

WHITE HORSE ALLIANCE

CLOSING SUBMISSION

WILTSHIRE COUNTY COUNCIL PLANNING APPLICATION WO7.09002

**THE WILTSHIRE COUNTY COUNCIL (A350 WESTBURY BYPASS
CLASSIFIED ROAD) COMPULSORY PURCHASE ORDER**

THE WILTSHIRE COUNTY COUNCIL (A350 WESTBURY BYPASS
CLASSIFIED ROAD) SIDE ROAD ORDER

“A fundamental goal of transport policy must be to ensure that the transport sector plays its proper role in our fight to tackle climate change.”

“The Government accepts the logic that we cannot simply build our way out of congestion.” Towards a Sustainable Transport System. Secretary of State for Transport October 2007 (CD13.1)

Introduction

- 1.1 The White Horse Alliance (WHA) is a coalition of environmental and transport organisations established in August 2007 with the common aims of opposing plans by Wiltshire County Council (WCC) for the construction of an eastern bypass for Westbury and seeking alternative solutions to meet the transport, environmental, social and economic needs of the town of Westbury, and surrounding communities in West Wiltshire. The Alliance represents local, regional and national bodies including the Campaign to Protect Rural England (CPRE), Campaign for Better Transport (formerly Transport 2000), the Woodland Trust, Friends of the Earth (FOE), the Westbury Bypass Alliance and the A36/A350 Corridor Alliance (ACA), an umbrella organisation representing environment and transport campaigns along the transport corridors between the M4 and the South Coast. The Parish Councils of Southwick, West Ashton and Steeple Ashton are also members of the WHA and are represented on its Steering Committee.
- 1.2 Evidence from the WHA has chronicled the long history of strong local opposition to the A350 eastern bypass project. The scale of that opposition is reflected in the numbers represented by the WHA's member organisations. The core local organisation, the Westbury Bypass Alliance, has a mailing list of over 1200 supporters, approximately 500 of them in Westbury and West Wiltshire and most of the remainder in Wiltshire as a whole.
- 1.3 Including the electorates of its parish council members and the membership of local NGOs, notably those in the Wiltshire branch and the West Wilts group of CPRE, together with local members of national organisations such as the Woodland Trust, the WHA can say with confidence that it represents 5,000 people in the Westbury area and probably 6,000 within Wiltshire.

- 1.4 The first objective of the WHA was to oppose the current planning application at this public inquiry and to raise sufficient funds to support a professional case with expert witnesses and legal representation. The strength of local opposition to this road can be judged from the fact that most of the funding for this case – tens of thousands of pounds - has been raised in Westbury and surrounding communities.
- 1.5 The strength of local opposition was acknowledged at the 1997 Planning Conference by the District Plan Inspector in his reasons for recommending against safeguarding of the Eastern Bypass Route (EBP); by the EiP panel in its invitation to the WBA to give evidence at a session devoted to the role of the Westbury bypass in relation to regional transport strategy in summer 2007; the strength of local opposition was clearly an influential factor in persuading the Secretary of State to call in this application in July 2007; finally it would appear that the human rights case made on behalf of the local community by the WHA, was influential in the decision by DCLG to agree to our request that the starting date of the inquiry should be moved from April to June 2008 to allow proper time for the Alliance to prepare its case and instruct a team of expert witnesses.
- 1.6 It should be recalled that the County Council resisted any delay and at the first Pre Inquiry Meeting opposed our request for deferral on the grounds that *its* evidence was complete and that the WHA had also had ample time to prepare its case.
- 1.7 In the event this Inquiry has shown that it was WCC, not the Alliance, that was unprepared. As early as May 2007 we had put WCC on notice that its ES was defective and that to proceed with the grant of planning permission could be 'unlawful'. That letter was not placed before the Council's regulatory committee, which proceeded to make a conditional grant of planning permission.
- 1.8 It is now clear that WCC was not ready to subject its flagship road scheme to professional scrutiny at a full planning inquiry, as opposed

to its own regulatory committee or the CPO inquiry it anticipated in the summer of 2007.

1.9 That is why, almost exactly four months after it opened, this inquiry is only now drawing to its close. Between midsummer and autumn, the transport case for the scheme became a moving target, with the County Council and its consultants forced to produce new, revised or corrected information on traffic modelling, weight limits, HGV routeings, and route comparisons as more of its case failed to stand up to public scrutiny.

1.10 On the second day of this inquiry, the traffic model began to unravel. On the last day before the final adjournment, 11 September, WCC produced a document, Written responses to written technical evidence, September 2008 (WCC/136) that was itself a response-to-responses-to-further-information issued by the Council following its correction of an error in traffic modelling that required HGV numbers to be doubled. Even this last document had to be withdrawn after examination by the Inspectors revealed drafting errors that the County Council was unable to clarify. (Corrected document: WCC/136A).

1.11 At the end of this muddled saga, we are still left speculating as to precisely what is the scheme for which planning permission is now sought and precisely what purpose it will serve.

1.12 In one important respect the definition of the scheme that has emerged from the Inquiry is different from that placed before the people of Westbury in the planning application last year. In the supporting Environmental Statement a weight limit on the bridge over the railway in Station Road was presented as an *intended* measure that would follow construction of a bypass, along with £1.3m worth of town centre improvements made possible by the scheme and conditional upon it.

1.13 By the end of the Inquiry a weight limit at Station Road had become essential for structural reasons and - simultaneously and more

significantly for the purposes of this Inquiry - essential and integral to the bypass itself and to the transport case for it.

1.14 While the consequences of this mandatory ban do not appear to have been quantified in terms of traffic movements through Westbury or the extra mileage and extra carbon emissions that would be expected to result, the ban represents a major change to the scheme that was put before the public in February 2007.

1.15 The emergence of a lorry ban as an integral part of the Westbury bypass is one element in the 'shifting ground' beneath the case for this road, referred to by Professor Whitelegg (para 6.2, OBJ/WHA/W/5):

1.16 "In 20 years or more of taking part in public inquiries I have never seen so many recalculations of basic numbers and I remain very concerned about the reliability of the information supplied by Wiltshire County Council to this Inquiry. I fear we are in a never ending "do-loop" of error, recalculation and shifting ground.'

1.17 Professor Whitelegg's doubts about the reliability of the data underlying WCC's evidence on traffic modelling, induced traffic and emissions of climate change gases apply equally to the assumptions and methodology adopted by WCC in its analysis of the economic value of this road scheme.

1.18 If cost-benefit analysis is to play any part in deciding whether this road should be granted planning permission, Professor Goodwin's doubts on the economic benefits claimed for it need to be a material consideration, as does the lack of convincing rebuttal from the council (WCC/136A).

1.19 As regards the Compulsory Purchase Orders sought at this Inquiry, the Secretary of State must be persuaded by WCC that there is a compelling case in the public interest. The burden of proof clearly rests with the Acquiring Authority. The Secretary of State must be sure that the purposes for which these Orders are sought sufficiently

justify interfering with the human rights of those with an interest in the land affected. For the CPOs there must be clear evidence that the public benefit will outweigh the private loss (ODPM Circular 06/2004).

1.20 For the SROs the question is whether the public benefit claimed outweighs the acknowledged loss to the public.

1.21 Those objecting to these Orders have no case to prove. The Alliance does not have to prove that there is no need for the scheme that would be facilitated by the confirmation of these Orders. We do not have to provide the Secretary of State with fully worked up alternatives to the scheme proposed. It is our submission that there is no basis for the confirmation of the Orders sought at this Inquiry and that it would not be in the public interest for the proposed scheme to be further progressed.

1.22 The evidence submitted by the WHA has covered landscape, biodiversity and noise issues. It has covered community, economic development and transport. The question of sustainability has been central to our case, as have carbon emissions and the alternatives to building this road. By addressing each of these areas, we have shown that the objections to this proposal on numerous aspects of planning policy are overwhelming.

1.23 As Alan James said in his evidence, "at a basic level, it must be asked whether it makes planning sense to build a road which damages a pristine landscape along the escarpment of Salisbury Plain - an area of national iconic status - , for an opening year traffic flow of barely 10,000 (AADT) with only 3% HGVs, for a journey time saving of two minutes".

1.24 National and regional transport policy increasingly puts the emphasis on using existing infrastructure, management of traffic, promotion of modal shift and achieving social inclusion. Major road construction is increasingly limited to congestion pinch points on important parts of the national road network. Our case is that the A350 through

Westbury is neither a pinch point on the road network – it is only very lightly congested even at peak times – nor is it strategically important in the South West region. The A350 is no longer even featured on the Regional Transport Key Diagram drawn up by the Secretary of State in 2008 in her response to the draft RSS. The A350 is not included in the list of strategically important corridors.

- 1.25 While acknowledging that a Far Western Bypass would represent a much better choice if major road construction were to take place – see WHA Proof of evidence of Alan James (Landscape and Townscape OBJ/WHA/P/3) - our case is that alternatives to major new road building have not been sufficiently investigated, nor, as importantly, implemented.
- 1.26 Building a major new road should be a last resort when all alternative measures have been tried and failed. New road building which threatens the conservation status of internationally protected species, which will cause damage to a valued and protected landscape, and which flies in the face of adopted and emerging policy at a national, regional and local level is wholly unacceptable.
- 1.27 Even in its own limited terms, the Eastern Bypass fails to satisfy a number of important criteria. Professor Goodwin (WHA/127) examined the methodology used by the council’s consultants and concluded that “a full scale variable demand appraisal would have a very substantial impact on the appraisal, certainly reducing the net present value (NPV) of the scheme very considerably, and perhaps even making the benefits less than the cost.”
- 1.28 In other words, were this road to be appraised in the way that this international expert on induced traffic suggests that it should be, it could end up costing the government more to build than it would pay back in the notional dividends offered by the COBA formula - seconds shaved off millions of journeys over the next 60 years.
- 1.29 This timescale brought Professor Goodwin to a deeper question that needs to be answered before this road project can be signed off as

an appropriate investment for the 21st Century: **“The appraisal is based on uninterrupted traffic growth apparently at least for 39 of the 60 years of the appraisal period, and continued presumption of fuel prices at a level which seems to be less than the current level. Lower traffic growth as a result of either circumstances or policy would both affect the robustness of the scheme. It seems that a very high proportion of the net benefits of the scheme are assumed to arise in a distant future - far beyond the horizon which can reliably be modelled - when there will be substantial reasons for reducing traffic volumes rather than encouraging them to grow.”**

1.30 There can be little doubt that this scheme, when the veneer of the transport “package”, is stripped away, is a bypass scheme, pure and simple. It is a bypass that will increase carbon emissions. It is a bypass that cuts through a Special Landscape Area (SLA), which arguably shares landscape characteristics with an Area of Outstanding Natural Beauty (AONB). It is a bypass that will adversely affect European protected species and their habitats despite a panoply of untried and untested mitigation measures. It is a bypass that threatens a public water supply. It is a bypass that the people of Westbury have had foisted upon them despite years of opposition, and a bypass which has been pushed for over a decade despite a clear preference for a Far Western route by nearly all stakeholders including the local Chambers of Commerce and Economic Partnership. It is a bypass that is inappropriate, unpopular, and unsustainable.

