The Planning Inspectorate

Appeal Decisions

Inquiry Opened on 26 November 2019
Site visit made on 26 November 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Appeal Ref: APP/A0665/C/18/3206873 (the EN1 appeal)
Land at Thornton Science Park (Building Numbers 38, 48, 58, 62, 304 and 305), Pool Lane, Ince, Chester CH2 4NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by University of Chester against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice, numbered 18/00459/EMCOU, was issued on 13 June 2018 (EN1).
- The breach of planning control as alleged in the notice is: Without planning permission change of use of the Land to a university faculty within Use Class D1 of the Town and Country Planning (Use Classes) Order, 1987 (as amended) ["the Unauthorised Development"].
- The requirements of the notice are: Cease the use of the Land as a university faculty for further education teaching, research and related activities within use class D1 of the Town and Country Planning (Use Classes) Order, 1987 (as amended).
- The time for compliance with the requirements is by 30 September 2018.
- The appeal was made on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: **The enforcement notice is quashed and no further action is taken on the appeal**.

Appeal Ref: APP/A0665/C/19/3232583 (the EN2 appeal)
Land at Thornton Science Park, Pool Lane, Ince, Chester CH2 4NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by University of Chester against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice, numbered 19/00286/EMCOU, was issued on 29 May 2019 (EN2).
- The breach of planning control as alleged in the notice is:
  Without planning permission the material change of the use of the Land
  from a mixed use for research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories, office use, and industrial use (engineering workshops and blending plant)
  to a mixed use comprising a University science and engineering faculty providing undergraduate and postgraduate education, together with use for research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories, office use and industrial use (engineering workshops and blending plant) ("the Unauthorised Development").

- The requirements of the notice are: Cease that element of the use of the Land as a University science and engineering faculty providing undergraduate and postgraduate education.
- The period for compliance with the requirements is within 6 calendar months from the date the notice takes effect.
- The appeal was made on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/A0665/X/19/3227520 (the LDC appeal)
Land at Thornton Science Park, Pool Lane, Ince, Chester CH2 4NU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by University of Chester against the decision of Cheshire West & Chester Council.
- The application (Ref. 18/04182/LDC), dated 15 October 2018, was refused in part by the Council by notice dated 28 February 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development was sought is a sui generis mixed use, including elements of research and development, laboratory, teaching, workplace training, and including ancillary facilities such as offices and restaurant.

Summary of Decision: The appeal is allowed only in so far as the certificate granted by the Council is modified.

Appeal Ref: APP/A0665/W/18/3206746 (the section 78 appeal)
Buildings 38, 40, 58, 62, 304 and 305, Thornton Science Park, Pool Lane, Ince, Chester CH2 4NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by University of Chester against the decision of Cheshire West & Chester Council.
- The application Ref 17/05138/FUL, dated 30 November 2017, was refused by notice dated 6 June 2018.
- The development proposed, as described on the planning application form, is Application for the change of use of buildings 38, 40, 58, 62, 304 and 305 at Thornton Science Park to continue to accommodate the University of Chester Faculty of Science and Engineering as an integral part of the Science Park.

Summary of Decision: The appeal is dismissed.

PRELIMINARY MATTERS

The Inquiry

1. The inquiry into all four appeals sat for ten days on 26 to 29 November, 3 to 5 and 10 and 11 December 2019 and 8 January 2020. The Health and Safety

Executive (HSE) and Essar Oil (UK) Limited (Essar) were granted Rule 6 status.

2. An accompanied site visit took place on the afternoon of 26 November to Stanlow Oil Refinery and Thornton Science Park.

3. In week one of the inquiry the cases of the appellant, the Council and Essar were presented on the legal grounds of appeal against the two enforcement notices and the LDC appeal. In weeks two and three all parties, including the HSE, presented their respective cases on the ground (a) appeals/deemed planning applications, the ground (g) appeals and the section 78 appeal. The final sitting day was primarily taken up with closing submissions on behalf of all four parties. The only round table discussion was in relation to planning conditions.

Application for costs

4. An application for costs was made by the Council against the appellant and by the HSE against the appellant. These applications will be the subject of separate Decisions. The costs application by the Appellant was withdrawn.

The Appeals

5. Shell used to own Stanlow Oil Refinery and the land now known as Thornton Science Park (TSP). In 2011 the oil refinery was sold to Essar Oil (UK) Limited. The University of Chester acquired TSP on 31 March 2014.

6. The TSP is a roughly triangular shaped area of land of some 26 hectares (ha)[1], with a number of buildings in a fairly formal layout around a central open space and a network of access roads.

7. Over the period leading up to and during the inquiry, I sought clarification on the descriptions of the alleged breaches of planning control, the grounds of appeal against the enforcement notices, the use considered lawful, the description of the proposal in the section 78 appeal and the related plans. Additional information was requested in respect of heritage assets and the Mersey Estuary Special Protection Area (SPA) / Ramsar site.

The Enforcement Notices

Grounds of appeal

8. The appellant withdrew grounds (b) and (f) in the EN1 appeal and grounds (b), (d) and (f) in the EN2 appeal[2]. Confirmation of the position on the ground (d) appeal was made in the appellant's opening submissions to the inquiry. The ground (f) appeals were withdrawn by letter dated 17 December 2019.

9. Consequently, it was understood that the appeals against the enforcement notices are proceeding on grounds (c), (a) and (g). However, at the end of the inquiry the appellant submitted that EN1 is invalid, because it does not relate to the single planning unit at the TSP, serves no useful purpose and should be quashed. In addition, the ground (b) appeal was maintained

[1] CD15.1 paragraph 2.7
[2] CD6.16 confirmed ground (b) was withdrawn in the EN2 appeal

because the appellant submitted that there has not and never has been any independent principal office use at TSP and therefore the Council's conclusion on the matter was disputed[3].

Proposed corrections EN1

10. The notice is clearly directed at the buildings outlined in red on the plan attached to the notice. I agreed with all parties that the description of the Land in the notice should be corrected to read "Building numbers 38, 40, 58, 62, 304 and 305 Thornton Science Park, Pool Lane, Ince, Chester CH2 4U, as shown in red on the attached plan ["the Land"].

11. The Council requested that the alleged breach of planning control be corrected to "Without planning permission, a material change of use of building numbers 38, 40, 58, 62, 304 and 305 to accommodate the University of Chester Faculty of Science and Engineering for the purposes of teaching, training and research as an integral part of the Science Park." This wording was considered to better reflect the description of the development subject to the section 78 appeal.

12. In my view it is not necessarily a good reason to correct the description of an alleged breach of planning control to accord with a description of a development in a planning application. The two developments need not necessarily be the same. In this case the notice was authorised and then issued shortly after the refusal of planning permission in June 2018. The references throughout the authorisation report are to a Class D1 use. In addition, Essar has consistently expressed the view that the phrase "as an integral part of Thornton Science Park" is vague and meaningless. I agree that the phrase is not sufficiently clear for describing an alleged breach of planning control.

13. I consider the corrections to the wording of the alleged breach should be limited to tidying up the wording of the description when read together with the corrected definition of the Land. The alleged breach would become "Without planning permission, a material change in the use of the Land to a university faculty for the provision of higher education within Use Class D1 of the Town and Country Planning (Use Classes) Order, 1987 (as amended) ["the Unauthorised Development"]. I am satisfied such a change is able to be made without prejudice to the Council and the Appellant.

Proposed corrections EN2

14. The Council requested that the description of the alleged breach of planning control be corrected to omit the words "and industrial use (engineering workshops and blending plant)" because after further consideration they were no longer identified as primary uses.

15. The appropriateness of such a correction is dependent on the outcome of the legal grounds of appeal and therefore I will return to the matter later in this decision.

[3] Inquiry Document A.16 paragraphs 4 and 6

The LDC appeal and the Section 78 appeal

16. The Council did not refuse to issue a certificate of lawfulness but exercised its powers under s191(4) of the 1990 Act and issued a certificate for a use that was described differently to the use applied for. The use that was certified to be lawful on 26 October 2018 was described in the First Schedule as: Use of the site (outlined in red on the plan appended) for research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories, office use (within Class B1 of the Town and Country Planning Use Classes Order 1987) and engineering workshops. The site was identified as the whole of TSP.

