

## APPENDIX 2 — EIP PANEL REPORT 2003

### Extract from the Report of the Panel dated February 2003 following the Examination in Public of the Cambridgeshire and Peterborough Structure Plan

8.77 "... the valley ... forming Grantchester Meadows, which are one of the most important features of the Cambridge setting...."

#### *Land North of Barton Road*

8.107 The proponents of this location submitted to the Panel some fairly detailed information about its suitability. The Panel has had regard to this material insofar as it is appropriate to the strategic level. In our view, there are two main issues relating to this location.

These are:

- the impact of major development in this location on Green Belt purposes;
- the sustainability of the location.

#### *Impact on Green Belt purposes*

8.108 There is no dispute that the Barton Road location contributes to the setting of Cambridge although the proponents of the scheme argue that other locations proposed for release in the Structure Plan are equally valuable, such as the University land in North West Cambridge.

8.109 The land at Barton Road falls within the Coton corridor which brings countryside right in to the heart of the city. Viewed from the west the distinctive skyline of the historic centre is seen against the open foreground of land in the Barton Road area. In our view, the relationship between the historic centre and the countryside in this location is critical to the character of Cambridge. Indeed, the Barton Road area of the city is distinctive in creating a very direct interface between city centre and countryside. We have some sympathy with the view expressed by South Cambridgeshire, that 'this is the most important location on the edge of the city'.

8.110 This interface would be largely lost by major development in the location proposed. Narrowing the Coton corridor to the extent suggested by the indicative Masterplan for this location would render it almost meaningless as 'countryside'. Accordingly, we see no reason to disagree with the conclusion of the Buchanan Study that development in this location would conflict with the purpose of preserving the unique character of the city. In our view, this conclusion applies equally to land to the north as to land to the south of Barton Road.

#### *Sustainability*

8.111 There can be no argument with the fact that the proximity of this location to the city centre renders it potentially highly sustainable in terms of accessibility by slow modes (pedestrians and cyclists). Barton Road is also accessible by such modes to significant areas of employment, notably the University's western campus. However, unlike other locations proposed for release, Barton Road is not on a major transport corridor and there is no public transport at present. Thus, the development would need to support a public transport system.

8.112 The strategy proposed by the proponents of the location is for a high frequency service along Barton Road, Sidgwick Street/Silver Street and Madingley Road – to link the Barton Road location with the University employment areas. We have serious doubts about the deliverability of such a proposal. Major development in this location would be at the 'end of the line' for public transport services and would need to deliver high levels of patronage to support a high quality public transport system. We question whether this is a likely proposition.

8.113 Whilst we consider that there are sustainability benefits in terms of the location's proximity to services and facilities in the city centre we do not believe it to be particularly sustainable in terms of the provision of public transport. The need for accessibility is not related solely to the city centre and the University employment areas, but is also relevant to other parts of the city where employment opportunities exist such as Cambridge Northern Fringe, Addenbrooke's and Cambridge Airport. The rather isolated location of the Barton Road area relative to these locations in public transport terms suggests that major development in this location could encourage car dependency, especially given the proximity to J12 of the M11.

8.114 We note the argument which has been put to us that there is a need to develop new housing in the west of the city to balance with the available jobs. Whilst we agree in principle with the desirability of achieving a jobs/housing balance so far as practical, we do not consider this to be the appropriate location in which to provide large-scale housing.

#### *Conclusion*

8.115 In our view, the potential sustainability benefits of this location do not outweigh the potential harm to Green Belt purposes which would result from major development. This location is the most sensitive of those identified on the western side of the city in terms of its impact on the setting of the historic part of the city. South Cambridgeshire District Council suggested that there may be scope for a modest review of the Green Belt boundary in this sector, but any resulting releases would not be of a strategic scale and, thus, are not relevant to the Structure Plan.

APPENDIX 3 — SCDC LDF 2007

Extract from South Cambridgeshire District Council's "Local Development Framework – Site Specific Policies" dated February 2007

Chapter 5  
Detailed Site Assessments  
Site 7 - Edge of Cambridge  
Land North of Barton Road

SITE 7 - LAND NORTH OF BARTON ROAD			
Site Number	7		
Location	Edge of Cambridge		
Objector [ref no]	Ashwell (Barton Road) Limited (Mr Martin Friend) [4271]	Rep No..	12858
Objector's Proposal	Housing.		
Site Size	13.6 ha. Full objection site: 99.4 ha. Development area: 12.4 ha.		
Housing Capacity	The objector proposes 400 dwellings within South Cambridgeshire. This would be part of a wider development together with 500 dwellings in Cambridge City. However, a significant part of the site is within flood zone 2 and 3, the area available for development is 4.9 ha and could therefore accommodate 150-200 dwellings depending on the appropriate density (30-40 dph).		
Site Description	The duly made objection site covers a large area of agricultural land bounded by the M11, A603 Barton Road, and the district boundary. However, during the examination, the objector has clarified that it wishes to develop the part of the site close to the edge of Cambridge, adjacent to the district boundary and west as far as Laundry Farm. This comprises an area of small agricultural fields with a small area of farm buildings at the western end of the Barton Road frontage. The site proposed for development in South Cambridgeshire does not adjoin the built up area of Cambridge apart from a very narrow tongue of land fronting Barton Road which lies within the floodplain of the Bourne Brook.		
Site Context	The area is part of a larger area of land (including land within the administrative area of Cambridge City Council) which was promoted for the development of a further 500 dwellings through the City Local Plan. The allocation was rejected and the City Local Plan has been adopted. The objector challenged the Plan in the High Court. That challenge was dismissed. The Objector was given leave to appeal. The appeal has been heard and the final decision is awaited. Whatever the decision, this site should be assessed on the basis of the South Cambs land alone.		
Stage in development sequence	Edge of Cambridge		
Is the location identified in Structure Plan Policy P9/2c?	No		
Allocated for housing in an existing plan?	No		

Tier 1				
	Y/N	Note	Y/N	Note
Green Belt	Yes	Identified in the LDA "Cambridge Green Belt Study" as part of an area of landscape to the west of Cambridge which is essential to the special character of Cambridge where there is no scope for development (Area 4 on page 81).	Flood Risk	Approximately 65% of the site lies within Zones 2 and 3. The Zone 3 land broadly follows the line of the Bin Brook watercourse alongside Barton Road.
European Nature Conservation Sites	No		SSSI	No
Scheduled Monument	No		Listed Buildings	No
Historic Park & Garden	No		Suitable scale for housing allocation	Yes
Could site form an extension to an existing settlement?		This is a matter of interpretation. The objection site within South Cambridgeshire's boundaries only adjoins the built up area of the city via a very narrow area at the most eastern point. However, that part of the site is in the floodplain and the part of the site where development could potentially take place does not physically adjoin the built up area of Cambridge.		
Tier 1 conclusion:		The site is within the Green Belt and has not been identified as a location for review in the Structure Plan. Identified in the LDA "Cambridge Green Belt Study" as part of an area of landscape to the west of Cambridge which is essential to the special character of Cambridge where there is no scope for development. A large part of the site proposed for development is within flood zones 2 and 3, and the area lying in zone 1 is 4.9 ha which could accommodate a scale of development suitable for a housing allocation in the range 150-200 dwellings depending on the appropriate density (30-40 dph). The objector proposes 400 dwellings on the site. The part of the site in zone 1 is entirely detached from the built up area of Cambridge and would only form a physical extension to Cambridge if taken together with adjoining land in Cambridge City, on which there is no certainty of development.		
Does the site warrant further		Yes. This is specifically in the context that it is an objection site at the top of the search sequence where even though it would not provide a continuous built development joined to Cambridge, it is so close to the		

**assessment?** built up area that a thorough assessment of all the issues affecting the site and sustainability appraisal should be undertaken to assist the Council and the inspectors in reaching their conclusions.

Tier 2		
Section A		
<b>Sustainability ranking of settlement</b>	2nd	
<b>Accessibility to local employment (ratio jobs to workers)</b>	Site would form an isolated development close to Cambridge and would have good access to a wide variety of employment opportunities by walking and cycling but less so by public transport, consistent with the strategy to provide more homes focused on Cambridge to improve the jobs:workers balance.	
<b>Accessibility to Key Cambridge Locations</b>		
<b>Science Park</b>	City Centre	
7.5 km	3 km	
	Addenbrookes	
	5.5 km	
<b>Accessibility to Key Services</b>		
	<b>As the Crow Flies</b>	<b>Actual Walking Distance</b>
	<b>Nearest Point</b>	<b>Furthest Point</b>
<b>Supermarket / Food Shop</b>	3,220m	4,650m
	4,675m	6,315m
<b>Primary School</b>	1,270m	2,040m
	1,390m	3,045m
<b>Secondary School</b>	2,430m	3,800m
	3,230m	4,885m
<b>Post Office</b>	900m	2,040m
	1,160m	2,820m
<b>Doctor's Surgery / Medical Centre</b>	1,130m	2,500m
	1,785m	3,440m
<b>Existing Public Outdoor Sport</b>	565m	2,220m
	210m	1,530m
<b>Existing Children's Formal Playspace</b>	1,380m	2,810m
	1,455m	3,100m

