the removal of a lodge from the scheme would reduce the possibility of the MSA becoming a destination in its own right [7.17]. I do not consider the SAMSAG fear that a future planning application could be made for a lodge to be a consideration to which much weight should be attached [12.18]. Any such application would be treated on its merits at the time.

16.181 I accept that there is some risk that the retail facilities provided at this junction site could become used as local retail facilities [8.53, 11.15], though the availability in the immediate area of extensive retail and petrol sales facilities offering goods at prices lower than those likely to be charged at a MSA would significantly reduce the likelihood of this happening on any extensive scale [7.20, 7.21, 7.48g].

16.182 Although DfT Circular 01/2008 does not apply to the consideration of applications for MSAs registered prior to 2 April 2008, paragraph 57 of the Circular indicates that all MSAs will in future be required to provide the facilities demanded of MSAs by the Circular. There would be no difficulty in achieving this at J4, because the appeal application is in outline with all matters reserved. The provision of all the facilities required by the Circular could be ensured at the detailed planning stage [7.18].

16.183 Although paragraphs 97 and 98 of the new guidance indicate the Government's preference for on-line MSA sites, it is made clear that a junction site such as that proposed at J4 may be considered where it can be clearly demonstrated that the construction of an on-line MSA would have an adverse impact or could not be delivered due to planning, operational or environmental constraints [7.19, 13.8]. The Appellants argue that that is the case in relation to the Appeal A site at Catherine de Barnes [7.19], given the conflict which would arise with the ATM system, a view which I have effectively indicated at paragraph 16.137 above that I share. I therefore accept that a

junction site in this case would not be at odds with the Government's new guidance.

16.184 **I conclude** that the appeal development would be consistent with the policies in the MSA Policy Statement.

Consistency with PPS6 – Planning for Town Centres

16.185 The level of retail activity proposed for the J4 scheme is consistent with PPS6 and within the guidelines for MSAs contained in DfT Circular 01/2008 [7.20, 8.53]. The CPRE contend that the total level of retail space proposed would exceed the maximum area advised by the 1998 Policy Statement, which is carried forward to the new Circular [11.4]. Paragraph 112 of that Circular, however, makes it clear that the maximum figure does not include the area for ancillary retail sales from within the kiosk serving the petrol filling station [6.42].

16.186 I acknowledge at paragraph 16.181 above that there is some risk that the retail facilities provided at this junction site could become used as local retail facilities [8.53, 11.15], but because of the availability in the immediate area of extensive retail and petrol sales facilities I do not consider it likely that this would happen on any extensive scale. The MSA would be clearly signed as a motorway facility, and would be physically separate from local facilities within its own landscaped setting [7.21].

16.187 **I conclude** that the proposed development would be consistent with paragraph 3.30 of PPS6.

The adequacy of the Environmental Statement

16.188 The Council draw attention to the fact that, since the latest ES was prepared in relation to the appeal site, the proposed parking area has been extended, and could be further extended if planning permission were granted for the appeal development including a condition proposed by the HA to increase the provision for parking if demand should show this to be necessary. Both extensions would reduce areas of landscape around the proposed parking area as envisaged at the time the ES was prepared [8.54, 8.55]. The areas intended for the expansion of parking provision can be identified by comparing drawing 50592_MSA_001 Revision E (within Document CD417) with Document SEL0/8, which shows the area now proposed for parking at the intended opening of the appeal development, and the additional area which would be used, if necessary, to meet the HA's proposed condition [7.104].

16.189 I agree with the Appellants that the amendments, even taken together, are small ones, with no obvious environmental consequences. The area for parking would remain within the originally proposed circulatory roadway of the MSA [7.104]. An area for landscaping beyond the parking area would, however, remain, and the impact of the slightly extended parking area could in my view be

addressed by the landscaping treatment of that area agreed at the detailed stage.

- 16.190 The Council also claim (as do Swayfields) that the ES failed to consider the impact of the appeal proposals on Monkspath Wood [6.223, 8.56]. I agree with the Appellants, however, that the engineering works at Gate Lane would have no apparent impact on Monkspath Wood, the impact in fact being limited to the verge of Gate Lane adjacent to Monkspath Wood. There would be no impact on the root systems of trees in Monkspath Wood, because the ditch between the verge and the Wood presents a barrier to root growth extending to Gate Lane [7.23 to 7.26].
- 16.191 There was no reference in the ES to the existence of English bluebells (*Hyacinthoides non scripta*) in the verge alongside Gate Lane. Six small clumps would be affected by the J4 proposals. These enjoy some protection under the Wildlife and Countryside Act 1981, as extended. The protection amounts only to a prohibition on sale, however. There are extensive areas of English bluebells within Monkspath Wood itself, and these would not be affected by the development proposal [14.30, 14.32 to 14.36]. I do not consider that the omission of reference to English bluebells in the Gate Lane verge represents a substantial criticism of the environmental information presented to the inquiry.
- 16.192 **I conclude** that the ES provided to the inquiry (which I have taken into account in my conclusions on Appeal B, together with all other environmental information offered) is adequate for the purpose of giving proper consideration to any likely environmental effect of the proposed development.

Impact on safety and the free flow of traffic

- 16.193 The HA act as the highway authority for the M42 and its slip roads. The Council are the highway authority for the local road network, including the J4 roundabout [9.1].
- 16.194 In 2001, the Secretary of State placed considerable weight on two criticisms made on traffic grounds of the scheme then promoted at J4. It was concluded that the scheme would not allow the gyratory system at J4 to operate without causing undue congestion; and it was concluded that the proposed access layout to the MSA would be so complicated that it would lead to confusion for drivers who were unfamiliar with the area [7.28].
- 16.195 Building a MSA on the appeal site at J4 would not in itself generate much new traffic, but it would increase substantially the number of vehicles using the gyratory system at J4 [7.30, 8.58]. The Appellants accept that this extra traffic on the junction would increase the time taken by a driver in negotiating the junction, but question whether that delay would be perceptible, and whether it would in fact damage the reputation of the junction [7.46].
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- 16.196 The junction is already a complicated one, part of a series of linked junctions serving not just the M42, the A34 and the A3400, but also the existing major retail development at Tesco/Notcutts and the partially developed and planned employment developments at BVBP and Aspire [2.23, 2.25, 6.196, 8.57]. It is a junction where there are often already queues of traffic from time to time [10.25, 12.42, 14.4]. As a junction which provides access to major employment sites, the importance of which is recognised in the Development Plan, it would be a matter of some concern if J4 were to develop a reputation of becoming more congested or more difficult to navigate [6.215, 10.28, 14.15, 15.6].
- 16.197 Against that background, the Appellants have sought to address the Secretary of State's two highways concerns of 2001 in the following ways.

The impact on the gyratory system at Junction 4

- 16.198 The Appellants have modelled the operation of the junction using the TRANSYT computer program. From the outset, the modelling has sought to encompass the impact of alterations to the existing network proposed in connection with committed developments, the improvements proposed as part of the Appeal B scheme, and the traffic which would be generated by those committed developments plus the appeal development [7.33, 7.34].
- 16.199 Swayfields claim that, for a complicated junction such as that at J4, the Appellants should have used a micro-simulation model [6.204], but both the HA and the Council agreed that TRANSYT should be used, as it had been in assessments carried out in relation to previous applications in the area [7.33]. I agree with Swayfields that the use of a micro-simulation model such as PARAMICS or VISSIM would have been helpful, but I do not see that there can be any justified criticism of the Appellants for following the requirements of the two highway authorities.
- 16.200 Despite six Pre Inquiry Meetings spread over 17 months and an inquiry which took place over a period of 16 weeks, arguments about the parameters for the TRANSYT modelling continued virtually to the end of the inquiry. Ultimately, a TRANSYT run was produced for the Appellants taking account of all the elements contended for by the Council [7.37 to 7.39]. The Appellants claim that this shows that a problem would arise at only one point, and that point is one for which the HA are the responsible authority rather than the Council [7.42]. The HA are satisfied that the appeal development would have no impact on the operation of the ATM system [7.31], and in fact have withdrawn their objection to Appeal B [7.32, 9.63].
- 16.201 The Appellants contend that the TRANSYT run incorporating all the Council's requirements demonstrates that the system would have a particularly robust capacity to deal with the traffic generated by the appeal development and its impact on the local road network, because
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no allowance is made for the improvement which would take place in the operation of J4 and the surrounding traffic signals as a result of the installation of LINK-MOVA. This is a computerised linked traffic signal control system, already committed to be installed as part of the works connected with an approved development in the area. The Appellants say that system has been found to reduce delays on large signalised junctions by about 19% [7.36]. This is contested by the Council, who say that the system has not been used to date at so complex a junction as that at J4 [8.65]. It is also contested by Swayfields, who say that, on a complex series of junctions such as those found at J4, the beneficial impact might be only 2%. Micro-simulation would have removed any argument on the impact of LINK-MOVA [6.204]. Since all agree that the introduction of LINK-MOVA would not **reduce** the effectiveness of the modelled operation of the junction, I have assessed the outcome of the modelling on that basis.

- 16.202 Swayfields claim that the TRANSYT modelling underestimates the impact of committed development, because too great a level of modal shift is assumed as a result of the BVBP Phase II Travel Plan, to be implemented as a result of the planning approval for the second phase of that development [6.209]. This concern is shared by HHPC [10.29 to 10.32]. It is an issue, however, which I do not believe I need to pursue, since the TRANSYT run ultimately produced on behalf of the Appellants was prepared on the assumption that the impact of the BVBP Travel Plan on traffic flows would be nil [7.43].
- 16.203 Swayfields' further concerns about the TRANSYT modelling arise from doubts about the detailed operation of the junction and associated roads.
- 16.204 The TRANSYT assumes three ahead lanes would be used on the A34 northbound from the J4 roundabout, but Swayfields suggest that only two lanes would actually be used for this purpose by drivers; they say that the third lane is in practice used only by traffic wishing to turn right into Tesco [6.212 to 6.214]. Whilst that practice was seen to be followed by drivers during the accompanied site visit to this area [6.212], the traffic at that time (late morning) was not particularly heavy. I share the view of the Appellants that, in heavy traffic conditions, it would not be sensible to suppose that drivers would use only the two inside lanes when there would be a further lane which could be used to travel ahead. I note that neither the Council nor the HA adopted this approach when considering the traffic modelling for BVBP Phase II. They regarded the use of more than two lanes for travelling ahead as acceptable in considering that scheme, and I consider that a similar approach should be adopted here [7.44, 7.45].
- 16.205 The TRANSYT has also assumed no control to facilitate pedestrian crossing of the road system in the area [6.216]; but neither the Council nor the HA assumed that a pedestrian crossing phase should be included in the modelling for BVBP Phase II, despite their aspirations for the positive impact of the Travel Plan for that scheme.
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Again, I do not criticise the Appellants for following the same approach [7.45].

- 16.206 As with all TRANSYT assessments, the queues shown in the Appellants' TRANSYT outputs are "mean maximum queues" ("MMQs"), and, by definition, would be regularly exceeded. Those queues would not always clear during one green phase on the traffic signals. As a result, there would be a risk that queues would build, and begin to interfere with other parts of the junction upstream. That result is achieved even with intergreen times (the time when successive lights are not at green to avoid any conflict on the system) reduced from their current on-site timings. In fact, the appeal proposal would add carriageway width to the junction, and I accept that intergreen times would therefore need to be increased to allow time for traffic to clear [6.207].
- 16.207 There are junction improvements which are to be carried out by the developers of BVBP when occupation of that development has reached 103,060 sq m. Shirley Estates have no ability to advance certain of those junction arrangements should a MSA be opened before that level of occupation of BVBP be achieved, since they would involve land controlled by BVBP, who have made it clear that they oppose the MSA development and would not therefore assist [6.208, 15.7 to 15.9]. In response to that, the Appellants ultimately carried out modelling of the impact of MSA traffic on the road system without BVBP built beyond 103,060 sq m and also with BVBP built beyond that limit and their conditional works undertaken. This showed, again having regard to the Council's most stringent parameters, that the scheme would be acceptable under either scenario. Consequently, a revised form of condition was suggested, which dealt with the situation whether or not BVBP's conditional works had been completed [7.110]. This would not involve the need for works to be carried out by the Appellants on land outside their ownership or on highway land. No party objected to the efficacy of the wording of that condition [7.111]. I return to this issue in my discussion of conditions below.
- 16.208 The present position in relation to the Secretary of State's first issue of concern on highway matters in 2001 is therefore that the form of assessment required by the highway authorities has been undertaken. All the parameters required by the Council have been accommodated in the modelling. Adopting a similar approach to that followed by the Council and the HA in assessing the BVBP Phase II development in 2006, the TRANSYT shows that the junction arrangements could cope with the additional traffic generated by the MSA use, though queues would not always clear within one green phase, and intergreen times might have to be increased.
- 16.209 The Appellants accept that the additional traffic on the gyratory arising from the MSA use would add to the delay for traffic using the system, but claim that such delay would not be perceptible. Local people say that, whatever the predictions of computer modelling, there are significant queues at times on the system now, and extra MSA traffic
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could only add to that, at a time when there is still considerable extra traffic to be expected as a result of permissions already given for the balance of the BVBP development and for the Aspire development [6.203, 10.25 to 10.27, 12.16, 12.42, 14.5, 14.15, 14.16]. It is suggested that some drivers are already leaving the motorway and using the local road network rather than facing the existing congestion involved in using J4. No estimate of the extent of this phenomenon could be provided [14.22], but there is a fear expressed that the trend could become more common [14.27].

- 16.210 I consider that additional MSA traffic on the gyratory system at J4 must of necessity add to delay on that system, and, whilst the indication is that it would not cause the gridlock feared in 2001, there is at least the possibility that such delay would reduce the attraction of the regional investment sites in the area of J4, to which importance is attached in the Development Plan in the interests of the regional economy.

Complicated access arrangements and confusion for drivers

- 16.211 The revised J4 scheme before this inquiry seeks to address the Secretary of State's concern about the access arrangements to the MSA by providing access for both northbound and southbound traffic directly from the traffic controlled roundabout above the M42 at J4. The access to the MSA would become just another destination off the roundabout. Traffic **leaving** the MSA would all leave via the widened Gate Lane and the A3400, with traffic wishing to continue on the motorway again using the J4 roundabout (minimally in the case of southbound traffic) to return to the motorway [6.202, 7.29]. I note, however, that the number of decision points for drivers wishing to continue northwards after a stop at the proposed MSA would actually remain the same as that considered at the previous inquiry [8.59].
- 16.212 The revised J4 scheme would provide a benefit to the existing motorway system in that the southbound off slip diverge from the M42 to J4 would be improved to a two lane diverge. In fact, this improvement would be necessary in any event to accommodate adequately the level of traffic from developments in the area which have already been granted approval. No provision has been made in any of the planning permissions granted to secure funding to carry out the required improvements to the southbound diverge, so the improvement would produce a net benefit, in that it would address an existing potential problem [7.30, 7.48b].
- 16.213 The Council continue to express concerns, however, about the impact of MSA traffic on the safety of J4. The Council say that the junction presently has an exemplary safety record [8.66]. In fact, HHPC claim that this is at least partly the result of traffic negotiating the junction frequently having to travel at such low speeds as a result of congestion that the accidents which take place are non-reportable low impact accidents. HHPC claim that that is the only reason why the effects of driver confusion are not reflected in recorded serious impacts [10.25].
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In any event, Solihull Council contend that the complicated manoeuvres which would be required as a result of the addition of MSA development, the increased amount of traffic, and the increase in the proportion of unfamiliar drivers using the junction all point to a serious increase in complexity, likely to be followed by an increase in accidents at the junction [8.66].