1.31 Whereas a planning application is determined by a balancing process of consideration of material benefits set against disbenefits, the draconian measure of compulsory purchase requires a far higher standard of proof. If there is doubt that the proposed scheme is compliant with planning policies, doubt that the scheme will achieve its stated objectives, uncertainty over its likely effects, or doubt over deliverability, then the benefit of the doubt must be given to those who are the subject of the compulsory purchase orders. A precautionary approach is essential to protect and preserve both

private and public interests.

1.32 The County Council asserts that the scheme is needed for the economic well-being of the area and to facilitate economic regeneration, but there is little evidence to support this contention, for as Professor Whitelegg explained, West Wiltshire is in the top fifth most affluent areas in the UK.

1.33 The West Wilts Trading Estate (WWTE) brochure (WHA/101) states that vacancies on the estate have never been so low in ten years, and the text does not in any way imply that access to the estate is an impediment to further planned expansion.

1.34 With a 3-tonne weight limit (later revised to 3.5 tonne) on one of two entrances into the WWTE as an integral part of the scheme, and in consideration of newly allocated and existing strategic employment land between Westbury and Trowbridge (WCC/104), the potential contribution of the Eastern Bypass to the economy becomes even less clear.

1.35 As Jenny Raggett commented (OBJ/WHA/W/10) "Considering that the bypass is put forward in large part as a means of delivering better access to the West Wilts Trading Estate and also the delivery of economic regeneration of West Wiltshire by better transport links to employment areas, it is to us quite extraordinary that the closure of one of the two entrances to the WWTE area to vans and lorries of all sizes should never have been consulted widely upon."

1.36 Wiltshire County Council has failed to demonstrate that there is any need, compelling or otherwise, for this scheme. The repeated assertion of need cannot be equated with the demonstration of need and it is our submission that, on the basis of the evidence before this Inquiry, the tests set for the grant of planning permission and the confirmation of these Orders have not been remotely met.

1.37 As regards those matters upon which the Secretary of State wishes to be particularly informed,

“the extent to which the proposed development accords with the relevant policies and provisions of the current RSS (RPG10), the draft RSS, The Wiltshire and Swindon Structure Plan, the West Wiltshire District Plan and the Wiltshire and Swindon Waste and Minerals local Plans.”

Regional Planning Guidance for the South West (RPG 10) (CD2.1)

- 1.38 The County Council has not produced any evidence of any direct reference to the proposed scheme in RPG10, published in September 2001. This is acknowledged by Mr Simkins in his proof at para 3.18 (WCC/P/6)
- 1.39 The key aims and objectives set out at pages 14-15 of RPG10 include “safeguarding and enhancing the quality and diversity of the natural, cultural and built environment across the region” and “...ensuring that patterns of future development reduce the need to travel and encourage access by walking, cycling and public transport.”
- 1.40 Specific RPG 10 development and transport policies, outlined below, are consistent with the achievement of Government objectives as set out in PPG13 (CD7.1). There is no specific development or transport policy support for the proposed scheme to be found in RPG10.
- 1.41 The Council claim support for the scheme by reference to Policy SS 3: The Sub-Regional Strategy for the Northern sub-region. This policy refers to “...strengthening the roles of the Principal Urban Areas (PUAs)”, to “develop and improve sustainable urban and inter-urban transport networks”, and to “conserve and enhance important environmental assets.” Mr Simkins accepted that the nearest PUA to Westbury is Bath, that there was no evidence of significant out-commuting to Bath and that the Special Landscape Area (SLA) through which the proposed route will pass is an important environmental asset (XX).
- 1.42 The County Council made no specific mention of Policy TRAN 1: Reducing the Need to Travel in its evidence. This states that “Local Authorities, developers and other agencies should work towards

reducing the need to travel by private motor vehicle through the appropriate location of new development". Mr Simkins accepted that TRAN 1 should properly be regarded as an overarching policy, and that indicative targets relevant to the policy are to reduce the growth of traffic and to increase ridership on public transport (XX). It is clear that there is no support for the proposed scheme to be found in Policy TRAN 1. There is a TRAN 1 recommendation to encourage new development to be situated conveniently for developing sustainable transport services rather than to encourage car commuting.

1.43 Policies TRAN 2: Strategic Inter-Urban and Inter-Regional Transport Networks and TRAN 4: Transport Infrastructure Investment Priorities are equally unhelpful to the County Council. Mr Simkins agreed that TRAN 4 refers to "sustainable transport systems in and around PUAs", and that Westbury could not be considered to be either in or around a PUA (XX). Whilst the policy makes specific reference to "... economic growth and regeneration in areas of special need", there is no evidence before this inquiry that Westbury is an area in special need of regeneration. Moreover Policy TRAN 4 refers to Table 6 (at RPG10 page 89) where the region's seventeen specific priorities for transport infrastructure and investment are listed. The Westbury bypass proposal is not among them. The text of the Policy states that development plans, LTP policies, operators and agencies should deliver the investment detailed in Table 6 in accordance with a number of priorities, subject to successful feasibility testing, satisfaction of statutory processes and availability of finance.

1.44 Policy TRAN 5: Demand Management is ignored by the County in its evidence although Mr Simkins did acknowledge its relevance (XX). The Policy states that "Highway authorities, local authorities and other agencies should actively manage urban car parking and make more efficient use of highway space to achieve a modal shift towards more sustainable transport."

1.45 There is no support for the proposed scheme to be found here. Mr Helps accepted that the Council had produced no evidence that the

scheme would result in modal shifts from private car use to more sustainable forms of transport, and Mr Turner agreed that the Warminster by pass had produced no marked modal shifts (XX).

1.46 Policy TRAN 10: Walking, Cycling and Public Transport, again not referred to in evidence by the Council, states “ Local authorities, transport operators and other agencies should have regard to the sustainable transport hierarchy, giving priority to walking, cycling and public transport. They should aim to increase the share of total travel by these modes and ensure that they provide attractive and reliable alternatives to the private car”. There is no support for the proposed scheme here and the weight of evidence suggests that the objectives of this policy will be hindered and not helped. (See for example TAG Table WHA 107 page 43).

Draft Regional Spatial Strategy (Draft RSS) for the South West 2006 – 2026 (CD2.2) and EiP Panel Report (CD2.4)

2.10 The Regional Spatial Strategy has been through a number of revisions. The sections on Sustainable Development - polices SD1 to SD4 - and also those concerning the Environment – polices ENV1 - 4 have remained more or less intact during the course of the latest drafting by the Secretary of State and we will deal those policies now in their original Draft RSS form. The transport policies by contrast have undergone fundamental revision and therefore our analysis of the Westbury Bypass scheme in terms of up to date regional transport policy will refer to the latest revision, the Secretary of State’s re-drafting of the RSS Transport Section.

2.11 Policies SD1 to SD4 are the cornerstones of the Draft RSS, but surprisingly the scheme promoter makes no reference to them. It is our submission that

no transport planner, who objectively examined the local issues, and paid due attention to these policies, could produce a scheme that would increase road capacity, increase traffic in the area and encourage more distant commuting by car as roads become faster, and work against the objective of modal shift. WHA witnesses have cited a number of approaches which should have been worked up, assessed and consulted upon by WCC, as part of a modern and systematic optioneering of transport solutions, taking into account regional policy on sustainable development and the environment. This systematic optioneering has never taken place and we submit that had it been, an Eastern Bypass for Westbury would never have been taken forward.

1.47 Going through the SD and ENV policies in turn, Policy SD1, The Ecological Footprint, seeks to stabilise and then reduce the footprint by, inter alia, "minimising the need to travel and securing a shift to use of more sustainable modes of travel". The Council have failed to provide any evidence that the scheme will secure any modal shift, and appear to accept that the bypass will not contribute in any way to minimising the need to travel. On the contrary, the WHA cited evidence by Oxford Brookes University that locating new development near faster roads encourages more distant commuting by car (OBJ/WHA/W/9).

1.48 Policy SD2, Climate Change, seeks a reduction in greenhouse gases "at least in line with current national targets of 30% by 2026". The evidence that this scheme will, even on the basis of the Council's own figures, result in an increase in carbon emissions of over 10% speaks for itself.

1.49 Policy SD3, The Environment and Natural Resources, aims to protect and enhance the region's environment by "Reducing the environmental impact of the economy, transport and development",

by "Planning and design of development to reduce pollution and contamination and to maintain tranquillity", and to contribute to regional biodiversity targets through the restoration, creation, improvement and management of habitats. As the evidence has shown, the scheme may reduce to some extent the impact of HGVs through particular streets in Westbury, bearing in mind that much of the shopping area and the core of the town centre are already on lightly trafficked streets. However this relatively small benefit is more than outweighed by the impact on tranquillity, loss and severance in a favoured outdoor recreational area, and also the impact of induced traffic as it impinges on other communities on the A361 and A350. The scheme fails to maintain tranquillity, and cannot be regarded as making a positive contribution towards the region's biodiversity targets.

1.50 Policy SD4, Sustainable Communities, includes a policy objective of "Promoting a step change in public transport, taking steps to manage demand for travel, and promoting public transport", together with "making the best use of existing infrastructure". There is no evidence that this scheme will promote public transport, nor does there appear to be any element of demand management involved. A new road cannot, by any stretch of the imagination, be regarded as making the best use of existing infrastructure, and, if approved, is highly likely to frustrate these policy objectives.

1.51 Of particular relevance to this Inquiry is the new supporting text to Policy ENV1, which is specifically concerned with the region's "Natura 2000" (N2K) sites. The text identifies the Bath and Bradford on Avon Bats SAC as a site of particular concern where development of housing, employment and transport infrastructure has the potential to adversely affect bat foraging and commuting habitat. In fact the Secretary of State's response to the draft RSS puts even more emphasis on the sanctity of Natura 2000 sites, making this policy even more important when consideration this application.

1.52 Policy ENV1 states explicitly that "Any development that could have

any negative effect on the integrity and conservation objectives of a N2K site would not be in accordance with the development plan". Although the evidence in respect of adverse impacts on bats and the Bath and Bradford SAC is discussed in greater detail in the context of PPS9 below, Professor Altringham's evidence has cast serious doubt on whether there is sufficient evidence to conclude that there would be no negative effect on the SAC and that the test of no reasonable scientific doubt had not been met. (OBJ/WHA/P/1 and XinC). Furthermore, he advised that an Appropriate Assessment was desirable and would be a sensible precaution, and would only not be required if it could be confidently shown that there would be no effect on local bats. In the absence of sufficient evidence regarding the likely effects of the highly experimental mitigation proposed, there can be no such confidence in the scheme proposed. In these circumstances, the scheme is clearly in conflict with Policy ENV1 and is therefore not in accordance with the development plan.

