

**LAND BETWEEN A34 MILTON INTERCHANGE, & B4015 NORTH OF CLIFTON
HAMPDEN**

Section 77 Public Inquiry, LPA ref: R3.0138/21, Appeal ref: APP/U3100/V/23/3326625.

FULL STATEMENT OF CASE OF EAST HENDRED PARISH COUNCIL

**Prepared by Cllr. Roger Turnbull, BSc (Town Planning), MSc (Transport Planning),
MRTPI.**

17th October 2023.

EXECUTIVE SUMMARY

7.1 East Hendred Parish Council (EHPC) object to the proposed development.

7.2 The main issue is whether the proposed development is consistent with the promotion of Sustainable Transport, both within the development plan, in the most recent Oxfordshire C.C. Local Transport & Connections Plan, 5th Edition, & as defined in Chapters 2, 5, 6, & 9 of the National Planning Policy Framework.

7.3 Whilst sustainable development is “at the heart of the Framework,” it is not at the heart of the appeal proposals. It is the role of development plans to be consistent with Government policies to meet the need for new homes & jobs, but those proposals need to be in locations, & in a form, that is consistent with Government policies to achieve sustainable development & promote sustainable transport.

7.5 Even if full weight was given to Local Plan Part 1 Policy CP17, the appeal proposals would be inconsistent with its Strategic Objectives S08/09, Strategic Policies CP33, CP34 & CP35, & the NPPF on promoting sustainable transport, Chapter 9.

7.6 There is a big difference between a policy which safeguards land for highway infrastructure and the evidence required to support the need for new infrastructure in a planning application.

7.7 EHPC is concerned as to how the Local transport Plan 5th edition Sustainable Transport Strategies will be delivered within the next 10 years, when the largest percentage of the Housing Infrastructure Fund is allocated to encouraging the use of the private car through four road schemes. The financial adverse impacts on schemes promoting sustainable transport caused by the appeal proposals would outweigh the benefits of encouraging the use of the private car, contrary to NPPF policies on promoting sustainable transport.

7.8 Can the County Council explain how diverting traffic from the strategic highway network (A34) onto local roads is consistent with Local Plan Part 1 Policy CP34, which sets a strategy for the A34 to function as a strategic route, to avoid consequential congestion on the local road network, or with policies promoting sustainable transport, Policies CP33 & CP34?

7.9 In paragraph 5.3.10 of the Transport Assessment, can the County Council explain, given the targets in the July 2022 Local Transport Plan 5 to reduce travel by private car, whether it would be reasonable to run the model with a 70% total demand in 2034, to account for Didcot Garden Town principles for modal shift etc?

7.10 The AECOM Appendix on Walking & Cycling to its Options Report, the Didcot to Culham Bridge & area around Didcot A Power Station reports, merely identify WCHAR opportunities for walking & cycling, without pursuing hardly any of them. The Walking & Cycling measures are over-engineered, so costs could be reduced.

7.11 The Parish Council seeks clarification as to why the EIA Regulations for Infrastructure Planning & the Case Law in Appendix 1 should not apply in this case.

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1. Qualifications & Experience.

- 1.1 I have a wide experience of attending public inquiries as an expert witness on Town Planning issues as an ex-Director of Barton Willmore, & present Director of Apt Planning Ltd, Planning Consultants:
- 1.2 Attendance at South Oxfordshire Local Plan Examination, Local Plan housing sessions.
- 1.3 Attendance at Vale of White Horse Part 1 & Part 2 Local Plan Examinations, Harwell Campus sessions.
- 1.4 Appeal into refusal of redevelopment of Esso Research Centre, at Milton Heights, Abingdon, for a Major Distribution Centre.
- 1.5 Milton Keynes Core Strategy & Aylesbury Vale Examinations - major urban extensions for Taylor Wimpey & Aylesbury College.
- 1.6 Acted as Council's Planning Case Officer for planning application for major urban extension at Corby Borough Council.
- 1.7 Regional Plans for South East, East Midlands & Yorkshire.
- 1.8 Roskill Commission on Third London Airport on behalf of Cambridgeshire & Essex County Council.
- 1.9 I have wide Transport Planning experience at Halcrows, Steer Davis & Gleave & Colin Buchanan, Consulting Engineers:
- 1.10 As Head of Transport Planning, L.B. Lewisham, & at London Docklands Development Corporation, I promoted the River Thames Crossing of Dockland Light Railway to Lewisham as part of the Isle of Dogs Transport Strategy.
- 1.11 Transport modelling of Dockland Light Railway & Sheffield Supertram for South Yorkshire Public Transport Executive.
- 1.12 Development of transport models for West Yorkshire & Wiltshire County Councils, on M1 alignment east of Leeds, Bradford & Swindon Transport Studies.
- 1.13 I have local experience of commenting on planning applications as a Parish Councillor, & as a resident in East Hendred for 35 years (since 1988).
- 1.14 The evidence which I have prepared and provide for this appeal is true and I confirm that the opinions expressed are my true and professional opinions.