- 16.214 Clearly, motorway drivers using a MSA would include a greater proportion of drivers unfamiliar with the gyratory system at J4 than the proportion of unfamiliar drivers otherwise using the system [6.201, 8.58, 8.62, 10.26]. Standards of design do not differentiate between drivers familiar or unfamiliar with an area, but the existence of a significant proportion of unfamiliar drivers was accepted by the Secretary of State as a relevant factor in 2001 [6.197].
- 16.215 While there is an accepted signing strategy for signing the Appeal B development from the motorway [9.64], the Council say that signing proposed on the local road network would not be adequate to avoid confusion amongst drivers. Without gantry signs on the circulatory carriageway, the scheme would rely only on road markings, and these would frequently be obscured by standing traffic [6.199, 8.63].
- 16.216 I note, however, that J4 has recently been accepted as safe by the Council to accommodate the BVBP development. The only difference which would arise from the addition of a MSA development would be the provision of signs and a lane to access the MSA. The Council have not suggested that there is any inherent unacceptability related to safety in the proposed new arrangement at the Gate Lane/A3400 junction. From that junction, road conditions would be the same for a MSA user as for a BVBP user [7.48h]. I consider that the detail of the signing of the junction to assist unfamiliar drivers is a matter which could be dealt with by a condition on any planning approval.
- 16.217 I do not consider that the access arrangements now proposed for the MSA or the highways proposals associated with the development would cause confusion for drivers sufficient to justify a refusal of planning permission.

Other highway and traffic issues

- 16.218 It is argued that the proposed layout of the J4 MSA would mean that vehicles using it would travel an additional 1,568,577 km per year to access and leave the MSA as compared with the distance which would be travelled by vehicles accessing and leaving the proposed MSA at Catherine de Barnes. I agree with the Appellants, however, that that figure needs to be considered in the context of the total of 40,800 million km travelled by vehicles each year. It would represent an additional 0.0038% of the distance travelled [7.47].
- 16.219 The Council contend that the network alterations proposed do not make adequate provision for cyclists and pedestrians to connect with major residential areas, and no facilities are provided to encourage
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public transport. These points are supported by Lorely Burt MP [14.4]. Again, however, I agree with the Appellants that the purpose of a MSA is to serve motorway traffic, which does not include cyclists and pedestrians. Improvements to cycleway, footway and public transport connections are only appropriate to influence the mode choice of a limited number of people – staff who would be employed at the MSA. There is very little cyclist or pedestrian activity around J4 at present. Measures to encourage public transport use are discussed in the Framework Travel Plan [7.48d].

- 16.220 Given that Gate Lane is the proposed route by which all traffic would leave the J4 MSA, the Council point out that there is a 2m vehicle width restriction on Gate Lane. However, I agree with the Appellants that the MSA proposals include widening the first section between the proposed MSA exit roundabout and the junction with the A3400. When that widening has taken place, it would be possible to move the width restriction to the east of the new roundabout. That section of the road would not be affected by vehicles leaving the MSA to return to the motorway [7.48e].
- 16.221 Finally, the Council contend that the Appellants have not demonstrated that their proposed mitigation works would be the most appropriate to address the impact of the additional traffic at J4, because their modelling does not show the operation of J4 with a MSA in place as proposed but with no mitigation [8.64]. So far as I can see the Appellants are correct when they say that there is no specific requirement in the Government's guidance on transport assessment for the provision of information regarding the impact of the proposed development without mitigation [7.47j], but it seems to me to be implicit in the approach that this should be done. However, what the Appellants have provided is the required assessment of the impact "with development" and "without development", and that seems to me sufficient to reach an informed judgement on the proposal on transport grounds.
- 16.222 **I conclude** that while the proposed development would not cause gridlock on J4, as was feared in 2001, it would add to delay for traffic at that junction, and there is the possibility that such delay would reduce the attraction of the regional investment sites in the area of J4, to which importance is attached in the Development Plan in the interests of the regional economy. I consider that this is an issue which needs to be taken into account in the balancing of issues concerning the appeal application.
- 16.223 **I conclude** that the other highway and traffic issues raised in connection with the appeal do not identify matters which should stand in the way of the approval of the appeal development.

Impact on Green Belt

- 16.224 In 2001, the Secretary of State concluded that the scheme then proposed at J4 would cause harm to the openness of the Green Belt
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and conflict with several purposes of including land in the Green Belt. It would also damage the landscape and harm the attractive rural appearance of the area [7.3]. The Appellants claim that the present appeal scheme significantly reduces the harm which the earlier scheme would have caused to landscape and Green Belt interests [7.4]. The proposed buildings and car parking areas have been moved to the eastern side of the central ridge of the site. The western side of the ridge (between the ridge and the motorway) would contain only landscaping and the access road to the MSA. The overall view from the M42 would remain principally one of meadow and woodland [2.21, 7.5]. The Appellants say this should be seen in the context of the area around J4 having become more urbanised since 2001 with the permissions which have been granted for development at BVBP and the Aspire Business Park [7.6].

- 16.225 The Appellants fully accept that the appeal site remains within the Green Belt, and that the MSA development would be inappropriate development [7.15]. They make the point, however, that any site for a MSA on this stretch of the M42 would equally lie within the Green Belt [7.52]. They point to the increased need for a MSA on the M42 in the interests of the safety of the travelling public (which I have accepted at paragraph 16.28 above) as representing other circumstances, outweighing the level of harm to the Green Belt by reason of inappropriateness and other harm which the appeal development would cause. The Appellants contend that there are therefore very special circumstances which would justify the grant of planning permission for the appeal development [7.9].
- 16.226 As to the increased urbanisation of J4, the BVBP and Aspire developments are not within the Green Belt. The M42 marks the boundary to the built development to the west [6.182, 8.46, 10.3]. I agree with the Council that the fact that the Aspire development would be visible from the M42 offers no support for a development on the other side of the motorway within the Green Belt [8.47].
- 16.227 While the actual hard area of the built development of the appeal proposal would be less than that envisaged in 1999/2000, the overall area of land involved in the present proposal would be increased [6.181, 10.4].
- 16.228 Paragraph 3.2 of PPG2 underlines the fact that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt, and substantial weight must be attached to that harm [10.8, 10.9]. The Appellants contend that harm though inappropriateness would be less than in 2001 because the appeal development would be less apparent than the earlier scheme [7.60]; but, as the Appellants themselves accept, inconspicuousness is not sufficient to eradicate harm [6.184, 7.61, 10.6]. I consider that the appeal development would still be to some extent visible from the motorway, because the access road to the development would be apparent to travellers on the motorway [6.185]. The development itself would be visible to people on the diverted footpath through the site, from Gate Lane, from the
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footpath to the south of the site, and to some extent from the edge of Monkspath, and from J4 itself [6.185, 8.70, 10.13, 12.40, 14.25].

- 16.229 I consider that the development proposed would also cause harm to the openness of the Green Belt, which paragraph 1.4 of PPG2 says is the most important attribute of the Green Belt. There would be hard surfaces over a total area of 7.23ha, within an overall development site of around 23ha. This would represent a significant loss of openness as compared with the present undeveloped state of the site [10.10]. I agree with HHPC that, while the main areas of built development would be in a less prominent position so far as travellers on the M42 are concerned, the development would actually be taken further into the Green Belt, and the impact on openness would be that much greater [10.11].
- 16.230 The Appellants argue that the appeal development would not contribute to urban sprawl, because the site is physically separated from large built up areas. There would be a clear field between J4 and the MSA, and the boundaries of Bentley Heath and Dorridge are clearly defined in the UDP. Green Belt policy has successfully contained urban sprawl in the area to date, and the proposed development would not create a precedent which would weaken that position, because it would be allowed only to satisfy a particular need [7.54]. I agree with HHPC, however, that the appeal proposal would extend development beyond the junction with the M42 into a predominantly rural area that contrasts quite markedly with the mostly built-up land to the north of J4. The fact that the buildings and car parking areas of the MSA would be a short distance beyond J4 would not alter the perception of the MSA as being a physical extension of the built-up area because of the roads, lighting, signing and other manifestations of the MSA on the approach to it from the junction. The significantly urbanised form proposed for the widened section of Gate Lane would add to this perception [10.15].
- 16.231 The MSA would be only about 400m from the conurbation Green Belt boundary. Within that 400m would be the motorway itself, which is an urban form of development. The remaining narrow gap of some 200m that will be left between Aspire Business Park and the M42 has little visual function in diminishing the perception of urban sprawl as far as the motorway, particularly because the car park for Aspire Business Park will be within this gap. The inner edges of the Green Belt are the most vulnerable to pressure for development that, if not resisted, could lead to a gradual erosion of the Green Belt, as paragraph A2 of PPG 2 advises. The appeal proposal would cause significant harm to the first Green Belt purpose, a conclusion that was shared by the Inspector who dealt with the First Review of the UDP [10.16].
- 16.232 At present, the built form of the conurbation lies to the west of the motorway. Even though the built form of the appeal proposal would be located beyond the ridge, the development would breach the existing limit of development by taking development to the east of the motorway. Although Green Belt policies would continue to apply to the
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remaining gap between Solihull and Dorridge, an extension of the conurbation beyond the motorway is clearly not desirable.

- 16.233 I consider that the development would also be in conflict with the second purpose of including land in the Green Belt. The Green Belt gap between Solihull and Dorridge is narrow (only about 1.5km), and the appeal development would significantly reduce it [6.176, 6.183, 8.67 to 8.69, 10.17, 11.14, 12.39, 14.9, 14.23]. The Appellants contend that placing the built development further away from the western edge of the gap between Solihull and Dorridge than was the case with their earlier scheme would provide increased separation from Solihull while still allowing separation from Dorridge [7.55 to 7.58]. In my view, however, while there is no intervisibility between Solihull and Dorridge, the appeal development would increase the perception for people moving between the two settlements of development continuing from the edge of Solihull to Dorridge.
- 16.234 In relation to encroachment on the countryside, it seems to me unquestionable that the appeal development would be in conflict with this Green Belt purpose. As both HHPC and Mr and Mrs Train argue, moving the built development away from the M42, although it reduces the impact on travellers on the M42, increases the level of encroachment on the countryside -7.59, 10.18, 14.24].
- 16.235 I have acknowledged above (at paragraphs 16.181 and 16.186) that there is some risk that the retail facilities provided at this junction site could become used as local shopping facilities. For the reasons stated in those paragraphs, however, I believe that this is a limited risk. I do not consider that it puts the appeal development in conflict with the fifth purpose for including land in the Green Belt [10.20, 12.10].
- 16.236 In terms of conflict with Green Belt land use objectives, I do not see that the appeal development would reduce opportunities for access to the open countryside for the urban population [10.22]. Clearly it would remove an area of open countryside as a result of development, and it would develop part of the area through which the Trans Solihull Link runs; but that footpath would still exist, albeit on a slightly diverted route [7.75]. The route through the MSA would not offer the attractions of the present route [8.83, 12.40], but that would apply only to a distance of some 500m to 850m of the full 25km length of the Trans Solihull Link [7.76]. The fact that the footpath would run through a MSA might lead users of the MSA to take it and to walk into the countryside as part of the process of taking a break from driving. The route would still offer a mainly countryside walk between Solihull and Dorridge, and the appeal proposals also include the provision of a new link to the rest of the local rights of way network [3.8, 7.75].
- 16.237 It is certainly the case, however, that the appeal proposals would not retain or enhance an attractive landscape near to where people live, and that it would take land out of agriculture [7.74, 8.84, 10.23, 10.24, 12.10].
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16.238 **I conclude** that the appeal development would be inappropriate development within the Green Belt, and that it would damage the openness of the Green Belt. It would conflict with three of the five purposes of including land within the Green Belt and with two of the six land use objectives for Green Belts.

Impact on light pollution

16.239 I accept that, since the 1999/2000 inquiry, new lighting has been introduced along the M42 in connection with the ATM system. I also accept that the development which has taken place and which is to take place on the western side of J4 has increased and will increase lighting in the area of the junction [7.64]. To the east of the Gate Lane ridge, however, apart from the lighting associated with the golf driving range (which operates until 10 pm) the site is predominantly dark at night times at present, a fact which I confirmed on my unaccompanied site visit during the hours of darkness. While the roundabout at J4 was lit, as was the A3400, after passing The Red House (moving away from the A3400) Gate Lane quickly becomes a dark country lane with dark land to both sides. There is a distinct sky glow from J4 and the M42 beyond, but the requirement for safe levels of lighting within the MSA together with attendant vehicle lights would extend the lit corridor of the M42 into open countryside for a significant distance. The top of the light columns at the Gate Lane roundabout would come into view about 120m from the junction of Gate Lane with Four Ashes Lane. This would in my view erode night time tranquillity and extend the urbanising influence of the M42 corridor [8.73].

16.240 **I conclude** that the appeal development would cause harm by reason of creating additional light pollution in the area contrary to Policy C9 of the UDP.

Impact on air pollution

16.241 The impact of the proposed development on air quality is a matter raised very strongly by local people [14.25, 15.10, 15.11]. SAMSAG criticise the approach to the provision of air quality information in the ES [12.21]. While Councillor Cresswell accepts that the motorway runs through the area at present, he points out that the highest level of pollution from a vehicle arises on the start of its engine from cold. The development of a MSA would therefore, in his submission, add to air pollution in the area [14.21].

16.242 The Appellants produce evidence, however, that the levels of pollutants which would be associated with the operation of the proposed MSA have been predicted against the requirements of the Air Quality Standards Regulations 2007 using the appropriate DMRB methodology. The assessment shows that the air quality which would apply during both the construction and operation of the proposed MSA would be well within the limits required by the Regulations [7.65].

16.243 I note that the Council as Environmental Health Authority raise no issue regarding air quality [8.74].

16.244 **I conclude** that there is no evidence to support the claim that the appeal development would cause unacceptable air pollution.

Other areas of potential harm arising from the appeal development raised by objectors

Impact on noise

16.245 Local people are also concerned at the impact which they believe the appeal development would have on the noise environment of the area of the appeal site. The issue is raised by Lorely Burt MP, by Councillor Cresswell, by Mr and Mrs Train, and in many of the written representations received [14.6, 14.20, 14.25, 15.10, 15.11].

16.246 The Appellants point out, however, that a comprehensive noise measurement survey was undertaken to determine existing background noise levels at the nearest residential property to the appeal site. The result shows that the noise climate is dominated by noise from the M42. It is also the case that it was confirmed at the accompanied site visit that, although the traffic noise reduces as a pedestrian moves further away from the motorway, there is still perceptible traffic noise at the eastern extremity of the appeal site [7.81].

16.247 I accept the evidence that the construction and operation of the proposed MSA would provide no significant change in the level of noise experienced at nearby sensitive receptors. I also note that the Council as Environmental Health Authority raise no issue regarding noise [8.87].

16.248 **I conclude** that there is no evidence to support the claim that the appeal development would cause unacceptable additional noise pollution.

Impact on landscape and visual amenity

16.249 Unlike the proposals submitted to the 1999/2000 inquiry, the Appellants emphasise that the current application was subject to a visual sensitivity analysis before any design work was undertaken. This led to the decision to locate the buildings and parking areas of the MSA to the east of the central ridge across the appeal site [7.67]. The Appellants consider that this substantially addresses the concerns of the Inspector about the view of the previous scheme for southbound travellers on the M42. There would still be potential glimpses of the northern part of the development from the motorway between existing trees immediately on completion of building. That would, however, be limited to a short section of the M42 (less than 450m). Once the new woodland planting had taken effect, the core development would be completely hidden from view [7.69].