1.53 Policy ENV4 reinforces Policy ENV1, requiring that the distinctive habitats and species of the region be "maintained and enhanced in line with national targets and the SW Biodiversity Action Plan". The proposed scheme does nothing to contribute to the maintenance or enhancement of such, and conflicts with this policy requirement.

1.54 Policy ENV2 refers to the importance of preserving our landscape and local distinctiveness as a region: "The distinctive qualities and features of the South West's landscape will be sustained and enhanced...." The noise and visual intrusion of a major road, with a climbing lane, through the Wellhead Valley, close to the Westbury White Horse, passing only metres from its viewing point on the Bratton Road, cannot be in accordance with policy ENV2.

Regional Transport Policy - Draft Revised RSS July 2008, incorporating Secretary of State's recommendations

1.55 In 2008 the Draft RSS was reviewed by the Secretary of State and a

revised draft was produced. The transport section (Section 5) was completely re-written and now encompasses a further shift away from new road building with an increased emphasis on multimodal transport, demand management, making urban areas work effectively, a consideration of transport in the context of climate change, corridor management and reducing the rate of road traffic growth. The text in the new draft explains that the main aim of the RTS is to support the Regional Spatial Strategy and reduce the rate of traffic growth through the following:

- supporting economic development (identified in the RES) by maintaining and improving the reliability and resilience of links from the region's major areas to other regions (particularly the South East and London), international markets and connectivity within the region;
- addressing social exclusion by improving accessibility to jobs and services;
- making urban areas work effectively and creating attractive places to live by developing the transport network to support the strategy to concentrate growth and development in the Strategic Significant Cities and Towns; and
- reducing any negative impact of transport on the environment including climate change

1.56 There is a new RTS *Key Diagram* that illustrates:

- The SSCTs
- The corridors of national importance identified in RTS1
- The corridors of regional importance identified in RTS1
- The ports identified in RTS5
- The airports and heliports covered by RTS6

1.57 The text goes on to explain that in order to improve the reliability

and resilience of journey times, to develop opportunities to facilitate a modal shift and support growth at the SSCTs, provision will be made to manage the demand for long distance-journeys and reduce the impacts of local trips on these corridors. Measures are then listed as:

- Demand management measures and improvements to the local transport networks serving the SSCTs along the corridors (particularly walking, cycling, public transport and interchange facilities) that will reduce the rate of road traffic congestion on the corridors of national and regional importance;
- Developers managing down the impacts of their developments on the corridors of national and regional importance;
- Access control measures on the corridors of national and regional importance;
- Improvements to road junctions that will reduce the rate of road traffic growth and congestion on the corridors of national and regional importance;
- Proposals that will make the best use of the existing infrastructure;
- Improvements in information management, including the timetabling of rail services;
- Engineering measures to enable increasing frequency of rail services; and
- Capacity enhancements to the corridors, including rail passenger services.

1.58 The Westbury Bypass scheme represents a clear deviation from the policy set out in this list, and in many cases runs counter to the thrust of the Regional Transport Strategy, as Alan James in his supplementary proof (OBJ/WHA/SP/7) made clear.

1.59 As Mr. James explained, the A350 is not a road featured in the corridors of Regional Importance in the Regional Transport Key

Diagram, or referred to in policy RTS1. Westbury meanwhile is not an SSCT – the nearest one is Trowbridge – and, although the Regional Assembly may still maintain that the Westbury Bypass is a “regional priority” (WCC/135) no convincing evidence has been presented to show why this local road should retain any regional significance.

1.60 As highlighted by Cate Mack in her proof of evidence the case for the road fails to address the sub-regional needs of the area around Westbury, towards Frome and Trowbridge for relief from HGVs. No proposals for a longer distance relief road for Bath or linkage to the Dorset ports have been approved by the Regional Transport Strategy or as part of the RSS. Mr Simkins in his proof regarding the RSS (WCC/SP/6) fails to properly appreciate that West Wiltshire is part of the West of England Housing Management Area – it has been all along – and WHA witnesses have given evidence that WCC has failed completely to look at the bypass in the context of the growth of Bath, Bristol and its environs despite the stated links between West Wiltshire and those centres, as set out in Section 4 of the RSS covering Housing.

1.61 Cate Mack highlighted in her proof of evidence (OBJ/WHA/P/8 and OBJ/WHA/A/8) the historic reluctance of WCC to work with Mendip on the route of the bypass, or on any other transport solutions to problems associated with the impact of HGVs on communities – a lack of cross-boundary approach that is essential for regional progress. She also explained the history of the scheme in terms of regional funding, showing how the Westbury Bypass as an original low-priority scheme was manoeuvred at a late stage to a position where it commanded a position as a potential regional “priority”.

1.62 Returning to the Secretary of State’s re-drafting of section 5 of the RRSS on Transport, Policy RTS 2 focuses on demand management and sustainable travel measures at the SSCTs to “...reduce the growth of road traffic levels and congestion”, through the promotion of sustainable travel behaviour, improved public transport and other

“soft” measures. Wholly absent from this strategy is any support for new road building or increasing the capacity of the road network. It is noteworthy that whereas a bypass is proposed for Westbury, WHA public transport witness Gordon Edwards showed that, although traffic in Westbury was too light to hold up buses, in Trowbridge the inter-urban buses were unable to meet the timetables because of congestion. The Westbury Bypass contributes nothing to modal shift in Trowbridge and can in no way be construed to be in accordance with the regional agenda to promote sustainable growth of the town.

- 1.63 As Jenny Raggett pointed out in her rebuttal to Mr Simkins (OBJ/WHA/R/15) “The risk is that the new bypass will locate employment and even retail and services out of town, which is counterproductive to urban renewal initiatives such as the very good ‘Transforming Trowbridge’, a large and dynamic project which Mr. Simkins surprisingly does not mention.”

Wiltshire and Swindon Structure Plan (CD2.6)

- 1.64 The Structure Plan (SP) was adopted in 2006, by which time the EBP had long been identified as the preferred route for a Westbury bypass by the County Council. As such, the SP conforms to the proposed scheme rather than vice versa.

- 1.65 Policy T12, which specifically identifies the proposed scheme, nevertheless comes with the caveat of environmental acceptability, and Mr Simkins for the Council accepted that if the scheme were shown to be environmentally unacceptable that it would not only conflict with Policy T12, but also with a number of other SP policies (XX).

- 1.66 Policy C9 on Special Landscape Areas (SLAs) is one such policy, which imposes a requirement to have regard to the need to protect landscape character and scenic quality in such designated areas. The supporting text to the policy establishes “a need to maintain and enhance all aspects of the landscape” (SP para 6.37), and sets out a

further requirement that any development in such areas has to be shown to be "essential".

1.67 In this context, the availability of alternatives to the proposed scheme, both in terms of non-road building and a Far Western Route (FWR) which could meet the scheme objectives casts significant doubt on whether the proposed scheme is "essential", whilst the acknowledged adverse impacts on the SLA which neither maintain nor enhance the landscape sets the scheme at odds with both policies C9 and T12.

West Wiltshire District Plan (CD2.12)

1.68 It is common ground that the proposed scheme is a departure from the development plan as it is not supported by the District Plan. Mr Khansari accepted that this application is a departure application (XX), Mr Simkins accepted that the WWDP does not include an EBP (XX), and also accepted that there was no District Council resolution in support of the proposed scheme. The County Council's own legal advice was that the mere safeguarding of a route in the District Plan did not mean that the route was "proposed" in the Plan, and that the application should therefore be regarded as a departure application, advertised accordingly and the Secretary of State consulted (CD5.3 paras 88-91 and OBJ/WHA/P/7 para 4.3.3 – 4.3.5)

1.69 Perhaps most telling of all is the decision of the District Council not to participate in this Inquiry. Despite the reported views of a representative of the County Council that if this scheme were not to proceed the "town could be waiting for a very long time for a bypass", that it was "Westbury's last chance", that "the town centre improvements will also fall through if the bypass does" and that if the plan were rejected money for the scheme would not be available "for decades" (WHA 123), the District Council appears to have been unable, or unwilling to support the County Council at this Inquiry. Like the dog that didn't bark, the silence of the District Council speaks volumes.

1.70 As far back as October 1999 the County Council were advised by their own consultants that a bypass for Westbury could not be justified within Government policies at that time. (Parkman Report Oct 1999 ES Part A App C) Since then the overall thrust of government policy in respect of transport has had the effect, as has been generally agreed at this Inquiry, of pushing new road building to the bottom of the agenda, to be permitted only as a last resort.

1.71 In summary, this proposed development fails to accord with the current RSS (RPG10) and the draft revised RSS, is in conflict with the County's own Structure Plan, and is unsupported by the District Plan and the District Council.

“the extent to which the proposed development is consistent with Government policies in PPS1: Delivering Sustainable Development with particular regard to:

- the achievement of sustainable development and sustainable communities through an integrated approach to social cohesion, protection and enhancement of the environment, prudent use of natural resources and economic development:

- whether the design principles in relation to the scheme and its wider context, including the visual appearance and landscaping, are appropriate in their context and take the opportunities available for improving the character and quality of the area and the way it functions, having regard to the advice in paragraphs 33 to 39 of PPS1”

Guidance in PPS1 states that “Plans should be drawn up with community involvement and present a shared vision and strategy of how the area should develop to achieve more sustainable patterns of development.” Various Alliance witnesses presented evidence to show that the Eastern By Pass (EBP) route was developed in isolation rather than as part of a wider planning view and that where community involvement was elicited in the process of choosing a bypass route, or indeed in deciding if road building was the correct use of transport capital resources, such involvement served no purpose as WCC had already decided on its preferred course of action which was the construction

of an eastern bypass.

The proposed road has been consistently promoted in the face of well-documented unpopularity, contrary to government policies on sustainable communities and 'community buy-in'. The history of the bypass presented by the WHA (OBJ/WHA/A/8) has shown that for over a decade, a clear public majority has been opposed to this scheme. This opposition continues even though there is now no alternative route on offer from the County Council.

The history shows that on every consultation on route selection, a route to the east of Westbury was unpopular, and that a Far Western route was thought by the vast majority to be a better option than an Eastern route. The business community to this day says that it would have preferred a western route. In the West Wiltshire Economic Partnership (WWEP) and the Wessex Association of Chambers of Commerce (WACC) joint submission (SUP/WWEP/P/1) Len Turner admitted that "It was with some reluctance that we had to accept that no acceptable or achievable route could be identified to our satisfaction to the west of the town".