2. The Main Issue.

2.1 East Hendred Parish Council (EHPC) object to the proposed development.

2.2 The main issue is whether the proposed development is consistent with the promotion of Sustainable Transport, both within the development plan, in the most recent Oxfordshire C.C. Local Transport & Connections Plan, 5th Edition, & as defined in Chapters 2, 5, 6, & 9 of the National Planning Policy Framework (2023 NPPF).

3 The National Planning Policy Framework (NPPF).

3.1 EHPC accepts that the Sec of State particularly wishes to be informed about whether the proposals are consistent with Government policies for the delivery of a sufficient supply of homes (NPPF Chapter 5), and for building a strong competitive economy (NPPF Chapter 6).

3.2 However, **NPPF Chapter 1**, paragraphs 2 & 3, also state that “Planning Law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise,” and that “The Framework must be read as a whole.”

3.3 **NPPF Chapter 2** on Achieving Sustainable Development states that this is achieved by pursuing mutually supportive economic, social & environmental objectives. So sustainable development is “at the heart of the Framework.”

3.4 **NPPF Chapter 5** promotes sustainable development in rural areas in the supply of homes, under paragraph 79. The Vale of White Horse is a Rural District.

3.5 **NPPF Chapter 6** includes a clear vision to positively encourage sustainable economic growth, in paragraph 82 a) & 84 a). In paragraph 85, the NPPF sets criteria for sites in rural areas to meet local business needs in locations not adjacent to existing settlements or not well served by public transport, such as Harwell Campus & Culham Campus.

Development in these circumstances:

- i) “should be sensitive to its surroundings,
- ii) it does not have an unacceptable impact on local roads,
- iii) exploits any opportunities to make a location more sustainable,
- iv) for example, by improving the scope for access on foot, by cycling or by public transport.”

3.6 EHPC considers that the appeal proposals do not meet these NPPF criteria.

NPPF Chapter 9 on Promoting Sustainable Transport, highlights in paragraph 104 c) that “opportunities to promote walking, cycling & public transport are identified & pursued,” in paragraph 106 b), c), & d), that planning policies should support sustainable transport, widen transport choice, & provide walking & cycling networks,” & in paragraph 108, set maximum parking standards.

3.7 NPPF paragraph 110 a) on Considering Development Proposals, seeks that appropriate opportunities are taken to promote sustainable transport modes.

3.7 NPPF paragraph 112 a) states that development “should give first priority to pedestrian & cycle movements & second to facilitating access to high quality public transport.”

3.8 It is concluded that:

- i) Whilst sustainable development is “at the heart of the Framework,” it is not at the heart of the appeal proposals.
- ii) When the NPPF is “read as a whole, as required in Chapter 1, paragraphs 2 & 3, the weight given to achieving sustainable development, in Chapters 2, 5 & 6 & in promoting sustainable transport, in Chapter 9, is clearly a requirement that is deep-seated within the whole of the NPPF.
- iii) Achieving sustainable development & promoting sustainable transport therefore outweighs the need for consistency with Government policies for the delivery of a sufficient supply of homes in Chapter 5, & building a strong competitive economy in Chapter 6.
- iv) Even if the Inspector finds that the proposals are consistent with Government policies on the supply of homes (Chapter 5), & a competitive economy (Chapter 6), matters that the Sec. of State wishes to be informed about, that would not necessarily mean that the proposals “were in accordance with the development plan, unless material considerations indicated otherwise.”
- v) It is the role of development plans to be consistent with Government policies to meet the need for new homes & jobs, but those proposals need to be in locations, & in a form, that is consistent with Government policies to achieve sustainable development & promote sustainable transport.

4. Whether the Proposals are consistent with the development plan.

4.1 The Vale of White Horse Local Plan Part 1, was adopted in December 2016. Paragraph 11d) of the NPPF says that, where plans are out-of-date, i) policies protecting Green Belt provide a clear reason for restricting development, or ii) permission should be granted only where adverse impacts demonstrably outweigh the benefits. The Local Plan is 7 years old (since 2016) & out-of-date because paragraph 33, Footnote 20, of the NPPF states that reviews at least every 5 years are legal requirements under Regulation 10A, the Town & Country (Local Planning) Regulations 2012.

Limited weight can therefore be given to the 2016 Local Plan Part 1 Policy CP17 & the 2015 Local Transport Plan 4 (superseded by Plan 5), where adverse impacts at the heart of the proposals from not promoting sustainable transport, public transport, cycling & walking, demonstrably outweigh the benefits of encouraging the use of the private car, contrary to the NPPF Framework, Chapter 9.