<b>Education Requirements or Potential for Additional Provision</b>	There is currently insufficient capacity for additional pupils in existing primary schools. Therefore new primary school places would be required. Secondary School provision would require additional capacity.		
<b>Potential for Additional Services or Facilities</b>	The objector proposes a development of 400 dwellings in South Cambridgeshire. The existence of flood plain on the southern part of the site suggests 150-200 dwellings would be more appropriate. Located so close to the built-up area of Cambridge, this level of development is unlikely to generate sufficient demand for additional services and facilities.		
<b>Accessibility to Public Transport</b>			
	<b>As the Crow Flies</b>		<b>Actual Walking Distance</b>
	<b>Nearest Point</b>	<b>Furthest Point</b>	<b>Nearest Point</b>
<b>Distance to nearest Bus Stop</b>	90m	1,620m	90m
<b>Quality of Public Transport</b>	Limited service (Bus no. 18 / 18A) - Mon-Sat 2 / 3 early services before 8.20am then hourly to 7.30pm. No service on Sunday		
<b>Existing Public Transport Summary</b>	1 bus service an hour runs adjacent to the site into the city centre.		
<b>Existing Cycling Infrastructure</b>	Adjacent to the site is an off-road cycleway which leads into the city centre and the city cycle network.		
<b>Potential for Transport Improvements</b>	Given the level of planned housing here (maximum 400 dwellings) the most frequent bus service that could possibly be supported from the site is likely to be 2 buses an hour, i.e. 30 minute frequency. This is on the basis that the Orchard Park development also has 900 dwellings and is served directly by 3 buses an hour (C184 service). It would be difficult to achieve any degree of bus priority from the site into the city centre, however once buses reach Silver Street they could benefit from the priority given to buses there. Given there is already an off-road cycle route running along Barton Road into Newham and the city centre, this route could potentially be enhanced to improve the route for cyclists.		
<b>Likelihood of achieving high share of sustainable modes</b>	If this site followed the pattern of the district / city wards within which it lies then a car driver mode share of between 27-56% could be expected. If the site could support its own bus service then a car driver mode share closer to 27% could be expected. However, if the site can not support its own bus service then a car driver mode share closer to 56%, or above, could be expected given that the site is both physically and physiologically separate from the built-up area of the City.		



Tree Preservation Order	No	
Public Rights of Way Crossing the Site	Yes	Paths alongside the site from Barton Road over M11. Path along District boundary.
Public Rights of Way leading from the site	Yes	Footpath to Colton.
Non Statutory Archaeological Site	No	
Previously Developed Land	No	
Agricultural Land	Yes	Grade 3
Ground Water Source Protection Zone	No	
Drainage Issues	Yes	There are existing flooding issues in Gough Way that would need to be addressed by any development scheme. 65% of the sites itself lies within Flood Zones 2 and 3, the development of which would be inconsistent with the sequential test required by PPS25.
Land Contamination	Yes	Laundry Farm and associated land are present on the site. Due to such use contaminated land is a material consideration that will require investigation and remedial as necessary so that land is suitable for use in accordance with PPS23 and associated British Standards / guidance. Any proposed application should be accompanied by a contaminated land assessment. It is likely that this issue could be addressed satisfactorily by condition or similar.
Air Quality Issues	Yes	This site adjoins the M11 and a major route into and out of Cambridge. Given that the site potentially has space for 900 dwellings, it can be assumed that a significant amount of extra traffic may be generated during the operational phase of the development. The site is close to two AQMAs - Cambridge City Councils' AQMA in Cambridge city centre and South Cambridgeshire District Councils' AQMA on the A14 to the north. Given both the proximity of this site to the AQMAs and the potential size of the development, South Cambridgeshire District Council will require a full and detailed air quality assessment, the content of which should be agreed with the Council prior to being carried out. The effect on air quality in the AQMAs could be a significant issue with regards to this site.

Section A conclusion:	The site is located on the edge of Cambridge, geographically within close proximity to a number of key destinations which are within either acceptable maximum walk or cycle distances. There is an issue with congestion and capacity of Barton Road city-bound in the AM Peak. Without any obvious opportunities for bus priority into the City bus services will also become caught in congestion significantly reducing reliability and attractiveness and extending journey times. Given the location of the site close to the M11, travel to sites such as Addenbrookes and the Science Park would be likely to be more attractive to be made by car. There is unlikely to be opportunity to improve the bus service sufficient to achieve High Quality Public Transport and therefore a density of 30 dph would be appropriate using the Council's normal approach. On that basis the site capacity outside Flood Zones 2 and 3 would be 150 dwellings.
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Section B				
Development Plan				
Y/N	Note	Y/N	Note	
No	Close to city edge	Allocated for another use in the LDF?	No	
No		Other local designations	Yes	Lordsbridge 2 - consultation on telecommunication and microwave operation proposals
Designations in Minerals and Waste Plans				
Constraints				
Y/N	Notes			
No	Conservation Area			
No	Important Countryside Frontage			
No	Protected Village Amenity Area			
No	County Wildlife Site			
No	Local Nature Reserve			

Potential to create sustainable mixed development	This is a small site which has a poor relationship with nearby development in Cambridge. A development of 400 dwellings over the whole site requires development in Flood Zones 2 and 3. This would generate a population of approximately 1,000 people. Sufficient for a small primary school and possibly a local shop albeit that adjoining areas of Cambridge do not. However, more realistically, development of the land outside Flood Zones 2 and 3 would be likely to provide approximately 150 dwellings or 360 people which would not be likely to support any local facilities.
Relationship to Existing Settlement	The site has a poor relationship with Cambridge being in effect a 'right angled triangle' shape which is joined to Cambridge by the tip of one of its points. The northern part of the site outside Flood zones 2 and 3 does not physically join the built area of Cambridge. The nearest development in Cambridge at Gough Way 'turns its back' on the countryside and presents no opportunities for integrating development of this site.
Impact of development on local character and appearance	Existing trees and hedgerows provide some scope to mitigate the impact of development, particularly during the summer months. However, residential development would appear incongruous and would be particularly conspicuous from the cyclepath alongside Barton Road.  To maintain and enhance the quality of Cambridge's setting - The site lies within the general sweep of open land on the western side of Cambridge. Views from the west are afforded over this area to the skyline of Cambridge in which can be seen some of Cambridge's quintessential landmark buildings including Kings College Chapel and the University Library. Whilst the site is small in size development would nevertheless have an impact on this important part of the setting of the City. The Cambridge Green Belt Study prepared for South Cambridgeshire District Council in 2002 and which was influential in the finalisation of the Cambridgeshire Structure Plan's policies for changes to the Green Belt identified the land including this site as "supportive landscape" which supports the character of the historic core and areas distinctive townscape/landscape providing the backdrop and ambience which bolsters the sense of place of the city and its approaches. The authors of the report concluded that the land was part of a wider area of landscape to the west of Cambridge which is essential to the special character of Cambridge where there is no scope for development. A subsequent Inner Green Belt Study for Cambridge City Council also dated 2002 identified land within the hedgerows and treed part of the site as part of a small pocket of land to have 'medium significance' to the purposes of the Cambridge Green Belt. That report did not inform the Structure Plan proposals for Green Belt changes as did the LDA report for South Cambridgeshire.
Impact on purposes of the Green Belt	The City Local Plan Inspector who considered objections in 2006 on that part of the objectors land within the City administrative area had both of these studies and concluded:  "This area of Cambridge is not one of those identified in Structure

Noise Issues	No	The south of the site is bounded by Barton Road. Traffic noise and possible noise from Laundry Farm and the Animal Breeding Centre will need assessment in accordance with PPG24 and associated guidance. However residential is likely to be acceptable with careful orientation / positioning / design / layout of buildings, noise mitigation /attenuation and noise insulation measures.
Known Ecological constraints to development	Yes	The part of the site proposed for development in the Represorator's Masterplan comprises mainly arable land and semi-improved grassland. A phase 1 habitat survey carried out in 2004 noted that others, water voles, badgers, foxes, deer, and a variety of birds use the site. It is also suitable for bats and reptiles. The Barton Road frontage contains a number of broad-leaved trees, and the remnants of an orchard. There are also a number of hedgerows, including one that follows the District boundary and broadens into a tree belt. There are a number of wet ditches present, including the Bin Brook which runs along the Barton Road frontage, noted to be of high value due to the presence of water voles. The phase 1 study recommends retention of the semi-improved grassland and orchards, and to retain and enhance ditch habitat. If the site were allocated for development an updated survey would be required.
Section B Conclusion		There are fundamental constraints to development of the objector's proposed area for development. The site is located in part of the Cambridge Green Belt where there is no strategic case for review. 65% of the site lies within Flood Zones 2 and 3 - the range of sites included in this overall assessment demonstrates that taking the sequential approach required by PPS25 there are alternative sites which can be developed. Avoiding development of either or both the Zone 2 and Zone 3 land creates a small free-standing site of 150 dwellings in the countryside unconnected to the built-up area of the City.