- 16.250 The Appellants claim that the access roads on the part of the appeal site closest to J4 and the motorway have been carefully coordinated with the proposed ground modelling on the western part of the site to produce a less intrusive and more natural appearance. They consider that this would provide a soft and natural outlook from the residential properties in Monkspath [7.71].
- 16.251 The photomontages produced show the winter view of the proposal, which represents the worst case scenario [7.68].
- 16.252 The Appellants recognise that the character of the appeal site would inevitably change if the development were to take place, but it is their contention that the extensive woodland planting and the areas of meadow proposed around the development would help it to integrate into the surrounding landscape to achieve an appropriate landscape fit [7.74].
- 16.253 I understand and recognise the efforts the Appellants have made to meet the criticisms of the scheme which they put forward to the 1999/2000 inquiry. In doing so, however, I agree with certain objectors that they have not fully addressed some of those criticisms, and have, at the same time, run into new problems.
- 16.254 The appeal site presently comprises open pasture farmland, seen against a backdrop of woodland [6.187]. The Appellants' own ES characterises the appeal site and the wider area of which it is part as an attractive undeveloped landscape, with a clear rural character, used for rural purposes, and not degraded or run down [8.75]. Planting blocks of woodland to shield the development would be out of character with the immediate area. This is not an area in which ornamental planting would ring true [6.187, 8.76].
- 16.255 While the land to the west of the M42 is urbanised (and becoming more so with the employment developments carried out and planned), the eastern side of the motorway remains a largely intact pastoral landscape when viewed both from the M42 and from the local road and footpath network [6.188, 8.77, 14.30, 14.31].
- 16.256 The proposed MSA would bring structures and extensive vehicle parking into the location, with the transformation of a 280m stretch of Gate Lane, and the introduction of large areas of woodland blocks to shield the development. The Appellants' own witness accepted in cross examination that this would convert countryside into a transitional area between urban development to the west and the remaining countryside to the east [6.189, 8.78].
- 16.257 Views of open countryside from the M42 would be replaced by views of woodland planting, with the access road, its signage and lighting, and vehicles entering the MSA. Even after ten years, the access road lighting would still be visible from the motorway and from the edge of Monkspath [6.191, 6.194]. Walkers on the Trans Solihull Link would walk around a MSA rather than through open rolling pasture [6.192].
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From Gate Lane, on top of the substantial change to Gate Lane itself as a result of the widening of the road [8.81], there would be views towards the fuel forecourt and views of the lighting columns of the MSA and the Gate Lane roundabout instead of views of countryside [6.193].

16.258 The MSA proposals are also fundamentally at odds with the management strategies in the adopted Supplementary Planning Guidance contained in Solihull's Countryside Strategy. The development would occur in what is probably the most vulnerable of gaps between settlements. It would erode rather than enhance the River Blythe corridor. It would significantly degrade the recreational value of the Trans Solihull Link. While new planting would be introduced along the M42 corridor, this would be at the expense of what is currently an attractive area of open countryside with a clear rural character [8.78, 8.80].

16.259 **I conclude** that the current proposal would still cause harm to the landscape of the surrounding area through the introduction of alien uses and alien land forms, and that the visual amenity for travellers through the area, on the M42 or otherwise, would be reduced by the appeal development.

Impact on trees

16.260 The appeal development would involve the loss of 12 existing trees and 483m of existing hedgerow. One of the trees which would be removed is covered by a Tree Preservation Order. A detailed arboricultural survey has been carried out to ensure that retained trees would have adequate root protection areas. Appropriate conditions could be imposed to ensure that proper procedures were followed [7.78]. Despite that, the Council consider it likely that the nature of the ground modelling proposed to be carried out would cause the loss of further trees and hedgerow [8.85]. It is agreed that no veteran tree would be affected by the proposal. The appeal development would include the provision of a substantial quantity of replacement planting, and again that could be enforced by condition.

16.261 **I conclude** that the tree and hedgerow loss involved in the appeal development would represent an identifiable harm resulting from the proposal, but that harm would not alone be so substantial as to justify the refusal of the appeal.

Impact on ecology

16.262 Moving development further to the east (as compared with the 1999/2000 scheme) takes the proposal into a field which contains two grassland communities protected by the Biodiversity Action Plan. The Appellants accept that the scheme would involve the loss of 60% of that field. The question is raised whether arrangements would be made to save the balance of the protected grassland [6.220, 8.86]. In response, the Appellants offer a management plan secured by a

Section 106 obligation, which, they say, would represent an advance on the present treatment of the whole field; a continuation of the current grazing management regime could lead to the interest in the field being entirely lost [7.82].

16.263 The management plan in relation to drainage would also deal with the concern of Swayfields about the impact on the adjoining River Blythe Site of Special Scientific Interest, which lies just to the north of the appeal site [6.221, 7.83].

16.264 Ponds on the appeal site and permanent ponds to the north were surveyed for great crested newts. Only two exploratory individuals were found. Ponds to the east of the site were not surveyed [6.222, 7.83, 7.84]. The Appellants would be happy, however, to accept a condition requiring further survey work at the time of construction, with mitigation work to improve pond quality and provide access to a higher quality of terrestrial habitat for great crested newts [7.84]. A similar approach is offered in relation to bats [7.85].

16.265 The Appellants point out that Natural England raise no objection to the J4 scheme [7.86].

16.266 **I conclude** that, subject to the imposition of the conditions offered on any planning permission granted, there is no issue related to its impact on ecology which should stand in the way of approval of the appeal development.

Interim overall conclusion on Appeal B

16.267 The provision of a MSA at J4 would meet the significant unmet need for such a facility on this section of the M42. I have concluded at paragraph 16.28 that such need is in fact somewhat greater now than was the case in 2001. The provision of a MSA would also improve facilities and safety on the strategic road network in line with RSS aims. The appeal proposal would include an improvement to the southbound off-slip diverge from the M42 to J4, which is required, but not otherwise planned to be provided. The Appellants claim that these are other considerations sufficient to provide very special circumstances in which inappropriate development can be accepted in the Green Belt.

16.268 Inappropriate development is by definition harmful to the Green Belt. In this particular case, although the appeal development would be less apparent from the M42 than the proposal previously put forward for a MSA at J4, its illuminated access road would still be visible from the motorway. The MSA itself would also be visible to people on the diverted footpath across the site, from Gate Lane, from the footpath to the south of the site, and to some extent from the edge of Monkspath and from J4 itself. Although views from the M42 are important, this does not mean that views from other locations are unimportant.

- 16.269 The appeal development would cause harm to the openness of the Green Belt, since it would involve the development of a site of around 23ha which is currently open countryside. Of the total area, some 7.23ha would be developed with hard surfaces and buildings. In fact, both the hard development and the landscaping planned to shield it would reduce Green Belt openness.
- 16.270 The proposal would contribute to urban sprawl by extending development into a predominantly rural area, appearing as a physical extension of the existing built up area, because the roads, lighting and signing of the MSA would effectively link the existing development in the area of J4 with the hard development of the MSA to the east. The appeal development would occupy a significant proportion of the narrow gap between Solihull and Dorridge, and give rise to a risk that it would be claimed that the gap which would remain would no longer serve a Green Belt purpose. It would increase the perception of coalescence between Solihull and Dorridge. The more the gap is reduced, the more vulnerable it becomes. The appeal development would encroach on what is at the moment open countryside. It would not retain or enhance an attractive landscape near to where people live, and it would take land out of agriculture.
- 16.271 In addition to harm through inappropriateness and damage to openness, the proposal would therefore conflict with three of the five purposes of including land within Green Belts and two of the six land use objectives for Green Belts.
- 16.272 The appeal development would also cause harm by creating additional light pollution contrary to Policy C9 of the UDP, and it would cause harm to the landscape and visual amenity of the area, including the loss of some trees and lengths of hedgerow.
- 16.273 Although the proposed development would not cause gridlock on J4, as was feared in 2001, it would add to delay for traffic at that junction, and there is the possibility that such delay would reduce the attraction of the regional investment sites in the area of J4, to which importance is attached in the Development Plan in the interests of the regional economy.
- 16.274 Having given full weight to the benefits which would arise from the appeal development listed in paragraph 16.267, I consider that the harm which would be caused by the development to the Green Belt and the other harm which I have identified above substantially outweigh the benefits which would arise from the Appeal B development.
- 16.275 **I conclude** that very special circumstances have not been demonstrated to justify the MSA proposal at J4, and that the appeal should therefore be dismissed.
- 16.276 Although I shall recommend that the appeal be dismissed, the Secretary of State might reach a different conclusion on the issue of
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the balance of the arguments. I therefore go on to consider the conditions which might be imposed on any grant of planning permission and the relevance of the Unilateral Undertaking put forward by the Appellants.

Conditions

- 16.277 The conditions I suggest should be imposed on any grant of planning permission in relation to Appeal B are set out in Appendix D to this report. They were substantially agreed between the parties at the inquiry [7.101]. The matters they are intended to address are indicated by the side headings. I comment on the conditions suggested only where necessary or where they were the subject of disagreement.
- 16.278 Conditions 1 to 4 are necessary to ensure that details of reserved matters are properly dealt with in an appropriate time scale. Conditions 5 to 8 should be imposed to ensure that the development is carried out in accordance with the illustrative plans referred to in the conditions, which can serve the same purpose as a parameters plan [7.102]. Although the siting of the buildings would be largely controlled by condition 5, it seems to me that retaining “siting” as a reserved matter would allow some minor flexibility on siting while ensuring that the locations of the buildings did not materially depart from those shown on the illustrative master plan. The nature of the application would therefore not be changed.
- 16.279 In my view, condition 5 needs to be subject to condition 22, because condition 22 could take parking provision outside the areas shown on drawing 50592_MSA_001_Rev F. I accept the evidence of the HA in relation to the potential for traffic growth to generate a need for additional parking space at the appeal development. Adequate parking space at a MSA is important in the interests of highway safety [9.59, 9.66].
- 16.280 Condition 13 limiting the impact of lighting is required in the interests of the amenity of the area and in the interests of road safety on the M42.
- 16.281 Condition 15 is intended to address the issue dealt with at paragraph 16.207 above. The Council continue to raise the issue of whether the Appellants would have control of the necessary land to carry out the required works [8.90]. On the basis of the evidence I heard at the inquiry, that land would either be part of the existing highway or would be owned by the Appellants [7.111].
- 16.282 As regards the restriction on opening the development without a signing agreement, that part of condition 17 was included by the Secretary of State in the draft conditions put forward in relation to the Catherine de Barnes site in 2001, and I do not see that the fact that a similar condition has not been used elsewhere would justify its removal [7.103].
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- 16.283 The Appellants oppose the inclusion of condition 19, but I agree with the Council that it is necessary. The owners of the appeal site own other land adjoining the appeal site. The appeal site and this land have been put to a variety of uses in the past, some of them involving substantial public access. If such uses were to continue alongside MSA use, this could give rise to conflict with motorway and MSA traffic [7.105].
- 16.284 It is concern for road safety which prompts condition 20. As the Appellants say, there is a general system of control of advertisements, which in the normal event should be allowed to take its course [7.107]. I do not support the blanket restriction on the display of signs without consent sought by SAMSAG [12.44], but I consider that advertisements visible from the M42 should be prohibited in order to avoid the distraction of drivers.
- 16.285 In relation to condition 22, the Appellants are content with the provision made for possible future extension of the parking area at the appeal site and with the machinery proposed to assess whether and when such extension is necessary [7.104, 9.66].
- 16.286 Like Swayfields, the Appellants would resist the inclusion of a requirement for the Council to consult the HA in relation to certain of the material required to be submitted to the Council for subsequent approval. The Council say that such consultation will take place as a matter of course, so setting a requirement out in a condition is unnecessary. The HA contend that a requirement to consult would serve as a useful *aide memoire*; it would provide for a transparent and publicly recognised process; and such a requirement has been included in conditions on other MSA approvals [9.62, 9.67]. I note, however, that an obligation to consult was not written in to the conditions approved in relation to the Catherine de Barnes site in 2001. In my view, such a requirement could serve to blur the responsibility of the Council to deal with reserved matters. No model condition contained in Circular 11/95 provides a specific requirement for a local planning authority to consult on reserved matters. I have therefore not included the HA's requested requirement for consultation. If it were to be included, it would affect conditions 14, 15, 17, 18, 22 and 40.
- 16.287 Restrictions on the overall size of the retail areas are justified by the need to reduce the possibility of the appeal development becoming a destination in its own right or harming the viability and vitality of adjoining town centres. I agree with the Appellants that SAMSAG's submission that all permitted development rights should be withdrawn is not justified [7.107, 12.44]. Circular 11/95 makes it clear that there should be a specific and persuasive justification for such an approach. If SAMSAG's fear that there would be a move ultimately to add a lodge at J4 proved to be justified, it would in any event require an application for development which would no doubt be treated on its merits.
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16.288 The travel plan condition would provide scope for addressing sustainable access to the development by employees [12.41].

The Appeal B Unilateral Undertaking

16.289 During the inquiry, the Appellants submitted a Unilateral Undertaking dated 27 March 2008. Subsequently, they submitted a further Unilateral Undertaking dated 29 May 2008, which they wished to substitute for the earlier document [1.28]. It was pointed out that a Unilateral Undertaking cannot be revoked by a subsequent document in the way the Appellants proposed. The Council undertook, however, that they would seek to rely on only the later of the two documents if planning permission were to be granted [8.88]. It is therefore the later document which I have considered.

16.290 It would provide for an ecological and landscape management plan to be prepared covering areas both within and beyond the appeal site which are in the control of the parties to the obligation. This would address issues such as woodland and hedgerow protection and improvement and protection and mitigation of the impacts on protected species. A drainage and pollution management plan would address those two issues, both during the construction and during the operation of the proposed development. The Undertaking also commits the parties to it to provide for the diversion of footpath SL56, to provide a new footpath link between footpath SL56 and footpath SL55, and to provide a new footpath link running along the south side of Little Monkspath Wood to the diverted Gate Lane.

16.291 I am satisfied that the provisions of the Unilateral Undertaking of 29 May 2008 are reasonable and necessary, and that they comply with the other tests contained within Circular 05/2005.

Comparison of Appeal A and Appeal B

16.292 There is no dispute that planning permission should not be granted for more than one MSA on the M42 between J3A and J7. There were two proposals before the inquiry, and normally in that situation the relative merits of the alternative schemes would be a material consideration. In fact, however, I consider that the harm which would be caused by each of the appeal proposals would outweigh the benefits which would arise from acceptance of either proposal. In those circumstances, I have not considered this issue further, though the Appellants themselves and certain of the objectors did so [6.175 to 6.224, 7.87 to 7.96, 10.34, 10.35, 13.9, 13.10].