4.2 The Strategic Objectives in Local Plan Part 1 for Sustainable Transport are to:

SO 8: Reduce the need to travel and promote sustainable modes of transport.

SO 9: Seek to ensure new development is accompanied by appropriate and timely infrastructure delivery to secure effective sustainable transport choices for new residents and businesses.

4.3 Policy CP7 states that all development will be required to contribute a package of on & off-site infrastructure requirements set out in the Infrastructure Delivery Plan, using CIL charges & section 106 & 278 legal agreements. How much money is the County & Districts due to receive for infrastructure, & what percentage is allocated to sustainable transport?

4.5 Policy CP17 identified highways infrastructure to mitigate the impact of planned growth, subject to the package being further refined in Local Transport Plan 4 (superseded by Plan 5), & Local Plan Part 2. The package includes road improvements including a Culham Thames Crossing on a route to be determined in Fig 5.6a, a strategic cycle network in Fig 5.6b, & bus network improvements in Fig 5.6c. Policy CP18 safeguarded land for infrastructure, including Appendix E13, a River Thames Crossing.

4.6 Policy CP33 Promotes Sustainable Transport & Accessibility, (based on Strategic Objectives S08 & S09), to i) minimise the impact of developments on the road network, ii) promote sustainable links between new development & facilities/employment, iii) support measures in the Local Transport Plan 7 iv) improve air quality.

4.7 Policy CP34 sets a strategy for the A34 to function as a strategic route & reduce consequential congestion on the local road network.

Policy CP35 Promotes Public Transport, Cycling & Walking, i) to use these sustainable modes to enable modal shift, ii) to strengthen bus services close to new development, iii) to ensure that new development encourages walking, iv) through the provision of a cycle friendly infrastructure & new cycle routes to services, jobs & schools, vi) to be secured by a Transport Assessment & Travel Plan, vii) to County Council parking standards, (recently revised).

4.8. It is concluded that even if full weight was given to Local Plan Part 1 Policy CP17, the appeal proposals would be inconsistent with its Strategic Objectives S08/09, Strategic Policies CP33, CP34 & CP35, & the NPPF on promoting sustainable transport, Chapter 9.

4.9 Local Plan Part 2 was adopted in October 2019. Policy CP15b, states that all new development at Harwell Campus will be guided by a Comprehensive Development Framework to be published as a Supplementary Planning Document. The Framework will demonstrate a comprehensive approach including a Travel Plan for the whole campus & a comprehensive landscape plan. The absence of this Travel Plan prevents the reduction in car use to enable modal shift, in accordance with Local Plan Policies CP33, 34 & 35.

4.10 The EHPC has consistently sought the adoption of a Framework in a Supplementary Planning Document & Travel Plan for the whole campus, including the landowners on the south & west boundaries, & adoption of the new OCC cycling, walking & parking standards, prior to new development being granted permission. It needs to accord with the “Predict & Decide” policies to promote sustainable transport in the new Local Transport Plan 5th edition. This would replace the “Predict & Provide” methodology in the appeal proposals. An adopted Harwell Campus Framework & Travel Plan would promote sustainable transport & reduce the need to travel by car between Harwell/Milton Park & Culham. Campuses, & reduce the need to meet a c.40% traffic growth target, as set out in the appeal proposals.

4.11 Policy 16b on Didcot Garden Town Fig 2.7 would “reduce reliance on motorised vehicles & promote a step-change towards active & public transport” linking houses, jobs & services. Cycling & walking between Didcot, its surrounding villages, natural assets & jobs will be enhanced. Policy 16b does not support the appeal proposals.

4.12 Policy 18a safeguards land for a new Thames Crossing, a cycle bridge over the A34 at Milton Heights, & an improved cycle route between Steventon & Milton, as part of the Science Vale Cycle Network, (Inspector’s Report paragraph 103 Amendment MM11). Clarification is sought as to whether the cycle proposals in the Inspector’s Amendment MM11 are included in the appeal proposals, & if not, why not?

4.13 There is a big difference between a policy which safeguards land for highway infrastructure and the evidence required to support the need for new infrastructure in a planning application.

4.14 The 2015 Local Plan Part 1 Infrastructure Delivery Plan identified the costs:

i) Widening A4130	£13.5m
ii) Science bridge	£26m
iii) Cycle network	£10m
iv) Thames Crossing	£40m
Total Costs	£89.5m (The current estimate is double this sum)

This raises the question as to whether the costs represent Good Value for Money?

4.15 The 2020 Oxfordshire Climate Action Framework focuses on:

- i) being a Climate Active Council
- ii) Operating at net zero Carbon by 2030 by reducing emissions by 50% by 2030.
- iii) Enabling a net zero Carbon in Oxfordshire by 2050.

This strategy relies on electric & active travel as the new normal, through the County Council's strategic & economic development role.