Cross-examination of Mr. Boyle on Alternatives by Mrs Lynne Fish, an objector to the scheme, showed that at no stage during the past 10 years did WCC look at a hybrid package of smaller road(s), public transport, route management and other soft measures. Local people had no possibility of participating in modern optioneering to choose a sustainable transport solution – the local authority had no intention of listening, let alone acting according to the wishes of the community it purportedly served – a bypass, and for that matter an eastern bypass, was all that was ever going to be on offer.

In order to work up the transport case for an Eastern route over a Far Western bypass, WCC did not disclose to the public that the former had been assessed in terms of its effectiveness at removing lorries from the A350 in Westbury, by imposing a restriction on HGVs going through the southerly entrance to the West Wilts Trading Estate. The Far Western route had not been assessed with such a restriction giving the Eastern bypass an unfair advantage. This lack of transparency and unfair comparison of routes only came to light during the course of the inquiry when Mr Helps was cross-examined on traffic modelling.

As shown by letters submitted to the inquiry by Cate Mack in the history and its

appendices submitted with her proof of evidence, Westbury Town Council had until comparatively recently been clearly against an eastern bypass because of environmental, economic and transport reasons. The Town Council later supported an eastern bypass, but it seems that even this was a fraught process: Councillor Hawkins for the Town Council, admitted during cross-examination that many councillors had effectively been barred from voting on the bypass over the years as a result of either living, or having relatives living, in the “wrong” part of town.

The Officer’s Report to the County Council’s Regulatory Committee (CD 5.3) records objections to the scheme from 5 local Parish Councils, local branches of CPRE, FOE, Transport 2000 (now the Campaign for better Transport), as well as local groups established to oppose the scheme such as the Westbury Bypass Alliance.

Additionally, the evidence has shown that the proposed development will fail to meet the four key objectives of PPS1. The scheme fails to achieve social progress which recognises the needs of everyone, fails to effectively protect the environment, is a singularly imprudent use of natural resources, and, as Professor Whitelegg’s evidence has shown, there is no firm evidence that road building delivers economic growth and employment. On the contrary as Professor Whitelegg explained, West Wilts is an affluent area with low unemployment. Other WHA witnesses cited research showing that the construction of a faster road would facilitate more car-borne out-commuting and in-commuting rather than self-containment.

Since the Secretary of State called this proposal in, a Supplement to PPS1 has been published, “Planning and Climate Change”, which is clearly highly relevant to the proposed development before this inquiry.

As Professor Whitelegg’s evidence has shown, climate change is at or near the very top of the national policy agenda, and this scheme is wholly contrary to the Government’s stated policy of reducing greenhouse gas emissions. The evidence has shown that this scheme will increase carbon emissions by at least 385 tonnes per year. On carbon grounds alone there is no case for the scheme to proceed. The guidance in PPS23, which predates the supplement to PPS1, requires that greenhouse gas emissions be limited and, where possible reduced. Prof Whitlegg’s view that PPS1 strengthens the guidance set out in PPS23 is clearly the correct approach to policy, and, in any event, as Prof Whitelegg stated, by definition, this scheme cannot limit greenhouse gas emissions in

any way (ReX).

“The extent to which the proposed development is consistent with the Key Principles in paragraph 1 of PPS7 Sustainable Development in Rural Areas, and to which it complies with the policies in PPS7 to:

- promote thriving, inclusive and sustainable rural communities, focusing most new development in or near to local service centres that are accessible through a range of transport modes in accordance with paragraphs 2-4 of PPS7;**
- support strong, diverse economic activity in rural areas, in accordance with paragraph 5; ensure the quality and character of the countryside is protected and, where possible, enhanced, whilst facilitating sustainable development that supports traditional land-based activities and makes the most of leisure and recreational opportunities that require a countryside location, in accordance with paragraphs 15 and 16”**

1.72 The key principles of PPS7 set out in paragraph 1 referred to by the Secretary of State include and reiterate those principles of sustainable development found in para 4 of PPS1, social inclusion, effective protection and enhancement of the environment, the prudent use of natural resources and the maintenance of high levels of economic growth and employment.

1.73 In addition, and of most relevance to this application, para 1 of PPS7 refers to, at (iv), “the Government’s overall aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all”.

1.74 Further, (v) requires that priority be given to the re-use of previously developed sites in preference to greenfield sites, and (vi) requires that all development should be in keeping and scale with its location, and sensitive to the character of the countryside and local distinctiveness.

Landscape

- 1.75 It is agreed that for approximately 3,000m of its total length the scheme route will run through a Special Landscape Area (SLA), whereas a Far Western alternative would, at most run through approximately 300m, which, as Mr James has stated in evidence, could easily be avoided. It is also agreed that a non-road build alternative would have no effect at all on the SLA.
- 1.76 The Council's own expert accepts that all impacts of the proposed scheme within the SLA would be adverse to some degree even after landscaping mitigation, and that the overall impact on landscape after 15 years will still be "moderate adverse". (WCC/P/5 para 7.11)
- 1.77 Mrs Betts arrived at a similar conclusion in respect of visual impacts, assessing the overall impact, after mitigation and after 15 years as moderate adverse (WCC/P/5 para 8.34)
- 1.78 Definitions of moderate adverse effects in the context of landscape impact assessment are set out in Appendix B of Mrs Betts' appendices, and include the following characteristics. The proposals are "out of scale with the landscape or at odds with the local pattern and landform; are visually intrusive and will adversely impact on the landscape; not possible to fully mitigate for, that is, mitigation will not prevent the scheme from scarring the landscape in the longer term as some feature of interest will be partly destroyed or their setting reduced or removed; will have an adverse impact on a landscape of recognised quality or on vulnerable and important characteristic features or elements; in conflict with local and national policies to protect open land and nationally recognised countryside set out in PPS7 and PPG2".
- 1.79 Large adverse effects, which Mrs Betts accepts will be experienced at Wellhead Valley between Years 1 and 15 are defined and described in Appendix B of Mrs Betts' appendices. TAG Unit 3.3.7 describes proposals having large adverse effects as being "very damaging to the landscape in that they:

- Are at considerable variance with the landform, scale and pattern of the landscape
- Are visually intrusive and would disrupt fine and valued views of the area
- Are likely to degrade, diminish or even destroy the integrity of a range of characteristic features and elements in their setting
- Will be substantially damaging to a high quality or highly vulnerable landscape, causing it to change and be considerably diminished in quality
- Cannot be adequately mitigated for
- Are in serious conflict with government policy for the protection of nationally recognised countryside as set out in PPG7”

1.80 Definitions of visual impact assessment are set out in Appendix E, where moderate impact is described as “where the scheme would cause a noticeable deterioration”.

1.81 Despite these overall assessments, Mrs Betts nevertheless asserts that these impacts should not be regarded as detrimental in any way, but rather as an “enhancement of the area”. (WCC/P/5 para 5.51)

1.82 The West Wiltshire District Landscape Character Assessment (WCC/A/5 App H) describes the G2 character area, the Greensand and Chalk Terrace through which much of the proposed route will pass in the following terms. It has a strong sense of tranquillity throughout, has open views to the “dramatic Chalk Downland Edge” and open views to the Westbury White Horse as a dramatic landscape feature. The White Horse itself is a “visible landmark within views eastwards and contributes to a strongly recognisable sense of place”.

1.83 The overall strategy for the area is to “conserve the existing landscape pattern and dramatic open views to the adjacent Chalk

Downland Edge and enhance to landscape setting of Westbury". Specific management objectives are to "seek to resist any development that would affect the open views across the terrace to the chalk uplands, to conserve the open views to the Westbury White Horse as a distinctive landmark and to avoid large developments that would be out of scale and character within the existing situation".

1.84 By contrast, the E8 area, the Heywood Rolling Clay Lowland, through which the northern section of either an Eastern or Far Western bypass would pass exhibits the following characteristics; strongly visible human influence in the form of the West Wilts Trading Estate (WWTE) and junction of two major railway corridors, rural character disturbed by noise and visual intrusion associated with the railway corridors, roads and WWTE and generally a low level of tranquillity throughout the area.

1.85 The remaining character area through which a FWR would be likely to pass is area E3, the North Bradley Rolling Clay Lowland, where pylons are a dominant vertical element, and no direct reference is made to either levels of tranquillity nor sense of place.

1.86 Various comparison tables assess the likely landscape impact of either an EBP or FWR as being "moderate adverse", although Mrs Betts acknowledged that she had not been instructed by WCC to provide either advice or a detailed assessment of the FWR. (XX)

1.87 If an eastern route is capable of enhancing the setting of a designated Special Landscape Area with all of its inherent landscape sensitivities, then it is perfectly reasonable to suggest that the enhancement that would be achieved in an area of less sensitivity would be even greater.

1.88 As regards impacts of the proposed scheme on public rights of way, Dr Ireland's evidence accepts that the changes in amenity value on a number of bridleways (W37, W35, W51, Heyw12 and Heyw6) will be either substantial adverse, defined in the DMRB as "where the

scheme would cause a significant deterioration in the existing view”, or moderate adverse (W36, Heyw28), where the scheme would cause a noticeable deterioration.

1.89 Jenny Raggett, in her proof of evidence on Noise includes two maps produced for Wiltshire County Council with their 2005 planning application which show noise contours before and after the bypass is built. It is plain so see that the Wellhead Valley would be affected by traffic noise to the extent that walkers and riders would never enjoy the tranquility and recreational amenity of the area again as they had done in the past . Additional noise contour maps produced by WCC in its evidence to the inquiry confirmed the situation, and with the late doubling of HGV figures, noise levels in the valley would be increased and the countryside beneath the White Horse, if not the White Horse itself, would be subject to higher levels of noise pollution from the road.

1.90 Although WCC undertook a rights of way survey in 2002 to establish the level of use of various footpaths and bridleways likely to be affected by the scheme, it is very surprising that no similar surveys were undertaken to establish either use or likely impact on the Wessex Ridgeway, a national long distance route running from Lyme Regis to Avebury. Dr Ireland informed the Inquiry that no data existed for the Ridgeway (XX), but apparently did not see fit to carry out surveys similar to those undertaken on the local rights of way network. Similarly there are no survey data available for the White Horse itself, and it is therefore impossible to assess the effects of the scheme on public amenity at two of what are likely to be the most highly used elements of the network.

1.91 This lack of assessment is even more surprising given that one of the benefits of the scheme is asserted to be an encouragement of tourism in Westbury and the surrounding area.

Townscape

1.92 The suggestion by the Council that the limited benefits that the

scheme would bring to residents along existing stretches of the A350 in some way outweighs the accepted harm to the SLA, resulting in overall enhancement, is barely worth comment.

1.93 The A350 does not run through the historic core of the town, and only a small part of the Conservation Area. Away from the direct route of the A350, the town centre is largely unaffected by the A350. Traffic levels are comparatively low, and there has been no significant growth over recent years.