Overall conclusions

16.293 For the reasons set out in paragraphs 16.136 and 16.137 above, I **conclude** that Appeal A should be dismissed.

16.294 For the reasons set out in paragraph 16.275 above, I **conclude** that Appeal B should be dismissed.

17. RECOMMENDATIONS

17.1 I recommend that Appeal A be dismissed.

17.2 I recommend that Appeal B be dismissed.

Michael Ellison

INSPECTOR

APPENDIX A

LIST OF APPEARANCES

For the Appellant in Appeal A

Richard Phillips QC and Ian Ponter of Counsel, instructed by Hammonds, Solicitors, 2 Park Lane, Leeds, LS1 3ES

They called:

David Huskisson, DipLA (Glos), MLI, Principal, David Huskisson Associates

Hilary Ludlow, BSc, MSc, CBIol, MLI, MIEEM, CEnv, Managing Director, Landscape Science Consultancy Ltd

John Rhodes, MRICS, Planning Director, RPS plc

Michael Bedwell, BSc, CEng, MICE, FIHT, Executive Director, Waterman Boreham

Michael A Cutler, FRICS, Partner, John Shepherd, Chartered Surveyors, Auctioneers and Estate Agents

For the Appellant in Appeal B

Christopher Boyle and Angela Morris of Counsel, instructed by the Davis Planning Partnership, 17a Post House Wynd, Darlington, Co Durham, DL3 7LP

They called:

Allan Moss, BA (Hons), BPI, MRTPI, DipLA, MLI, Director, Alan Moss Associates

Jill Davis, BA (Hons), MRTPI, Partner, Davis Planning Partnership

Stephen West, MSc, MACMA, AIEEM, Europaeus Land Management Services

Ann J Sherwood, BSc (Hons), MIEEM, Senior Ecologist, ADAS UK Ltd

Nicholas J Anderson, BSc, CEng, MICE, FIHT, Regional Director, Faber Maunsell

For the Local Planning Authority

Martin Kingston QC and Nadia Sharif of Counsel, instructed by Michael Blamires-Brown, Solicitor to Solihull Metropolitan Borough Council, PO Box 18, The Council House, Solihull, B91 9QS

They called:

Anthony Bateman, BA (Hons), TP, MRICS, MRTPI, MCMI, Partner, Pegasus Planning Group

Philip Rech, BA (Hons), BPhil, MLI, Senior Partner, FPCR

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Ruth Jeffs, BEng (Hons), DipEN, CEng, MICE, MIHT, Director of Transport Planning, Peter Brett Associates

Peter Cornford, FRICS, FNAEA, Partner, John Earle & Son LLP, Chartered Valuation Surveyors

For the Highways Agency

Peter Goatley of Counsel, instructed by The Treasury Solicitor (Ms Sue Duncan), One Kemble Street, London, WC2B 4TS

They called:

Neil Hansen, MSc, IEng, MICE, Network Strategy Manager, West Midlands Network Strategy Division, Highways Agency

Goktug Tenekeci, BSc, MSc, PhD, MIHT, Associate, JMP Consulting Ltd

Ian Patey, BSc (Hons), MSc, CEng, MICE, Business Unit Director, Mouchel Traffic and Technology Business Unit

For Hockley Heath Parish Council

Roger Giles of Counsel, instructed by Stansgate Planning LLP, Conrad House, Birmingham Road, Stratford-upon-Avon, CV37 0AA

He called:

Peter Horridge, BSc (Hons), DipTP, FRICS, MRTPI, Partner, Stansgate Planning LLP

For the Campaign to Protect Rural England

Mark Sullivan, MRTPI, CMILT, CPRE Warwickshire, 41A Smith Street, Warwick, CV34 4JA

For SAMSAG, Bardon Lodge, Bardon Drive, Solihull, B90 3DA

George R Goodall, TD, BA, MSc, MSoc Sc, FRTPI gave evidence and called:

David Deanshaw, Honorary Secretary, Balsall Common Village Residents' Association

Maggie Throup, Say No Action Group

Councillor Malcolm James, Chairman, Hampton-in-Arden Parish Council

Russell Hogg, Catherine de Barnes Residents' Association

Graham Juniper, Chairman, Hampton-in-Arden Society

David Glanfield, BEd, Chairman, Dorridge & District Residents' Association

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Ian M Spencer. BSc (Hons), Planning Secretary, Dorridge & District Residents' Association

Interested parties

Lorely Burt MP, House of Commons, London, SW1A 0AA

Caroline Spelman MP, House of Commons, London, SW1A 0AA

Councillor Len Cresswell, Solihull MBC

Janet and Chris Train, 10 Denton Croft, Dorridge, Solihull, B93 8SE

Valerie Just, 26 Snowhill Drive, Cheswick Green, Solihull, B90 4JT

APPENDIX B

LIST OF DOCUMENTS

Core documents

CD1 to CD100 Base Plans

CD1	OS Plan of Area around Proposed MSA at M42 – Catherine de Barnes – Scale 1: 10,000
CD2	OS Plan of Area around Proposed MSA at J4 M42 – Box Trees / Monkspath – Scale 1:2500
CD3	Folder of Aerial Photos of the 2 MSA sites 1999
CD4	Plan of Public Rights of Way – J4 M42
CD5	Plan of Public Rights of Way – Catherine de Barnes
CD6	Drawing 301/05 Revision D, October 1999 – Catherine de Barnes Proposed Layout (for illustrative purposes only) at 1:1250 Scale

CD 101 to CD 200 – Development Plans

CD101	Regional Planning Guidance for the West Midlands (RPG11) – (The Regional Spatial Strategy 2004)
CD102	Solihull Unitary Development Plan 2006 (Adopted February 2006)
CD103	Inspector's Report into Solihull UDP First Review 2001-2011 (April 2005)
CD104	North Warwickshire Local Plan Review (Adopted 2006)

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CD105	Birmingham International Airport Surface Access Strategy (2007)
CD106	Birmingham International Airport Master Plan to 2030
CD107	Solihull MBC Green Spaces Strategy
CD108	West Midlands RSS Phase 2 Revision Submission Draft Regional Spatial Strategy, December 2007
CD109	Regional Spatial Strategy for the West Midlands – Incorporating Phase 1, January 2008

CD201 – 300 National Planning Guidance / Secretary of State Guidance linked to the Appeals & related letters

CD201	PPS1 – Delivering Sustainable Development (February 2005)
CD202	PPG2 Green Belts (January 1995)
CD203	PPS6 – Planning for Town Centres (March 2005)
CD204	PPS7 – Sustainable Development in Rural Areas (August 2004)
CD205	PPS9 – Biodiversity and Geological Conservation (August 2005)
CD206	PPG13 Transport (March 2001)
CD207	PPG15 Planning and the Historic Environment (September 1994)
CD208	PPG16 Archaeology and Planning (November 1990)
CD209	PPS23 Planning & Pollution Control (November 2004)
CD210	PPG24 Planning and Noise (September 1994)
CD211	Secretary of State letter dated 6 March 2001 ('minded to approve' the Catherine de Barnes proposals and dismissing the appeals at Junctions 4 & 5)
CD212	Inspector's report dated 17 October 2000 into the appeals at Catherine de Barnes and Junctions 4 & 5
CD213	Ministerial Statement on Policy for MSAs (1998)
CD214	The Future of Air Transport (the White Paper on Air Transport, produced by Department for Transport, December 2003).
CD215	The Future of Air Transport Progress Report (the Progress Report on the Air Transport White Paper, produced by Department for Transport, December 2006).

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CD216	Joint Circular 01/2003 Safeguarding Aerodromes Technical Sites and Military Explosives Storage Areas : The Town and Country Planning (Safeguarded Aerodromes Technical Sites and Military Explosives Storage Areas) Direction 2002 (published jointly by The Office of the Deputy Prime Minister, The Department for Transport and the National Assembly of Wales, January 2003)
CD217	DfT Circular 1/2002 Control of Development in Airport Public Safety Zones (published by the Department for Transport, July 2002).
CD218	Withdrawn
CD219	CAP 728 The Management of Safety: Guidance to Aerodromes and Air Traffic Service Unit on the Development of Safety Management Systems (Civil Aviation Authority March 2003)
CD220	Withdrawn
CD221	Reducing Risk, Protecting People, HSE's Decision Making Process (Health and Safety Executive 2001)
CD222	DfT & Welsh Office Joint Circular 1/94 Motorway Service Areas
CD223	DTLR Circular 04/2001 Control of Development Affecting Trunk Roads and Agreements With Developers Under Section 278 of the Highways Act 1980
CD224	DfT Circular 02/07 Planning and the Strategic Road Network
CD225	DETR Transport 2010 – The 10 Year Plan
CD226	HA Framework Document – November 2005
CD227	DfT – Guidance on Agreements with the Secretary of State for Transport under Section 278 of the Highways Act 1980 (February 2007)
CD228	Design Manual for Roads and Bridges – TD27/05 Cross Sections and Headrooms, February 2005
CD229	Design Manual for Roads and Bridges – TD22/06 Layout of Grade Separated Junctions, February 2006
CD230	Guidelines for Landscape and Visual Impact Assessment – Second Edition (2002)
CD231	DoE Circular 2/93 Public Rights of Way
CD232	Highways Agency Roadside Facilities Policy Review – Consultation - 29 October 2007
CD233	Countryside Agency Landscape Character Assessment Topic Paper 6 – Techniques and Criteria for Judging Capacity and Sensitivity
CD234	Countryside Agency Landscape Character Assessment – Guidance for England and Scotland
CD235	Suite of English Heritage Correspondence
CD236	Blue Boar Motorways Further Representations in Response to SoS Decision Letter
CD237	Government Office for the West Midlands Letter inviting further Representations in respect of the Blue Boar Scheme, 21 October 2004

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CD238	Solihull MBC Response to GOWM Letter 15 November 2004
CD239	SOS Letter re-opening the Inquiry 6 September 2005
CD240	Highways Agency Direction to refuse Application, 18 October 2001 and 17 May 2004
CD241	Withdrawn
CD242	PPS Planning and Climate Change – Supplement to PPS 1, December 2007
CD243	Building a Green Future - Policy Statement, Communities and Local Government
CD244	Planning Policy Statement 25 – Development and Flood Risk
CD245	ODPM Circular 05/2005 Planning Obligations
CD246	ODPM Circular 06/2005 Biodiversity
CD247	The Future of Transport White Paper – July 2004
CD248	DCLG – Guidance on Transport Assessment – March 2007
CD249	Design Manual for Roads and Bridges TD9/93
CD250	Transport White Paper 'A New Deal for Transport Better for Everyone' (July 1998)
CD251	A New Deal For Trunk Roads in England: Understanding the New Approach (July 1998)
CD252	Strategic Roads 2010 – Highways Agency 10 Year National Roads Strategy (2000)
CD253	Intelligent Transport Systems: The Policy Framework for the Roads Sector (November 2005)
CD254	Towards A Sustainable Transport System: Supporting Economic Growth in a Low Carbon World (October 2007)
CD255	Planning For Biodiversity and Geological Conservation – A Guide to Good Practice (March 2006)
CD256	Policy on Service Areas and Other Roadside Facilities on Motorways and All Purpose Trunk Roads in England (DfT Circular 01/2008 2 April 2008)
CD257	Department for Transport Statement – Expanding choice and cutting congestion on our motorways

CD301 – 400 Local Planning Papers

CD301	Warwickshire Landscape Guidelines
CD302	Nature Conservation in Solihull
CD303	Bundle of papers on M42 Motorway Tree Preservation Order 1974 including Plans and Modifications

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CD304	BIA – Draft Master Plan – Towards: 2030 Planning a Sustainable future for air transport in the Midlands (October 2005)
CD305	BIA – The Future Development of Air Transport in the UK: Midlands A National Consultation, The Birmingham Alternative
CD306	Withdrawn
CD307	Withdrawn
CD308	Solihull's Countryside 2000 – 2005 (SMBC)
CD309	CPRE – Saving Tranquil Places

CD401 – 500 Environmental Statements/Technical Reports and Linked to Appeals

CD401	Withdrawn
CD402	Withdrawn
CD403	Withdrawn
CD404	Withdrawn
CD405	Catherine de Barnes MSA Environmental Statement Technical Reports 1 – Traffic Impact Assessment
CD406	Catherine de Barnes MSA Environmental Statement Technical Reports 2 and 3 – Noise (2) & Air Quality Effects (3)
CD407	Catherine de Barnes MSA Environmental Statement Technical Reports 4 – 7 – Drainage and Water Quality (4) Earthworks (5) Lighting Appraisal (6) and Public Utilities Services (7)
CD408	Catherine de Barnes MSA Environmental Statement Technical Reports 8 – 10 – Landscape and Visual Effects (8) Historic and Cultural Assessment (9) and Ecological Assessment (10)
CD409	Catherine de Barnes MSA Environmental Statement, December 1997
CD410	Catherine de Barnes MSA Environmental Statement Non Technical Summary, December 1997
CD411	Catherine de Barnes MSA Additional Ecological Information, July 1998 (to be read in conjunction with Technical Report 10)
CD412	Catherine de Barnes MSA Supplemental Ecological Information, October 1999
CD413	Catherine de Barnes MSA Updated Environmental Statement, October 1999

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CD414	Catherine de Barnes MSA Further Environmental Information, June 2006
CD415	Catherine de Barnes MSA Further Environmental Information – September 2007
CD416	Proposed Motorway Service Area Blythe Valley M42 Junction 4 Shirley Estates (Developments) Ltd Revised Supplementary Environmental Statement – September 2007
CD417	Proposed Motorway Service Area Blythe Valley M42 Junction 4 Shirley Estates (Developments) Ltd Revised Supplementary Environmental Statement (Drawings) – September 2007
CD418	Proposed Motorway Service Area Blythe Valley M42 Junction 4 Shirley Estates (Developments) Ltd – Environmental Statement – February 2004
CD419	Shirley Estates Supplementary Environmental Statement (November 2006)

CD501 – 600 Transport Assessments / Information

CD501	Transport Assessment submitted in support of application 2006/1461 – Extension to Blythe Valley Business Park
CD502	Withdrawn
CD503	Withdrawn
CD504	Joint Statement of the Highways Agency, Birmingham International Airport Limited and the National Exhibition Centre regarding Options for Improving Motorway Access from the M42
CD505	Faber Maunsell M42 J4 MSA Transport Assessment for Shirley Estates – June 2007
CD506	Highway Design Statement including Relaxations and Departures from Standard for Proposed MSA Catherine de Barnes – Swayfields Ltd September 2007
CD507	Staff Travel Plan for Proposed MSA Catherine de Barnes – Swayfields Ltd September 2007
CD508	Transport Assessment for Proposed MSA Catherine de Barnes – Swayfields Ltd September 2007
CD509	Safety Case for Proposed MSA Catherine de Barnes – Swayfields Ltd September 2007
CD510	Proposed Carriageway Widening between Junctions 5 & 6 of M42 for Proposed MSA Catherine de Barnes (11 Sheets) – Swayfields Ltd January 2007
CD510A	Letter from Mr. Brian Plumb (Borehams) to Mr. Neil Hansen (HA) dated 6 June 2007 re: Drawings Contained in CD510

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CD511	Technical Note – Catherine de Barnes Integration of the MSA with Active Traffic Management
CD511A	North and Southbound Scenarios to Accompany CD511
CD512	ATM Monitoring and Evaluation 4-Lane Variable Mandatory Speed Limits – 6 Month Report (Primary and Secondary Indicators)
CD513	Agreed Statement on Turn-In Rates (November 1999)
CD514	ATM Monitoring and Evaluation of Vehicle Emissions and Air Pollution Impacts
CD515	ATM Monitoring Project – Road Safety ‘Before’ Report May 2005

CD601 – 700 Listed Buildings

CD601	Swayfields Listed Buildings Consent Application Reference 2006/882 re Walford Hall Farmhouse, together with Relevant Drawings, Specification, Relevant Correspondence/Consultation Responses and Decision Notice
CD602	Swayfields Listed Buildings Consent Application Reference 2006/1737 re Walford Hall Outbuildings, together with Relevant Drawings, Specification, Relevant Correspondence/Consultation Responses and Decision Notice
CD603	CPRE Listed Buildings Position Statement
CD604	SMBC Listed Buildings Position Statement
CD605	Shirley Estates Listed Buildings Position Statement
CD606	Swayfields Listed Buildings Position Statement
CD607	Walford Hall Farm & Outbuildings – Cost Plan
CD607A	Section 2A Threshing Barn – Extract from CD607 (Walford Hall Farm & Outbuildings – Cost Plan)
CD607B1 to 7	Sales Particulars to accompany CD607 (B1 Gorcott Hall / B2 Eastcote Manor / B3 The Firs / B4 Templars Cottage / B5 Old Marsh Farm / B6 The Chain House / B7 Knowle Hall)
CD607C	Location Maps of Buildings Presented in CD607B1 to 7
CD607D	Hampton Manor – Hampton in Arden