4.16 The Oxfordshire Local Transport & Connectivity Plan was adopted in July 2022. It aims to reduce 1 in 4 current car trips, & deliver a net-zero transport network by 2040, by reducing the need to travel, discourage private car journeys, & make walking, cycling, & shared transport the natural first choice. The Active Travel Strategy focuses on walking & cycling to be delivered in the next 10 years, a Mobility Hub Strategy seeks better integration of transport modes, to be followed by a Freight & Innovation Strategy.

4.17 EHPC is concerned as to how these Sustainable Transport Strategies will be delivered within the next 10 years, when the largest percentage of the Housing Infrastructure Fund is allocated to encouraging the use of the private car through four road schemes. The financial adverse impacts on schemes promoting sustainable transport caused by the appeal proposals would outweigh the benefits of encouraging the use of the private car, contrary to NPPF policies on promoting sustainable transport.

4.18 Appendix 2 illustrates an example of sustainable transport proposals of the Greater Cambridge Partnership.

5. Transport Modelling

5.1 The JCT Consultancy Technical Note 21047 “HIF1 Scheme Package” Model Audit January 2022, page 4 shows the junctions modelled in Fig 1 between Milton Gate & Clifton Hampden. It omits the links in the Paramics Model Extent carried out by AECOM shown in Fig 5.1 of the Transport Assessment, east of East Hendred on the A417, which is currently at capacity, a matter of particular interest to East Hendred Parish Council. Could this data be provided to the Parish Council?

5.2 Page 6 of the JCT Report, paragraph 2.02 states that “Traffic flow diagrams were not included within the Transport Assessment,” so traffic flows used in the models are highlighted in this note. Paragraph 2.1.2 says that Junction OFF1 Milton Interchange, was not modelled in LinSig, so there is no model audit of this junction. The EHPC seeks data on Traffic Flow diagrams for 2020, 2024, 2034 for Milton Interchange, and Cordon Counts across the River Thames. See below.

5.3 Clarification is sought in the Environmental Statement Chapter 16 on Transport, as to whether in a comparison of daily traffic flows on Link 1, the A34, there would be a reduction of c.9,000 vehicles per day on the A34 being diverted onto the proposed River Thames crossing, when comparing the 2034 Do Nothing & 2034 Do Something results below:

Model Results	2034 Do Nothing	2034 Do Something	Difference
Link 1, A34	86,067	76,931	-9,132
Link 34 B4016 Culham Br.	11,569	3,661	- 8,508

5.4 Clarification is also sought as to whether the model results show that c.8,500 vehicles per day would be diverted from the B4016 Culham Bridge onto the proposed new River Thames Crossing.

5.5 Would it be reasonable to conclude that c. 9,000 vehicles of the modelled traffic, in 2034, would be diverted from the A34, & a similar amount from Culham Bridge, 8,500 vehicles per day, onto the proposed Thames Crossing?

5.6 Can the County Council explain how diverting traffic from the strategic highway network (A34) onto local roads is consistent with Local Plan Part 1 Policy CP34, which sets a strategy for the A34 to function as a strategic route, to avoid consequential congestion on the local road network, or with policies promoting sustainable transport, Policies CP33 & CP34?

Reducing Travel by private car.

5.7 In paragraph 5.3.10 of the Transport Assessment, can the County Council explain, in the light of the targets in the July 2022 Local Transport Plan 5th Edition to reduce travel by private car, whether it would be reasonable to run the model with a 70% total demand in 2034, to account for Didcot Garden Town principles for modal shift etc? This would enable the model to run without gridlock. The model assumes that 2017 base demand will remain at 100%, with existing residents not changing travel patterns, & these trips have been added in. This paragraph accepts that a “it is a robust assumption as it is likely that some would change travel patterns by 2034, due to improved bus & non-motorised (NMU) transport infrastructure,” which does not support the decision to retain the existing 2017 base demand at 100%.

Active Travel, e.g. walking & cycling.

5.8 The AECOM Appendix on Walking & Cycling to its Options Report, the Didcot to Culham Bridge & area around Didcot A Power Station reports, merely identify WCHAR opportunities for walking & cycling, without pursuing hardly any of them.

5.9 The Walking & Cycling measures are over-engineered, & could be re-designed to achieve cost savings to allow bus & active travel improvements to be implemented. The 19m wide Bridges required for pedestrians & cyclists do not need to carry the same weight as the 7.3m-9m wide carriageways for cars & lorries. In Cambridge, lighter walking & cycle bridges have been attached to road/rail bridges. It appears that the 19m wide bridges could be altered from a single to a dual carriageway without significant engineering development, which would have significant environmental impacts.

6. The Assessment of Alternative Options.

6.1 The AECOM Options Report identifies alternative options for promoting public transport but rejects all these options without pursuing them to any level of detail under which they could be assessed as reasonable options.