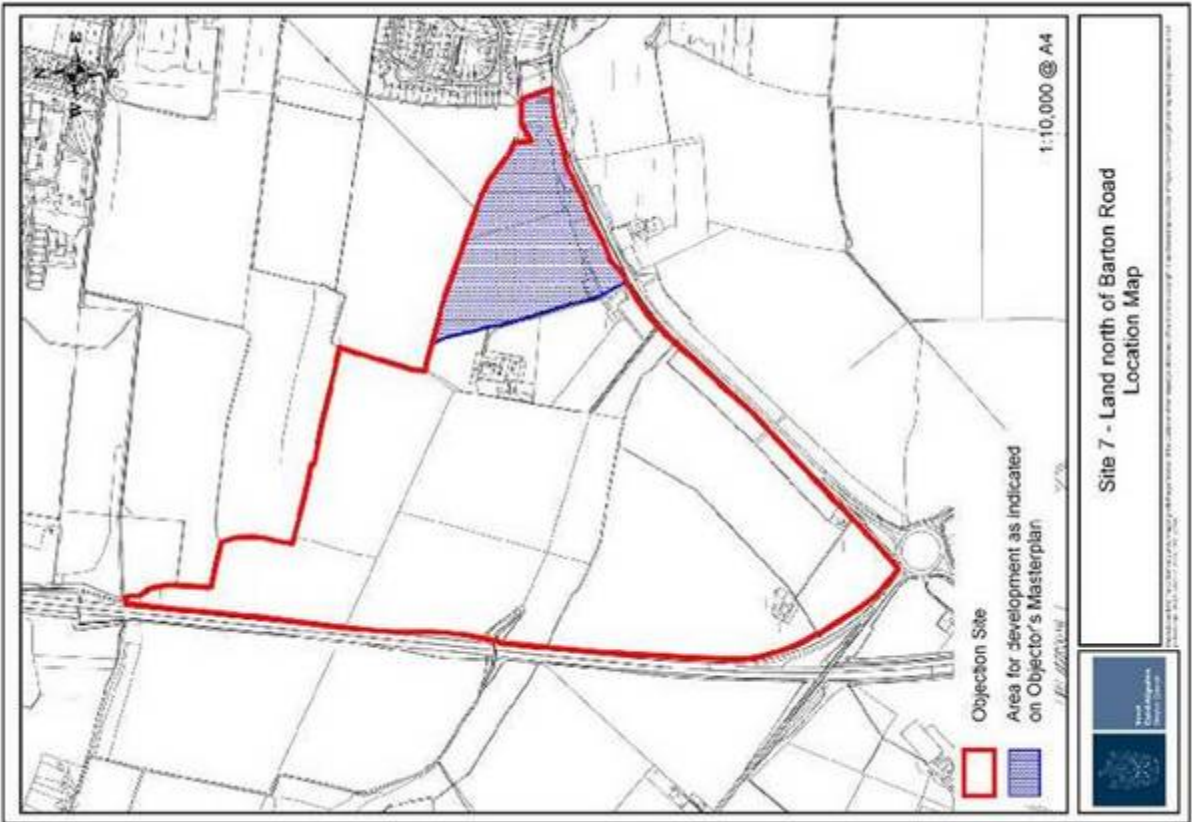
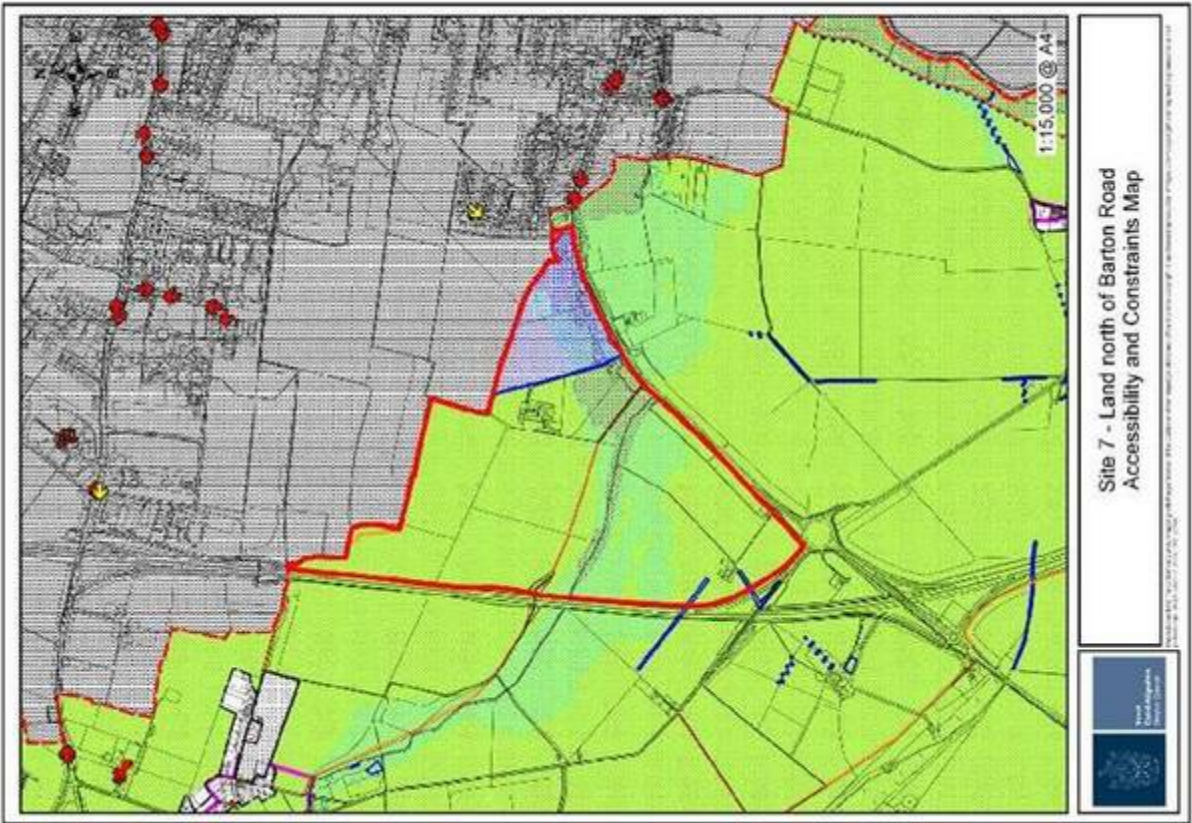
Section C	
Planning Considerations and Delivery	
Planning History	Part of the land has planning permission for use as College playing fields.
Implications of scale of site for settlement character	The scale of development would have no significant impact on the character of Cambridge as a whole but would have an impact on the Green Belt setting of Cambridge.



	It indicates that it is likely that appropriate vehicular access into this site could be achieved.
Potential for countryside access (e.g. linked to scale of development / developer proposals)	The site has good potential for countryside access using existing rights of way. The Barton Road cycleway provides a safe cycle route as far as the village of Toft. A footpath on the western boundary of the site extends across the M11 motorway and links to the Cotton Countryside Reserve, effectively a Country park being developed by the Cambridge Preservation Society.
Deliverability (Key Infrastructure Constraints)	None
Deliverable completions by 2016	The objector's proposed development area would deliver 400 dwellings. The area outside Flood Zones 2 and 3 would deliver 150-200.
Section C conclusion:	The objection site is poorly related to the edge of Cambridge and to nearby development. It is also located in a sensitive part of the Cambridge Green Belt and forms an important part of the setting of Cambridge. It is not a location identified in the RSS and Cambridgeshire Structure Plan for removal from the Green Belt.

<b>Site Assessment Conclusion</b>
The site is not in a location identified in the Structure Plan for development. It is questionable whether this site is located at the top of the search sequence, as it is only joined to Cambridge by a narrow spur of land on the frontage of Barton Road which lies within the floodplain of the Bourne Brook. There would be an impact on Green Belt purposes. The impact needs to be balanced with the sustainability merits of the site both in terms of its proximity to Cambridge and the opportunity to use sustainable forms of transport; walking, cycling and public transport. The overall merits of the site also need to be weighed against the assessments of alternative site options, particularly those located further down the search sequence and further away from Cambridge. The sequential approach to flood risk required by PPS25 limits potential on the frontage of Barton Road, as there are other reasonable alternatives in Flood Zone 1, and this limits the potential to create appropriate form of development.

	<p>Plan Policy P 9/2 c for housing and mixed use development, and where local planning authorities are required to carry out a review of the Green Belt. Studies of the wider Green Belt west of the City have identified little scope for change if the purposes of this part of the Green Belt are to be maintained, a conclusion endorsed by the Structure Plan EIP panel in considering a proposal for development in this location of a far larger scale than proposed now.</p> <p>The Council's own more detailed review of the Inner Green Belt boundaries identifies a smaller area including this omission site as having only a medium importance to the setting of the City and a medium importance to the Green Belt itself. However, it did not recommend removing the area from the Green Belt. I agree with the Council that development on the omission site would have at least a medium effect on the Green Belt, as it would have a detrimental impact on views of the City Centre from rising ground to the west. I also note that the objection would result, for the present at least, in a boundary that is not defined on the ground.<sup>5</sup></p> <p>The objectors have sought to argue to the current examination that this impact will be mitigated by the existing hedges and trees on and in the vicinity of the site. However, the Council considers there would be a significant impact on the setting of Cambridge.</p> <p><i>Prevent communities in the environs of Cambridge merging into one another and with the City – development of the site would not result in any coalescence with nearby villages.</i></p> <p>The County Council comments that the capacity of the road network in Cambridge is severely constrained and the ability of any radial route into the city to take additional traffic, particularly in the peak hours, is limited.</p> <p>Particular highways issues that would have to be addressed if this development came forward would be the potential impact of the development upon junction 12 of the M11 and a number of critical junctions closer to the city centre: A603 / Grange Road, A603 / Newnham Road, Newnham Road / Fen Causeway, Newnham Road / Silver Street / Sidgwick Avenue, Fen Causeway / Trumpington Street, Trumpington Street / Lensfield Road and Lensfield Road / Regent Street / Gonville Place / Hills Road junctions.</p> <p>The Highways Agency has commented that the development of the South Cambs area, immediately adjacent to the M11, without the proposed area within the City Council's boundaries is unlikely to contain sufficient (local, education, health et al) services to be sustainable. Thus, in traffic terms, development at this location is likely to encourage car-based trips on the Trunk Road Network via the conveniently located M11 / Jun 12; not least to the Cambridge Park &amp; Ride sites at Trumpington (M11 / Jun 11) and Madingley Road (M11 / Jun 13).</p>
Road capacity and access	