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CD701 – 800 Conditions / Section 106 Agreements / Statements of Common Ground and Statements of Case

CD701	Shirley Estates Draft Conditions 29 October 2007
CD702	Proposed Motorway Service Area Between Junctions 5 & 6 of the M42 at Catherine de Barnes – Highways Statement of Common Ground Between the Highways Agency and Boreham Consulting Engineers (on behalf of Swayfields Ltd) November 2007
CD702A	Signed SCG between the HA and Swayfields
CD703	Highways Agency Initial Views on Conditions and Obligations in Respect of Catherine de Barnes – 16 th November 2007
CD704	Proposed Motorway Service Area Blythe Valley M42 Junction 4 Shirley Estates (Developments) Ltd – Statement of Common Ground Between the Highways Agency and Shirley Estates – November 2007
CD705	Highways Agency Initial Views on Conditions and Obligations in Respect of Shirley Estates – 16 November 2007
CD706	Draft Section 106 Obligation Catherine de Barnes (Swayfields) 2007
CD707	Proposed Motorway Service Area Between Junctions 5 & 6 of the M42 at Catherine de Barnes – Statement of Common Ground Between Swayfields Ltd and Birmingham International Airport on Aviation Issues
CD708	SMBC – Catherine de Barnes MSA Draft Conditions (4 December 2007)
CD708A	SMBC – Catherine de Barnes MSA Draft Conditions (19 March 2008)
CD708B	HA – Catherine de Barnes MSA Draft Condition – Car Parking (19 March 2008)
CD708C	SMBC – Minerals and Waste Department MSA Appeals A & B Draft Conditions (20 March 2008)
CD708D	HA – Catherine de Barnes Revised Draft Highway Conditions
CD709	SMBC – Shirley Estates MSA Draft Conditions (4 December 2007)
CD709A	SMBC – Shirley Estates MSA Draft Conditions (19 March 2008)
CD709B	SMBC Environment Health and Noise Dept – MSA Draft Conditions J4 (20 March 2008)
CD709C	HA – Shirley Estates Revised Draft Highway Conditions
CD709D	Response of Shirley Estates to Document X8

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CD710	Draft Statement of Common Ground between SMBC & Swayfields
CD711	Draft Statement of Common Ground between SMBC & Shirley Estates
CD712	Inspector's Interim Comments on Draft Conditions (January 2008)
CD713	Waterman Boreham Letter & Plan to Highways Agency Clarifying Extent of Agreed Position and Identification of Outstanding Matters (8 January 2007)
CD714	Agreed Statement between Birmingham International Airport Ltd and Swayfields Ltd
CD715	Swayfields Rule 6 Statement of Case – 17 October 2005
CD716	Birmingham International Airport Rule 6 Statement of Case (Appeal A) – September 2005
CD717	Highways Agency Rule 6 Statement of Case (Appeal A) – July 2006
CD718	Highways Agency Rule 6 Statement of Case (Appeal B) – August 2006
CD719	Swayfields Rule 6 Statement of Case (Appeal B) – August 2006
CD720	Welcome Break Group Rule 6 Statement of Case (Appeals A & B) – July 2006
CD721	Hockley Heath Parish Council Rule 6 Statement of Case (Appeal B) – August 2006
CD722	Solihull Metropolitan Borough Council Rule 6 Statement of Case (Appeal B)
CD723	Shirley Estates (Developments) Ltd Rule 6 Statement of Case (Appeal B) – May 2006
CD724	Campaign to Protect Rural England Rule 6 Statement of Case (Appeals A & B)
CD725	SAMSAG Rule 6 Statement of Case (Appeal A) – July 2006
CD726	Shirley Estates (Developments) Ltd Rule 6 Statement of Case (Appeal A) – May 2006
CD727	Solihull Metropolitan Borough Council Rule 6 Statement of Case (Appeal A)
CD728	Deed of Planning Obligation by Undertaking Relating to Land at Catherine de Barnes Solihull – 27 August 2004

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CD729	Final Statement of Common Ground Between Swayfields and SMBC (Updates CD710)
CD730	Final Statement of Common Ground Between Shirley Estates and SMBC (Updates 711)
CD731	Draft Section 106 Obligation Catherine de Barnes (Swayfields) (Updates CD706)
CD732	Statement of Common Ground Between the Highways Agency and Shirley Estates
CD732A	Statement of Common Ground Between the Highways Agency and Shirley Estates (CD732) Displaying Track Changes
CD733	Draft Section 106 Obligation Shirley Estates (20 March 2008)
CD734	Final Section 106 Agreement between SMBC and Swayfields (20 March 2008)
CD735	Unilateral Undertaking regarding proposed J4 MSA (27 March 2008)
CD736	Unilateral Undertaking dated 3 June 2008 regarding resources for the Regional Control Centre
CD737	Unilateral Undertaking regarding proposed J4 MSA (29 May 2008)
CD738	Shirley Estates Land Registry Searches in relation to Titles WM699317 (the appeal site) and WM394013 (the woodland)

CD801 – Miscellaneous Documents

CD801	Third Party Written Representations
CD802	Notes of the 1 st Pre Inquiry Meeting
CD803	Notes of the 2 nd Pre Inquiry Meeting
CD804	Notes of the 3 rd Pre Inquiry Meeting
CD805	Notes of the 4 th Pre Inquiry Meeting
CD806	Notes of the 5 th Pre Inquiry Meeting
CD807	Notes of the 6 th Pre Inquiry Meeting
CD808	Swayfields – List of Appearances
CD809	Shirley Estates – List of Appearances
CD810	Solihull Metropolitan Borough Council – List of Appearances

Inquiry Documents

X – Inspector's Documents

X1	Inspector's Note of Evidence given by Mr. Rhodes during cross examination by Mr. Kingston regarding Walford Hall Farmhouse
X2	Email from HA to Programme Officer dated 18 February 2008 Concerning Inspector's Queries Regarding Statements of Common Ground
X3	Inspector's Response to X2 (above)
X4	Response of the Inspector to Submission on behalf of SAMSAG (SAM0/2) regarding cross examination of SMBC and HA Witnesses
X5	Agreed Note of Evidence given by Mr. Rhodes during cross examination by Mr. Kingston and in re-examination by Mr. Phillips relating to Walford Hall Farm House
X6	Preliminary List of Possible Site Visit Venues
X7	MSA Outstanding Issues on Conditions as at 28 March 2008
X8	Inspector's Outstanding Queries on Conditions as at 12.5.08
X9	Letters dated 16 July 2008 formally closing the inquiry

Documents submitted by Swayfields Ltd

SWA0/1	Swayfields – Opening Submissions
SWA0/2	List of Latest Application Plans
SWA0/3	Evidence from Previous Inquiry – Site Specific Landscape Evidence on Catherine de Barnes on behalf of SMBC by David Thirkettle
SWA0/4	Shirley Estates (Developments) Ltd – Plan 7.1 Zone of Visual Influence Year 0 – Dated December 1999
SWA0/5	Suite of Correspondence re: Veteran Trees and Regulation 19 requests for Further Information
SWA0/6	Email from Michael Bedwell (Swayfields) to Neil Hansen (HA) dated 13 February 2008 re: Auxiliary Lanes
SWA0/7	Extract from HA269 - Government Announces Tests for New Motorway Service Areas

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SWA0/8	Times Article Wednesday 5 March 2008 – ‘Drivers Face a Toll For Life in the Fast Lane’
SWA0/9	Note Regarding Wicket Signings on Narrowed Central Reservation
SWA0/10	Implications for the resourcing of the Regional Control Centre
SWA0/11	Closing submissions – Appeal B
SWA0/12	Closing submissions – Appeal A
SWA0/12A	Judgement in R v Warwickshire County Council ex parte Powergen PLC
SWA1/1	Hilary R. Ludlow – Appeal A Catherine de Barnes Proof (Ecology)
SWA1/2	Hilary R. Ludlow – Appeal A Catherine de Barnes Summary Proof
SWA1/3	Hilary R. Ludlow – Appeal A Catherine de Barnes Appendices
SWA1/4	Hilary R. Ludlow – Appeal B Shirley Estates Proof (Ecology)
SWA1/5	Hilary R. Ludlow – Appeal B Shirley Estates Summary Proof
SWA1/6	Hilary R. Ludlow – Appeal B Shirley Estates Appendices
SWA1/7	Hilary R. Ludlow – Tree Schedule Catherine de Barnes – May 2007
SWA2/1	David Huskisson – Appeal A Catherine de Barnes Proof (Landscape & Visual Effects)
SWA2/2	David Huskisson – Appeal A Catherine de Barnes Summary Proof
SWA2/3	David Huskisson – Appeal A Catherine de Barnes Appendices
SWA2/4	David Huskisson – Appeal B Shirley Estates Proof (Landscape & Visual Effects)
SWA2/5	David Huskisson – Appeal B Shirley Estates Summary Proof
SWA2/6	David Huskisson – Appeal B Shirley Estates Appendices
SWA2/7	David Huskisson – Rebuttal Proof in Response to Allan Moss of Shirley Estates (SEL2A&B)
SWA2/8	David Huskisson – Note detailing differences in Revision Plan G over and above Revision Plan F
SWA2/9	Table and Comparison Plan at Junction 4 Site

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SWA3/1	Michael Bedwell – Appeal A Catherine de Barnes Proof (Highways Issues)
SWA3/2	Michael Bedwell – Appeal A Catherine de Barnes Summary Proof
SWA3/3	Michael Bedwell – Appeal A Catherine de Barnes Appendices
SWA3/4	Michael Bedwell – Appeal B Shirley Estates Proof (Highways Issues)
SWA3/4/SUP	Michael Bedwell – Appeal B Shirley Estates Supplementary Proof
SWA/3/4/SUP/ APPENDICES	Michael Bedwell – Appeal B Shirley Estates Supplementary Proof Appendices
SWA3/4/2 nd SUP	Michael Bedwell – Appeal B Shirley Estates Second Supplementary Proof
SWA3/4/3 rd SUP	Michael Bedwell – Appeal B Shirley Estates Third Supplementary Proof
SWA3/4/4 th SUP	Michael Bedwell – Appeal B Shirley Estates Fourth Supplementary Proof
SWA3/REB	Michael Bedwell – Rebuttal Proof in response to Neil Hansen, Dr. Goktug Teneckeci and Ian Patey of the Highways Agency, Ruth Jeffs of SMBC, Nicholas Anderson of Shirley Estates and the Written Representations of Welcome Break Group
SWA3/REB/ APPENDICES	Michael Bedwell – Appendices to Rebuttal Proof in response to Neil Hansen, Dr. Goktug Teneckeci and Ian Patey of the Highways Agency, Ruth Jeffs of SMBC, Nicholas Anderson of Shirley Estates and the Written Representations of Welcome Break Group
SWA3/5	Michael Bedwell – Appeal B Shirley Estates Summary Proof
SWA3/6	Michael Bedwell – Appeal B Shirley Estates Appendices
SWA3/7	Michael Bedwell – Flow Diagram of Procedures for Agreements under Section 278 of the Highways Act 1980
SWA3/8	Michael Bedwell – Critical Path Procedural Flow Chart for Section 278 Works
SWA3/9	Calculation of Diversion Distances to proposed M42 MSA
SWA3/10	Michael Bedwell – Note to Inquiry in respect of Parking Allocation

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SWA3/11	Michael Bedwell – Note Relating to Statement of Common Ground Between HA and Shirley Estates Blythe Valley Business Park Traffic
SWA3/12	Michael Bedwell – Proposed Highways Works Cross-Section Details – Departures from Standard Proposals on M1 & M62
SWA3/13	Michael Bedwell – Note on J4 TRANSYTs for 1.4 million sq ft of office development at Blythe Valley Business Park
SWA3/14	Michael Bedwell – Note on the Secretary of State’s previous dealings with Departures from Standard
SWA4/1	John Stuart Rhodes – Appeal A Catherine de Barnes Proof & Appendix (Planning Policy)
SWA4/2	John Stuart Rhodes – Appeal A Catherine de Barnes Summary Proof
SWA4/4	John Stuart Rhodes – Appeal B Shirley Estates Proof (Planning Policy)
SWA4/5	John Stuart Rhodes – Appeal B Shirley Estates Summary Proof
SWA4/6	Draft Report on Walford Hall Farm by Mike Cutler referred to in evidence by John Stuart Rhodes

Documents submitted by Shirley Estates (Developments) Ltd

SELO/1	Shirley Estates - Opening Submissions
SELO/2	Shirley Estates – List of Relevant Plans
SELO/3	Shirley Estates – Veteran Tree Survey 25 February 2008
SELO/4	World Health Organisation – Guidelines for Community Noise
SELO/5	Shirley Estates – Summary of Listed Building Evidence for Appeal A
SELO/6	Statement of Common Ground in respect of Ecology between Shirley Estates and Swayfields dated 14 February 2008
SELO/7	Shirley Estates Position Statement on Swayfields Listed Building Case
SELO/8	Revised Proposed MSA and Junction Layout Plan 50292_MSA_001 Revision F

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SEL0/9	Comparison of Land Areas – Shirley Estates’ response to David Huskisson Figures
SEL0/10	Jill Davis – Letter dated 18 April in response to Document BVP2
SEL0/11	Early draft of SCG between SMBC and Shirley Estates
SEL0/12	Closing submissions on behalf of Shirley Estates
SEL0/13	Closing submissions – final observations
SEL0/14	Response to the application for costs submitted on behalf of Solihull MBC
SEL1A&B	Jill Davis – Appeal A & B Joint Proof (Planning Matters)
SEL1A&B/1	Jill Davis – Appeal A & B Joint Proof Addendum
SEL1A&B/2	Jill Davis – Replacement Table 1 in respect of SEL1A&B/1
SEL1A/2	Jill Davis – Appeal A Catherine de Barnes Summary Proof
SEL1A/4	Jill Davis – Rebuttal Proof in response to John Rhodes of Swayfields (SWA4/1)
SEL1A/5	Jill Davis – Rebuttal Proof in response to John Rhodes of Swayfields (SWA4/4)
SEL1B/2	Jill Davis – Appeal B Shirley Estates Summary Proof
SEL1B/3	Jill Davis – Rebuttal Proof in response to Anthony Bateman of SMBC (SMBC1B)
SEL1B/4	Response to SAMSAG Questions for Jill Davis on 26 February 2008 regarding Vibrock Statements
SEL1B/5	Note on the implications for the inquiry of DfT Circular 01/2008
SEL2A&B	Alan Moss – Appeal A & B Joint Proof (Landscape)
SEL2A&B/1A	Alan Moss – Appeal A & B Joint Proof Appendix 1
SEL2A&B/1B	Alan Moss – Appeal A & B Joint Proof Appendix 2
SEL2A&B/1C	Alan Moss – Appeal A & B Joint Proof Appendix 3
SEL2A/2	Alan Moss – Appeal A Catherine de Barnes Summary Proof
SEL2A/3	Alan Moss – Rebuttal Proof in response to David Huskisson of Swayfields (SWA2/1)