6.2 No reasonable options have been assessed to the four road proposals.

6.3 The requirements for assessing alternative options in Environmental Impact Assessments have been the subject of a High Court ruling relating to proposals for the A303 at Stonehenge. EHPC accepts that this application is not related to regulations on a Development Consent Order. However, the High Court ruling below does identify the Court's view on what is meant by assessing alternative options against all policy & legal requirements.

6.5 The High Court decision, Ref: EWHC 2161, on 30th July 2021, found that the Sec of State for Transport had acted unlawfully in granting the Development Consent Order for the A303 Amesbury to Berwick Down (Stonehenge Tunnel), see attachment below.

i) This was on the grounds that an assessment of alternative options against all policy & legal requirements was not carried out, (paragraphs 268-290).

ii) This judgement effects the legal powers of public bodies in decision- making where:

iii) There is a significant adverse environmental impact, e.g. on Green Belt.

iv) There are large scale engineering works,

v) There has been strong criticism & objections,

vi) There is a clear planning objection to the development identified by the Local Planning Authority's Planning Committee,

vii) The promoter concluded that carrying out an options appraisal made it unnecessary to consider the merits of alternatives,

viii) The alternatives meet the same need or demand requirement,

ix) Where compliance with taking environmental information into account, does not address the specific obligation to compare the relative merits of alternative options,

x) It is no answer to say the proposed scheme complies with guidance because this does not override the Common Law Principles where alternative options are an obvious material consideration.

6.6 The Parish Council seeks clarification as to why the EIA Regulations for Infrastructure Planning & the Case Law above should not apply in this case. See High Court decision in Appendix 1 below.

7. Conclusions.

7.1 East Hendred Parish Council (EHPC) object to the proposed development.

7.2 The main issue is whether the proposed development is consistent with the promotion of Sustainable Transport, both within the development plan, in the most recent Oxfordshire C.C. Local Transport & Connections Plan, 5th Edition, & as defined in Chapters 2, 5, 6, & 9 of the National Planning Policy Framework.

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7.11 The Parish Council seeks clarification as to why the EIA Regulations for Infrastructure Planning & the Case Law in App.1 should not apply in this case. 10.

APPENDICES

Appendix 1 High Court decision on A303 proposals at Stonehenge.

Appendix 2 Example of Sustainable Transport of Greater Cambridge Partnership.

APPENDIX 1.

<p>IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION PLANNING COURT</p> <p>Case No: C0/4844/2020 Royal Courts of Justice Strand, London, WC2A 2LL Claimant Defendant Before : Date: 30/07/2021</p>
<p>THE HON. MR JUSTICE HOLGATE Between : The Queen on the application of SAVE STONEHENGE WORLD HERITAGE SITE LIMITED - and - SECRETARY OF STATE FOR TRANSPORT - and □ (1) HIGHWAYS ENGLAND</p>
<p>(2) HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND (HISTORIC ENGLAND) Interested Parties</p>

275. The wider issue which the Court of Appeal went on to address at [33] to [38] of the *Sainsbury's* case does not arise in our case, namely must *planning permission be refused* for a proposal which is judged to be “acceptable” because there is an alternative scheme which is considered to be more acceptable. True enough, the decision on acceptability in that case was a balanced judgment which had regard to harm to heritage assets, but that was undoubtedly an example of the first principle stated in *Trusthouse Forte* (see [269] above).

³Which is to do with a failure to assess the relative merits of identified alternatives.

The court did not have to consider the second principle, which is concerned with whether a decision-maker may be obliged to take an alternative *into account*. Indeed, in the present case, there is no issue about whether alternatives for the western cutting should have been taken into account. As I have said, the issue here is narrower and case-specific. Was the SST entitled to go no further, in substance, than the approach set out in paragraph 4.27 of the NPSNN and PR 5.4.71?

277. In my judgment the clear and firm answer to that question is no. The relevant circumstances of the present case are wholly exceptional. In this case the relative merits of the alternative tunnel options compared to the western cutting and portals were an obviously material consideration which the SST was required to assess. It was irrational not to do so. This was not merely a relevant consideration which the SST could choose whether or not to take into account⁴. I reach this conclusion for a number of reasons, the cumulative effect of which I judge to be overwhelming.

278. First, the designation of the WHS is a declaration that the asset has “outstanding universal value” for the cultural heritage of the world as well as the UK. There is a duty to protect and conserve the asset (article 4 of the Convention) and there is the objective *inter alia* to take effective and active measures for its “protection, conservation, presentation and rehabilitation” (article 5). The NPSNN treats a World Heritage Site as an asset of “the highest significance” (para. 5.131).

279. Second, the SST accepted the specific findings of the Panel on the harm to the settings of designated heritage assets (e.g. scheduled ancient monuments) that would be caused by the western cutting in the proposed scheme. He also accepted the Panel’s specific findings that OUV attributes, integrity and authenticity of the WHS would be harmed by that proposal. The Panel concluded that that overall impact would be “significantly adverse”, the SST repeated that (DL 28) and did not disagree (see [137], [139] and [144] above).