17. The Council accepted that the description in the First Schedule was meant to have stated: Use of the site (outlined in red on the plan appended) for research and development (in connection with automotive/petrochemical/ aviation/environmental and energy industries), laboratories, office use (within Class B1 of the Town and Country Planning Use Classes Order 1987) (as amended)) and industrial use (engineering workshops and blending plant) (within Class B2 of the Town and Country Planning Use Classes Order 1987 (as amended)). This description was in fact set out on page 1 of the certificate.

18. The common factor to both descriptions is that the Council did not consider teaching and workplace training to be a lawful component in the mix of uses. On further consideration, as more information became available during the course of appeal, the Council formed the view that the industrial use was not a primary but an ancillary use. The Council indicated a modified description would be acceptable: Use of the site (outlined in red on the plan appended) for research and development (in connection with automotive/petrochemical/ aviation/environmental and energy industries), laboratories, and office use (within Class B1 of the Town and Country Planning Use Classes Order 1987 (as amended)).[4]

19. Section 195 provides for appeals against refusals of LDCs and refusals in part[5]. The appellant put forward amended descriptions of the development subject to the LDC appeal.

20. The appellant is now seeking a certificate of lawful use or development under section 191(1)(a) of the 1990 Act for an existing use described as: "Use of the site (Thornton Science Park) for sui generis mixed use, comprising elements of research and development, laboratory, teaching and workplace training (for up to 404 higher adult education students on site at any one time) and ancillary uses". The site is identified as the whole of the TSP, as shown on Plan TSX_P00_002 rev A[6]. The main amendment is that the number of students is reduced from up to 600 higher education students, as set out originally in the description detailed in October 2018[7]. The modification relates

[4] Council's proof 6.25
[5] By virtue of section 195(4) of the 1990 Act, references in the section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.
[6] CD1.23.2 and Inquiry Document A.6. This was further to the amendment proposed on 23 October 2019 CD11.17
[7] CD1.22.1 Letter dated 25 October 2018: Use of the site (Thornton Science Park) for sui generis mixed use, comprising elements of research and development, laboratory, teaching and workplace training including accommodating up to 600 higher education students and ancillary uses.

more to a level of educational use rather than a significant change in the land use described.

21. In the section 78 appeal the appellant also has proposed amending the description of the development for which planning permission is sought to: "A material change in the use of buildings 38, 40, 58, 62, 304 and 305 to use by the University of Chester Faculty of Science and Engineering for the purposes of teaching, training and research as an integral part of the Science Park".[8] The amendment takes on board two matters. The application was seeking planning permission retrospectively under section 73A of the 1990 Act. Any permission would be for the actual development of a material change of use, rather than a continuation of the use. Secondly, the purpose and use carried out by the Faculty is confirmed.

22. To proceed on the basis of the proposed amendments to both the LDC appeal and the section 78 appeal would not cause injustice to any party bearing in mind they were subject to discussion and comment through Pre-Inquiry Notes and at the inquiry.

Development plan

23. The Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies was adopted in July 2019 as part of the development plan for the area. The Local Plan (Part Two) replaces the Ellesmere Port and Neston Borough Local Plan 2002. The saved policies cited in the reasons for issuing the enforcement notices and in the reasons for the refusal of planning permission are no longer relevant or require consideration.

Ruling

24. On 6 September 2019 the appellant requested sensitive information from Essar related to documentation prepared under the Control of Major Accident Hazards Regulations 2015 (the COMAH Regulations). Subsequently requests were made to the Council and the HSE for the same information. All three parties declined to provide the documents requested. I concluded that it was not necessary to require the Council, the HSE or Essar to provide the information for the reasons set out in a ruling dated 1 November 2019.

Screening Directions for EN1, EN2 and section 78 appeals

25. The use(s) of land at issue in the deemed planning applications in the EN1 and EN2 appeals and the development in the section 78 appeal fall within the description at 10(b) of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

26. The Secretary of State issued a Screening Direction dated 22 October 2019 concluding that while there may be some impact on the surrounding area as a result of the development, it would not be of a scale and nature likely to result in significant environmental impact. Environmental Impact Assessment was not required. Accordingly of the Secretary of State directed that the alleged development would not be Environmental Impact Assessment development.

[8] Inspector's Inquiry Note 1 and confirmed in Inquiry Document A.3 page 2 paragraph 2

LEGAL GROUNDS OF APPEAL

LDC Appeal and EN1 and EN2 Appeals on Ground (c)

27. EN1 is specific to six buildings on TSP whereas the Land in EN2 extends over the whole Science Park. The EN2 notice was issued in the alternative after the Council concluded, in light of evidence submitted with the application for the LDC, that TSP was a single planning unit. Essentially the Council has maintained throughout that as a result of the acquisition and establishment of the University's Faculty of Science and Engineering (FSE) at TSP a new higher education use was added to the mix of uses traditionally and lawfully taking place on the land. According to the Council, the FSE's occupation of buildings for higher education purposes resulted in a material change of use for which planning permission was required but not obtained. Therefore the new sui generis mixed use is not lawful.

28. The appellant's case on the LDC appeal is that the certificate issued was not well-founded because it omitted teaching and workplace training from the mix of lawful uses of the TSP. The appellant's case on the ground (c) appeals evolved over the period leading up to the inquiry. In brief, initially it was argued that the present use was the same character as the use that had taken place at TSP since the 1940's. The increase, or intensification, in the level of teaching that had occurred when the FSE was established at TSP in 2014 did not amount to a material change of use.

29. Subsequently the appellant accepted that the introduction of the FSE onto the site amounted to a change of use (by virtue of the previously existing ancillary teaching and training elements becoming primary elements of the composite use) but that the change was not material in planning terms. In closing, the argument was expressed in a more subtle way, which I will return to in due course. Essentially, the common thread is that no material change of use took place as a result of the establishment of the FSE at the TSP.

30. Much of the appellant's evidence focussed on the encouragement given by the Council to the University's proposals to acquire TSP and to establish the FSE on the site. The appellant believed the Council gave assurances that because of the sui generis use of the site planning permission would not be required. The Council's position at the time was put forward as a compelling indication that no material change of use was proposed or took place. A case based on legitimate expectation was not advanced.

31. The case presented specifically in respect of building 58, based on section 75(3) of the 1990 Act, is that this building has explicit approval for use by the FSE by reason of a planning permission granted in February 2014.

32. A lawful development certificate was issued by the Council dated 24 May 2016 in respect of internal re-planning and replacement / remodelling works to the elevations of Building 95[9]. No party placed any reliance on this LDC in their respective cases and I have no need to refer to this matter again.

[9] CD12.2

Main Issues

LDC Appeal

33. Having regard to s195(3) of the 1990 Act, the main issue is whether the Council's decision to issue a certificate for a use other than that sought through the application was well-founded.

34. For the purposes of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason (s191(2)). In this appeal the focus is on whether a change to a sui generis mixed use on the site that includes elements of teaching and workplace training for up to 404 higher adult education students involved development.

EN1 and EN2 Appeals

35. In so far as a ground (b) appeal has been maintained in the EN2 appeal, the issue regarding the status of the office use will be considered as part of the ground (c) appeal.

36. In an appeal on ground (c) the onus is on the appellant to show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. Having regard to the context outlined above the main issues are:

- In relation to EN1, whether the use of buildings 38, 40, 58, 62, 304 and 305 by the University of Chester's Faculty of Science and Engineering for higher education purposes resulted in a material change of use of the planning unit.
- In relation to EN2, whether the new use resulting from the addition of an educational use (teaching, training and research) to the mix of uses on the Land, is materially different in character and effects to the previous use of TSP.
- In respect of both the EN1 and EN2 appeals whether the planning permission granted in February 2014 authorised the use of building 58 for the purposes of teaching, training and research as a primary use.

Planning Unit

37. The first step is to define the relevant planning unit(s). Based on the principles established in *Burdle*[10], the planning unit is an accepted tool for determining the most appropriate area against which to assess the materiality of change. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. A mixed or composite use is where the occupier carries on a variety of activities and it is not possible to say one is incidental to the other. The component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

[10] *Burdle v Secretary of State for the Environment* [1972] 1 WLR 12007

38. The appellant, the Council and Essar agreed that the 26 ha TSP site is and always has been a single planning unit. An initial review of the core documents and proofs of evidence indicated to me that probably was the position and therefore I did not consider the matter needed to be explored in detail at the inquiry. The parties were agreeable to proceeding on that basis. Further consideration has confirmed that initial conclusion for the following reasons.