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SEL2A/12	Letter from David Hothersall to Alan Moss dated 4 February 2008 re: Photomontages for Proposed MSA at Junction 4 and accompanying Lighting Plan
SEL2B/2	Alan Moss – Appeal B Shirley Estates Summary Proof
SEL2B/3	Alan Moss – Rebuttal Proof in response to Phil Rech of SMBC (SMBC3B)
SEL2B/4	Alan Moss – Rebuttal Proof in response to David Huskisson of Swayfields (SWA2/4)
SEL2B/5	Alan Moss – Rebuttal Proof in response to Ian Spender of SAMSAG (Enclosed Within SAM2A&B)
SEL2B/6	Alan Moss – Scale of land lost to Agriculture (J4 Proposals)
SEL2B/7	Alan Moss – Response to SWA2/9: Faber Maunsell Drawing (Rev A) Superimposed on Alan Moss Associates Drawing 1263.02
SEL2B/8	Alan Moss – Statement regarding the Alleged Impact of the Widening of Gate Lane on Monkspath Wood
SEL2/11	Evidence from Previous Inquiry – General Landscape Evidence on behalf of SMBC by David Thirkettle
SEL3A	Nicholas J. Anderson – Appeal A Catherine de Barnes Proof (Highway Matters)
SEL3A/2	Nicholas J. Anderson – Appeal A Catherine de Barnes Summary Proof
SEL3B	Nicholas J. Anderson – Appeal B Shirley Estates Proof (Highway Matters)
SEL3B/1	Nicholas J. Anderson – Appeal B Shirley Estates Appendices
SEL3B/2	Nicholas J. Anderson – Appeal B Shirley Estates Summary Proof
SEL3B/3	Nicholas J. Anderson – Rebuttal Proof in response to Ruth Jeffs of SMBC (SMBC2B)
SEL3B/4	Nicholas J. Anderson – Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/4)
SEL3B/5	Nicholas J. Anderson – Supplementary Proof including Rebuttal to Proof of Evidence by Ruth Jeffs (SMBC2B/3)
SEL3B/6	Nicholas J. Anderson – Supplementary TRANSYT Report
SEL3B/7	Nicholas J. Anderson – Errata: Supplementary TRANSYT Report (SEL3B/6)

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SEL3B/8	Nicholas J. Anderson – M42 J4 MSA Comparison of Turn in Flows
SEL3B/9	Nicholas J. Anderson – Schedule of Highway Differences Between Shirley Estates and Swayfields
SEL3B/10	Nicholas J. Anderson – Email re Highways J4 Assessment SoCG
SEL3B/11	Nicholas J. Anderson – Extract from Ruth Jeffs Draft SoCG Dated 10 March 2008
SEL3B/12	Nicholas J. Anderson – Note on Swayfields Position Re: Junction Modelling
SEL3B/13	Draft Statement of Common Ground between Shirley Estates and SMBC prepared by Ruth Jeffs dated 12 March 2008
SEL3B/13A	Text of SEL3B/13 Showing Track Changes from previous Draft
SEL3B/14	Nicholas J. Anderson – Draft Schedule of Differences between Shirley Estates and SMBC (19 March 2008)
SEL3B/15	Nicholas J. Anderson – Additional TRANSYT Modelling Junction 4 (Introduction)
SEL3B/16	Nicholas J. Anderson – SMBC TRANSYT Reference Case Results
SEL3B/17	Nicholas J. Anderson – Note on Signage Strategy and Decision Points
SEL3B/18	Nicholas J. Anderson – Second Supplementary Proof
SEL3B/19	Nicholas J Anderson – TRANSYT Outputs in relation to the extension of Blythe Valley Business Park
SEL3B/20	Nicholas J Anderson – Base and Committed Development – Node Diagram BVP 1.4m sq ft analysis
SEL3B/21	Nicholas J Anderson – with MSA Development Link – Node Diagram 1.4m sq ft analysis
SEL3B/22	Nicholas J Anderson – Traffic flows – BVP 1.4m sq ft
SEL3B/23	Nicholas J Anderson – TRANSYT results comparison BVP development up to 1.4 sq ft with existing exit arrangements
SEL3B/24	Revised condition regarding highway works
SEL3B/24A	NJA9_Rev A Plan showing proposed highway works BVP up to 1.4 million sq ft
SEL3B/24B	NJA10_Rev A Plan showing proposed highway works

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SEL3B/25	Off slip travelling south to J4 proposed MSA – queuing length
SEL4B/1	Ann Sherwood – Rebuttal Proof in response to Hilary Ludlow of Swayfields (SWA1/4)
SEL4B/2	Ann Sherwood – Field Notes
SEL5B/1	Stephen West – Rebuttal Proof in response to Hilary Ludlow of Swayfields (SWA1/4)
SEL5/2	Stephen West – Bat Mitigation Guidelines (English Nature)
SEL5/3	Stephen West – Bat Surveys Good Practice Guidelines (Bat Conservation Trust)
SEL5/4	Stephen West – Great Crested Newt Mitigation Guidelines (English Nature)
SEL5/5	Stephen West – Herpetofauna Workers Manual (Joint Nature Conservation Committee)

Documents submitted by Solihull Metropolitan Borough Council

SMBC0/1	SMBC Opening Submissions
SMBC0/2	High Court Judgment CO/3497/2003 Chelmsford Borough Council v First Secretary of State
SMBC0/3	Letter from Hammonds to SMBC dated 28 November 2007 re: Ecology
SMBC0/4	Tree Schedule Catherine de Barnes – December 2007
SMBC0/4A	Field Copy of Tree Schedule Catherine de Barnes – December 2007
SMBC0/5	Veteran Trees Initiative, Specialist Survey Method (English Nature)
SMBC0/6	Veteran Trees – A Guide to Good Management
SMBC0/7	Letter from Roger Stone to Ms. A Frost (GO-WM) re: Walford Hall Farmhouse
SMBC0/8	Suite of Letters re: Listed Buildings
SMBC0/9	List of Trees SMBC Request for Shirley Estates Survey on Veteran Status

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SMBC0/10	Advanced Motorway Signalling and Traffic Management Feasibility Study - A report to the Secretary of State for Transport – March 2008
SMBC0/10A	Annex to SMBC0/10 Above
SMBC0/11	Rights of Way Improvement Plan – November 2007 to November 2012
SMBC0/12	Valuation Report on Walford Hall Farmhouse
SMBC0/12A	Plan Showing Locations of Photographs in Appendix of SMBC0/12
SMBC0/13	Outbuildings to Walford Hall – Report by the Conservation Studio
SMBC0/14	Committee/Cabinet Report of Council Meetings
SMBC0/15	Minutes of Committee/Cabinet Meetings (SMBC0/14)
SMBC0/16	Note on TPO matters
SMBC0/17	Putative Reasons for Refusal to Grant Planning Permission for Shirley Estates development at Junction 4 M42
SMBC0/18	Response to MSA Policy Review
SMBC0/19	Section 106 obligation relating to the development of Blythe Valley Park Phase 2
SMBC0/20	Outline planning permission 2006/1461 for Blythe Valley Business Park
SMBC0/21	Off slip traveling south to J4 proposed MSA – queuing length
SMBC0/22	Closing submissions on behalf of Solihull MBC
SMBC0/23	Application for costs against Shirley Estates Ltd
SMBC0/24	Reply to Shirley Estates response to costs application
SMBC1A	Anthony Bateman – Appeal A Catherine de Barnes Proof (Planning Matters)
SMBC1A/1	Anthony Bateman – Appeal A Catherine de Barnes Summary Proof
SMBC1A/2	Anthony Bateman – Appeal A Catherine de Barnes Appendices
SMBC1B	Anthony Bateman – Appeal B Shirley Estates Proof (Planning Matters)
SMBC1B/1	Anthony Bateman – Appeal B Shirley Estates Summary Proof
SMBC1B/2	Anthony Bateman – Appeal B Shirley Estates Appendices

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SMBC1B/3A	Solihull UDP Review – Response of Shirley Estates (Developments) Ltd to Council's evidence to the UDP Inquiry regarding Motorway Service Areas Policy
SMBC1B/3B	Solihull UDP Review – Representations of Shirley Estates (Developments) Ltd to UDP Motorway Service Areas Policy
SMBC1B/4	Connecting to Success – Extract from West Midlands Economic Strategy Summary
SMBC2/0	Ruth Jeffs – Proofs Errata
SMBC2/1	Ruth Jeffs – Note on Signing and Decision Points
SMBC2/1A	Ruth Jeffs – Plan of Decision Points for Northbound Traffic
SMBC2A	Ruth Jeffs – Appeal A Catherine de Barnes Proof (Highways & Transport)
SMBC2A/1	Ruth Jeffs – Appeal A Catherine de Barnes Summary Proof
SMBC2A/2	Ruth Jeffs – Appeal A Catherine de Barnes Appendices
SMBC2A/3	Ruth Jeffs – Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
SMBC2A/4	Ruth Jeffs – Clarification Table on Non-Local Traffic Flows as shown in Appendix 1 of Main Evidence
SMBC2A/5	Note of Discussion between SMBC & Shirley Estates 20 December 2007
SMBC2B	Ruth Jeffs – Appeal A Shirley Estates Proof (Highways & Transport)
SMBC2B/1	Ruth Jeffs – Appeal A Shirley Estates Summary Proof
SMBC2B/2	Ruth Jeffs – Appeal A Shirley Estates Appendices
SMBC2B/3	Ruth Jeffs – Rebuttal Proof in response to Nicholas Anderson of Shirley Estates (SEL3B)
SMBC2B/4	Rebuttal Note on Various Shirley Estates Documents
SMBC2B/5	Note on Accidents
SMBC2B/6	Note on ITIS Data
SMBC2B/7	Calculating Turn in Traffic – TRL Report 441
SMBC2B/8	Note on Toucan Crossing

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SMBC2B/9	Note on Method to Assess MSA Impact
SMBC2B/10	Ruth Jeffs – Supplementary Proof of Evidence
SMBC2B/11	Ruth Jeffs - Appendices to Supplementary Proof of Evidence
SMBC2B/11A	Ruth Jeffs – Further Appendices to Supplementary Proof of Evidence
SMBC2B/12	Ruth Jeffs – Note on Traffic Generation from Blythe Valley Park
SMBC2B/13	Ruth Jeffs – Note on Decision Points Exiting the MSA and Travelling Northbound
SMBC2B/14	Ruth Jeffs – Note clarifying minutes of meetings re J4 Local Traffic
SMBC3A	Phil Rech – Appeal A Catherine de Barnes Proof (Landscape & Ecology)
SMBC3B	Phil Rech – Appeal B Shirley Estates Proof (Including Appendices) (Landscape & Ecology)
SMBC3B/1	Phil Rech – Appeal B Shirley Estates Summary Proof
SMBC3B/2	Phil Rech – Drawings of Aspire Business Park
SMBC3B/3	Phil Rech – Note J4 Historic Landscape Character and Gate Lane/Monkspath Wood

Documents submitted by the Highways Agency

HA0/1	Highways Agency – Opening Submissions
HA0/2	Departures from Road Geometry Standards (DMRB Volume 6) – Guidelines for Designers
HA0/3	Email dated 3 March 2008 Re: Preparation Work for the M62 J25 to J28 and M1 Improvement Schemes
HA0/4	Letter from Neil Hansen (HA) to Brian Plumb (Boreham Consulting Engineers) dated 1 June 2007 Re: Required Content of Swayfields Scheme
HA0/5	Letter from Brian Plumb to Neil Hansen dated 6 June 2007 in response to HA0/4
HA0/6	Ruth Kelly Press Release – Better Managed Motorways and More Funding to Tackle Urban Congestion – 4 March 2008
HA0/7	Average Speed Data Between J5 – J6 of M42

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HA0/8	Calculation to show the additional Yearly Mileage Comparison between the two Appellants' Sites
HA0/9	Potential Additional Resources required at the Regional Control Centre (RCC) as a result of Swayfields Proposals
HA0/9A&B	Accompanying Spreadsheets to HA0/9
HA0/10	Clarification of Inspector's points raised regarding M1 & M62
HA0/11	Note of Hard Strip Measurements between JMP on behalf of the HA and Waterman Boreham on behalf of Swayfields
HA0/12	HA Response to Mike Bedwell (Swayfields) Traffic Management Issue, Wicket Signings on the Narrow Central Reserve
HA0/13	HA – Heavy and High Load Route Plan
HA0/14	Response to Inspector & Swayfields' Questions re: RCC Staffing Requirements
HA0/15	Technical Note – RCC Resources
HA0/16	Technical Note – Response to SWA3/12 – M1 & M62 Improvement Schemes
HA0/17	Technical Note in response to Shirley Estates TRANSYT Data
HA0/18	Technical Note in response to question from Mike Bedwell re Business Case
HA0/19	Technical Note in response to question from Inspector re Interruption of RCC Operations arising from Critical Faults
HA0/20	Closing submissions on behalf of the Highways Agency
HA1A	Neil Hansen – Appeal A Catherine de Barnes Proof
HA1A/1	Neil Hansen – Appeal A Catherine de Barnes Summary Proof
HA1A/2	Neil Hansen – Appeal A Catherine de Barnes Appendices
HA1A/3	Neil Hansen – Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA1A/4	Neil Hansen – Appendices to Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA1B	Neil Hansen – Appeal B Shirley Estates Proof
HA1B/1	Neil Hansen – Appeal B Shirley Estates Summary Proof

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HA1B/2	Neil Hansen – Appeal B Shirley Estates Appendices
HA1B/3	Neil Hansen – Rebuttal Proof in response to Nicholas J. Anderson of Shirley Estates (SEL3B)
HA2A	Dr. Goktug Tenekeci – Appeal A Catherine de Barnes Proof
HA2A/1	Dr. Goktug Tenekeci – Appeal A Catherine de Barnes Summary Proof
HA2A/2	Dr. Goktug Tenekeci – Appeal A Catherine de Barnes Appendices
HA2A/3	Dr. Goktug Tenekeci – Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA2A/4	Dr. Goktug Tenekeci – Appendices to Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA2A/5	Dr. Goktug Tenekeci – Emails Re: M27 J11 to 12 Widening
HA2A/6	Dr. Goktug Tenekeci – Table Displaying Speed Differential Data
HA2A/7	Dr. Goktug Tenekeci – Analysis of Average Speed Data Between J5 & J6 of M42
HA2B	Dr. Goktug Tenekeci – Appeal B Shirley Estates Proof
HA2B/1	Dr. Goktug Tenekeci – Appeal B Shirley Estates Summary Proof
HA2B/2	Dr. Goktug Tenekeci – Appeal B Shirley Estates Appendices
HA2B/3	Dr. Goktug Tenekeci – Supplementary Proof expanding on HA2B and response to Nicholas Anderson of Shirley Estates (SEL3A)
HA2B/4	Dr. Goktug Tenekeci – Technical Note in response to SWA3/11 Traffic Generation from Blythe Valley Business Park Phase Two
HA3A	Ian Patey – Appeal A Catherine de Barnes Proof
HA3A/1	Ian Patey – Appeal A Catherine de Barnes Summary Proof
HA3A/2	Ian Patey – Appeal A Catherine de Barnes Appendices
HA3A/3	Ian Patey – Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA3A/4	Ian Patey – Appendices of Rebuttal Proof in response to Michael Bedwell of Swayfields (SWA3/1)
HA3B	Ian Patey – Appeal B Shirley Estates Proof
HA3B/1	Ian Patey – Appeal B Shirley Estates Summary Proof

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HA3B/2	Ian Patey – Appeal B Shirley Estates Appendices
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Documents submitted by the Campaign To Protect Rural England

CPRE0/1	Closing submissions on behalf of CPRE
CPRE1A&B	Mark Sullivan – Appeal A & B Joint Proof
CPRE1A&B/1	Mark Sullivan – Speaking Note and Appendices
CPRE1A&B/2	Letter to George Goodall from Dept of the Environment dated 22 February 1974 re: Compulsory Purchase Order for Friday Lane Service Area
CPRE1A&B/3	Toll Charges on M6 Toll from 1 January 2008

Document submitted by Hockley Heath Parish Council

HHPC1	Peter Horridge – Appeal B Shirley Estates Proof
HHPC2	Peter Horridge – Appeal B Shirley Estates Appendices
HHPC3	Peter Horridge – Appeal B Shirley Estates Summary Proof
HHPC4	Peter Horridge – Rebuttal Proof in response to various Shirley Estates Proofs in relation to Appeal B
HHPC5	Opening Statement
HHPC6	TRW Planning Permission 7 July 2005
HHPC7	Travel Plan for The Green, Solihull
HHPC8	Travel Plan for Blythe Valley Business Park
HHPC9	Guidance on the Assessment of Travel Plans (DfT)
HHPC10	Closing submissions on behalf of Hockley Heath Parish Council

Documents submitted by Solihull against Motorway Service Area – (S.A.M.S.A.G.)