1.94 In addition, no assessment has been made of the beneficial effects of town centre management measures which could be undertaken without a bypass, so no comparison is available in terms of positive impacts on townscape of non-road building measures. (WHA/P/3).

Rural economy

1.95 As regards impacts on the rural economy, WCC acknowledge that the scheme will result in the permanent loss of almost 19 ha of the best and most versatile agricultural land. With the sole exception of Ashton Hill Farm, all impacts on farm holdings affected by the scheme range from slight to moderate adverse (WCC/P/15) Although moderate adverse is defined as "...likely to have a notable effect on the net farm income" (WCC/P/15 Table 5.4), no attempt has been made by the Council to quantify the impacts of the scheme on agricultural production in financial terms, not has any attempt been made by the Council to assess any benefits to the rural economy that might be provided by the scheme.

1.96 In these circumstances it is therefore not possible to assess what contribution, if any, the scheme will make to supporting "strong, diverse economic activity" (PPS7 para 5) in the area.

1.97 Mrs Tindale acknowledged that she had not undertaken an assessment of any FWR at a similar level to that carried out for the preferred route, but suggested that as land to the west of Westbury is predominantly livestock, severance effects of any scheme would be

greater to the west (WCC/P/15 para 6.6).

1.98 This view was countered by Mrs Mack for the Alliance, who speaking from personal experience running a farm stated that splitting fields would be likely to have a greater effect on arable farming than livestock, as stock tended to be easier to move than heavy machinery. (XiC)

1.99 In summary, it is clear that a non road build solution would not involve the loss of any best quality agricultural land, and it is not possible from the evidence produced by WCC either in the ES or by individual witnesses to make any informed comparison between the preferred route and a Far Western option.

“The relationship of the proposed development to national policy guidance in PPS9 Biodiversity and Geological Conservation, in particular;

- **national and international responsibilities and obligations for nature conservation are fully met;**

- **adequate provision is made for development and economic growth whilst ensuring effective conservation and enhancement of the diversity of England’s wildlife and geology;and**

- **planning permission is not refused if development can be subject to conditions that will prevent damaging impacts on wildlife habitats or other important physical features or if other material factors are sufficient to override nature conservation considerations.”**

The evidence of Professor Altringham, Michael Woods and Penny Lewns has demonstrated that the proposed scheme will fail to meet national and international obligations to safeguard and improve the conservation status of species which are afforded protection at a European level.

When set in the context of PPS9 and the ODPM / Defra Circular, *Biodiversity and*

Geological conservation - Statutory obligations and their impact within the planning system' (ODPM 06/2005, Defray 01/2005) (CD 8.9), the underlying legislation referred to in those documents, including the European Habitats Directive 1992 (Council Directive 92/43/EEC) (CD 8.7), the Conservation Regulations 1994 (CD 8.2) and the EIA Regulations 1999, this scheme has been shown to be inappropriate, unacceptable and incapable of meeting the rigorous tests for derogation.

Guidance on the Habitats Directive (CD 8.7a) and ODPM Circular 06/2005 (CD8.9).

It is accepted that several European protected species are present in the vicinity of the preferred route. These include 13 species of bat, including 4 Annex II species (Billington XX), otter, dormice and great crested newts (Jones XX).

It is also agreed that various surveys have indicated that bats present have been traced back to the Bath and Bradford on Avon Special Area of Conservation (SAC) (Billington XX), but that the statutory consultees took the view that an Appropriate Assessment was not required, as the scheme was unlikely to have a significant effect on the SAC.

ODPM Circular 06/2005 emphasises that it is for the decision-taker to ascertain that the proposal will not have an adverse effect on the integrity of a European site (CD 8.9 para 20). In the context of this proposal the decision-taker will be the Secretary of State. The Circular, referring to the Waddenzee judgement of the ECJ further emphasises that a proposal may only be authorised where it is **certain** (emphasis in original) that the proposal will not affect the integrity of the site, and that such certainty, citing the judgement, is defined as being the case "*where no reasonable scientific doubt remains as to the absence of such effects.*" (italics in original) Competent national authorities must be "*convinced*" that there will not be an adverse effect, and where doubt remains the project must not be authorised, subject to derogation procedures set out in Article 6(4) of the Directive (CD 8.9 para20)

Professor Altringham's evidence was unequivocal on this point. He was unsatisfied that there was enough evidence to support the conclusion of Natural England that there would be no significant effects on the Bath Bradford on Avon SAC, and that the test of no reasonable scientific doubt had not been met at all (XiC). Although the number of bats positively linked to the SAC was small they nevertheless represented a significant proportion of bats caught (OBJ/WHA/P/1 para 3.5), and that whatever survey techniques

were used, nets caught only a small proportion, were not adequate (Billington XX) and those caught were likely to be the tip of the iceberg (Altringham XiC).

In the absence of an Appropriate Assessment, when placed in the context of evidence of inadequate surveys, the Secretary of State cannot reasonably conclude that this proposal will not have significant effects on the integrity of the Bath Bradford SAC, and cannot permit this proposal to proceed unless the derogation tests of Article 6(4) are met.

Dr Jones agreed that the primary aim of the Directive is to maintain or restore protected species at favourable conservation status (FCS) (XX). He further agreed that there is no evidence that dormice are currently at FCS, defined in the guidance as where "species populations are doing well with good prospects for the future" (CD 8.7a page 11). Professor Altringham's evidence on bats was that the scheme would have a severe adverse effect on them, and that some species could be reduced to unsustainable levels as a result of the scheme, and that even were the proposed mitigation to be successful, the killing of relatively small numbers could be enough to have a significant effect on populations (XiC).

As the Guidance points out, Article 6 of the Directive is concerned with the protection of sites and habitat conservation whereas Article 12 is concerned with protecting individuals of the listed species and their breeding and resting places (CD 8.7a para 38 page 15). Article 12 requires Member States to take requisite measures to establish a strict system of protection of Annex IV (including Annex II) species, and these measures must contribute to maintaining or restoring a FCS (CD8.7a page 28).

The derogation applicable to protected sites is similar in many respects to the derogation applicable to protected species. Article 6 (4) allows for derogation where there is an absence of alternative solutions and imperative reasons of overriding public interest. Article 16 applying to protected species, allows derogation where 3 tests are satisfied.

First, one of the reasons set out in Article 16 (1) (a) to (e) must be met. Dr Jones agreed that the only reason likely to be relevant to the current proposal was (c) "In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment." (CD 8.7a page 55)

As the Guidance states, the “overriding” character of this public interest must be underlined, and as the Circular points out, “There will be few cases where it can be judged that imperative reasons of overriding public interest will allow a development to proceed which may have a potentially negative effect on the integrity of a European site” (CD8.9 para 28)

What is the evidence that this proposal can meet the first test of derogation under Article 16? There is no evidence at all presented by the Council that this scheme is of overriding public interest. It is accepted that this proposal is a “local improvement scheme”, that there is nothing exceptional about Westbury in terms of levels of congestion or accidents. The A350 is not a trunk road, and Mr Kansari’s evidence was that Westbury was not in need of congestion solving (XX). There is no overriding case to be made for regeneration, and nothing to suggest that this is capable of being one of the “very few cases” referred to in the Circular.

The second test as set out in the Guidance document is that the Member State has to be “certain” that there is no satisfactory alternative before allowing the derogation, and that this is “an overarching requirement that all derogations must satisfy” (CD8.7a para III. 2.2 page 58). The Guidance goes on to suggest that, based on the case law of the ECJ, this test may be considered as having 3 parts.

Firstly, what is the problem or specific situation that needs to be addressed? Secondly, are there any other solutions?, and thirdly, will these resolve the problem for which the derogation is sought? As the Guidance states at para 37 on page 59, the analysis of whether there is no satisfactory alternative presumes that a specific problem exists. After 6 weeks of evidence to this inquiry it is still difficult to ascertain precisely what the problem in Westbury is, to which the bypass is supposedly the solution.

The Guidance continues in para 37 to state that “competent national authorities are called upon to solve this problem or situation by choosing, among the possible alternatives, the most appropriate that will ensure the best protection of the species while solving the problem/situation.” Alternative solutions could involve “alternative locations(or routes), different development scales or designs or alternative activities, processes or methods.”

Alternatives to the scheme are discussed in greater detail below, but in the context of species protection it is clear that alternatives to the derogation exist, such as a package

of non-road build measures (which Dr Jones accepted would have no impact on protected species XX), or a route to the west of the town, which on the basis of survey evidence available would not be likely to have the same impacts on protected species, although it is accepted that it is not possible to make a direct comparison, due to the inadequacy of information in respect of protected species which may be present to the west of the town. Dr Jones described the ecological appraisal of the FWR as "brief" (XX).

The Guidance, citing the Advocate General's Opinion in case C-10/96, takes the view that derogations must be a "**last resort**" (emphasis in original) (para 38 page 59), and that the requirement to consider seriously other alternatives is of "primary importance" (para 41 page 59)

Mr. Boyle agreed that the obligation to seriously consider alternatives was very different from the requirement to provide "an outline of main alternatives studied" pursuant to Part II of Schedule 4 of the EIA Regulations 1999 (XX). There is no evidence to suggest that the Council have considered the "satisfactory alternative" test set out in the Directive and Conservation Regulations, and nothing to suggest that this test has been satisfied.

As the Guidance goes on to state, "it should be stressed that another solution cannot be deemed unsatisfactory merely because it would cause greater inconvenience to or compel a change in behaviour by the beneficiaries of the derogation" (para 41 page 59).

It is common ground that the scheme, at best, will result in journey time savings of a little in excess of 2 minutes between the A350/A36 roundabout and West Ashton Crossroads (Helps Proof Table 5.2 WCC/P/2). No similar calculations have been provided for comparative purposes with a non-road "Do Something" alternative, or for a smaller road building alternative such as new distributor road and integrated transport package, and, in any event, given the stringent and rigorous nature of the test, the proposed scheme cannot remotely meet the criterion.

The third test to be satisfied is the impact of a derogation on conservation status, which requires that if granted, derogations must not be "detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range".

The Guidance advises that "An appropriate assessment of the impact of a specific

derogation will normally have to be at a lower level (e.g. site, population level) in order to be meaningful in the specific context of the derogation (CD8.7a page 61). No such assessment has been undertaken by the Council, save in the most general, qualitative manner, following TAG criteria. e.g. Billington's assessment of the impact of the scheme on the bat assemblage, with mitigation as "Minor Negative" and "slight adverse" (WCC/P/11 para 4.39)

In cross examination Mr Billington accepted that he had not undertaken an estimate of likely numbers of bats that would be killed as a result of the scheme, yet accepted that many of the bat species were listed as vulnerable, which he took to mean as being at risk of population decline.