39. The physical extent of the land at the Thornton site has shown little variation over the years, essentially being roughly triangular in shape. Pool Lane to the east and the railway to the north provide firm physical boundaries. The long narrow block of land to the north of the railway line, mainly used for car parking, was occupied in conjunction with the Research Centre (within the ownership of Shell) by 1994[11] and is connected to the main site by an access road. It is bounded by Oil Sites Road to the north. The position of the long south west/north west boundary shows some minor variation over time, where additional land for car parking (beyond the perimeter road) appears to have been included at some time post 1994. In this area the adjacent Stanlow Oil Refinery has a secure boundary that contains the extent of TSP.

40. Shell, as land owner, developed and occupied the triangular area of land at Thornton for its Research Centre over the period from around 1940 to the late 1990s. Shell was the sole occupier until about 1998, after which accommodation was made available for other third party commercial tenants. It appears that take up was limited. All the contemporary reports describe the Research Centre functioning as one, with the research and development supported by ancillary services and facilities and infrastructure. The work undertaken would have complemented the production, processing and related storage operations at the Oil Refinery, also owned by Shell but the evidence indicates that the Research Centre functioned as an entity in its own right. The Council and the appellant confirmed that in their view both sites were separate planning units. As a matter of fact and degree the land occupied by the Research Centre was a single planning unit throughout the period of Shell's ownership.

41. Ownership of the entire site transferred from Shell to the University on 31 March 2014. The freehold title to the land is held by the Chester Diocesan Board of Finance (CDBF), as custodian trustee for the University. In addition, a 125 year lease has been granted in respect of the site by the CDBF to Thornton Research Properties Limited, a wholly owned subsidiary of the University, in order to facilitate the grant of leases and licences to commercial tenants located there. The University's Facilities Department deals with management across the site. Therefore, in effect ownership, long lease and management are consolidated in and controlled by a single body.

42. There has been no significant change in the boundaries, extent, physical features or circulation of the land within TSP as a result in the change of ownership and occupation. Access to the site for both vehicles and pedestrians is controlled and secured.

43. The TSP is occupied by the FSE for the purpose of delivering higher education to students and by a number of commercial tenants. There are instances

[11] CD12.4.3

where a firm is the sole occupant of a single building but more typically buildings are occupied by more than one tenant. As seen on the site visit, there is flexible space and close links between accommodation occupied by the FSE and commercial tenants. Students do not have day to day access to the non-educational buildings but tenant businesses have direct access to the FSE buildings (dependent on research projects) and access to the professional training offered to the students. Ancillary facilities are available to all (students and commercial users), the main examples being the coffee shop, sports facilities and conference space. It is not possible to identify individual buildings or areas of land which are physically separate and distinct, and/or occupied for different and unrelated purposes.

44. The University advised that commercial tenants have leases (the larger tenants) or occupy their premises pursuant to a short term licence (the majority). This factor would be likely to increase the degree of control exercised by the site owner, flexibility and the ease with which tenants may switch sites or expand or contract their areas of occupation.

45. A continual theme throughout the appellant's evidence is the integration and interaction between the learning and skills being developed by the students and the project work and research being undertaken by businesses on the TSP. Representations from businesses located at TSP support that theme by illustrating with specific examples of their direct experience of collaboration with the academics and students and use of research facilities to test and develop products, technology and ideas. In addition, businesses have benefitted from the general support services and advice on site and from synergies with other firms located there. Reference is made to the culture at TSP associated with communication, combined expertise and knowledge pool and access to the technical resource.

46. In conclusion, the TSP is a single well defined and secure complex having a common access and circulation. The University is the sole owner and although there is not a single occupier, primary uses and activities are carried out with varying degrees of integration. As a matter of fact and degree the TSP is a single planning unit on account of the physical and functional characteristics.

Planning unit and EN1

47. The Council has explained why at the time it identified the Land as a smaller area focused on the six buildings. The notice was issued in response to the refusal of planning permission for a material change of use of the six buildings on TSP (the s78 appeal). Business tenants were known to occupy separate units. The notice was issued before receipt and consideration of the application for a lawful development certificate. Subsequently, with the benefit of additional information, the Council concluded that the entire TSP was a single planning unit and issued EN2 in the alternative.

48. The Council expressed no strong view on whether or not EN1 should be quashed if I decided there is a single planning unit but was not clear what the grounds for doing so would be, because the notice is not defective. The appellant considered in the circumstances EN1 should be quashed, as did Essar.

49. The conclusion on the planning unit does not mean that EN1 is invalid. There is nothing in the provisions of sections 172 and 173 of the 1990 Act that requires the enforcement procedure to be limited to a site or sites that do not overlap one another. Similarly, sections 174 and 175 have no indication of a requirement of exclusivity.

50. However, in respect of TSP, it is not a case where individual buildings are owned and/or occupied by different businesses or people. There has been a single breach of planning control, as opposed to multiple breaches of planning control involving several buildings within a single complex that would be subject to separate notices. The mixed use at issue is carried on over the whole planning unit rather than the enforcement action seeking to attack a single activity which is carried on exclusively on the smaller site. The conclusion on whether the relevant planning unit is the smaller or larger area is not finely balanced. There is a single appellant and only one notice is necessary to address the alleged breach of planning control. Furthermore, each notice gives rise to a separate deemed planning application that has to be considered individually on its own merits. The Council fully accepted that the notices were issued in the alternative. The only reason EN1 was not withdrawn was in case the decision maker formed a different view on the planning unit.

51. I consider that EN1 no longer serves a useful purpose. The notice is not necessary to consider a ground (c) as to whether or not there has been a breach of planning control as the evidence is duplicated and has been addressed under the ground (c) appeal against EN2. Similarly, the planning merits evidence presented by all parties has been common to the two ground (a) appeals and little distinction has been made between the deemed planning applications. Potentially it would lead to two planning permissions with different descriptions of development and different sets of conditions or, if upheld along with EN2, to two different sets of requirements. Such outcomes could cause injustice to the appellant. There is no practical justification to uphold the two notices. The notice as corrected will be quashed and to do so would not cause injustice either to the appellant or the Council.

52. Consequently, the appeal under grounds (c), (a) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered. I will take no further action in respect of the EN1 appeal.

Lawful use

Period 1940 to 2014

53. The main sources of available information on the history, use and development of the Land are the contemporary reports and articles on Thornton Research Centre[12], planning application documents and the personal statements of people who trained and worked on the site in the period before 2014[13]. In the planning history, the first records of planning applications and permissions date from around the mid-1970s, many covering small scale

[12] CD14.43-CD14.49
[13] CD1.26

developments. There is no original planning permission authorising a use/uses for the site.

Documentary evidence

54. The land was developed by Shell next to its largest refinery in Great Britain at Stanlow. An Aero Engine Research Laboratory was constructed in 1940 to study problems in the development of aviation fuels and lubricants and was engaged on Government work during the Second World War. During the early 1940's the laboratory was expanded to carry out chemical and metallurgical work and for engine test units. Additional laboratories were built for research on general lubricating oil problems, for investigations on the production of chemicals from petroleum and to study diesel oils.

55. In 1947 the laboratories were co-ordinated and Thornton Research Centre was established, with two main spheres of operation known as the Engine and Chemical Divisions. In 1948 floor space amounted to some 730,00 sq. ft. and staff numbered 895, of which 323 people were qualified technical staff engaged in research work and 572 were in workshops, technical services and administration. In 1955 a similar number of staff (about 870) was reported, comprising chemists, engineers, physicists, metallurgists and statisticians employed directly on research projects together with workshop staff, glass blowers, librarians, photographers and administrative staff who served the Research Centre and maintained its equipment. A range of specialist equipment and facilities, including rigs, were designed, developed and installed at the Centre.

56. In 1962 an article on research establishments noted nearly 1,000 people were employed at Thornton, including 240 graduates, mainly chemists and engineers. The recruitment of university graduates was regarded as a means of keeping up to date in marketing, development and research alongside external contacts with universities, learned societies, research organisations, manufacturers and industrial concerns. Thornton staff also worked temporarily in establishments outside the Shell Group. A Shell publication dated to 1962 made reference to the replacement of many of the original buildings and the use of the most advanced research tools available. The Applied Physics Division was responsible for the development and maintenance of the specialised instruments used throughout Thornton. Where the exact type of instrument or apparatus could not be supplied by instrument manufacturers, the Division designed and constructed it in the engineering workshops.