SAM0/1	SAMSAG – Opening Submissions
SAM0/2	Note of Application by SAMSAG to be allowed to Cross Examine Local Planning Authority Witnesses and other Witnesses

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SAM0/3	SAMSAG Opening Evidence Remarks
SAM0/4	Closing submissions on behalf of SAMSAG
SAM1A&B	George R. Goodall – Appeal A & B Joint Proof (Includes Summary & Annexes)
SAM1A&B/1	Extract from Defra Publication – One Planet Farming, Towards A Shared Agenda for the Future of Farming
SAM1A&B/2	Extract from CAA Publication – CAP725 CAA Guidance on the Application of the Airspace Change Process
SAM1A&B/3	Third Party Risk Near Airports & Public Safety Zones – Report from Research and Development Directorate National Air Traffic Services Ltd
SAM1A&B/4	Aerial Photographs of J4 Site and Footpath
SAM1A&B/5	Aerial Photographs of both Appeal Sites
SAM2A&B	Various Individuals – Appeal A & B Joint Proof
SAM2A&B/1	David Deanshaw – Emails between David Deanshaw and the HA re: Effect of MSA upon Local Road Network in Balsall Common
SAM2A&B/2	David Deanshaw – Table Displaying Traffic Flow Data - Kenilworth Road South of Gypsy Lane
SAM2A&B/3	David Deanshaw – Extract from Balsall Common Village Plan Household Survey 2006 Results re: Traffic
SAM2A&B/4	Maggie Throup – Blythe Valley Park Information
SAM2A&B/5	Maggie Throup – Selection of Bus Timetables
SAM2A&B/6	Malcolm James – Details of three dismissed Appeals
SAM2A&B/6A	Decision Letter – 20 th November 1992 Home Farm & the Park
SAM2A&B/6B	Decision Letter – 21 st November 2001 Potters Chicken Farm
SAM2A&B/6C	Decision Letter 20 th January 2000 Hampton-in-Arden Sports Club
SAM2A&B/7	Ian Spencer – Note on Highways Guidance with reference to SAMSAG Proofs of Ian Spencer
SAM2A&B/8	Russell Hogg – Chamber of Commerce Questionnaire re: Congestion Hotspots

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Documents submitted by Councillor Len Cresswell

CRE1B	Councillor Len Cresswell – Appeal B Shirley Estates Proof
CRE1B/1	Councillor Len Cresswell – Updated Proof

Documents submitted by Caroline Spellman MP

SPE1A&B	Caroline Spellman MP – Appeals A & B Joint Proof
SPE2A&B	Caroline Spellman MP – Updated Proof

Documents submitted by Lorely Burt MP

LOR1A&B	Lorely Burt MP – Appeals A & B Joint Proof
LOR1A&B/1	Lorely Burt MP – Updated Proof

Document submitted by Mr and Mrs. Train

TRA1A&B	Mr. And Mrs. Train – Appeals A & B Joint Proof
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Documents submitted by Valerie Just

VJU1B	Valerie Just
VJU1B/1	Valerie Just – Speaking Note

Document submitted by Welcome Break Group

WBG1	Welcome Break Group – Written Representations
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Written Representations received during the Inquiry

BVP1	Blythe Valley Business Park adjacent to Junction 4 M42, dated 21 February 2008
BVP2	Further written representation dated 16 April 2008

FLE1B	Mr. P. Fletcher, Wayside Cottage, 1600 Stratford Road, Hockley Heath, Solihull, B94 6DR
GNA1	Mr. G. Nall, 3 Briar Coppice, Cheswick Green, Shirley, Solihull, B90 4GD

APPENDIX C

RECOMMENDED CONDITIONS CATHERINE DE BARNES MSA SITE

General

1. Approval of the details of the siting, design and external appearance of the buildings and landscaping of the site (hereinafter called the “reserved matters”) shall be obtained from the local planning authority in writing before any development is commenced.
2. Plans and particulars of the reserved matters referred to in condition 1 above relating to design and external appearance of any buildings to be erected, and the landscaping of the site, shall be submitted in writing to the local planning authority and the development shall be carried out as approved.
3. Application for approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Layout and Buildings

5. Subject to condition 21 below, the siting of all buildings, car parks, access roads and service areas shall not depart from that in drawing number DH.301.A-5.F.
 6. Site levels shall accord with the details shown in drawing number DH.301.A-5.F.
 7. The maximum height of buildings over ground levels identified on drawing number DH.301.A-5.F related thereto shall not exceed the following: (a) amenity building 7.5 metres; (b) the lodge 7.5 metres; (c) the petrol forecourt canopy 5.5 metres and the HGV fuel forecourt 6.5 metres; and (d) the fuel services building 6 metres.
 8. The footprint of all buildings on site should not exceed that shown on the illustrative master plan DH.301.A-5.F.
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Sustainable Design and Construction

9. No development shall commence until a sustainability statement, providing detail on the sustainable design and construction of the proposed development, is submitted to and approved in writing by the local planning authority. This should demonstrate that the proposal incorporates renewables or low carbon energy equipment to meet at least 10% of the development's residual energy demand. Development shall be carried out in accordance with the approved statement.

Highways and Access and Lighting

10. The means of access to and egress from the site (including pedestrian and cycle access and egress) shall not depart from the details as shown in drawing number DH.301.A-5.F.
11. All roads and access ways and areas shall be constructed in accordance with details of circulation to be submitted to and approved in writing by the local planning authority before the commencement of development.
12. No building shall be first used by the public until such time as the means of access to and egress from the site have been constructed in accordance with the approved plans.
13. Details of all exterior lighting shall be submitted to and approved in writing by the local planning authority before the development commences. In the interest of the visual amenity of the area surrounding the site, no illumination of the fascia of the canopy of the fuel forecourt shall be permitted. Development shall be carried out in accordance with the approved details. The details submitted shall include reference to the colour, design and height of the lighting columns and lanterns and their levels and type of illumination. Any future changes in the type, colour, design, height and level of illumination of any external lighting shall receive written approval by the local planning authority before any such change is implemented.
14. No development shall take place until full details of the following highway works have been submitted to and approved in writing by the local planning authority:
 - (a) the design, construction and maintenance plans or regimes of the proposed MSA slip roads and auxiliary lanes together with any associated alterations to the M42, including carriageway widths, lane markings and alterations to the central reserve.
 - (b) the design, construction and maintenance plan and regime for the proposed M42 overbridge.

Those highway works shall be implemented in full in accordance with the approved details prior to the first occupation of the MSA hereby approved.

15. No part of the development shall be occupied until the highway works described on drawing numbers 98092/426 to 98092/429 inclusive have
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been completed.

16. No development shall take place until a detailed signing strategy for the MSA has been submitted to and approved in writing by the local planning authority. The MSA shall not be opened to the public until a signing agreement in respect of the approved signing strategy has been completed between the developer/MSA operator and the Highways Agency.
17. The land outside the running lanes of the M42 within 67 metres of the centre of the central reserve of the M42 shall not, save with the prior written consent of the local planning authority be used for any purpose other than landscaping, planting, access to and egress from the development or the construction, provision and use of the auxiliary lanes and associated highway works. A plan identifying the extent of the 67 metres zone shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development.
18. Vehicular access/egress other than that referred to in this permission shall not be obtained between any part of the site and any other land.
19. No advertisement signs shall be erected within the curtilage of the service area which are visible from any part of the M42 motorway.

Parking

20. No building shall be first used by the public until space has been laid out within the site in accordance with the approved plans for the following to be parked: 598 cars, 10 caravans, 75 heavy goods vehicles and 21 coaches.
 21. No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme for the surveying and recording of the usage of the car, lorry and coach parking provided for the MSA in accordance with condition 20 above. The scheme shall identify the intervals at which surveys will be carried out (which shall be not more than once every twelve months) and the dates, times and duration of the surveys. Such surveys shall be carried out in accordance with the approved scheme. The results of the parking surveys shall be submitted to the local planning authority and the Highways Agency within one month of the carrying out of each survey. If the surveys indicate that at any time car, lorry or coach parking spaces are fully used or that usage is within 10% of the available parking capacity for that vehicle type, then, at the written request of the local planning authority within twelve months of the date of submission of those survey results, necessary additional parking associated with that vehicle type shall be made available for use in accordance with the details shown on Plan DH.301.A-5.G. The parking usage surveys for each vehicle type shall continue in perpetuity in accordance with the agreed monitoring scheme (or any variation of that scheme agreed in writing by the local planning authority) until such time as all the additional parking for that vehicle type shown on Plan DH.301.A-5.G has been provided and is available for use.
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22. All vehicle parking areas shall not be used for any other purpose than for the parking of vehicles by visitors to the Motorway Service Area.
23. Vehicle parking areas shall only operate in accordance with a parking time control regime submitted to and approved by the local planning authority in writing.

The Lodge

24. The lodge hereby approved shall contain no more than 66 lettable bedrooms.

Uses

25. The amenity building shall contain no more than 465 square metres of net retail floor space (gross internal) within Class A1 of the Town and Country Planning Use Classes Order 1987.
26. No retail sales of clothes, fashion accessories, furniture, or DIY goods shall take place.

Fuel Area

27. The fuel sales building shall not exceed 360 square metres (gross internal).

Fuel Storage

28. The storage of fuel above and below ground shall accord with details to be submitted to and approved in writing by the local planning authority.

Drainage

29. No development approved by this permission shall be commenced until a drainage scheme for dealing with the disposal of foul and surface waters has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
30. Prior to the commencement of any development, a scheme for the provision and implementation of surface water limitation shall be submitted to and agreed in writing with the local planning authority. The works/scheme shall be constructed and completed in accordance with the plans and timetable approved by the local planning authority.
31. All surface water run off systems from parking access roads and service areas shall be provided with fuel oil storage interceptors to the written approval of the local planning authority.

Landscape

32. All hard and soft landscape works both within and outside the application site shall be carried out in accordance with the approved details. The
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works shall be carried out prior to the first opening for public use of any part of the development or in accordance with a programme agreed in writing with the local planning authority.

33. No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the development hereby permitted is first open for public use. Development shall be carried out in accordance with the approved details.
 34. The landscaping reserved matters referred to in condition 1 above shall include:
 - (a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;
 - (b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
 - (c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
 - (d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree;
 - (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development. In this condition "retained tree" means an existing tree, which is to be retained in accordance with the plan referred to in paragraph (a) above.
 35. The plans and particulars submitted in accordance with condition 34 above shall include details of the size, species, and positions or density of all trees to be planted, and the proposed time of planting, and means of protection.
 36. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is sooner, for its permitted use. The landscape management plan shall be carried out as approved.
 37. No development shall take place until a schedule of landscape
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maintenance has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

38. No work shall commence on construction of any of the buildings on site until such time as the earth works related thereto as shown in drawing number DH.301.A-5.F have been carried out in accordance with detailed plans submitted to and approved in writing by the local planning authority including proposed grading and mounding of land areas, the levels and contours to be formed and the relationship of proposed mounding to existing vegetation and the surrounding land form.
39. The development shall not begin until a landscaping scheme which accords with the Guidance in the Civil Aviation Authority, Airport Operators Association & General Aviation Awareness Council Document: "Safeguarding of Aerodromes: Advice Note 3 Potential Bird Hazards from Amenity Landscaping and Building Design" has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme. No subsequent alteration to the approved scheme shall take place unless submitted to and approved in writing by the local planning authority.

Construction General/Parking

40. No development shall take place until the details of the construction access and construction vehicle routes (including a scheme of signage and a methodology for encouraging driver compliance) have been submitted to and agreed in writing by the local planning authority. The approved construction access and construction signing scheme shall be in place prior to the commencement of development. All temporary directional signage shall be removed within one month of the completion of construction.
 41. Before any work on site takes place, access to the highway is to be constructed to local planning authority written approval, and provision is to be made within the site for:
 - (a) the loading and unloading and storage of all construction plant and materials to be used on the site;
 - (b) the parking of all vehicles including the cars of construction employees and other people who will be working at or visiting the site;
 - (c) ensuring that no mud or other materials from the site is deposited on the highway.
 42. The detailed siting of any construction compounds shall be submitted to and approved in writing by the local planning authority. Compounds shall be provided in accordance with the approved scheme, and removed (along with all other temporary construction provisions) within one month of the completion of construction.
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43. No work shall commence on site until such time as a scheme for site preparation has been submitted to and approved in writing by the local planning authority.
44. None of the development shall be occupied until the cycle parking provision and facilities are provided. Those facilities shall thereafter be retained.

Archaeological and Conservation Matters

45. No development involving any ground disturbance shall take place until an archaeological investigation of the site has been carried out in accordance with specifications to be submitted to and agreed by the local planning authority in writing.
46. Notification of the commencement date and information as to whom the archaeologist(s) should contact on site shall be given to the local planning authority in writing not less than 14 days before development commences.
47. Prior to the development taking place, a plan shall be submitted to the local planning authority and approved by them in writing, identifying the existing ridge and furrow within the site. Opportunity shall be allowed for the carrying out of a detailed landscape survey of this area by an archaeologist nominated by the developer and approved in writing by the local planning authority, before the area is altered or destroyed.
48. The developer shall afford access at all reasonable times to archaeologists nominated by the developer and approved in writing by the local planning authority, and shall allow them to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.

Ecology and Habitats

49. Prior to the commencement of development a detailed scheme for ecological investigation measures for protection, mitigation, creation of new foraging habitats shall be submitted to and approved by the local planning authority in writing. Any scheme proposed shall ensure that damage to existing hedgerows, hedgerow trees, areas of semi-improved grassland and wetland habitats is minimised by means of measures such as protective fencing and unworked boundary zones. Development shall be carried out in accordance with the approved scheme.

Travel Plan

50. No development shall commence until a travel plan for staff employed at the MSA has been submitted to and approved in writing by the local planning authority. The Travel Plan shall make provision for the following:
 - (a) the appointment of a travel plan coordinator
 - (b) the establishment of targets for modal shift
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- (c) the details of measures to be employed to achieve the identified targets
- (d) mechanisms for ongoing monitoring and review of targets and travel plan measures
- (e) details of penalties and/or additional measures to be investigated in the event that the identified targets are not met.

The approved travel plan shall be implemented upon first occupation of the MSA hereby permitted and shall be operated in perpetuity in accordance with the approved details, unless, as a consequence of the monitoring and review process, changes are first agreed in writing by the local planning authority.

Highway Improvements

- 51. No construction of the development shall commence until the applicant submits engineering details and receives approval in writing from the local planning authority for the proposed pedestrian and cycle links to the MSA from Solihull Road in accordance with drawing DH.301.A-5.F.
- 52. No construction of the development shall commence until layouts for a “drop off area” and safe turning provision to be provided off B4102 (Solihull Road) are submitted to and approved in writing by the local planning authority. The approved provisions shall be provided and thereafter retained.