**APPENDIX 4 — HIGH COURT JUDGMENT re BARTON ROAD 2008**

**Extract from the transcript of the High Court judgment concerning development along Barton Road**

Neutral Citation Number: [2008] EWCA Civ 1151

Case No: C1/2008/0012

IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE HONOURABLE MR JUSTICE FORBES  
[2007]EWHC 1753 (Admin)

Royal Courts of Justice  
Strand, London, WC2A 2LL

22 October 2008

Before:

THE RIGHT HONOURABLE SIR MARK POTTER, PRESIDENT OF THE FAMILY DIVISION  
THE RIGHT HONOURABLE LORD JUSTICE JACOB  
and  
THE RIGHT HONOURABLE SIR ROBIN AULD

Between:

ASHWELL PROPERTY GROUP PLC  
and  
ASHWELL (BARTON ROAD) LIMITED

Appellants

- and -

CAMBRIDGE CITY COUNCIL

Respondent

(Transcript of the Handed Down Judgment of  
WordWave International Limited  
A Merrill Communications Company  
190 Fleet Street, London EC4A 2AG  
Tel No: 020 7404 1400, Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

Mr John Steel QC and Mr Robert White (instructed by Mills & Reeve) for the Appellants  
Mr Simon Bird (instructed by Cambridge City Council) for the Respondent  
Hearing date: 24th June 2008

HTML VERSION OF JUDGMENT

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**SIR ROBIN AULD:**

**Introduction**

1. This is an appeal by the appellants ("Ashwell") from an order of Forbes J of 10<sup>th</sup> December 2007 upholding a decision of the respondent, Cambridge City Council ("the City Council"), in formulating the Cambridge Local Plan ("the Local Plan"), adopting the binding recommendations of the Local Plan Inspector. The decision was to retain as part of the City's Green Belt a green field site known as Barton Road North on the edge of an urban area of land to the west of the City ("the Site"), in which Ashwell has an interest.
2. Ashwell, by its claim and this appeal brought pursuant to section 287 of the Town and Country Planning Act 1990 ("the 1990 Act"), seeks to have quashed that part of the Local Plan affecting the Site. Ashwell's case is that the City Council, in retaining the Site as part of the City Green Belt in its formulation of the Local Plan, prejudiced it by



acting unlawfully and/or failing to comply with statutory procedural requirements. In outline, it maintains that Forbes J erred in law in:

- 1) misinterpreting the Secretary of State's planning policy framework, in holding, in the light of a Review of the City Green Belt as part of the Structure Plan Review, that the City Council was not obliged to review it again as part of its Local Plan Review; and
  - 2) wrongly holding that the Local Plan Inspector applied the correct test and took into account only material planning factors in determining and recommending against the release of the Site from the Cambridge Green Belt.
3. The City Council's case is that Forbes J correctly held that the Local Plan Inspector, and hence the City Council, had not erred in law and had correctly interpreted and applied the Secretary of State's planning policy framework in concluding that no further Green Belt Review was required at the Local Plan Stage.

#### **Planning policies and the facts**

##### *Planning Policy Guidance Note 2: Green Belts ("PPG 2")*

4. The general scheme for protection of Green Belts, which is provided by PPG 2, is through their means of establishment and maintenance through development plans, structure plans providing "the strategic policy content for planning at a local level" (para 2.3). Alteration of the general extent of a Green Belt is permitted only as a consequence of alterations to structure plans and "only in exceptional circumstances" (para 2.6), and, at local level, of Green Belt boundaries only where alteration to the structure plan has been approved "or other exceptional circumstances ..., which necessitate such revision" (para 2.7). Further protection is provided at the development control level in the imposition of a general presumption against inappropriate development, which, by definition, is "harmful to the the Green Belt"; such development may only be approved in "very special circumstances" (para 3.1).

##### *Regional Planning Guidance Note 6: Regional Planning Guidance for East Anglia to 2016 ("RPG 6")*

5. The historic City of Cambridge has long been girded by a Green Belt, reinforcing the City Council's consistent planning policies for restraint of new development in and around Cambridge and its dispersal to market towns and villages to the north. This combination of policies, whilst protecting the historic character of the City, has, along with significant increase of employment in the City and the growth of housing developments well outside it unsupported by local employment, generated much City commuter traffic.
6. The national phenomenon of increasing use of motor vehicles led the Government at the turn of the century to publish a series of Regional Planning Guidance Notes, including one for East Anglia, known as RPG 6. This guidance did not supplant other Government guidance, including PPGs, but fell to be considered by local planning authorities within the general statutory, governmental, regional and local planning policy guidance framework, as paragraph 1.7 of RPG 6 made plain:

"This guidance is intended to provide a regional dimension to, and should be read with, other statements of planning policy, as set out in planning policy guidance notes (PPGs), mineral policy guidance notes (MPGs), circulars and other relevant statements of Government policy. ... Unless specifically stated, this guidance does not supersede or otherwise amend other previously issued advice."

7. As stated in paragraph 567 of the Panel Report giving rise to RPG 6, the intent of the Review to be undertaken was not to:

"be simply a site finding exercise but should examine the fundamental purposes of the Green Belt and the extent to which they are being achieved by its present form" and "If it is found that sites could be released without significant detriment to the Green Belt, their possible development should be assessed against such criteria as proximity to public transport, the City Centre, employment and services."

8. The Panel clearly envisaged that RPG 6 should engender a fundamental change in planning policy for the City of Cambridge and its sub-region, so as, consistently with the fundamental aim of PPG 2, to prevent urban sprawl (paras 1.4 and 1.5), and to switch the emphasis for future growth in large part from the outlying market towns and villages to within or on the periphery of built-up areas of the City, subject to a review of its Green Belt. RPG 6, in paragraphs 5.13 and 5.14 and Policies 22 – 24 giving effect to them, highlighted the following four main features for attention:

- 1) greater concentration of high quality development in or close to the City, subject to capacity and environmental considerations, enhancing it and its surrounding area;
- 2) also, on the periphery of the built-up area of the City, "subject to a review of the Green Belt";
- 3) a sequential approach to the identification of new development sites, starting within the City's built-up area. followed in "urban extensions subject to Green Belt review", and then in market towns, larger villages and existing new settlements; and
- 4) a holistic, sub-regional approach to overall planning needs and sequence of new development.

9. Paragraph 5.15, and Policy 24 provided for the proposed Review of the City's Green Belt. Paragraph 5.15 read:

"A series of independent experts appointed to consider the sub-region, culminating in the Public Examination Panel, have identified the conflict between the Cambridge Green Belt on its existing boundaries and sustainable patterns of development and movement. The justification for a review of the Green Belt is accepted. It is also agreed that a new settlement will have an essential role in accommodating development sustainably, as will market towns, larger villages, and previously established new settlements with the potential for high quality public transport to Cambridge. .... a criteria based study is needed to evaluate the full range of options for .... [new settlement locations], which would then be tested through the structure plan process."

10. Policy 24 set the terms of reference for the required Review and, importantly, required any resultant proposals for change to the City's Green Belt boundaries to be included in its development plans. The Policy took as its starting point that, where land is fulfilling Green Belt purposes and objectives as respectively set out in paragraphs 1.5 and 1.6 of PPG 2, proposals in development plans should accord with those purposes and objectives. However, it went on to provide, as a structure for the review process, a formula for consideration for "release" of sites from the Green Belt, namely if it could be done "without significant detriment to Green Belt purposes" and their assessment for development against other planning criteria. This is how Policy 24 read, providing a three stage programme for consideration of release, which I indicate by the insertion of italicised numbers:

"A review of the Cambridge Green Belt should be carried out and any proposals for changes to its boundaries included in development plans. [1] The review should start from a vision of the city and of the qualities to be safeguarded. [2] It should consider how far the Green Belt is fulfilling relevant green belt purposes and its influences on settlement form. Where land is fulfilling such purposes, development plans should include proposals for its use on the basis of the objectives set out in paragraph 1.6 of PPG 2. [3] *If sites could be released without significant detriment to Green Belt purposes, their suitability for development should be assessed against criteria including proximity to public transport, employment and services and environmental quality.*" [my emphasis]

11. The Panel responsible for the public examination of the draft version of RPG 6 stated, in paragraph 386 of its Report, that the Review should be undertaken in accordance with a brief agreed by the local authorities most directly involved. In paragraph 385 it cautioned that undertaking the Review would "not imply that land would be released on a significant scale. Forbes J, at paragraph 30 of his judgment, acknowledged that: 1) the use of the words in the Policy of "any proposals" and "review", rather than "revision", indicated its neutrality as to whether the review would lead to amendment of the Green Belt boundaries; 2) the sequential approach to identification of new development, including urban extensions, that underlay it subjected any such proposals to their acceptability as part of the Review; and 3) the Policy contemplated a single act of review.