57. A visitor handout dated September 1976 identified the Thornton Research Centre as being one of Shell's two principal centres of research in the United Kingdom, where 'the effort' was principally concerned with oil products (fuels, lubricants and bitumen), natural gas, marine, transportation and storage and general research[14]. The Centre employed some 950 people, about half of whom were directly engaged in research and development. Of these some 260 were graduates, predominantly chemists and engineers.

58. Reference is made to a continuous need for use of computer facilities and the use and application of this associated expertise to wider research and

[14] The second was Sittingbourne Research Centre associated with agricultural chemicals, toxicology, enzymology and the chemistry of natural products.

development programmes. The role of a fully equipped blending unit was to provide special blends used in the development, evaluation and field trials of fuels and lubricants and specified reference fuels for use in engine tests. Support services and facilities included a photographic and film unit, a patents unit, a film and lecture hall, workshops, catering and medical facilities, an employees' shop. The recruitment, career development and training of employees was overseen by personnel services. There were some 5,000 visitors each year and regular presentations by staff and visiting speakers on a range of subjects of scientific interest.

59. A 50 year review described the 1970s as a period of expansion. The 1980s saw staff numbers reduced to 715 but Thornton was established as a world laboratory. The review noted that great emphasis had always been placed on helping schools and colleges through secondment of staff to schools, help with projects, provision of equipment and visits by teachers and students to Thornton.

60. The uses described in the reports and articles are reflected on a plan of the site and the buildings submitted with a planning application in 1974. Over the eight areas, the various laboratories were generally in the larger buildings, together with the central workshop, main building and restaurant. The lecture hall, offices, stores, trades units and workshops generally were buildings with a smaller footprint along with plant rooms, garages, sub stations, pump houses and so on. Photographs of the site in the 1970's showed generally low rise flat roofed brick buildings in a regular layout fronting incidental open space and access roads. The main administrative building was significant for its greater presence.

61. An application in 1976 for a proposed blending plant described the development as storage tanks, blending tanks and pumping equipment for the formulation of automotive gasolines for research processes. A new oil blending plant was granted planning permission in February 1990. The related site location plan included a small training centre building that had not been shown on earlier site plans[15].

62. In 1994 proposals were submitted for the first stage of a redesign of the site with a view to including the environmental research and additives synthesis work previously carried out at Sittingbourne[16]. The first phase was for a new building comprising five laboratory wings linked by communal facilities and support services. A new product and testing centre, and a new amenity and visitor centre were included. The aim of the project was to improve the functioning of the site and reduce running costs through the development of a smaller number of larger buildings grouped by activities – laboratories, engine and rig testing equipment and amenities.

63. The emphasis was on the expansion of research at Thornton, described then as 'one of the world's leading industrial laboratories'. Employment at that time was around 600 people and activities were concentrated in fuels and lubricants technology, combustion science/hazard analysis and environmental science. Close links were maintained with academic, government and

[15] CD12.5.5
[16] CD12.4.1-CD12.4.3

independent scientific bodies, and manufacturing industry but no indication was given that education was regarded as a mainstream activity.

64. In 1998, the site was partially occupied by the commercial tenant Shell Global Solutions (a subsidiary of Shell UK) and the site was renamed Cheshire Innovation Park. Additional rented accommodation was available for other third party commercial tenants. Marketing literature referred to 'quality laboratory space' and state of the art laboratory space, supporting office accommodation and on site services directed at scientific and technical organisations[17]. Seemingly the venture was not a success and a very limited number of businesses were attracted to the site. In 2006 the site was renamed Shell Technology Centre Thornton. New staff facilities (including a sports pitch and restaurant) were provided in 2009.

65. There is limited documentary evidence about the uses and activities at Thornton between the late 1990's /2000 and Shell's exit in 2014. A Shell information release to its staff in February 2013[18] noted that approximately 400 Shell employees and around 150 contractors worked at the site, although significantly the centre was described as being involved with research and development for Shell since 1940. The business case for consolidation of laboratory activity away from Thornton was made as part of a global strategic review.

Conclusions from documentary evidence

66. The articles and other contemporary documents were to some degree promotional literature but the probability is that they presented a good picture and reliable factual information of the development of the site and the specialist work and activities undertaken at Thornton.

67. A strong theme is the concentration of expertise and the pre-eminence of Thornton for research and development, much in laboratories with highly specialised and custom built equipment and apparatus. An appreciation is able to be gained of the type, range and specialist nature of the research carried out in the various technical divisions and in the laboratories, primarily related to aviation, vehicles, oil products, petrochemicals and energy. The expansion in environmental research was particularly related to the relocation of the Sittingbourne research centre to Thornton in the 1990s. The detail on the type, range and specialist nature of the research carried out in the various technical divisions strongly supports the view that research and development was a primary use, together with use of the laboratories.

68. The limited information on the offices indicates that at least to the 1990s this use was an important component in terms of the numbers of staff and their administrative and support functions in relation to research operations on the site. Subsequently there was the addition of commercial office tenants. The engineering workshops were associated with development and maintenance of the specialist equipment and therefore were ancillary to the primary research use. The purpose of the blending unit also was to service the research work and hence the industrial type use was ancillary.

[17] CD14.50
[18] CD14.18

69. After the early years of development and subsequent consolidation and expansion, Thornton functioned as a self-contained site with all necessary support services and facilities. Peak employment occurred during the 1970s (around 1,000 people). There is no evidence at all that it reached nearly 4,000, a figure suggested by the appellant. The staff engaged directly in research and development were supported by those who worked in technical, administration and personal services.

70. The Research Centre's role in education focused on the professional development of staff, the promotion of its expertise, and the sharing and expanding of specialist knowledge and its research work. The links to schools, colleges and universities were a passing reference in nearly all the various documents, in contrast to the detail on the research carried out in the various technical divisions. The graduates that were employed had completed their education and the aim was to draw on their newly acquired knowledge, not to teach and educate them. The appellant maintained that based on conversations with former employees the site was known as 'Shell's University' but I have found no such mention of the term in the contemporary documents. The help to schools and colleges noted in the 50 year review was primarily in the form of outreach work, visits and assistance, not through teaching on-site as the main place of learning.

Statements in appellant's evidence[19]

71. The statements are generally consistent and indicate the type and scale of training and education that took place across the site in the 1970s, 1980's 1990's and through to 2012 and the end of Shell's occupation. The appellant identified 17 buildings where teaching and workplace training took place during Shell's occupation.

72. Highlighting the main points, in the 1960s and 1970s, approximately 25 apprenticeships were available for 16 year old students at Ellesmere Port Grammar School and other schools. In the 1980s schoolchildren from the Ellesmere Port schools would visit the site for extended periods of work experience.

73. A trainee technician programme was operating in 1992 when three trainees were recruited to work towards attaining National Vocational Qualifications. A new trainee was taken on every year over the following three years. Trainees were partnered with on-site technicians and training involved practical tasks to build up technical competence. Classroom sessions were predominantly run by Shell employees. Subsequently trainees and apprentices were recruited through TTE Training a local training provider. Shell participated in the Government sponsored Youth Training Scheme (YTS) in the 1980s and 1990s taking on 15 to 30 school leavers per year.

74. Students undertaking a sandwich year in industry and students undertaking PhDs spent part of their course at Thornton carrying out industrial research. Reference is also made to a programme for undergraduate students reading science at a variety of universities to visit Thornton for 8 weeks during their summer vacations to work in the laboratories. In the 1990s external learners on site numbered between 20 to 40 per year for work experience, as part of a

[19] CD1.26

sandwich degree course or for general training purposes. An initiative also established a scheme that extended over 8 years involving students from universities across Europe who worked two years full time at Thornton followed by a third year back in their host institution.

75. As part of the company's investment in their workforce, training sessions were held most weeks in a purpose built lecture/conference facility that were open to staff members, apprentices, trainees and outside visitors. Shell also encouraged employees into higher education by sponsoring degree courses. In the 1970s and 1980s technicians taken on at 18 continued their education to degree level by day-release and evening studies augmenting their learning at work. Outreach events and activities were arranged as part of Shell's Social Investment Programme to generate interest young people in Science, Technology, Engineering and Mathematics (STEM) subjects.