280. Third, the western cutting involves large scale civil engineering works, as described by the Panel. The harm described by the Panel would be permanent and irreversible.

281. Fourth, the western cutting has attracted strong criticism from the WHC and interested parties at the Examination, as well as in findings by the Panel which the SST has accepted. These criticisms are reinforced by the protection given to the WHS by the objectives of Articles 4 and 5 of the Convention, the more specific heritage policies contained in the NPSNN and by regulation 3 of the 2010 Regulations.

282. Fifth, this is not a case where no harm would be caused to heritage assets (see *Bramshill* at [78]). The SST proceeded on the basis that the heritage benefits of the scheme, in particular the benefits to the OUV of the WHS, did not outweigh the harm that would be caused to heritage assets. The scheme would not produce an overall net benefit for the WHS. In that sense, it is not acceptable *per se*. The acceptability of the scheme depended upon the SST deciding that the heritage harm (and in the overall balancing exercise *all* disbenefits) were outweighed by the need for the new road and *all* its other benefits. This case fell fairly and squarely within the exceptional category of cases identified in, for example, *Trusthouse Forte*, where an assessment of relevant alternatives to the western cutting was required (see [269] above).

⁴ It should be recorded that neither the Panel nor the SST considered exercising any discretion to consider the relative merits of alternative options for extending the proposed tunnel to the west, given PR 5.4.71 and their reliance upon para. 4.27 of the NPSNN.

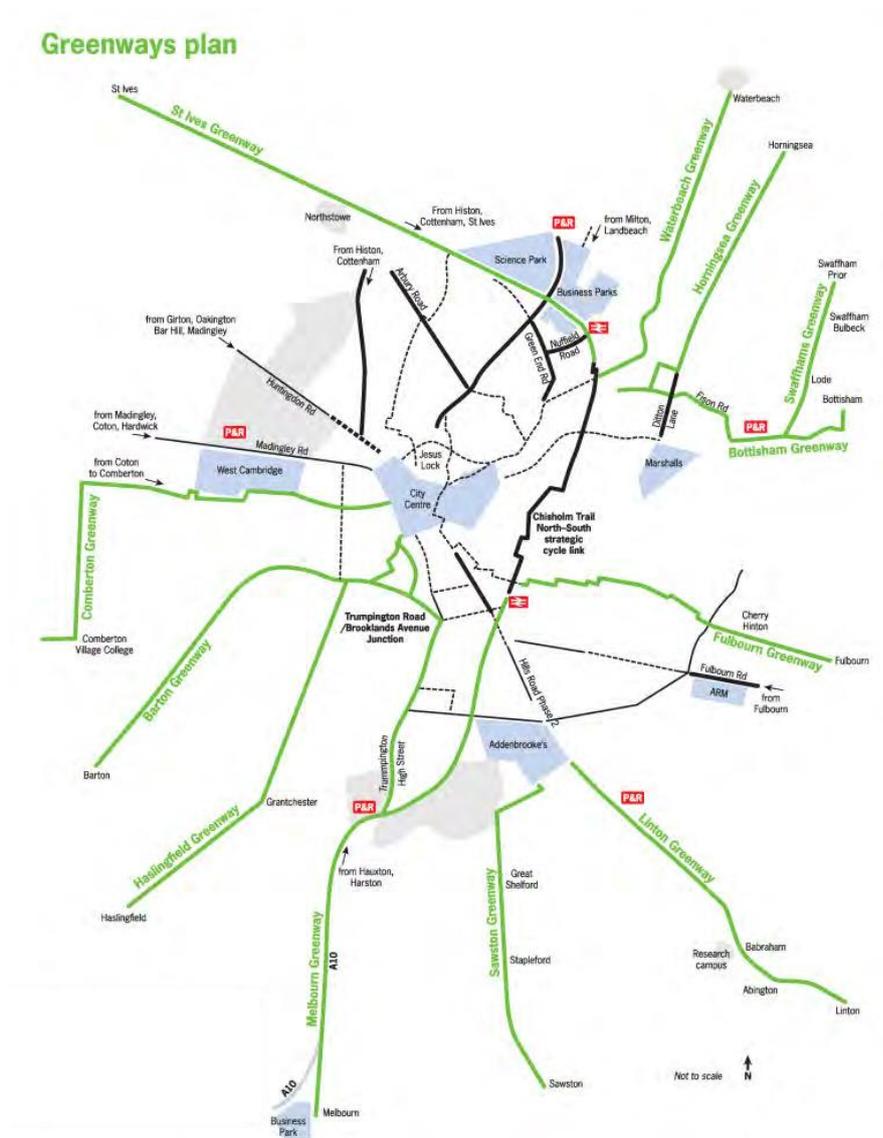
283. The submission of Mr. Strachan QC that the SST has decided that the proposed scheme is “acceptable” so that the general principle applies that alternatives are irrelevant is untenable. The case law makes it clear that that principle does not apply where the scheme proposed would cause significant planning harm, as here, and the grant of consent *depends* upon its adverse impacts being outweighed by need and other benefits (as in para. 5.134 of the NPSNN).