#### *The RPG 6 Review*

12. Following the publication of RPG 6 in 2000, Cambridgeshire County Council and Peterborough City Council, as joint strategic local planning authority, undertook a review of the Cambridgeshire & Peterborough Structure Plan. In doing so, it was informed by a Cambridge Sub-Regional Study- the RPG 6 Review - undertaken by all the local authorities responsible for the Cambridge Green Belt (the Standing Conference of East Anglian Local Authorities, known as "the Buchanan Committee"). Its brief was: 1) to develop a vision for the Cambridge Sub-Region; 2) to undertake a single strategic review of all land within the Cambridge Green Belt to appraise whether it fulfilled relevant Green Belt purposes; and 3) to refine that strategic review by individual site assessments.
13. True to that brief, and as described by Mr David Roberts, the Planning Policy Manager for the City Council in his unchallenged witness statement before Forbes J, the authors of the RPG 6 Review: 1) assessed all the land within the Cambridge Green Belt against the purposes of the Green Belt, an exercise that included "a strategic review, highlighting in broad terms areas where potential development could and could not be accommodated"; and 2) then refined that assessment and review by "assessments of the suitability of individual sites to accommodate development against the criteria set out in Policy 24 of RPG 6".
14. This RPG 6 Review was intended to meet all the requirements of Policy 24. In detailed policies, later set out as part of Policy 9 of the Revised Draft Structure Plan, it assessed the Cambridge Green Belt against a vision of the City; it assessed individual sites within the inner Green Belt, identifying those that could, be released without significant detriment to Green Belt purposes and those that could not, including the Barton Road North Location. In so doing, it enabled those responsible for the preparation of the draft Structure Plan to be unusually specific.
15. There has been no challenge by Ashwell in these proceedings to the adequacy of the RPG 6 Review.

#### *The Revised Draft Structure Plan*

16. In March 2002 the Cambridge County Council and Peterborough City Council, informed by the RPG 6 Review, published and placed on deposit the Revised Draft Structure Plan, identifying a number of locations on the periphery of Cambridge for release from the Green Belt at the Local Plan stage, none of them including the Barton North Road Location.
17. In the broadest outline, the material policies of the Revised Draft – which were much the same when the Plan was later approved – were as follows. Policy 1 required local planning authorities in the Cambridge Sub-Region to review commitments to provide additional housing between 1999 and 2016 in the light of strategic advice in the Plan. Policies 9/2a and 9/2b required them, in doing so, to have proper regard to the strong imperative to safeguard the Green Belt as tailored to the needs of the City envisaged in RPG 6 and the Review. Policy 9/2c went on to identify in some detail the location and phasing of development land to accommodate up to 8,000 dwellings on the edge of the City, "subject to review of Green Belt boundary" in the light also of considerations particularised in Policy 9/2b. None of the locations so identified included the Barton Road North Location. Explanatory memoranda for Policy 9, in paragraphs 9.32 – 9.35, concluded with a general requirement for the preparation of "Strategic Masterplans to proceed in parallel with the preparation of relevant Local Plans".
18. In reaching its conclusions, the EIP Panel acknowledged the detail of the Revised Draft Structure Plan and of the proposals before it, a detail unusual at the Structure Plan stage. It also recognised that what were to become the material policies in P9 of the Structure Plan had not only identified general locations for release of strategic sites from the Green Belt, but that those conducting the RPG 6 Review had undertaken much of the work in relation to non-strategic sites that would otherwise have fallen for consideration at the Local Plan stage. Because of that unusual detail and its materiality to this appeal, I set out the relevant passages in the Panel Report more fully than would otherwise be necessary:

"7.20. ... Policy P9/2 is based on a great deal of detailed work examining capacity in a sequential way across the Cambridge Sub-Region, firstly, by the Buchanan Study and then jointly by the LPAs in preparing the Structure Plan. This, together with the further detailed examination of locations for the new settlement and for Green Belt releases, is work required by RPG 6 which would otherwise have had to be undertaken at

Local Plan level. It is therefore appropriate, in our view, for Policy 9/2 to be reasonably clear and precise about where housing growth should be located....

- 8.18 Our attention was drawn to the requirement in Policy 24 of RPG 6 to 'review' the Green Belt first and then consider whether any locations which do not contribute to the purposes of the Green Belt and can be released, are suitable for development. We agree that it would be appropriate for Policy p9[2]b to expressly require a review of the Green Belt but we accept that the process of identifying general locations for the release of land development has been carried out as part of this Structure Plan. Subject to our conclusions on the particular locations identified in Policy 9/[2]c, we see no reason to depart from the requirement in Policy9/[2]b that LPAs look to release land for possible future development in particular locations, as set out in Policy 9/[2]c."...
- 8.25 [Policy P9/3c] is unusual in that it gives very clear guidance to the LPAs as to where they should be looking to release land from the Green Belt. ... It is essential that major development, such as that proposed for the edge of Cambridge, be brought forward through the Development Plan system. However, the significant increase in build rate required in the Cambridge Sub-Region and the need for an early start to be made in redirecting the strategy to focus on meeting the needs of Cambridge in a more sustainable way, means that the Development Plan system must deliver an early outcome on the Green Belt review and the land to be released. In our view, this justifies the general approach of Policy 9/[2]c in defining locations where meeting the needs of Cambridge in a sustainable way need not compromise the purposes of the Green Belt.
- 8.26 As to the basis for the locations chosen, the Buchanan Study carried out an independent appraisal of the options for development and included a Green Belt Review which considered 'the role of the Green Belt adjoining and close to the urban edge, in line with the preferred sequence of the *Regional Planning Guidance* (paragraph 7.1.2). The Study assessed '32 *Green Belt sites around the inner boundary and 31 other Green Belt sites*' (paragraph 7.3.5). This comprehensive work, carried out with the involvement of all the affected LPAs, helped to inform the Structure Plan. Whilst we note that there was some disagreement over the precise locations chosen by the SPAs ....., we are satisfied that this rigorous approach provides justification for the principle of specifying locations in Policy p9/[2]c."
19. Ashwell made representations seeking the release of the Barton Road North location, with a view to its development as an urban extension to accommodate some 3,500 dwellings. The Structure Plan EIP Panel rejected any such strategic release in that location. However, it did allow, in its conclusion on the issue in paragraphs 8.15 and 8.116 of its Report, for the possibility of a more modest non-strategic release in the Barton Road North area, which it regarded as "not relevant to the Structure Plan", and at another site, which it stated to be a matter for the Local Plan, This is how the Panel expressed its views in those passages:
- "8.115 ... the potential sustainability benefits of this location do not outweigh the potential harm to Green Belt purposes which would result from major development. This location is the most sensitive of those identified on the western side of the city in terms of its impact on the setting of the historic part of the city. South Cambridgeshire District Council suggested that there may be scope for a modest review of the Green Belt boundary in this sector, but any resulting releases would not be of a strategic scale, and thus, are not relevant to the Structure Plan.
- 8.116. The Panel were asked to consider the identification of land north east of Histon as a readily deliverable urban extension. ... It is not a strategic location and cannot sensibly be considered to form part of the potential Green Belt releases in the North West Cambridge sector. We are satisfied that any proposal to bring forward land in this location is a matter for the Local Plan."
- Mr John Steel QC, for Ashwell, relied on these observations as indications of the Panel's view of a need for a further RPG 6 Green Belt Review at the Local Plan stage.
20. The Revised Draft Structure Plan and the EIP Panel's attention to it were equally detailed and rigorous in relation to the individual locations proposed by Ashwell and others for release from the Cambridge Green Belt. The best way of demonstrating that in relation to Ashwell's proposals for the Barton Road North Location can be seen in the relevant passages from the EIP Panel's Report:

#### **"Land North of Barton Road**

8.107 The proponents of this location submitted to the Panel some fairly detailed information about its suitability. The Panel has had regard to this material insofar as it is appropriate to the strategic level. In our view, there are two main issues relating to this location. These are:

- The impact of major development in this location on Green Belt purposes;
- The sustainability of the location

#### **Impact on Green Belt purposes**

8.108 There is no dispute that the Barton Road location contributes to the setting of Cambridge although the proponents of the scheme argue that other locations proposed for release in the Structure Plan are equally valuable, such as the University land in North West Cambridge.

8.109 The land at Barton Road falls within the Cotton corridor which brings countryside right in to the heart of the city. Viewed from the west the distinctive skyline of the historic centre is seen against the open foreground of land in the Barton Road area. In our view, the relationship between the historic centre and the countryside in this location is critical to the character of Cambridge. Indeed, the Barton Road area of the city is distinctive in creating a very direct interface between the city centre and countryside. We have some sympathy with the view expressed by South Cambridgeshire that 'this is the most important location on the edge of the city'.



8.110 This interface would be largely lost by major development in the location proposed. Narrowing the Coton corridor to the extent suggested by the Indicative Masterplan for this would render it almost meaningless as 'countryside'. Accordingly, we see no reason to disagree with the conclusion of the Buchanan Study that development in this location would conflict with the purpose of preserving the unique character of the city. In our view, this conclusion applies equally to land to the north as to land to the south of Barton Road.