76. Official demonstration days, open days or family days attracted large numbers of visitors and families to the site.

Council's evidence

77. Direct knowledge of the site in the later period of Shell ownership comes from the statutory declarations of three people who worked there[20]. Mrs Brown, who also gave oral evidence at the inquiry, had a contract position with Shell Global Solutions for some 18 months in 2010/2011. Her work was office based on the ground floor of building 62, where 25-30 people worked within teams dealing with data and regulatory compliance across the world. Team meetings and training activities were held in meeting rooms on the top floor of buildings 49 and 62 or the ground floor of buildings 90 or 102. The training that took place at Thornton was concerned with on-site safety, departmental training on specific topics, personal development and one to one or small group training with trainees from the TTE Technical Institute, year out placements and summer/work experience students. Presentations, usually related to Shell initiatives and projects, were optional. She confirmed her training was solely for tasks forming part of her job or for personal safety and the safety of those she worked with.

78. During her time at Thornton, the site accommodated conferencing facilities for in-house and visiting Shell personnel, laboratory facilities for the Shell Stanlow Refinery and Lubricants plant, testing facilities for emissions and high octane fuels, teams from Shell Global Solutions and HR and IT personnel. Buildings 303, 304 and 305 operated as laboratories and had small meeting rooms. Building 301 was described as offices, building 38 housed the IT department and occupational health facilities, building 49 had a conference centre and was occupied by the HR department. Building 62 was used for offices and meeting rooms. Approximately 200 to 300 people worked on site.

79. Ms Hymes, whose role was with Shell Global Solutions, was at Thornton from 2005-2008. She was based primarily in offices in building 62 once it had undergone renovation works. Building 49 was then renovated to form conferencing space and offices. She recalled most buildings on the site were vacant, and that buildings 303, 304 and 305 were well occupied. She was aware of graduates and work placement students but they were relatively few

[20] Appendix B to the Council's proof

in number. She was not aware of large numbers of students being present or student lectures taking place on site.

80. Mr Oliver was employed at Thornton with Shell Downsteam from late 2005 to February 2008. His role involved working with refineries and chemical plants throughout Europe advising on future investment plans and asset integrity. His office was in building 62, he used conference facilities in building 49 although he was away from TSP about 50% of his working time. His recollection of a student presence was similar to that of Ms Hymes.

Other evidence

81. A representation from Essar in February 2018 included information based on interviews with employees who had previously worked on the Thornton and Stanlow sites during various periods from 2005 to 2011[21]. The Research and Technology Centre served the needs of any part of Shell's global organisation and technologies associated with fuels, lubricants, additives, engineering and the environment. Laboratory testing, fuels development research, technical consultancy and management of global assets were carried out at the Centre. The Thornton site was a research centre but not a Shell designated training and / or education centre. Such training was provided at Wythenshawe and a location in the Netherlands. Local training for TTEs/apprenticeships and Stanlow Refinery staff was often carried out at the Excel centre, which was the Refinery site dedicated training facility. Prior to 2011, students, TTEs/apprentices were engaged in work experience related to the company's activities, the majority of who were located on the Refinery site.

Conclusions

82. Over the period between the 1960s and the late 1990s 'in house' education and training was directed primarily towards trainee technicians and apprenticeships and extended work experience. There were opportunities for students on external courses of study to carry out research at Thornton as part of their course, to gain work experience or carry out summer vacation work. Such activities were small scale and involved relatively small numbers of students or school children in comparison to the permanent staff numbers. Continual staff training and development was seen as an investment in maintaining a skilled workforce and a centre of excellence. There is nothing in the statements to lead me to alter my conclusions derived from the documentary evidence.

83. The evidence forming part of the Council's case covers relatively short periods of time post 2005 but is valuable because of the lack of other evidence on this period in the site's history. In particular Mrs Brown was the only person appearing at the inquiry who had first hand knowledge and experience of working at Thornton. She was clear and consistent in her evidence and recollection and her evidence has a lot of weight.

84. The appellant did not adequately explain or support in any detail why it considered there never was any independent principal office use. I consider that the descriptions of the offices and individual roles of employment demonstrate that in all probability the office use was a primary rather than an

[21] CD3.1

ancillary use. The office function not only focused on serving and supporting the primary operations on the site but also had a much broader function related to operations, management and investment worldwide. This primary role was facilitated by the accommodation review, redevelopment of premises and the encouragement of commercial tenants during the mid 1990s. Even if the offices were an ancillary use in the earlier years of site development the primary office use formed part of the mix of uses on TSP for a period of over 10 years, sufficient to become lawful before the ownership changed in 2014.

85. Secondly, education and the presence of students was limited in scope and numbers. Staff training was more important but it was purely ancillary, directed at continuing professional development.

Overall conclusion

86. On the balance of probability research and development was a primary use. The highly equipped nature and concentration of work within laboratories on site supports a conclusion that laboratories should be in the mix of primary uses. Office use is the other primary component.

87. The engineering workshops were associated with development and maintenance of the specialist equipment and therefore were ancillary to the primary research use. The purpose of the blending unit also was subsidiary to the research work. The Centre's role in education focused on the professional development of staff, the promotion of its expertise, and the sharing and expanding of specialist knowledge and its research work. Training and education of technicians, apprentices and students undertaking external courses were very much subsidiary. There is not the evidence to demonstrate that teaching and workplace training should be included as components in the mix of primary uses.

88. At the beginning of 2014 the lawful use of the planning unit was a sui generis mixed use comprising research and development, laboratories and office use. The main focus of the research was in connection with automotive, petrochemical, aviation, environmental and energy industries.

Post March 2014

89. The main triangular block of land and the adjacent car parking and circulation areas (as shown outlined in red on the plan attached to EN2 and the LDC plan) passed into the ownership of the University of Chester on 31 March 2014.

90. Thornton Science Park was established with the core objective of creating a unique higher education, research and commercial environment to deliver significant economic, education and environmental benefits[22]. TSP covers around 25 ha or so and 39 buildings are described as 'active' providing some 46,071 m^2 of floor space[23]. The establishment of TSP to date has been achieved primarily through building refurbishment rather than major building development.

[22] CD1.5 paragraph 5
[23] Inquiry Document A.1

91. As of 31 October 2019 this space is split between commercial tenants (45.71%), the FSE (13,359 m^2 or 29%), support services 5.78% and 19.5% is vacant. The commercial tenants total 41, with a total of 540 employees, comprising a mix of start-ups, Small Medium Enterprises (SMEs) and multinationals in the energy, environment, advanced manufacturing and automotive sectors. All the businesses, except for Essar SGS, have moved onto the site since March 2014.

92. The first intake of students to the University's newly formed Faculty of Science and Engineering was in September 2014. The FSE offers degrees in a range of disciplines including chemical engineering, electronic and electrical engineering, mechanical engineering, mathematics, computer science and natural sciences. Degrees take three years, or four years for masters degrees, to complete. Research was described as a fundamental aspect of the education. The University Prospectus identifies facilities as modern purpose-built labs including computer labs and a games zone, professional engineering software and a specialist science and engineering library.

93. More specifically, the FSE has occupied 6 buildings at TSP – numbers 38, 40, 58, 62, 304 and 305.

- Building 38 Sutton used to accommodate offices, a foyer and library on the ground floor, offices and meeting rooms on the first floor and administrative space above. The building now houses a library, teaching pods, an IT zone and information; IT seminar rooms, larger teaching rooms with small pods and group workspace on the 1st floor and on the 2nd floor a design suite, small modules and practical space and 3D printers.

- Building 40 Backford, originally constructed in the 1960s and subsequently refurbished, was used always as a restaurant with ancillary offices and meeting space. There continues to be a refectory and coffee shop open to all, with a conference room at the rear and access to buildings 90 and 102.

- Building 58 Kingsley was originally built as a workshop in the 1960s. The building was substantially refurbished for use by the FSE as a workshop with ancillary laboratory and office accommodation. It is now used as welding, casting, engineering, machinery workshops plus pilot plant for chemical engineering.

- Building 62 Dunham, constructed in the 1950s to provide offices and store room. It was later refurbished. An engine systems laboratory, with ancillary offices, was granted planning permission in November 1978. There are now teaching labs, seminar rooms and post graduate accommodation.

- Building 304 Hartford and Building 305 Sandfield were built in 1996, alongside building 303, to provide workshop and laboratory space, including a conference room and visitor reception. Building 304 now has various forms of laboratories, research facilities and post graduate accommodation, housing physical science and engineering, biotechnology and bio-engineering, automation and robotics, electronic and electrical engineering. Building 305 has on the ground floor fuel cell

laboratories, post graduate laboratories and hybrid space. On the 1st floor are rooms for theory, with rooms for practical work either side, chemical and practical laboratories.