284. I reach that conclusion without having to rely upon the points on which the claimant has succeeded under-ground 1(iv). But the additional effect of that legal error is that the planning balance was not struck lawfully and so, for that separate reason, the basis upon which Mr. Strachan QC says that the SST found the scheme to be acceptable collapses.

285. Sixth, it has been accepted in this case that alternatives should be considered in accordance with paragraphs 4.26 and 4.27 of the NPSNN. But the Panel and the SST misdirected themselves in concluding that the carrying out of the options appraisal for the purposes of the RIS made it unnecessary for them to consider the merits of alternatives for themselves. IP1’s view that the tunnel alternatives would provide only “minimal benefit” in heritage terms was predicated on its assessments that no substantial harm would be caused to any designated heritage asset and that the scheme would have slightly *beneficial* (not adverse) effects on the OUV attributes, integrity and authenticity of the WHS. The fact that the SST accepted that there would be net harm to the OUV attributes, integrity and authenticity of the WHS (see [139] and [144] above) made it irrational or logically impossible for him to treat IP1’s options appraisal as making it unnecessary for him to consider the relative merits of the tunnel alternatives.

286. The options testing by IP1 dealt with those heritage impacts on a basis which is inconsistent with that adopted by the SST.
287. Seventh, there is no dispute that the tunnel alternatives are located within the application site for the DCO. They involve the use of essentially the same route and certainly not a completely different site or route. Accordingly, as Sullivan LJ pointed out in *Langley Park* (see [246] above), the second principle in *Trusthouse Forte* applies with equal, if not greater force.
288. Eighth, it is no answer for the defendant to say that DL 11 records that the SST has had regard to the “environmental information” as defined in regulation 3(1) of the EIA Regulations 2017. Compliance with a requirement to take information into account does not address the specific obligation in the circumstances of this case to compare the relative merits of the alternative tunnel options. 7.
289. Ninth, it is no answer for the defendant to say that in DL 85 the SST found that the proposed scheme was in accordance with the NPSNN and so s.104(7) of the PA 2008 may not be used as a “back door” for challenging the policy in paragraph 4.27 of the NPSNN. I have previously explained why paragraph 4.27 does not override paragraph 4.26 of the NPSNN, and does not disapply the common law principles on when alternatives are an obviously material consideration. But in addition the SST’s finding that the proposal accords with the NPSNN for the purposes of s.104(3) of the PA 2008 is vitiated (a) by the legal error upheld under ground 1(iv) and, in any event, (b) by the legal impossibility of the SST deciding the application in accordance with paragraph 4.27 of the NPSNN.
289. I should add for completeness that neither the Panel nor the SST suggested that the extended tunnel options need not be considered because they were too vague or inchoate. That suggestion has not been raised in submissions.
290. For all these reasons, I uphold ground 5(iii) of this challenge.

APPENDIX 2. An Example of Sustainable Transport Proposals by Greater Cambridge Partnership.



Executive Summary

The Cambridgeshire Context

The Greater Cambridge Partnership is the local delivery body for a City Deal with central Government, bringing powers and investment, worth up to £1bn over 15 years, to vital improvements in infrastructure, supporting and accelerating the creation of 44,000 new jobs, 33,500 new homes and 420 additional apprenticeships.

However, the area is facing many pressures over the coming years if no change is made:

- Continued growth of traffic and congestion, as more people live in and travel to our area for work
- Limited choices for people to travel by public transport
- Poor air quality with 106 deaths each year in Greater Cambridge attributable to air pollution
- High levels of carbon emissions due to high levels of car use, contributing to climate change
- A city environment dominated by the car, which discourages some people from walking and cycling and makes our public spaces less attractive
- Difficulty accessing opportunities for those who rely on public transport

The Making Connections programme will help to tackle these issues delivering better travel choices for most people. It will deliver a transformational change to public transport, affordable, convenient, reliable, safe, including wider improvements to cycling and walking.

To achieve this we need to reduce traffic, to create the space for buses, walking and cycling and need a source of revenue to fund the estimated £60m a year costs of a transformed bus network and wider programme of sustainable transport measures of 12 greenways 150 kilometres in length.

Through reducing traffic, congestion can be tackled, providing more reliable travel for buses and the vehicles that need to travel in the city. This supports the wider objectives of improving air quality and reducing carbon emissions within the city, along with reduced noise and improving actual and perceived views around how safe it is to walk or cycle.