#### Sustainability

8.111 There can be no argument with the fact that the proximity of this location to the city centre renders it potentially highly sustainable in terms of accessibility by slow modes (pedestrians and cyclists). Barton Road is also accessible by such modes to significant areas of employment, notably the University's western campus. However, unlike other locations proposed for release, Barton Road is not on a major transport corridor and there is no public transport at present. Thus, the development would need to support a public transport system.

8.112 The strategy proposed by the proponents of the location is for a high frequency service along Barton Road, Sidgwick Street/Silver Street and Madingley Road – to link the Barton Road location with the University employment areas. We have serious doubts about the deliverability of such a proposal. Major development in this location would be at the 'end of the line' for public transport services and would need to deliver high levels of patronage to support a high quality public transport system. We question whether this is a likely proposition.

8.113 Whilst we consider that there are sustainability benefits in terms of the location's proximity to services and facilities in the city centre we do not believe it to be particularly sustainable in terms of the provision of public transport. The need for accessibility is not related solely to the city centre and the University employment areas, but is also relevant to other parts of the city where employment opportunities exist such as Cambridge Northern Fringe, Addenbrooke's and Cambridge Airport. The rather isolated location of the Barton Road area relative to these locations in public transport terms suggest that major development in this location could encourage car dependence especially given the proximity to J12 of the M11.

8.114 We note the argument which has been put to us that there is a need to develop new housing in the west of the city to balance with the available jobs. Whilst we agree in principle with the desirability of achieving a jobs/housing balance so far as practical, we do not consider this to be the appropriate location in which to provide large-scale housing."

#### The Structure Plan

21. As I have indicated, the Structure Plan, as approved in 2003, closely followed the Revised Draft of it, as examined and supported by the Structure Plan EIP Panel. For convenience of reference, I repeat the essentials. Policy 9/1 required local planning authorities in the Cambridge Sub-Region to review commitments to provide additional housing between 1999 and 2016 in the light of strategic advice in the Plan. More particularly, in relation to the issues raised by this appeal, Policy 9/1 called for the provision of an additional 8,000 homes on the edge of Cambridge, "subject to review of Green Belt boundary". Policies 9/2a and 9/2b required them, in doing so, to have proper regard to the strong imperative to safeguard the Green Belt as tailored to the needs of the City envisaged in RPG 6 and the RPG 6 Review. Policy 9/2c went on to identify in some detail the location and phasing of development land to accommodate up to 8,000 dwellings on the edge of the City, "subject to review of Green Belt boundary" in the light also of the considerations particularised in Policy 9/2b. None of the locations so identified included the Barton Road North location. Policy 9 concluded, in explanatory material in paragraphs 9.32 – 9.35 with a general requirement for the preparation of "Strategic Masterplans to proceed in parallel with the preparation of relevant Local Plans".
22. The Plan, in paragraph 9.34, allowed for consideration of release from the Green Belt, within the development period up to 2016, of non-strategic sites to meet long term needs beyond that date. Mr Steel placed considerable reliance on that provision. He maintained that it was referable only to a review to be undertaken through the Local Plan process and, therefore, would be governed by RPG 6, Policy 24. The short answer to that, as Mr Simon Bird, for the City Council, noted, is that the terms of paragraph 9.34 are permissive – "Smaller non-strategic sites *may* also be identified at this stage." [my italics] A further Green Belt Review is not required by RPG 6 or the Structure Plan. With or without any such requirement, exceptional circumstances would still need to be shown through the Local Plan process. As it was, the EIP Panel's conclusion, in paragraph 8.117 of its Report, had been that the Structure Plan with its recommended changes, met the aims of RPG 6 to provide for the short, medium and long term needs of Cambridge up to and beyond 2016.
23. As I have indicated, the Structure Plan EIP Panel, in its Report had considered Ashwell's proposal in considerable detail. It also expressly acknowledged, in paragraphs 7.20 and 8.18 – 8.26 of its Report (para 18 above), that much of that detail would have been usually submitted and considered at the Local Plan stage, but for the RPG 6 Review - passages to which Forbes J gave considerable weight in his judgment.

#### The Local Plan

24. Following the adoption of the Structure Plan, the City Council undertook a review of the Local Plan, an exercise required of it by section 12(6) of the 1990 Act. That provision obliged it to have regard to a number of factors, including RPG 6 as part of "any regional or strategic planning guidance given by the Secretary of State to assist it in the preparation of the Plan", current national policies, availability of resources and such other matters as he might prescribe or direct. The City Council complied with those obligations, by having regard to: 1) the Structure Plan Policies 9/2b and 9/2c requiring it to review the Green Belt in order to identify the boundaries of the land to be released to serve the long-term development needs of Cambridge in the locations specified in Policy 9/2c; and 2) the Cambridge RPG 6 Review; and 3) its own Inner Green Belts Boundary Study of 2002, which had concluded that the Barton Road North Location should remain within the Green Belt.

25. In the result, the City Council, in its Revised Deposit Draft Local Plan of 2004, followed the Structure Plan EIP Panel in not allocating the Barton Road North location as suitable for development, and proposed its retention in the Green Belt.
26. In the ensuing public consultations on the Revised Draft Local Plan, Ashwell, by way of objection, again sought release from the Green Belt of an area of land on the Barton Road North location, but this time of a far smaller area, proposing its allocation for mixed development, including some 350 to 400 dwellings. Ashwell's objections were mainly based on alleged failure of the Revised Draft Local Plan to make adequate provision for the Structure Plan housing requirement. Ashwell took no point at that stage that the appropriate test for consideration of the Site for release from the Green Belt was something else or less than PPG 2 "exceptional circumstances", or that the Site could be released from the Green Belt without significant detriment to its purposes even if not considered suitable for development.

#### **The Local Plan Inquiry and the Inspector's Report**

27. To resolve Ashwell's and other objections, the Secretary of State appointed, pursuant to section 42 of the 1990 Act, an Inspector to conduct a Local Plan Inquiry. At the Inquiry, which the Inspector conducted in late 2005, Ashwell, by way of written and oral representations, developed its proposal. The stance taken by the City Council at the Inquiry was that: 1) the site was not identified in the Structure Plan for housing and mixed use development or for review of the Green Belt; 2) a smaller area, including that the subject of Ashwell's modified representations had, on its more detailed review "a medium importance" to the setting of the City and to the Green Belt; 3) development on it would have at least "a medium effect" on the Green Belt and "a detrimental effect" of views of the City Centre from rising ground to the west; 4) there were additional constraints on development of the site of a risk of inadequate accessibility to the site and flooding; and 5) there was no need for the site to be developed for housing.
28. The Inspector agreed with the City Council's stance in all those respects. In paragraph 5.51.6 of his Report of 16<sup>th</sup> May 2006, he concluded that the Site should not be allocated for housing, and that there were no exceptional grounds for altering the Green Belt boundary in this location.
29. This is how the Inspector expressed his conclusions:
  - 5.51.1 his area of Cambridge is not one of those identified in Structure Plan Policy P 9/2c for housing and mixed use development, and where local planning authorities are required to carry out a review of the Green Belt. Studies of the wider Green Belt west of the City have identified little scope for change if the purposes of this part of the Green Belt are to be maintained, a conclusion endorsed by the Structure Plan EIP panel in considering a proposal for development in this location of a far larger scale than proposed now.
  - 5.51.2 The Council's own more detailed review of the Inner Green Belt boundaries identifies a smaller area including this omission site as having only a medium importance to the setting of the City and a medium importance to the Green Belt itself. However, it did not recommend removing the area from the Green Belt. I agree with the Council that development on the omission site would have at least a medium effect on the Green Belt, as it would have a detrimental impact on views of the City Centre from rising ground to the west. I also note that the objection would result, for the present at least, in a boundary that is not defined on the ground.
  - 5.51.3 Land has been released from the Green Belt south of Addenbrooke's Hospital and between Madingley Road and Huntingdon Road, but that is as a result of the recommendations of the Structure Plan EIP Panel. There is no justification in terms of housing need for the removal of this site from the Green Belt."
30. After mentioning risk of lack of adequate accessibility by public transport and flooding as an additional constraints on development of the site, the Inspector expressed his conclusion in paragraph 5.51.6, in the following terms:
 

"For all of these reasons, I conclude that this site should not be allocated for housing, and that there are no exceptional grounds for altering the Green Belt boundary in this location."
31. Mr Steel has taken issue with the Inspector's clear reference in that conclusion to the test of "exceptional circumstances" in paragraphs 2.6 and 2.7 of PPG 2, rather than "without significant detriment to Green Belt purposes" in Policy 24 of RPG 6. The response of Mr Bird to that criticism was that Policy 24 is concerned with both Green Belt and over-all material planning considerations, which together go to the PPG 2 test of "exceptional circumstances", and he pointed to the opening words of the Inspector's conclusions, "For all of these reasons".
32. The City Council, on 20<sup>th</sup> July 2006, resolved, as required,<sup>[1]</sup> to adopt the Local Plan in accordance with the Inspector's conclusions. Any material errors of law by the Inspector in reaching them would necessarily vitiate to like extent the City Council's adherence to its Local Plan. It was on that basis that Ashwell instituted its claim against the Council for judicial review of the Local Plan.