94. The density of occupation of buildings by students was shown to be about two times that by employees of commercial tenants.

95. In November 2019 there were 90 FTE teaching staff and 50 University support staff based at TSP. For the academic year 2019-2020 there are 549 undergraduates and 111 postgraduates at the FSE. Over 760 students have graduated since the FSE was established in 2014. The representations from lecturers, programme leads and heads of department explain how the structure and content of courses have been designed to take advantage of the accommodation, facilities and co-location with businesses.

96. Throughout the year the University raises awareness of the importance of science, technology engineering and mathematics (STEM) through outreach work. The programme includes a number of workshops, public lectures and open days at TSP and working closely with a number of local schools. Open days are also used to recruit and engage with students.

97. The Informatics Centre moved from the Parkgate Campus to TSP around October 2014. The web design and application development business is based within the FSE and works on a range of projects for academic and commercial clients. The web site describes the space occupied as office accommodation comprising office and meeting spaces[24].

98. In 2015 the High Growth Centre was established in buildings 90, 101 and 102, co-funded by the University and the European Regional Development Fund (ERDF). The Centre offers advice and support (including technical advice and research by the FSE) to SMEs and start-up businesses and is designed specifically for companies operating within the advanced manufacturing, automotive, engineering and environmental sectors.

99. A facility known as the Energy Centre at Thornton was set up in 2017 in a refurbished building 95 to provide flexible space where industry and academia are able to come together to innovate, develop and demonstrate new energy technologies.

100. The representations confirm that some of the commercial tenants are primarily office uses occupying office space. These include a professional services company and a company involved in managing and developing real estate and infrastructure.

Conclusion on use

101. The establishment of a University Faculty offering degree courses in a range of disciplines brought a substantial change to the educational activity on the site. Student numbers on site increased to around 400 during term time (at any one time). Teaching and learning have occurred through a variety of mediums (workshops, seminars, lectures, practical work, individual study and so on) and in a range of spaces. There are instances where buildings such as 40 and 58 have similar uses as before but now as part of a

[24] CD13.2.3

broader mixed use. Buildings have been adapted to provide suitable accommodation as demonstrated by the before and after comparisons for buildings 38, 58, 62, 304 and 305 in particular. The educational use expanded in 2014 to a position where it was no longer subsidiary but became a primary use within the mix of uses within the planning unit on the TSP site. The continuing intake of students and delivery of education has ensured the continuation of the use over nearly a six year period.

102. Research and development continues as a primary use in part linked to the FSE but also through the businesses that have occupied the commercial space on the site and more recently in the Energy Centre. Similarly, the laboratory work has retained its importance as a primary function for education and commercial occupiers. Whilst there is ancillary office use associated with the FSE and research and development use, office activity is identifiable as a primary use through the businesses offering professional services and advice as their main role and activity.

103. In 2014 the previous ancillary teaching and training expanded to become a primary educational use and the planning unit took on a new mixed use. The use of the TSP changed to a mixed use comprising research and development, laboratories, office use and a University science and engineering faculty for the provision of undergraduate and postgraduate education.

Materiality of the change of use

104. Planning permission is not always required for a change of use from one mixed use to another. The issue is whether the change of use is material in planning terms by comparing the former with the new use[25]. As set out in Planning Practice Guidance there is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case[26].

105. Case law[27] has established that an essential consideration is whether there has been a material change in the definable character of the use of the land, as opposed to a change in the particular purpose of a particular occupier. Off-site impacts are relevant, as well as planning purposes, the policy context and the planning consequence(s) of the loss of an existing use. Intensification does not amount to a material change unless and until the fundamental character of the use changes. It applies when the only way to distinguish between the former and present uses is in terms of scale.

106. A sui generis use is a use of its own kind. TSP has changed from one sui generis mixed use to a different sui generis mixed use. It is not a question of an intensification of the same use (such as more caravans on a caravan site). Whilst attention has focused on comparing the teaching / education uses the

[25] CD10.11 *Beach v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 381; CD10.12 *Belmont Riding Centre v First Secretary of State* [2003] EWHC 1985 (Admin)
[26] Planning Practice Guidance: When is permission required? Paragraph: 011 Reference ID: 13-011-20140306
[27] Including *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWHC 277 Admin; [2012] EWCA Civ 1473; *East Barnet UDC v B T Commission* [1962] 2 QB 484; *London Borough of Richmond v Secretary of State for the Environment Transport and the Regions and Richmond upon Thames Churches Housing Trust* [2000] QBD; and *R (oao) the Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government, David and Rees and Gianna Tong* [2016] EWHC 1785 (Admin)

final comparison is between the former and existing mixed uses, as set out in *Beach*.

107. The appellant summarised the vision for the site under the University's ownership as 'to create a unique environment in which the presence of the new Faculty would play a crucial role in attracting business occupiers in the energy, environment, automotive and advanced manufacturing sectors'. A vital component would be the opportunities to access cutting-edge research equipment and facilities within the Faculty and to collaborate with academics, researchers and students, helping to commercialise new research and take new products to market with associated economic benefits[28].

108. The 'unique environment' characterising the TSP is a common theme throughout the appellant's evidence. The model operated by the FSE is said to be 'unique' in terms of university facilities but is simply a continuation and development of what was being undertaken by Shell. Instead of one large multinational company with different departments undertaking laboratory work, research and allied teaching and training, there are now up to 40 smaller companies and a university undertaking very similar activities. The cases of the other parties were regarded as allegations about changes in identity of the occupier and increases in personnel rather than any change in the character of what is undertaken on the site.

109. The case presented finally by the appellant was that teaching and training were ancillary elements of the previous mixed use. The continuation of these uses by the University do not constitute new additions, merely a change in their intensity and status. There has been no discernible change in the character of the use of the land and no change from one use class to another. Instead there has been an incremental change in the composition of a sui generis mixed use across a large planning unit. The overall nature of the uses is the same, being related to research and development in the automotive, petrochemical, aviation, environmental and energy industries. The identity and purpose of the particular occupier has changed resulting in the teaching and training uses no longer having an ancillary function serving Shell's use of the site but instead becoming principal components of the mixed use by occupiers which now include the University. In short, the change in occupier from Shell to the University and its tenants has amounted to a change in the purpose of the occupier and it has not affected the character of the use of the land[29].

110. The evidence indicates to me that essentially the Thornton Research Centre was a purpose specific technology centre where testing and research was specific to the products and business of Shell. It was an employment site where employees were primarily engaged in research and development, specialist laboratory work and office work that latterly comprised administration, personnel and IT services and broader professional services operated through Shell Global Solutions and other companies. The 'allied teaching and training' was very much a subsidiary function limited in scope and scale directed at either (i) employees' personal professional development and safety and enhanced contribution to the parent business or company, or (ii) programme(s) of training of technicians and apprentices on a very limited

[28] Professor Wheeler's proof paragraph 18
[29] Inquiry document A.16 paragraphs 37 and 38

scale towards gaining first qualifications and a job within the company, or school and student work placements and holiday experience.

111. The University's witnesses described the Vision and Triple Helix model where academia, industry and government closely interact. The academic dimension comes across as essential and is directly derived from the FSE. Such an educational academic institution was not present during Shell's ownership and occupation before March 2014 and nor was the breadth of educational resources and learning that it provides. As Essar highlighted, Shell did not occupy a University campus, academia and industry was not co-located and was not fundamentally co-dependent[30].

112. The FSE may well be 'unique' when its research and laboratory facilities and its co-location alongside businesses are compared to other universities. However, it has come across strongly in the University's evidence that they have worked hard to create and ensure TSP is unique. The FSE's location on a site alongside small businesses and larger companies has been emphasised in the literature and prospectus information for students. The 'unique environment' has been an important element in the marketing of the site to attract new businesses to locate there. The FSE's presence has been regarded as vital to distinguish TSP from other science parks and to ensure its success. Shell was not an education institution. The documents related to Thornton Research Centre do not reference an academic environment at all and do not support the proposition now being advanced by the appellant. A representation on behalf of the University during consultation on the draft Local Plan (Part Two) referred to TSP's distinct land use role and economic development objectives since its establishment in 2014. As Essar submitted creating something unique can only be sensibly understood as meaning that the current use is materially different from the previous use[31].