Waste Management

- 53. Before development commences, a site waste management plan shall be submitted to and approved in writing by the local planning authority identifying the steps to be taken to:
 - a. Utilise waste generated by the on-site operations in the proposed development
 - b. Recycle/ reuse/ recover materials in order to avoid the off-site disposal of waste to landfill and
 - c. Design and provide sustainable waste management systems for the ultimate user of the proposed development.

The development shall be carried out in accordance with the provisions of that waste management plan.

- 54. The development shall not begin until details of a scheme for the disposal of putrescible waste have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

Birmingham International Airport Conditions

- 55. The development shall not begin until a Bird Hazard Management Plan has
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been submitted to and approved in writing by the local planning authority. The development shall be operated in accordance with the approved plan.

56. The development shall not begin until details of a scheme for the provision of lighting for the development which accords with the Guidance in the Civil Aviation Authority, Airport Operators Association & General Aviation Awareness Council Document: "Safeguarding of Aerodromes: Advice Note 2 – Lighting near Aerodromes" has been submitted to and approved in writing by the local planning authority, and such scheme shall specify that lighting is of flat glass, full cut off design with horizontal mountings and ensure that there is no light spill above the horizontal. The development shall be carried out in accordance with the approved details. No subsequent alteration to the approved scheme shall take place unless submitted to and approved in writing by the local planning authority.
57. The development shall not begin until details of the scheme lighting required during construction has been submitted to and approved in writing by the local planning authority and such scheme shall specify that lighting is of flat glass, full cut off design with horizontal mountings and ensure that there is no light spill above the horizontal. The lighting scheme shall be carried out in accordance with the approved details. No subsequent alteration to the approved scheme shall take place unless submitted to and approved in writing by the local planning authority.
58. The development shall not begin until a Construction Management Strategy has been submitted to and approved in writing by the local planning authority. The Strategy shall take into account the guidance in the Civil Aviation Authority, Airport Operators Association & General Aviation Awareness Council Document "Safeguarding of Aerodromes: Advice Note 4 – Cranes and Other Construction Issues". The Construction Method Strategy shall be implemented as approved.

APPENDIX D

RECOMMENDED CONDITIONS - JUNCTION 4 SITE

General

1. Approval of the details of the siting, design and external appearance of the buildings and landscaping of the site (hereinafter called the "reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.
 2. Plans and particulars of the reserved matters referred to in condition 1 above relating to design and external appearance of any buildings to be erected, and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.
 3. Application for approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
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4. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Layout and Buildings

5. Subject to condition 22 below, the siting of all buildings, car parks, access roads and service areas shall not depart from that in drawing number 50592_MSA_001 Rev F.
6. Site levels shall accord with the details shown in drawing number 50592_MSA_001 Rev F.
7. The maximum height of buildings over ground levels identified on drawing number 50592_MSA_001 Rev F related thereto shall not exceed the following: (a) amenity building 8.5 metres; (b) the petrol forecourt canopy 6.3 metres and the HGV fuel forecourt 6.3 metres; and (c) the fuel services building 6.3 metres.
8. The footprint of all buildings on site should not exceed that shown on the illustrative master-plan 50592_MSA_0001 Rev F.

Sustainable Design and Construction

9. No development shall commence until a sustainability statement, providing detail on the sustainable design and construction of the proposed development, is submitted to and approved in writing by the local planning authority. This should demonstrate that the proposal incorporates renewables or low carbon energy equipment to meet at least 10% of the development's residual energy demand. Development shall be carried out in accordance with the agreed statement.

Highways and Access and Lighting

10. The means of access to and egress from the site shall not depart from the details as shown in drawing number 50592_MSA_001 Rev F.
 11. All roads and access ways and areas shall be constructed in accordance with details of circulation to be submitted to and approved in writing by the local planning authority before the commencement of development.
 12. No building shall be first used by the public until such time as the means of access to and egress from the site have been constructed in accordance with the approved plans.
 13. Details of all exterior lighting shall be submitted to and approved in writing by the local planning authority before the development commences. In the interest of the visual amenity of the area surrounding the site, no illumination of the fascia of the canopy of the fuel forecourt shall be permitted. Development shall be carried out in accordance with the approved details. Details shall include reference to the colour, design and height of the lighting columns and lanterns and their levels and type
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of illumination. Any future change in the type, colour, design, height and level of illumination of any external lighting shall receive written approval by the local planning authority before any such change is implemented.

14. No development shall take place until full details of the following highway works have been submitted to and approved in writing by the local planning authority:
 - (a) The provision of a pedestrian footbridge at Junction 4 to include a footway a minimum of 3 metres wide.
 - (b) The provision of a LINK MOVA scheme to control the synchronisation of signals in the Junction 4 circulatory carriageway.
 - (c) The design of the M42 Junction 4 slip road merges and diverges and any associated alteration to the slip roads.
 - (d) The replacement of the existing ATM gantry (and associated works) immediately to the north of Junction 4 (to include a method statement for the erection of the new gantry and the removal of the old gantry).
 15. Prior to the opening of the MSA, a scheme of the highway works shall be submitted to and approved in writing by the local planning authority which provides for the construction of the works shown in blue of Plan NJA9 Revision A, unless or until the works required by condition 15 of planning permission 2006/1461 granted by Solihull MBC on 6 October 2006 in relation to land adjacent to the Blythe Valley Business Park between Cheswick Green and Illshaw Heath have been carried out, whereupon the scheme shall provide for the construction of the works shown in blue on Plan NJA10 Revision A.
 16. No part of the development shall be occupied until the highway works described on drawing numbers 50592_MSA_001 Rev F have been completed.
 17. No development shall take place until a detailed signing strategy for the MSA has been submitted to and approved in writing by the local planning authority. The MSA shall not be opened to the public until a signing agreement in respect of the approved signing strategy has been completed between the developer/MSA operator and the Highways Agency.
 18. The land outside the running lanes of the M42 within 67 metres of the centre of the central reserve of the M42 shall not, save with the prior written consent of the local planning authority be used for any purpose other than landscaping, planting, access to and egress from the development or associated highway works. A plan identifying the extent of the 67 metres zone shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development.
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19. Vehicular access/egress other than that referred to in this permission shall not be obtained between any part of the site and any other land.
20. No advertisement signs shall be erected within the curtilage of the service area which are visible from any part of the M42 motorway.

Parking

21. No building shall be first used by the public until space has been laid out within the site in accordance with the approved plans for the following to be parked: 619 cars, 9 caravans, 85 heavy goods vehicles and 24 coaches.
22. No development shall take place until there has been submitted to and approved by the local planning authority a scheme for the surveying and recording of the usage of the car, lorry and coach parking provided at the MSA pursuant to condition 21 above. The scheme shall identify the intervals at which the surveys will be carried out in accordance with the approved scheme. The results of the parking surveys shall be submitted to the local planning authority and the Highways Agency within one month of the carrying out of each survey. If the surveys indicate at any time that the available car, lorry or coach parking spaces are fully used or that the usage is within 10% of the available capacity for that vehicle type, then, at the written request of the local planning authority within twelve months of the date of the submission of those survey results, the additional parking associated with that vehicle type shall be provided and made available for use in accordance with the details shown on Plan NJA 5 Revision A. The parking usage surveys for each vehicle type shall continue in perpetuity in accordance with the agreed monitoring scheme (or any variation of that scheme agreed in writing by the local planning authority) until such time as all the additional parking for that vehicle type shown on Plan NJA 5 Revision A has been provided and is available for use.
23. All vehicle parking areas shall not be used for any other purpose than for the parking of vehicles by visitors to the Motorway Service Area.
24. Vehicle parking areas shall only operate in accordance with a parking time control regime submitted to and approved by the local planning authority in writing.

Uses

25. The amenity building shall contain no more than 465 square metres of net retail floor space (gross internal) within Class A1 of the Town and Country Planning Use Classes Order 1987.
26. No retail sales of clothes, fashion accessories, furniture, or DIY goods shall take place.

Fuel Area

27. The fuel sales building shall not exceed 360 square metres (gross
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internal)

Fuel Storage

28. The storage of fuel above and below ground shall accord with details to be submitted to and approved in writing by the local planning authority.

Drainage

29. No development approved by this permission shall be commenced until a drainage scheme for dealing with the disposal of foul and surface waters has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
30. All surface water run off systems from parking access roads and service areas shall be provided with fuel oil storage interceptors to the written approval of the local planning authority.
31. Prior to the commencement of any development, a scheme for the provision and implementation of surface water limitation shall be submitted to and agreed in writing with the local planning authority. The works/scheme shall be constructed and completed in accordance with the plans and timetable approved by the local planning authority.
32. Development shall not begin until drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted to and approved in writing by the local planning authority, and the scheme shall subsequently be implemented in accordance with the approved details before the development is completed/occupied.

Landscape

33. All hard and soft landscape works both within and outside the application site shall be carried out in accordance with the approved details. The works shall be carried out prior to the first opening for public use of any part of the development or in accordance with a programme agreed in writing with the local planning authority.
 34. No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the development hereby permitted is first open for public use. Development shall be carried out in accordance with the approved details.
 35. The landscaping reserved matters referred to in condition 1 above shall include:
 - (a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level,
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exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree;

(b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;

(c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

(d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree;

(e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development. In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

36. The plans and particulars submitted in accordance with condition 35 above shall include details of the size, species, and positions or density of all trees to be planted, and the proposed time of planting, and means of protection.

37. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is sooner, for its permitted use. The landscape management plan shall be carried out as approved.

38. No development shall take place until a schedule of landscape maintenance has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

39. No work shall commence on construction of any of the buildings on site until such time as the earth works related thereto as shown in drawing number 50592_MSA_001 Rev F have been carried out in accordance with detailed plans submitted to and approved by the local planning authority including proposed grading and mounding of land areas including the levels and contours to be formed and showing the relationship of proposed mounding to existing vegetation and surrounding land form.

Construction General/Parking

40. No development shall take place until the details of the construction access and construction vehicle routes (including a scheme of signage

and a methodology for encouraging driver compliance) have been submitted to and approved in writing by the local planning authority. The approved construction access and construction traffic signing scheme shall be in place prior to the commencement of development. All temporary directional signage shall be removed within one month from the completion of construction.

41. Before any work on site takes place access to the highway is to be constructed to local planning authority approval in writing, and provision is to be made within the site for:
 - (a) the loading and unloading and storage of all construction plant and materials to be used on the site;
 - (b) the parking of all vehicles including the cars of construction employees and other people who will be working at or visiting the site;
 - (c) ensuring that no mud or other materials from the site is deposited on the highway.
42. The detailed siting of any construction compounds shall be submitted to and approved in writing by the local planning authority. Compounds shall be provided in accordance with the approved scheme, and removed (along with all other temporary construction provisions) within one month of the completion of construction.
43. No work shall commence on site until such time as a scheme for site preparation has been submitted to and approved by the local planning authority in writing.
44. Prior to the commencement of the development, a scheme for cycle parking provision shall be submitted to and approved in writing by the local planning authority. None of the development shall be occupied until the approved cycle parking provision and facilities are provided. Those facilities shall thereafter be retained.

Archaeological and Conservation Matters

45. No development involving any ground disturbance shall take place until an archaeological investigation of the site has been carried out in accordance with specifications to be submitted to and agreed by the local planning authority in writing.
 46. Notification of the commencement date and information as to whom the archaeologist(s) should contact on site shall be given to the local planning authority in writing not less than 14 days before development commences.
 47. Prior to the development taking place, a plan shall be submitted to the local planning authority and approved by them in writing, identifying the existing ridge and furrow within the site. Opportunity shall be allowed for the carrying out of a detailed landscape survey of this area by an archaeologist nominated by the developer and approved in writing by the local planning authority, before the area is altered or destroyed.
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48. The developer shall afford access at all reasonable times to archaeologists nominated by the developer and approved in writing by the local planning authority, and shall allow them to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.

Ecology and Habitats

49. Prior to the commencement of development a detailed scheme for ecological investigation measures for protection, mitigation, creation of new foraging habitats shall be submitted to and approved by the local planning authority in writing. Any scheme proposed shall ensure that damage to existing hedgerows, hedgerow trees, areas of semi-improved grassland and wetland habitats is minimised by means of measures such as protective fencing and unworked boundary zones. Development shall be carried out in accordance with the approved scheme.

Travel Plan

50. No development shall commence until there has been submitted to and approved in writing by the local planning authority a Travel Plan for staff employed at the MSA. The Travel Plan shall make provision for the following:
- (a) the appointment of a travel plan coordinator
 - (b) the establishment of targets for modal shift
 - (c) the details of measures to be employed to achieve the identified targets
 - (d) mechanisms for ongoing monitoring and review of targets and travel plan measures
 - (e) details of penalties or additional measures to be investigated in the event that the identified targets are not met.

The approved travel plan shall be implemented upon first occupation of the MSA hereby permitted and shall be operated in perpetuity in accordance with the approved details, unless, as a consequence of the monitoring and review process, changes are first agreed in writing by the local planning authority.

Waste Management

51. Before development can commence, a site waste management plan should be submitted to and approved in writing by the local planning authority identifying the steps taken to:
- a. Utilise waste generated by the on-site operations in the proposed development;
 - b. Recycle/ reuse/ recover materials in order to avoid the off-site disposal of waste to landfill; and
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- c. Design and provide sustainable waste management systems for the ultimate user of the proposed development.
52. Before the development authorised by this permission is brought into use, any air conditioning, electrical or mechanical ventilation scheme must be installed and thereafter used and maintained in accordance with a scheme to be submitted and approved in writing by the local planning authority. The scheme shall specify in detail the provisions made to control noise and odour.
53. Construction work shall not begin until a scheme for protecting the existing dwelling at The Red House adjacent to the site from construction noise and from noise from the operation of the approved development and associated road traffic noise has been submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before construction is commenced.

APPENDIX E

LIST OF ABBREVIATIONS USED IN THIS REPORT

AADT	Average Annual Daily Traffic
ATM	Active Traffic Management
BAP	Biodiversity Action Plan
BIA	Birmingham International Airport
BVBP	Blythe Valley Business Park
DfT	Department for Transport
DMRB	The Design Manual for Roads and Bridges
EH	English Heritage
ERA	Emergency Refuge Area
ES	Environmental Statement
GOTA	The Government's Guidance on Transport Assessment (CD248)
GOWM	Government Office for the West Midlands
HGV	Heavy Goods Vehicle
J	Junction
MMQ	Mean Maximum Queue
MOVA	Microprocessor Optimised Vehicle Actuation, a computerised traffic signal control system
Mppa	Million passengers per year
MSA	Motorway Service Area

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MUA	One of the major urban areas within the West Midlands identified in the published RSS
NEC	National Exhibition Centre
NRTF	National Road Traffic Forecast
PIA	Personal Injury Accident
PIM	Pre Inquiry Meeting
Ppb	Parts per billion
RCC	Regional Control Centre
RDA	Regional Development Agency (Advantage West Midlands)
RFC	Ratio of Flow to Capacity
RSS	Regional Spatial Strategy
SAMSAG	Solihull Against Motorway Service Areas Group
SCG	Statement of Common Ground
SINC	Site of Importance for Nature Conservation
SSR	The Safety Standards and Research Division of the HA
SSSI	Site of Special Scientific Interest
The Applicants	Blue Boar Motorways Ltd and the Executors of Sir John Gooch (the original Applicants in relation to Appeal A)
The Council	Solihull Metropolitan Borough Council
The EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
The HA	The Highways Agency
TPO	Tree Preservation Order
TRL	Transport Research Laboratory
UDP	Unitary Development Plan
VCB	Vertical concrete barrier
Vpd	Vehicles per day