#### **The judgment of Forbes J**

33. Forbes J held that: 1) the joint working between the strategic and local planning authorities brought together in the RPG 6 Review, resulting in the unusually detailed 2003 Structure Plan, "fully complied" with Policy 24 of RPG 6; 2) in the absence of the Site being identified in the Structure Plan for release, it was for Ashwell, in accordance with PPG 2, to demonstrate "exceptional circumstances" justifying release; 3) the Inspector, on the material before him, had been entitled to conclude that it had not done so; and 4) in any event, the land was not suitable for development. This is how he expressed those conclusions in his judgment:
  - "31. ... Policy 24 of RPG 6 anticipated a single act of review and did not create any presumption that there would be significant Green Belt land release. ... this is clear from the Report of the Panel who conducted the public examination into its draft version ...
  33. Mr Bird submitted that [the RPG 6 Review] ... fully complied with the requirements of Policy 24 of RPG 6. I agree with that submission....

41. ... the reference in the explanatory memorandum [in paragraph 9.34 of the Structure Plan] to smaller non-strategic sites allowed for but did not require release of smaller Green Belt sites and I agree ... that this did not impose any requirements for further review of the CGB at local level....
49. ... In my view, the Green Belt review required by Policy 24 of RPG 6 was undertaken by the Council and its fellow local authority in their preparation of an unusually specific Structure Plan, which undertook work which would otherwise have had to be undertaken at local level. I am satisfied that such an approach accords with Policy 24 of RPG 6, which requires a single act of review and is not prescriptive as to how that review is to be undertaken.
50. In my view, it was neither irrational nor otherwise unlawful for the Council and the Inspector to regard the Structure Plan process as having discharged the requirements of Policy 24 of RPG 6 for its area, save for the drawing of detailed boundaries of the areas identified in Structure Plan Policy P9/2. ....
51. I am satisfied that, properly understood, there was no departure from Policy 24 of RPG 6. In this particular case, the Structure Plan process discharged those policy requirements. Accordingly, any further alteration to the CGB beyond those provided for by Policy P9/[2]c of the Structure Plan required the demonstration of exceptional circumstances in order to comply with PPG2.
52. To the extent that it is suggested that the basis for the decision to retain the site in the CGB is not understood, I am satisfied that there is no substance in any such complaint. Ashwell failed to make out a case of exceptional circumstances in that the Inspector was satisfied that the land should be kept open for Green Belt purposes (development would have had a detrimental effect on the City viewed from the west) and was unsuitable for development (on sustainability and flooding grounds. ... those reasons as expressed by the Inspector properly addressed Ashwell's duly made objections."

#### **The issues on the appeal**

34. As I have indicated, failure, if any, by an Inspector to understand the guidance or policy or to have proper regard to it so as possibly to have affected the outcome would be a ground for quashing any planning decision turning on it; see per Woolf LJ (as he then was) in *Gransden & Co Ltd v Environment Secretary* [(1987) 54 P & CR, 86.
35. Ashwell's case on this appeal is that the Inspector's decision, and in consequence that of the City Council, was irrational in that he failed to take into account material considerations, took into account immaterial considerations and failed adequately to reason his decision. There are no grounds of appeal attached to the Notice of Appeal. At the beginning of the hearing of the appeal, the grounds appeared to have been advanced in Counsel for Ashwell's Skeleton Argument filed in support of the appeal on 18<sup>th</sup> February 2008. However, Mr Steel's submissions on the hearing of the appeal did not entirely follow the scheme of the Skeleton Argument. My analysis of the issues canvassed in argument before the Court is that Ashwell complains that the Inspector, in considering its proposals at the Local Plan Inquiry, misunderstood and/or misapplied Policy 24 of RPG 6 in the following respects:
  - 1) he failed to read Policy 24 of RPG 6 as requiring an RPG 6 Review of locations at the Local as well as at Structure Plan stage.
  - 2) he misapplied and/or misunderstood the first limb of the critical test in Policy 24 by confusing the words in it of "significant detriment to Green Belt purposes" with the guidance as to "exceptional circumstances" given in paragraphs 2.6 and 2.7 of PPG 2;
  - 3) he failed to consider and determine separately the first limb, whether the Site could be released without causing "significant detriment to Green Belt purposes", before going on to the second limb, to consider and assess its suitability for development against a range of other planning criteria; and
  - 4) his conclusion that the site should not be released for development because of unresolved accessibility and flooding problems had nothing to do with the first and separate test whether release could be made without "significant detriment" to Green Belt purposes, but was part of the second limb going to the suitability for development; and, accordingly should not deprive Ashwell, as a potential future developer, of the opportunity of liberation of the site from Green Belt constraints, say if other allocated development sites in the Local Plan failed to materialise; in short, Ashwell's case was that it was entitled to release of the Site from the Green Belt under the first limb, properly applied, regardless of whether, at that stage, it satisfied the second limb.
36. In addition, Mr Steel complained that the Forbes J failed to give adequate or intelligible reasons for his conclusions, in particular in relation to material in the Structure Plan EIP Report, which, Mr Steel maintained indicated that a further RPG 6 Review was required at the Local Plan stage.
37. The City Council's case before Forbes J and on this appeal by way of a respondent's notice is that Policy 24 of RPG 6, consistently with paragraphs 2.6 and 2.7 of PPG2, required or contemplated a single act of RPG 6 Review at the Structure Plan stage to be undertaken to a brief agreed by the local authorities most directly involved. That, it maintained, is what took place, and Policy 24 did not impose any obligation on the City Council to undertake, in addition, a separate RPG 6 Review in its preparation of the Local Plan.

#### *Issue 1 – Whether Policy 24 of RPG 6 required a further RPG 6 Review at the Local Plan Stage notwithstanding the detailed RPG 6 Review at the Structure Plan Stage*

38. The Judge, in paragraph 31 of his judgment (para 33 above), held that Policy 24 contemplated a single act of review through the Structure Plan Review of Green Belt policies for Cambridge.
39. Mr Steel submitted that the requirement in Policy 24 of RPG 6 that any proposals for changes to the Green Belt's boundaries were to be "included in development plans" necessarily required an RPG 6 Review at the Local as well as at Structure Plan stage, not a single act of review, as the Inspector and Forbes J had concluded. As I have mentioned (para 19 above), Mr Steel suggested that his contention was supported by the view of the EIP Panel at paragraph 8.115 of its Report (para 19 above), when allowing for the possibility of non-strategic releases at the Barton Road North location, which it considered irrelevant to the Structure Plan, He also drew attention to the



Panel's assertion at paragraph 8.116, in respect of a proposals for release at another location, land north east of Histon, that they were "a matter for the Local Plan" (para 19 above).

40. Mr Steel also relied on passages in the Structure Plan itself, which, he maintained, indicated a clear intention that there was to be a further RPG 6 Review at the Local Plan stage, namely Policy 9/2b of the Structure Plan under the heading "Review of Green Belt boundaries" when read with paragraphs 9.34 and 9.35 of the Plan, to both of which I have referred (para 21 above) but which, for convenience I set out here in full:

**"Policy 9/2b**

Local Planning Authorities will carry out a review of the Green Belt in their areas to identify the boundaries of land to be released from the Green Belt to serve the long-term development needs of Cambridge in the locations indicated on the Key Diagram and set out in Policy 9/2c."

"Paragraph 9.34 of the Plan

"The review of the Inner Green Belt boundary must also consider long-term development needs. Local Planning Authorities will be expected to consider requirements beyond 2016 and identify areas to be safeguarded to meet those needs. Smaller sites *may* also be identified at this stage." [my italics].

41. Mr Steel submitted that those two provisions, when read together, and in context, required the City Council, as part of the review of its Local Plan, to undertake a further RPG 6 Review, to search for smaller non-strategic sites that could be released from the Green Belt. He also referred to the requirement in P9/2c for local planning authorities to carry out reviews to identify boundaries of land to be released, and submitted that the word *may* in the last sentence of paragraph 9.34 should be read as "must".
42. Putting Mr Steel's argument on this issue at its narrowest, he submitted that, in any event, where release of non-strategic sites has not been considered at the structure plan stage, the effect of Forbes J's decision if allowed to stand would deprive some landowners of having their views as to release of Green Belt land heard at the local plan stage.
43. Mr Bird submitted that Ashwell's case on this issue is misconceived in proceeding on the basis that an RPG 6 Review is a proxy for a PPG2 development plan alteration, and contended that there is nothing in the EIP Structure Plan Panel Report to support it. The references in paragraphs 8.115 and 8.116 the Report (para 19 above) were to the provision in paragraph 9.34 of the Structure Plan (para 40 above) for facilitating non-strategic releases at the Local Plan stage if, at that stage, "exceptional circumstances" could be shown, not an indication or understanding that there was to be a further RPG 6 Green Belt Review for the purpose.
44. He also submitted, as he had done successfully to Forbes J, (judgment, para 41) that the reference, in the explanatory memorandum in paragraph 9.34 of the Structure Plan to Policy P9/2c, to the "review" is not a reference to a further RPG 6 Review, but to a review for identifying boundaries required by Policy p9/2b, and that the word "may" in that memorandum means may, not "must".