113. The establishment of the FSE, an educational institution, has resulted in the provision of education becoming a primary use. Courses of study are followed by a large number of students with a view to obtaining a qualification and skills for future employment, not necessarily linked to research and businesses at TSP. The evidence shows the number of students continuing at TSP after their formal education has been very small in comparison to the total number of students graduating. Many staff are employed to design and run the courses, give tuition and support. The fact that the Use Classes Order distinguishes business uses (Class B1) from non-residential institutions (Class D1), which includes any use for the provision of education, indicates the likelihood of different planning characteristics and consequences associated with the creation of an institution of learning.

114. The scope of the educational use is indicated by the range of disciplines and courses available. The educational use is clearly able to be distinguished from the former ancillary teaching and training apprenticeships, work experience placements and continuing professional development at Thornton Research Centre. During that period of time the learning was provided by an employer to an employee or in association with a course of learning at a school or college elsewhere. The purpose was different. The description of teaching and workplace training used by the appellant is not an adequate description of the

[30] Inquiry document E.5 paragraph 54
[31] Document E.5 paragraph 55

use and does not sufficiently indicate or capture the features of a university education.

115. Previously the apprentices and trainees were working across a range of research activities housed in buildings across the site[32]. Now six buildings and around 30% of the floorspace is devoted to the FSE educational use, including use of legacy laboratory and specialist equipment. Through refurbishment and adaptation of buildings there are now facilities and spaces for varying types of tuition and learning, and interaction between students both in study and 'free' time. The external site layout in terms of building and spaces may not have significantly changed. However, the evidence points to a layout and utilisation of space within buildings that has undergone significant alteration to provide the necessary accommodation for undergraduates, postgraduates and staff. This is consistent with a change in character of the mixed use.

116. The evidence shows that the site has a new identity, in part associated with the change in the occupiers and people frequenting the site, interaction through new activities and patterns of movement. In the 10 year period pre 2014 the presence of students was not noticeable on the site according to Mrs Brown and other witness statements. Post March 2014, in term time the hundreds of students, predominantly of younger age than a settled workforce, would reasonably be expected to give the campus an identity and vibrancy that was not recognisable before. The Council's planning witness, when visiting the site in January 2016 in connection with an unrelated planning matter, noted that the range and scale of student activity and teaching was significant. The educational use fluctuates in its intensity as between terms and vacation leading to changes in character of the use of the site during the course of the year.

117. Furthermore students, who now form a substantial proportion of people on the site, are not employees but have a different contractual arrangement with the education institution, paying for their course of study and pastoral support. Being a student is different to being an employee, which is indicated by the importance attached by the University to workplace training for students.

118. The Council emphasised the controls now placed on patterns of movement within the site through the introduction of a card control access system applicable to all occupiers. When taken in isolation the CARDAX system does not contribute greatly to the change in character but it is relevant in so far as it is a further indication of the different nature of the use as expressed through the occupation and relationship between the FSE and its students, commercial tenants and the University as owner.

119. The Council and Essar submitted, with reference to a principle established in the *Richmond* case[33] that if a change of use gives rise to planning considerations that is a relevant factor to be taken into account. The appellant disputed this approach, submitting that planning policy can only bite where it has been established that there has been a change to the character of the use

[32] CD1.23.3
[33] Documents C.7 paragraphs 33, 34; Document E.5 paragraph 52; CD10.15 *London Borough of Richmond v Secretary of State for the Environment Transport and the Regions and Richmond upon Thames Churches Housing Trust* [2000] QBD

of the land – it cannot dictate or influence what amounts to such a change[34]. Reliance is placed on a very recent Supreme Court decision in *R (oao Wright) v Resilient Energy Severndale Ltd*[35].

120. In *Wright*, the development involved was a change of use of land from agriculture to the erection of a single community scale 500kW wind turbine for the generation of electricity. The issue in that case was whether the promise to provide a community fund donation qualified as 'a material consideration' and as a subsidiary issue whether the Council was entitled to include condition 28, regarding a community benefit society, in the planning permission. The judgement reaffirms the statement that when considering if there has been a change of use of land what really has to be considered is the character of the use of the land, not the particular purpose of a particular occupier.[36] However the decision focuses on the two stated issues and it does not consider in any detail, and hence does not overturn, the principle established in *Richmond*. On this point I agree with the Council.

121. Before the University acquired the land and the FSE moved to TSP the mixed use was research and business related, involving provision of employment and accommodated in purpose-built premises. This type of use dated back to 1940, when the subsequent development of the Research Centre was associated with Shell's operations and wider industrial use at the adjacent refinery site. This type of employment use was compatible with the major hazardous installation adjacent and was a type of land use that fulfilled a planning purpose in terms of public safety.

122. The development plan policies for the Stanlow special policy area and TSP seek to ensure that use of land is these places is consistent with the location within a hazard consultation zone and identify TSP for research and enterprise development. The loss of the existing lawful use would have a significant planning consequence.

123. No significant negative off-site impacts have been identified, related to typical planning matters such as noise, traffic generation, pressure on community facilities, services, infrastructure. No significant effect is likely on the Mersey Estuary SPA/Ramsar site. There may have been positive off-site impacts for which there is little evidence – the most likely being increased use of public transport to access the site by the shuttle bus service provided by the University. All in all off-site impacts add little to the overall assessment of materiality. However, the findings on all the other considerations strongly support a conclusion that a material change of use took place.

Other consideration

124. The appellant believed that the Council was fully aware of the proposals for the site and yet did not advise that a material change of use requiring planning permission would be involved. Much encouragement and full support was given to the proposals and the establishment of the FSE on the site. The appellant's key point is that the evidence of the Council's position at the time is a clear, objective and compelling indication that no material change of use was proposed, nor in fact took place.

[34] Document A.16 paragraph 36
[35] *R (oao Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53
[36] See *East Barnet* op cit

125. The Council submitted, in short, that the appellant's argument is legally irrelevant and secondly that there is no secure evidential basis for the contention that the Council ever gave the appellant an unequivocal assurance that planning permission was not needed. To the contrary, the evidence shows that the University was aware that a material change of use (as opposed to a change in ownership) would need planning permission.

126. Sections 191 and 192 of the 1990 Act provide a comprehensive code for defining what is or would be lawful for the purposes of planning legislation. In my view the fatal omission on the part of the University was that, for whatever reason, at the outset no application was made for a formal determination by the Council as local planning authority as to whether or not the proposed use would be lawful. An application would have provided the mechanism to compare in detail the former use of the site with the proposed use within the statutory planning framework. The fact that there is a procedure in the 1990 Act to do so means that what may or may not have been said as part of the discussions has very little weight. Applications for lawful development certificates were made in October 2018, over four years after occupation and a change of use took place. The evidence submitted at that time was limited and it has only been during the course of the appeal that more informative documentation on the former use has been produced.

127. Notwithstanding, I have examined the information and evidence on the discussions between the University of Chester and the Council over the period up to the acquisition of TSP in 2014. In December 2012 the then Chief Executive of the Council and the then Leader of the Council expressed full support in writing (in the form of letters) for the University's proposed acquisition of the Thornton Research Centre and its intention to establish an academic faculty of engineering on the site. The correspondence was addressed to the Vice Chancellor, who sought such support to begin negotiations with Shell, to seek approval and funding from the Higher Education Funding Council for England and engage with other parties. The support was no more than expressions of general encouragement for the project in principle within the context of the Council encouraging economic regeneration and growth in the area.

128. The position regarding the planning use of the site was discussed at a meeting on 13 March 2013 attended by the Vice Chancellor, the Chief Executive and the Deputy Chief Executive/Director of Regeneration of the Council and the Leader of the Council. No minutes of the meeting have been produced, although the University rely on an assurance on behalf of the Council that the University's plans to establish its new Faculty at the site and to recruit and teach students there did not require a planning application to change the site's use.

129. Even if such an assurance was given (and the Council does not accept that it was) there is nothing to show that the people giving such an assurance applied the relevant planning principles on material changes of use and were aware of appropriate detailed information and evidence. The letter of 5 September 2019 from the then Leader of the Council states that "we knew that the planning use did not need to be changed because we knew that Shell had used it for research and education for many years …...". However, there is nothing to show whether this assertion was made on the basis of detailed

information of the previous and proposed uses. The only indication is that the author was familiar with the TTE apprenticeship training. It is not credible to equate this small-scale programme with the education provided by a university faculty. Such an assurance, if made, was meaningless for current purposes and on which I place no reliance.