The Guidance advises that two things have to be distinguished in applying the third test: first what is the actual conservation status at a biogeographic and local level? Second, what is the impact of the derogation? (CD8.7a para 49 page 62)

However "slight" or "minor" the impacts may be, bearing in mind that this assessment has been made on the presumption that mitigation will be successful, as the Guidance points out, "the less favourable the conservation status and trends, the less likely will the granting of derogations be justified apart from in the most exceptional circumstances. The net result of a derogation should be neutral or positive for a species; detrimental effects should not occur" (CD 8.7a page 65). Mr Billington's evidence in cross examination was that he would never remove the slight adverse assessment of impacts as there was always a risk despite mitigation.

As with the Council's landscape evidence, it is difficult in the extreme to interpret the terms "adverse" or "negative" as equivalent to "neutral" or "positive", and in these circumstances it is impossible to see how the third test for derogation can be satisfied.

The success of the mitigation proposed for both bats and dormice is clearly of vital importance, particularly in respect of the bat assemblage which Mr Billington describes as of national and international importance. The maintenance of flight lines is vital (WCC/P/11 para 4.38). The mitigation proposed is described by Mr Billington as "cutting edge", who emphasises in his evidence that "there is no other road scheme reported in the world that this level of bat mitigation has ever been proposed" (WCC/P/11 para 5.3)

Mr Billington accepts that without successful mitigation the scheme would prove

“disastrous” and “major adverse” for the bat assemblage (XX)

At the same time, Mr Billington accepted that there is very little data available to show what numbers or percentages of bats will actually use the new routes proposed in the scheme, that there is very little information on the effectiveness of tunnels and bridges, that the gantry design is “unproven” and “terrible from a data point of view” (XX) He further accepted that there is, to date, no post-construction monitoring plan yet available for examination and assessment.

As regards the assessment of alternatives, he accepts that the information on bats is “incomparably more detailed” for the preferred route as compared to the FWR, and that the desk studies undertaken are variable in quality and mostly incomplete (XX).

In contrast to Mr Billington’s evidence, that of Professor Altringham and Michael Woods highlighted the highly experimental nature of the proposed mitigation and cast serious doubt over the likelihood of its success in practice .

For Professor Altringham the evidence relied on by Mr Billington showed that only small numbers of bat populations use the mitigation methods proposed, further research is needed into the effectiveness of underpasses and green bridges, and bat gantries appeared to be ineffective. (XiC)

When questioned that perhaps the scheme provided the opportunity to allow for good quality monitoring of mitigation measures, Professor Altringham’s response was that the given the importance of the particular assemblage likely to be affected by the proposed route he questioned whether it was appropriate to experiment in such a fashion.

This view was echoed by Mr Woods, who stated that this was no case for experimentation of the nature proposed, and that only proven methods of mitigation should be approved. There is no scientific evidence that dormice use aerial ropeways of the type proposed by the Council, no evidence that dormice use underpasses as proposed and that only green bridges of the type proposed at Chalford had been shown to be effective, but that this was likely to be of least use as it was the furthest removed from the population affected by the scheme.(OBJ/WHA/P/2)

Under cross examination Mr Woods reiterated his view that unproven experimental mitigation methods should not be used where a population is as at risk as the present population, as the consequence of failure of mitigation would be to fragment an already

at risk population with a very real risk of extinction. (XX)

Consequently, Mr Woods disagreed strongly with the Council's conclusion that the impact of the scheme on dormice following mitigation would be "slight adverse", but that as the magnitude of the potential impact was "major negative" on a species of high conservation value, "very large adverse" was a more appropriate assessment of the likely impact. As a result, Mr Woods stated explicitly that it was only possible to conclude that the scheme will have an adverse effect on the conservation status of the dormouse population in the area (OBJ/WHA/R/2), and was therefore incapable of satisfying the third test for derogation.

In addition, Mr Woods evidence was that due to the inadequacy of surveys it was impossible to tell whether the population was currently at FCS (XiC), although Dr Jones accepted that the population was not at FCS (XX).

As regards dormouse mitigation, Dr Jones appeared to be somewhat less convinced than Mr Billington was in respect of the proposed mitigation for the bat assemblage, although still describing the proposed mitigation in similar "cutting edge" terms. Dr Jones took the view that there was a "likelihood" that the dormouse mitigation would work, but placed such as no higher than a balance of probabilities (XX).

As regards the consideration of alternative solutions, Dr Jones stated that it was hard to think of a specific effect that a non-road build alternative would have on protected species, and there is no evidence before the Inquiry that a FWR would adversely affect a population of dormice. Those surveys which have been undertaken for a FWR have given no indication of a dormouse population.

In summary, it is accepted by the Council that derogations in the form of licences will be required in respect of bats, dormice and great crested newts. The evidence before this Inquiry leaves no doubt that the criteria for the grant of derogations have not been met, and cannot be met.

1.100 Additionally, the evidence of Professor Altringham has established that the likely adverse impacts of this scheme trigger the requirement for an Appropriate Assessment, in order to consider potential impacts on European protected habitats such as the Bath-Bradford bats Special Area of Conservation (SAC). In the absence of

such assessment, any grant of planning permission would be in breach of the Conservation Regulations 1994, and in breach of the UK's obligations which arise pursuant to the Habitats Directive.

“the extent to which the proposed development is consistent with the advice in PPG13:Transport, in particular on the need to locate development in a way which helps to promote;

- more sustainable transport choices;

- accessibility to jobs, shopping, leisure facilities and services

by public transport, walking and cycling; and

- reduce the need to travel, especially by car”

1.101 WCC proposes that the Westbury Bypass is in accordance with the policy objectives of PPG 13 (WCC/P/6, Simkins Proof of Evidence - Planning) by claiming that the Westbury Bypass moves us one step closer to the achievement of a sustainable pattern of development in West Wiltshire, to a low carbon economy, to the notion of the “self containment” of West Wiltshire towns and consequently “reducing the need to travel”, and to the notion of “achieving journey reliability”.

1.102 In our submission the WHA has successfully rebutted any and all assertions that the scheme is compliant with PPG13 on these grounds, making reference to the increase in car-based commuting and car-based out-of-town and fringe-of-town development that would be likely to ensue were the bypass to be constructed, referring to the situation around Chippenham following the construction of its A350 bypass as an example. The WHA also referred to work by Oxford Brooks University showing that car-based commuting increased with the building of faster roads connecting development to the primary route network.

- 1.103 Evidence presented has shown that it was very unlikely that the building of the bypass offered more sustainable choices when it came to transport modes, and echoed Natural England's response to the Options and Issues report for the West Wiltshire Development Framework which was cited in Mrs. Raggett's rebuttal to Mr. Simkins which explained that Natural England had a number of reservations regarding the sustainability of a transport strategy based around the A350 and sought an evidence base to support the strategy.
- 1.104 As regards the assertion that a bypass is a precondition to free up roads for buses to run faster through town, the WHA has shown that this is simply not applicable to the case of Westbury, as any congestion experienced is extremely limited. WHA witness Gordon Edwards gave evidence from bus companies that buses were not held up through Westbury even at peak periods sufficiently for them to deviate from the usual time-table, although in Trowbridge they were (OBJ/WHA/P/9).
- 1.105 Jenny Raggett explained in her proof of evidence that cycling in Westbury was good and traffic easily avoided, and walking facilities were generally good, apart from on the A350 Warminster Road and where wider pavements and traffic management was long overdue.
- 1.106 With regards to journey reliability related to congestion, the WHA questioned whether congestion was indeed a problem in Westbury, given that even at peak times WCC's own figures showed very short delays in the town, and that traffic generally moved freely on the A350 through Westbury. Alan James and other WHA witnesses presented evidence that the main pinch point on the A350 is at Yarnbrook. Jenny Raggett also made reference to the Eddington Transport Report maps showing the locations on the national route network where congestion caused delays. Yarnbrook is shown as problematic, but not Westbury.
- 1.107 Westbury Railway Station is a regional interchange. The Alliance is very surprised that the scheme appears not to address this

interchange at all in the context of providing access from the wider area, and that it has not taken any opportunity to provide a bus-train interchange at the station as an integral part of the scheme. Evidence has shown that an alternative package incorporating a link road from the west would for example, enable HGV access to the WWTE avoiding Westbury town centre, as well as vastly improve access to the station (see Gordon Edwards, OBJ/WHA/P/9).

1.108 In the view of the Government: "The right action to address the congestion problem depends on what is causing it. If all modes are congested over a sustained peak period, the solution may well need to involve increased capacity. If the congestion is more localised or concentrated in a short peak period, or if some modes are congested whilst others have spare capacity, the solution is more likely to involve looking at relative prices and service patterns" (CD13.1 para 2.14). In the light of that statement, what is the situation here?

1.109 Firstly, the Council seeks to reduce congestion (or "improve journey time reliability") in the town centre, and on limited stretches of the A350 to the north and south of the town centre. Thus the congestion problem is clearly limited and localised.

1.110 Secondly, any very limited congestion on this section is confined to the traditional two-hour AM and PM peak periods when both traffic flows and journey delay times are at their highest. Thus the congestion problem is not associated with a sustained peak period.

1.111 Thirdly, it can be noted that the evidence is that neither peak hour traffic flows nor annual average daily traffic flows on this section have changed significantly since 1996. (WHA 109) Thus any problem would appear to be stable and well-defined.

1.112 Fourthly, Mr Helps for the County Council accepted that for peak hour journeys between Westbury and Trowbridge there is no evidence that all transport modes are congested, far from it (XX).

1.113 Since all of the criteria set out by the Secretary of State have been

satisfied, it can be concluded that the County Council should not be looking to an increase in road capacity as a solution to any perceived problem of congestion. Solutions in the form of an integrated package of soft measures would be far more appropriate.

1.114 There is very little evidence that the County Council have implemented any soft measures to improve traffic flows through the town, to limit the impact of HGVs, and encourage modal shifts, with the sole exception of real time bus information (Helps XX).

1.115 The County Council claims that the proposed scheme would bring about a significant improvement in congestion relief in the town centre and that this, in turn, would allow various improvements to take place, making walking and cycling more attractive. Modal shift away from the private car would be enabled and Government transport objectives as set out in PPG13 and the Secretary of State's recent statement to Parliament would be met. In light of the Secretary of State's statement on using spare capacity before increasing it and the scheme's damage to the national interest, it is clear that any modal shift benefits claimed for this scheme should be subject to the closest scrutiny.

1.116 Such scrutiny reveals that the Council's claims on this issue are not based on the results of any significant quantitative investigation or analysis.

1.117 The Council has provided no evidence on likely modal shifts that might flow from the scheme. Mr Turner's evidence was that modal shifts had not occurred as a result of the construction of the nearby Warminster bypass, and that residual AADT flows in the town centre remained at a relatively high level (XX). As Professor Whitelegg commented, it is surprising, given the number of bypasses constructed by the County Council that no analysis of the impacts of such schemes on modal shift or the local economy has been undertaken or provided to this Inquiry.