*Conclusion*

45. The first point to note is that RPG 6, in Policy 24, and in paragraph 567 of its Panel's Report (para 7 above), clearly intended a single RPG 6 Review by the concerned local planning authorities, not two consecutive such Reviews, one at the Structure and another at the Local Plan stage. Policy 24 did not of itself require alteration of the Cambridge Green Belt extent and boundaries, but simply, a sequential review of three elements identified in it (para 10 above), and that, depending where they all led, might or might not prompt alteration on PPG 2 "exceptional circumstances" grounds at either stage of the development plan process, as Forbes J clearly acknowledged in paragraph 41 of his judgment.
46. This scheme of a single Green Belt Review feeding Policy 24 into the development plan process is of a piece with Policy 22 ii of RPG 6 in the latter's focus on the last of the Policy 24's three concerns, possible "suitability for development" on all other material planning factors, on the periphery of the built up area of Cambridge, *subject to a review of the Green Belt; ...*" [my emphasis]

"Policy 22: Location of housing and related development Development Plans should identify locations for housing and related development for services, schools, community facilities etc in the following order of preference

- i within the built up areas of Cambridge, subject to capacity and environmental considerations;
- ii on the periphery of the built up area of Cambridge, subject to a review of the Green Belt; ..."

47. Accordingly, I agree with the reasoning and conclusions of Forbes J in the passages from his judgment that I have set out in paragraph 33, and would hold:
- i) Policy 24 of RPG 6 required only a single Green Belt review, by strong implication, at the Structure Plan stage;
  - ii) the RPG 6 Review, as undertaken, complied with that Policy;
  - iii) the Structure Plan, informed by that Review, and given its unusual specificity, met the requirements of Policy 24, save for drawing - to be done at the Local Plan stage - detailed boundaries of the areas identified for release in Policy 9/2c; and;
  - iv) it does not follow that the only opportunity to secure release of land from the Green Belt was at the Structure Plan stage, since, in accordance with paragraph 9.34 of the Plan (para 40 above), there may be an opportunity for consideration of it at the Local Plan stage for non-strategic areas not already identified for release, subject to Policy 24 and the PPG 2 requirement of "exceptional circumstances".

*Issue 2 - Confusion of "without significant detriment" in Policy 24 of RPG 6 for release from the Green Belt with "exceptional circumstances" in paragraphs 2.6 and 2.7 of PPG 2, for alteration of the Green Belt;*

48. This issue overlaps with the first. Although it was not a point put to the Inspector, Mr Steel submitted to Forbes J and to this Court that the City Council and the Inspector misunderstood the requirements of Policy 24 of RPG 6 by equating the formula "without significant detriment to Green Belt purposes" with what he suggested is the more onerous test of "exceptional grounds" for permitting development in a Green Belt by alteration of development plans. In short, he maintained that the Inspector erred in not applying the "significant detriment" test in Policy 24, but the "exceptional circumstances" guidance in PPG 2, paras 2.6 and 2.7.
49. Mr Bird submitted that the "without significant detriment" formula in Policy 24 of RPG 6 does not qualify, and is not inconsistent with, an over-all PPG 2 test of "exceptional circumstances", encompassing all material planning factors governing release from the Green Belt in the development plan structure, including all three stages of a Policy 24 Review. As he put it, Policy 24 is not a requirement for change of the Cambridge Green Belt, but for consideration of change on PPG 2 terms through and in the course of the development plan process. He submitted that it is simply a paraphrase of paragraph 2.8 of PPG2 which advises that detailed boundaries "should be carefully drawn so as not to include land which it is unnecessary to keep permanently open", and that here, the City Council, the EIP Panel and the Inspector have all concluded that it is necessary to retain it.

#### *Conclusion*

50. It follows from my conclusion on the first issue that the submission of Mr Bird should also, in my view, succeed here. In particular, I agree with Forbes J's reasoning in paragraphs 51 and 52 of his judgments (para 33) above. As he indicated in those passages, the reference in RPG Policy 24 to the absence of "significant detriment to Green Belt purposes" is part of a wider composite of material planning factors, including suitability for development that go to the question in relation to any particular location whether, pursuant to PPG2", paragraphs 2.6 and 2.7, there are exceptional circumstances for altering the Green Belt so as to release it for the proposed development.

#### *Issue 3 – Whether "without causing significant detriment" and suitability for development" are parts of a single test in Policy 24 of RPG 6 for release of sites from the Green Belt or separate tests enabling release without contemporaneous determination of suitability for development*

51. Mr Steel submitted that, though the two parts of Policy 24 must be read together, they may be part of a two-stage decision-making process, certainly at the Local Plan stage. This submission, in large part, depended on the outcome of his submission on the second issue - which, as I have said, I would reject - that the RPG 6, Policy 24 "without significant detriment" test sets a different and/or lower threshold than that of PPG 2 "exceptional circumstances". His suggestion - which was not put to the Inspector - was that the Site could be released from the Green Belt without "significant detriment" to its purposes irrespective of its suitability for and/or need for its release for development. He maintained that Policy 24 does not of itself require consideration of what, if any, development is proposed and that, only after it is established, does the suitability of a proposed development fall to be assessed by consideration of the conventional planning criteria mentioned at the end of Policy 24. It is, he argued, of substantial importance to a developer such Ashwell, to know whether a site in which it is interested "passes the first stage of the Policy 24 test", namely whether the site could be released without significant detriment to Green Belt purposes.
52. In my view, Mr Steel's proposition has only to be articulated in this context - one in which the clear intent RPG 6 was to influence long-term development plans for the Cambridge sub-region at both strategic and local/non-strategic level - to be struck by its invalidity. Its intent, as I have summarised it in paragraph 8 of this judgment, was to secure a radical, sequential, long-term and wide-ranging change at both planning levels, in reconciling the importance of retention of Cambridge's Green Belt with the need to take account of developmental pressures, and to do so by moving to a greater concentration of new development in the City centre and on its periphery. Any release of land from the Green Belt was to be kept to the minimum, and granted only where it would do the least harm to the Green Belt, and where and when it is needed and suitable on conventional planning terms. Like all or most planning decisions, whether of local planning policy or at the development control stage, it is a composite exercise of planning judgement, guided, pursuant to section 12(6) of the 1990 Act, by all material national and local planning policy guidance and all other material planning factors appropriate to the exercise. Policy 24 requires all of that.
53. It would make no sense at all for a local planning authority to be charged with determining whether release of a particular site would or would not cause significant detriment to Green Belt purposes in the absence of knowledge as to the nature, scale and possible effects of some present or future proposed development of the site or of material developments and changes elsewhere that time may bring. If Green Belts are to retain the level of protection that PPG 2 requires, and Regional Guidance of which, RPG 6 is part, acknowledges, they should only be altered, when matched against proposed or potential development, where, in over-all planning terms there are "exceptional circumstances" for alteration - normally a single decision to be made in the development plan process. Otherwise, "banks" of released locations could arise, each one of which would be more vulnerable than hitherto to grants of planning permission to potential developers who, in seeking permission, would no longer have to show "exceptional circumstances" at any stage.

#### *Issue 4 – The materiality of the Inspector's finding that the site should not be released for development because of unresolved accessibility and flooding problems*

54. This issue necessarily turns on the outcomes of issues 3 and 4, and, for the reasons I have given on them, it should, in my view, also be resolved against Ashwell. There is no challenge to the Inspector's conclusions that the Site is unsuitable for development on accessibility and flooding grounds, both of which clearly fall within the class of planning criteria indicated in Policy 24 of RPG 6. For those reasons alone, Ashwell's challenge does not satisfy that Policy.

#### *Issue 5 - Reasons*

55. Mr Steel's main complaint under this head is that Forbes J failed to give adequate or intelligible reasons why he disagreed with what Mr Steel described as "clear findings" in the Structure Plan EIP Report, at paragraphs 8.115

and 8.116 (para 19 above), "that the Structure Plan Review was confined to an examination of strategic land releases and that smaller non-strategic sites were not considered".

56. I can see no basis for such criticism. At its best, it consists of complaints that the Judge: 1) did not refer to paragraphs 8.115 and 8.116 of the Structure Plan EIP Panel Report indicating the Panel's acknowledgment of the scope for consideration at the Local Plan stage of non-strategic site alterations to the Green Belt boundary; and 2) did not deal with Ashwell's contention that RPG 6, Policy 24 required an RPG 6 Green Belt Review to be undertaken at both the Structure and the Local Plan stages.
57. In my view, there is no substance to either complaint. As to paragraphs 8.115 and 8.116 of the Structure Plan EIP Panel Report, Forbes J, at paragraph 41 of his judgment (para 33 above), rightly acknowledged that the Structure Plan, in paragraph 9.34 of its explanatory memorandum to Policy P9/2c allowed for, but did not require, release at the Local Plan stage of smaller Green Belt sites. Such a view, as Mr Bird observed, is consistent with that of the Panel in paragraphs 8.115 and 116. As to what Policy 24 of RPG 6 required by way of a Green Belt Review in the development plans process, Forbes J clearly took the view that the opening sentence of that Policy,  
  
"A review of the Cambridge Green Belt should be carried out and any proposals of changes to its boundaries included in the development plans"  
  
was simply an acknowledgement that any resultant proposals for release should be dealt with, in accordance with PPG 2, by way of *alteration* in the development plans, though not necessarily in both.
58. I need not deal with the complaints that Forbes J did not deal with arguments based on advice from the Government Office for East of England to Ashwell. Not only would such advice have had no authoritative bearing on the correct interpretation of the planning policies in play, it was, on Forbes J's interpretation of them and mine, wrong.
59. For all those reasons, I would dismiss the appeal.