Making Connections is an opportunity for the Greater Cambridge Partnership and partner authorities to transform travel choices in a way not seen in this country before.

The wider investment in sustainable transport, will establish Cambridge as a national and international beacon for how to address the complex challenges we face and build a city focussed around people and fit for the future.

Strategic Case

The Making Connections programme has a strong alignment to relevant national, regional, and local policies and plans – an excellent strategic fit. In particular, it will improve accessibility, reduce traffic and congestion, support planned growth, improve air quality, and reduce emissions of greenhouse gases, contributing towards the net zero target. The programme is a key part of the GCP's plans for sustainable growth.

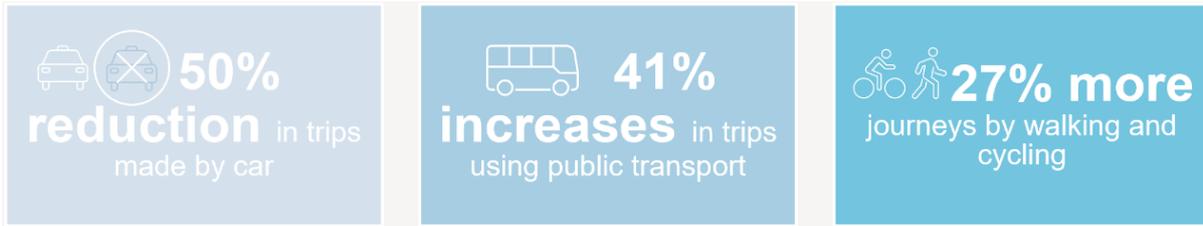
The Strategic Case assesses the existing and future problems that the programme needs to tackle, identifies opportunities for improvement, and sets clear objectives for the scheme to address these in ways that align with the wider strategic framework. It describes how a wide range of potential solutions were assessed, evaluated against the objectives, and refined to identify a preferred solution. It concludes that a programme combining improved public transport and other sustainable transport investment along with a charge for driving in the Sustainable Travel Zone would be the best way to achieve the objectives.

The Partnership have now stopped further development of the Sustainable Travel Zone.

The headline transport impacts of the Making Connections programme are to reduce congestion, increase public transport use and to increase the use of walking and cycling.

Economic Case

The overall Value for Money impact of the programme is broadly neutral in terms of user charge costs / disbenefits relative to the economic and environmental benefits to transport users and society. This shows that the balance is broadly right between the impact on transport users and the generation of revenue, which will be used to fund the bus, walking and cycling improvements: the programme on investment.



The combined impact of the transformed bus network, sustainable transport measures means that the Greater Cambridge area will continue to grow sustainably. The economy can grow, but grow cleanly, with the majority of trips being walked, cycled, or made on buses. Population growth can be accommodated, without increasing levels of congestion. Housing and commercial development can be delivered, and come forwards more quickly, unconstrained by sub-standard transport networks and services. And businesses will create more jobs, and operate more efficiently and profitably.

The headline economic benefits are summarised below:

Financial Case

The financial case outlines the expected costs, funding arrangements and overall affordability of the Making Connections programme.

It demonstrates that the proposed bus improvement and sustainable transport measures can be funded from a combination of the GCP City Deal funding (net of charging scheme expenditure) and the financial proceeds of the charging scheme, whilst balancing the affordability challenges of road users, particularly during the early (implementation) years of the scheme.

A non-recoverable £50m will be invested in the programme of improvements upfront by GCP, with a further £50m “borrowed” from the City Deal Fund.

Commercial Case

Each element of the Making Connections programme has been assessed and are considered to be commercially viable.



The options available for procurement of the bus improvement measures include bus service tendering; enhanced partnerships, and franchising, all of which are commercially feasible and will be explored at further detail at the next stage of work.

For the charging scheme the potential level of outsourcing and the procurement frameworks have been explored and are also considered commercially viable.

Management Case

GCP and CCC have the experience, capability and resources, the governance structure, mature project and programme management processes and assurance arrangements in place to successfully deliver the programme.

A final decision to proceed with the programme is expected in summer 2025 following submission of the Full Business Case, with procurement having started in summer 2024. The programme will be operational in 2026.

Making Connections CONFIDENTIAL | WSP Project No.: Making Connections | Our Ref No.: Soc-001 August 2022 Greater Cambridge Partnership

Visualisations of the scheme

EXAMPLE OF URBAN JUNCTION

Our proposals include high quality signal-controlled facilities for pedestrians and cyclists at busy junctions. This includes fully separated walking and cycle crossings at the junction of Long Road and Robinson Way to minimise conflict and improve safety.



Existing Layout



Proposed Layout

TYPICAL RURAL SETTING

Our proposals include shared use paths where the route runs off-road. This typically includes a 3-metre wide sealed track with a 2-3 metre grass verge for soft surface users (including horse riders) running parallel. Exact materials are still to be confirmed.