1.118 It is equally surprising that the Council have failed to provide any

worked-up non-road building alternative to the proposed scheme, or, for that matter, any low cost alternative to major road construction. WHA witnesses, especially Alan James and John Whitelegg have put forward various elements of alternatives packages which could have been investigated, with the aims of managing traffic, diverting HGVs away from the town centre, lessening the impact of HGVs on the town centre, improving access to employment areas for those without cars, improving public transport and the Westbury station interchange, and so on. It is clear that the council has never thought beyond the simple solution of "bypass".

1.119 In conclusion, there is no evidence submitted by the County Council to this Inquiry on the critical issue of the potential of the proposed scheme to bring about modal shift. In the absence of evidence there can be no confidence that the scheme will achieve its stated aims in respect of providing traffic relief, easing the transport of goods or facilitating economic regeneration. There is, on the contrary, every likelihood that the scheme would do nothing to encourage sustainable development. It would simply serve to perpetuate an unsustainable reliance upon the private car and thereby undermine Government policy objectives.

1.120 Furthermore, as the Secretary of State also noted in her written statement to Parliament on 30 October 2007, "Towards a Sustainable Transport System: Supporting Economic Growth in a Low Carbon World" (CD 13.1). "...it is important not to overstate transport's ability to stimulate economic growth in underperforming areas, when in many cases addressing skills shortages may have a much more decisive role to play." (CD 13.1 para 2.18). We submit that the witnesses in support of the scheme have consistently overstated the scheme's ability to stimulate economic growth in the area and have consistently failed to produce hard evidence to support their assertions. There is no evidence that the West Wiltshire towns are significantly underperforming in economic terms. No witness for the County Council was able to provide any evidence of what impact the scheme would have on local GDP, local job creation or the

mechanisms by which a bypass would “facilitate economic regeneration”. It was accepted by Mr Helps (XX) that West Wiltshire does not fall within an area of economic deprivation, and Mr Bullock was unable to identify the nearest Government defined Regeneration Area to Westbury. The Major Scheme Business Case (MSBC) acknowledges this in plain terms, stating, “A full Economic Impact Report has not been undertaken for the scheme as it is not anticipated that it would have any impact on a regeneration area.” (page 132 para 7.5)

1.121 Apart from the fact that the County Council’s proposal to increase road capacity is in conflict with national and regional policies, there is a great deal of evidence to show that the scheme will not meet its own limited objectives in terms of traffic relief to the town centre, and the Council have failed to show what element of any relief that does occur is attributable to the scheme itself or the proposed HGV ban.

1.122 As the Inquiry has seen, the HGV ban on Station Road has, apparently, always been an “integral” and “essential” (Helps XX) part of the scheme. The Council accepts that no alternatives to the preferred route have been modelled with the same ban in place.

1.123 Mr Helps was clearly under the impression that the ban would be put in place solely on the grounds of making the preferred route “work”. The ban is “required” for the EBP (Helps XX). If the ban were not in place HGV’s would continue to travel through Westbury as the shortest local route would be through the town (Helps XX). Given this admission, it is very surprising that Mr Bullock’s written response to WHA (in WCC/136A) suggested that even with the weight limit in place, HGVs could still get to the trading estate by using the very narrow (and in view of the WHA, completely unsuitable) Frogmore Road rather than use the bypass. This tiny road runs under two low railway bridge on its way to the WWTE from Westbury, and is currently used by walkers and cyclists.

- 1.124 The planning application stated that a ban would be put in place following completion of the EBP. Mr Helps was under the impression that this could be ensured by way of a condition attached to any planning permission (Helps XX).
- 1.125 On Day 11 of the Inquiry Mr Helps was recalled to provide corrected evidence on HGV flows, the Council having underestimated by a factor of 2 the numbers of HGVs in the model. At this stage there was no new evidence on the purported need for the ban on Station Road, and some discussion took place as to the likely weight limit that could be imposed. Mr Helps' view at that time was that it was likely that only HGVs over 7.5 tonnes would be subject to a ban, as they caused most nuisance and that would deliver most benefit, although a lower figure could be applied (Helps Insp Q)
- 1.126 Mr Helps further stated that it was not possible for the model to disaggregate figures for HGVs between 3.5 and 7.5 tonnes, nor possible to state what proportion of HGVs affected by the Station Road ban were between those weights.
- 1.127 Notwithstanding this, following requests from the Inspectors for the Council to produce traffic figures for the Do Minimum, EBP and FWR scenarios without an HGV ban and with a ban on Station Road at a 3 tonne limit and The Ham with a 7.5 tonne weight limit, the information provided as late as 22 August 2008 was incorrect in that it replicated the HGV error from earlier in the Inquiry and the data provided was wholly unintelligible.
- 1.128 The Secretary of State's statement to Parliament: "Towards a Sustainable Transport System: Supporting Economic Growth in a Low Carbon World" (CD 13.1) represents the Government's most recent views and policy intentions on these issues and provides an indication of the direction of Government policy on these matters. It should, accordingly, be afforded substantial weight. Furthermore, policies already adopted at a national, regional and local level should be interpreted and applied in the light of the objectives of the

statement and in a manner consistent with the statement.

1.129 As a means of reducing carbon emissions and other air pollutants, the Secretary of State expects local authorities to assess and develop packages combining road-pricing proposals with public transport improvements (CD13.1 para 2.33). The County Council accepts that the scheme would give rise to a net increase in carbon emissions of 385 tonnes (at the latest count) in the opening year alone (WCC/P/7 para 6.4). It can be concluded that the scheme does nothing to contribute to the Council's responsibility to reduce CO₂ emissions, does nothing to assist the achievement of national targets and, in the context of the internationally recognised need to address climate change, is wholly irresponsible. We submit that it should not be acceptable for a Local Highway Authority to promote a transport scheme with an estimated out-turn cost of up to £38 million, to result in an increase in carbon emissions, however small. Such expenditure should result in a substantial decrease.

“whether any planning permission granted for the proposed development should be subject to any conditions and, if so, the form that these should take, having regard to the advice in DOE Circular 11/95, and in particular paragraph 14 of the Annex:”

1.130 The case for the Alliance is that there are no conditions, mitigation or compensation that can render this scheme acceptable, although we shall offer observations on the detail of those conditions which have been proposed by WCC.

1.131 In this context the judgement of Elias J in the case of Hereford Waste Watchers v Hereford Council (2005) EWHC 191 which specifically addresses the relationship between environmental impact assessment and unproven and untested mitigation measures is particularly relevant.

1.132 At para 34 of his judgement Elias J summarised the legal principles

concerning environmental statements, mitigation and significant likely effects.

1.133 At 1 of para 34 he states that the decision as to whether a proposed development has significant effects is a matter of judgement for the LPA, as is the decision as to whether it has enough environmental information to make such a judgement.

1.134 However, Elias J at point 3 of para 34 makes clear; "...the planning authority can have regard to the mitigating measures provided that they are sufficiently specific, they are available and there is no real doubt about their effectiveness. However, the more sophisticated the mitigating measures and the more controversy there is about their efficacy, the more difficult it will be for the authority to reach a decision that the effects are not likely to be significant."

1.135 Where there is uncertainty about the effects, so that it is not sure whether there will be significant effects or not, further information should be sought, and, most importantly, "It (the LPA) cannot seek to regulate any future potential difficulties merely by the imposition of conditions." (para 34 point 4).

1.136 This judgement is clearly relevant to the mitigation measures proposed by the Council in respect of bats and dormice, and to the conclusion that an Appropriate Assessment of the Bath-Bradford SAC is not required as in the view of NE and the Council.

1.137 There can be no doubt that the mitigation measures proposed are "sophisticated", but there can also be no doubt that there is controversy about their specificity, availability and, above all, their effectiveness. The measures have been variously described as "cutting edge", "unproven" and "untested".

1.138 There is still no post-construction monitoring plan drafted, leave alone agreed, and the proposed conditions in respect of the Wildlife Management Plan and the Bat Management Plan clearly fall foul of Elias J's observations. In these circumstances, there can be no

certainty as to the likely effects of the proposal, and in the context of European protected species and habitats, such uncertainty can only reasonably lead to a refusal of this application.

any other matters that the Inspector considers relevant:

1.139 There are a number of other matters that are material considerations relevant to the consideration of these applications.

Noise

1.140 The Alliance has shown that, as with most areas of assessment, the purported benefits of the scheme have been exaggerated, whilst the disbenefits have been played down. The tranquillity of the Special Landscape Area through which the bypass will run will be lost and the amenity of local residents and visitors adversely affected.

Groundwater and Flood Risk

1.141 The evidence of Robert Sargent for the Alliance has shown that the design of the groundwater protection scheme proposed by WCC to protect the Wellhead source of public drinking water is inadequate, and cannot provide a satisfactory level of protection to a valuable natural resource.

1.142 Mr Sargent's evidence has further shown that the scheme is non-compliant with the policy requirements of PPS25, Development and Flood Risk, the flood risk assessment undertaken by WCC is inadequate and the scheme will increase the risk of flooding.

Air Quality

1.143As with its claims on beneficial noise reductions, the Council's claims for the scheme's ability to deliver improved air quality have been undermined by the corrections it has had to make to the numbers of HGVs in the town and surrounding areas. It should be noted that it has been unable to persuade the Woodland Trust that the impact of increased air pollution on its ancient woodland at Clanger and Picket Wood would be susceptible to mitigation of any kind. (Letter from Alice Farr to Dr Keith Jones in WCC/129A).

Alternatives to the Proposed Scheme

1.144WCC accepts that the issue of the consideration of alternatives to the scheme arises from two sources. Firstly the requirement in the EIA Regulations 1999, Schedule 4 Part II para 4, where an ES must contain at least "an outline of the main alternatives considered by the applicant and an indication of the main reasons for his choice, taking in to account the environmental effects", and secondly, the requirement arising from the Conservation Regulations 1994, which has been discussed in detail above. (Boyle XX)

1.145This inquiry has heard a great deal of evidence on alternatives to the scheme, or the lack thereof. WCC claim that non-road build alternatives have been considered by them, from as early as the Halcrow Report in 1990, that the BB2SC study also looked at non-road build options and that the 1998 Planning Conference at least implicitly considered, and rejected, non-road build alternatives (Boyle XX)

1.146It is however clear that no serious effort has been made by WCC to provide either this inquiry or the public of Westbury with a worked up non-road build alternative to the current scheme. The modelling for the scheme has provided a Do Minimum (DM) comparator, which in reality is a wholly unrealistic Do Nothing alternative. No "Do Something" alternative as referred to by Prof. Whitelegg has been developed at all. His replies to both WCC's and to the Inspectors'

questions were unequivocal. A “Do Nothing” scenario is “not a serious option”, a DM scenario had not been explained by WCC, was lacking in transparency whereas it should allow for inspection, was an artificial comparison, and should not be based on an assumption that present trends would simply continue.

1.147 Given that it has been generally agreed that new road building should be a last resort, it is only reasonable that WCC provide a realistic Do Something alternative based on the “huge amount of good practice on town centre measures” (Whitelegg XX) that are now available to planning authorities. Having done so, the onus is on WCC to prove that such measures cannot solve the problem as identified. As we have seen, the only town centre improvement measure introduced in Westbury has been the provision of real-time bus information. No traffic calming, speed reductions or restrictions below the existing 30 mph limit, workplace and school travel plans not fully implemented, no serious attempt to effect modal shift, no real segregation of pedestrians and cyclists from traffic, no real attempt to implement a sustainable transport strategy as set out in LTPs 1 and 2.

1.148 The County’s position on these measures exhibits a remarkable inflexibility. In its view none of these measures could be implemented without a bypass being in place. Speed reduction, traffic calming, any measures which prioritise the interests of the non-car driving public would, in its view, inexorably lead to increased congestion and therefore increased carbon emissions and noise (Boyle XX), although the Council produced no evidence whatsoever to support this assertion.

1.149 This inflexibility in turn has led to a singular failure to consider and assess the effects of a Do Something scenario, and as such this application has failed to satisfy the requirements of both the EIA Regulations and the Conservation Regulations.

1.150 Consistent with its propensity to solve perceived traffic related

problems by new road construction the Council has however, over the past 20 years, given comparatively detailed consideration to alternative routes for a possible by pass. Various western options have been worked up to differing degrees of detail, which have, by and large, been supported by a majority of those consulted.

1.151 A range of bypass routes was considered at the Planning Conference in 1998 with a clear majority favouring a Far Western Bypass option (WCC/A/1 App B). At that time both EBP and FWR showed, in cost benefit terms "good benefits" of £10.5m and £9.9m respectively, but a decision was taken by the County in September 1998 to prefer an Eastern route, on the basis that the EBP provided the best COBA result and greater traffic relief along Haynes Road. (WCC/A/1 App B – Report 2 Sept 1998) As the Report stated, further consultation should be undertaken but on the basis that it was made clear that the EBP was the "only viable route for a Westbury bypass, and the choice is between an Eastern Route or no bypass at all."

1.152 Since that time the COBA assessments of the EBP and FWR have undergone a series of remarkable transformations. By January 2001 the NPV benefits for the EBP had risen to £18m whilst the FWR had fallen to £8.9m, with no explanation provided for the changes. (Ringway Parkman Interim Report – Jan 2001).

1.153 By September 2006 the estimated cost of the EBP scheme had risen to £31m (excluding the West Ashton/Yarnbrook section of the original scheme but including a £1.3m budget for Town Centre Improvements), with a BCR of 5.4 (WCC/A/1 App B).

1.154 By the time of the submission of the planning application in January 2007 NPV for the EBP had risen to £138m and the FWR to £109m, with respective Benefit/Cost ratios (BCRs) of 6.039 and 3.525 (ES Part A App F).

1.155 In June 2008 the MSBC reported a dramatic reduction in NPV to £114m and a BCR of 4.475 for the EBP, whilst the FWR NPV remained unchanged at £109m.

1.156 Within the space of a month these figures had been further revised (MSBC Revision 1 – July 2008), the EBP showing a further downward fall to £110m with a BCR of 4.362, whereas the FWR NPV fell, inexplicably, to £80m, with a reduction in BCR to 2.795. The fall appears to be attributable to a major downward revision of the scheme benefits of the FWR from £153m to £125m, but the text discloses no reason for this remarkable adjustment. What confidence may be placed in these figures is, fortunately, a matter for others.

1.157 WHA witnesses, especially Alan James and other objectors have pointed out the lack of a like-for-like comparison of costs and benefits between Eastern and FWR options. Alan James questioned the Highways Agency 'requirement', claimed by WCC, that would add £7m to the cost of a western bypass for works on the A36 to accommodate extra traffic from a western route, yet at the same time WCC have apparently failed to assess any benefits arising from such investment.

1.158 No similar cost was produced by WCC for completing the original, pre-2003, eastern bypass scheme by building an extension to relieve Yarnbrook, West Ashton and villages on the route between Yarnbrook and Rode on the A361. WCC's own traffic data for HGV movements (Table 5.6 in ES – 'Heavy Goods Vehicle Flows outside of Westbury ... 2009 Opening Year') showed that these communities would experience large increases in HGV flows as a direct result of the present truncated EBP proposal.

1.159 What is clear from the evidence available is that the FWR performs perfectly adequately in terms of traffic relief of Westbury – with or without a weight limit on Station Road - and has the added advantage of serving an east-west traffic function, with nothing like the proven adverse environmental impacts that the EBP has.

Deliverability

1.160 In September 1998 the County Council resolved to make a Compulsory Purchase Order in respect of land required for the Westbury Bypass. (WCC/A/1 App B) In December 2005 the Cabinet of the County Council authorised the making of a Compulsory Purchase Order for the Westbury Bypass and a Side Roads Order for necessary alterations to rights of way and private means of access in connection with the scheme. These latter Orders were amended in August 2007 and are now before this inquiry in a further amended form. (Khansari ReX)

1.161 A Westbury Bypass scheme was first submitted to DfT in the Council's LTP Annual Progress Report in July 2001 but any decision was deferred pending the outcome of the BB2SC Study (WCC/A/1 App B) In the view of the Council in June/July 2003 the scheme had been developed in sufficient detail to enable a planning application to be made and for draft Orders to be drawn up. The Council considered that the Westbury Bypass should be the first priority major scheme bid in the 2003 Local Transport Plan (LTP) Annual Progress Report (APR). The Council did acknowledge that even were the bid to be successful the scheme may not proceed to construction.

1.162 Despite being the "first priority" of the Council's major scheme bid in the 2003 APR, and subsequently endorsed by the SW Regional Assembly, the Secretary of State at the time took a differing view, stating in December 2004 that the proposal "...does not present a sufficiently high priority for approval at this stage" (WCC/A/1 App C)

1.163 Mr Khansari accepted in cross-examination that this scheme has not achieved programme entry, and that there were many risks attached to this scheme.

1.164 The successive failures of earlier versions of the scheme to be progressed despite the Council's apparent best efforts, highlights not only the fact that the Secretary of State needs to be satisfied that

the funding for this scheme is likely to be available within a reasonable timescale, but also that this particular scheme needs to be approached and assessed with particular caution (CD???: ODPM Circular 06/2004 paras 19-21).

1.165 The County Council acknowledges that the scheme remains to achieve Programme Entry. This requires the County Council to submit a Major Scheme Business Case for the scheme to the Department for Transport. The assessment will establish whether or not the scheme is value for money, whether or not it is a high priority within the RFA and whether or not it is deliverable by the authority to time and budget.

1.166 The scheme is not a high priority within the extant RFA. The County Council acknowledges that the scheme is not in Table 1 of the RFA Programme, where the region has concluded that there is a strong case for inclusion in the RFA. It is listed in Table 2A as a scheme that potentially could be added to Table 1. A Table 2A scheme is described as one that requires further work and/or further analysis in relation to profiling of the programme.

1.167 Thus, at this stage, the Secretary of State cannot be sure that the funding for the scheme is likely to be available within a reasonable time-scale and the requirements of Circular 06/2004 have not been met.

1.168 In addition there is the point, made in our Statement of Case, that the present bypass scheme cannot deliver all the objectives of the original eastern bypass project until the northern extension relieving Yarnbrook and West Ashton - removed to reduce the cost of the 2003 funding bid - has been designed, funded and constructed. As well as the funding obstacles in the way of this project, there are serious environmental constraints, as shown by the concerns of the Woodland Trust over the pollution threat to its ancient woodland (see 8, Air quality, above) and WCC's own evidence (WCC/P/11) on the presence of an important maternity roost of Bechstein bats - an

Annexe 2 species - in this same area of woodland.

Conclusions

1.169 In conclusion, the Alliance's evidence has shown that the scheme flies in the face of Government planning policy, will fail to meet its own limited objectives and, more importantly, will fail to meet the requirements of national and European law. The damage that the scheme will cause will more than outweigh the modest benefits that may arise from the scheme and on that basis planning permission should be refused.

1.170 In summary, the proposed scheme is in conflict with national, regional and local policies and objectives designed to promote sustainable development. Should the scheme proceed, irreversible damage will be done to areas protected for the national interest and for the public benefit. The public interest, locally, regionally and nationally will not be served by the confirmation of these Orders.

1.171 The need for the scheme and for the Orders sought has neither been demonstrated nor established. The scheme would do nothing to reduce congestion and delays. Traffic through the SLA and on the network generally would be increased. Journey time reliability would not be significantly improved, if at all. Sustainable means of transport would not be encouraged, significant modal shifts would not be achieved. Alternatives to new road building have not been sufficiently investigated, nor, as importantly, implemented.

1.172 £40m spent on a Westbury eastern bypass would be £40m that could have been spent on a package of integrated transport measures for West Wiltshire of the kind set out by Professor Whitelegg.

1.173 But this is in no sense an integrated transport package. Inside the rapidly unravelling green wrapping of the West Wiltshire 'Sustainable Transport Strategy' what do we find? Not a great deal apart from a road, some costly measures to reduce - but not eliminate - the

demonstrable damage it would do to a protected landscape and protected wildlife and the risk it would pose to protected water resources.

1.174 The Westbury eastern bypass is a scheme from the past, from the era of 'Roads for Growth' when it was thought possible to build almost limitless road capacity so that an ever-expanding fleet of cars and trucks could complete an ever-increasing number of journeys without delay or inconvenience of any kind. That dream future never arrived.

1.175 Instead we find ourselves in the sooty twilight of the carbon age, confronting the crises of accelerating climate change and diminishing resources of oil, land, food, and water, the extinction of species and, finally, the drying up of credit. It is a world in which a bypass for the town of Westbury has nothing to offer except an exacerbation of its problems.

1.176 If the scheme is refused planning permission the question of the CPOs and SROs does not arise. However, were planning permission granted, the test for the confirmation of the orders sought is significantly higher than that for planning permission, and as the evidence has shown, it is a test that cannot be met by this scheme. The evidence has shown that there are serious doubts over the deliverability and implementation of the scheme, but there can be no doubt at all as to where the balance of public benefit and interest lies. Conflict with Government objectives of sustainable development is conflict with the public interest. Irreversible damage to the environment is irreversible damage to the public interest. There is a compelling case in the public interest. That compelling case can only lead to the refusal of these Orders.

1.177 Government has now accepted the logic that we cannot simply "build our way out" of congestion. It is now time for the County Council to recognise the force of that logic. Accordingly, this application should be refused and these Orders should not be

confirmed.

Charlie Hopkins

EarthRights Solicitors

8 October 2008