130. The documentation shows that the University was in direct contact with the Council's planning officers at the beginning of January 2013 at a time the University were bidding for capital support to develop the Thornton site. The University requested a general statement saying that "a like for like use will not require change under the sui generis but any alterations will be subject to change of use permissions". There is no evidence that such a statement was forthcoming from the local planning authority. What the request does indicate is a possible lack of understanding of the meaning of 'development' for planning purposes. Also, of note is the use of the phrase 'like for like'. The appellant confirmed that the advice of a planning consultant was not sought at this early stage.

131. More specifically in November 2013, on the basis of information on the proposed refurbishment of Building 38 (in the form of an outline description or works and a set of plans), a planning officer confirmed in writing that a planning application for the proposed works would not be necessary. A planning application was submitted for works to Building 58 in December 2013. The supporting documentation shows that in all probability planning officers knew of the University's proposals to create a new faculty of Engineering at Thornton and that the proposals for the two buildings were part of the proposal. However, there is no evidence that the planning authority was directly asked if the University's overall proposal for the site would require planning permission. There is nothing to show whether any more details were provided over and above the outline information in relation to the proposals for the two buildings. As a matter of fact no application was made at that time. It is not possible to conclude whether or not the planning authority specifically considered informally or applied its mind to whether a material change of use would be involved.

132. To conclude, the probability is that any opinion expressed in 2012 on the planning status of the site and proposal was not on a fully informed basis. Subsequently the evidence does not demonstrate how aware the Council's members and officers were of the previous use of the TSP site and particularly the extent and nature of any teaching and training, or how much information they were given of the University's plans for the TSP site. The evidence on the early discussions does not assist me in comparing the previous and the current use. The fact is no formal determination was made by the Council as local planning authority on the lawfulness of the existing or proposed uses through the procedure in sections 191 and 192 of the 1990 Act. The Council's position at the time the use by the Faculty was being proposed is of no assistance to deciding on the materiality of the change of use.

Conclusion on material change of use

133. As a matter of fact and degree post 31 March 2014 there was a material change in the definable character of the use of the land as a result of (i) the scale of the change that has taken place, (ii) the new identity developed on site, based on the University's Vision and the Triple Helix model, (iii) the way

in which the buildings are used, (iv) the new patterns of movement, (v) the different characteristics of the new mixed use, (vi) the land use planning consequences of the change. Even discounting the land use planning consequences, the other factors would together be sufficient to result in a material change. The change was not confined to a change in the particular purpose of a particular occupier.

134. The use materially changed to a new sui generis mixed use comprising a University science and engineering faculty providing undergraduate and postgraduate education, research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use. Development, within the meaning of section 55(1) of the 1990 Act, occurred.

Building 58[37]

135. Planning permission was granted in February 2014 to replace external curtain walling on the building and to provide a new entrance lobby and 2 canopies, circulation and ancillary accommodation.

136. The nub of the appellant's case, relying on section 75 of the 1990 Act, is that as a result of the 2014 permission use for a higher education faculty, including for teaching, became a lawful use of building 58 and a lawful principal component of the mixed use of the planning unit as a whole[38]. The result was considered entirely consistent with judgements in *Stevenage* and *Peel*[39].

137. If the appellant is correct the planning permission would have had the effect of authorising a material change of the TSP planning unit. Whether a subsequent material change would amount to a breach of planning control would rest on an intensification argument.

1990 Act

138. The relevant provisions are in section 75, regarding the effect of planning permission and section 336 on Interpretation.

139. Section 75(2) states "Where planning permission is granted for the erection of a building, the grant of planning permission may specify the purposes for which the building may be used."

140. Section 75(3) states "If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed." With reference to the case of *Wilson*[40], 'designed' means the purpose for which the building was intended.

141. With reference to section 336, 'building' includes any structure or erection, and any part of a building, as so defined; and 'erection' in relation to buildings as so defined includes extension, alteration and re-erection.

[37] CD12.3.1 – CD12.3.8 provides copies of the planning application, planning permission and associated documents
[38] The first time the full particulars of the case were presented was in the closing submissions.
[39] CD10.4 *Stevenage BC v Secretary of State for the Environment, Transport and the Regions* [2011] EWHC 381 Admin; Inquiry Document E.2 *Peel Land and Property Investments plc v Hyndburn Borough Council and others* [2013] EWCA Civ 1680
[40] *Wilson v West Sussex County Council* [1963] 2 QBD 764

The planning application

142. On 12 December 2013 a planning application was made by the University for a development described on the application form as "Internal remodelling of an existing workshop, Building 58, on the Shell Thornton Site, to provide a new entrance, circulation and ancillary accommodation. The development includes the replacement of the old aluminium curtain walling, the provision of a new entrance lobby and 2 canopies". The application fee was based on the proposed physical alterations, not a larger fee for a change of use application.

143. In response to various questions on the application form, the existing use was stated to be 'workshop'. Further on[41], the building was described as an existing light engineering workshop and would remain so, where metal, electronic engineering experiments and constructions would be carried out. The materials proposed for the walls and roof were listed and the increase in floor space stated[42].

144. A full set of plans was submitted, including plans of the existing and proposed floor layouts and elevations.

145. The design and access statement (DAS) outlined the proposed creation of a new Faculty of Engineering[43] at the Shell Technology Centre. The document provided details of the proposed building layout, treatment of the elevations and proposed landscaping and, under the heading Access, the internal circulation, means of escape and so on. The stated aim of the project was not only to adapt the building to enable it to accommodate a higher education Engineering Faculty but also to improve the appearance, presence and performance of the building. Building 58 was identified as the home of the engineering workshops and the primary home of the Mechanical and Civil Engineering Department, housing workshop, technician and administration accommodation with the potential for small teaching /study areas.

146. The officer delegated report under the heading 'Proposal' outlined the proposed building works and confirmed that the building would be used as a faculty of engineering. The section 'issues and assessment' focussed on the proposed changes to the external facades and the effect on the appearance of the building and site.

Decision notice

147. Planning permission was granted by a decision notice dated 7 February 2014 for a development described as "Replace old aluminium curtain walling and the provision of a new entrance lobby and 2 canopies, circulation and ancillary accommodation" (ref 13/05373/FUL). Condition 2 required the development to be carried out in accordance with the approved plans, as listed and in accordance with the supporting documents, namely the design and access statement.

[41] Question 22 on the application form
[42] In answering the question on the application form, the existing floor space of 786 sq m and the additional floor space were categorised as non-residential institution.
[43] The document did not refer to Faculty of Science and Engineering

Assessment

148. On a plain and common sense reading of the decision notice the planning permission is for the external alterations only, as stated in the description of the proposed development. The permission did not authorise a material change of use to use by a University Higher Education Engineering Faculty for higher education purposes (Class D1). The description of the development for which permission was granted was consistent with the details of the planning application that was for alterations to building 58 and did not explicitly propose or request permission for a material change of use. The planning conditions do not have the effect of changing the description of the development granted permission.

149. Planning permission can only be granted for 'development' as defined in section 55 of the 1990 Act. Notwithstanding the appellant's submissions, it was not at all clear from the application, plans and DAS that the proposals for building 58 involved a change of use, let alone a material change of use. In order for a change of use to be development it has to be material. The local planning authority was alerted to the proposed faculty use at TSP only by way of background explanatory and supporting information to the application for building 58. The external physical works were directed at enhancing the external elevations and identity of the building. The internal works were directed at providing a new corridor leading off the main entrance to assist circulation and containment of the main workshops. In addition, new toilet facilities were to be provided towards the back of the building. The internal alterations did not amount to development requiring planning permission. The use of the internal space, as detailed on the application form, was to remain as workshops.

150. The proposed floor layout plans confirmed that information. The four largest rooms were annotated as workshops (not teaching spaces). The smaller rooms included a test bay, labs and technician rooms (plus one marked technician + staff).[44] The one indication on the plans of an educational use was the space identified as study/break out, comprising 54 m^2 of a total floorspace of around 786 m^2.

151. The DAS described the scheme as a light touch refurbishment. In the section on proposed building layout reference was made to the 'potential for small teaching /study areas' but the large open plan workshops were described as suitable for continued use as Engineering workshops. The accommodation within the new building 58 would not vary significantly from the existing layout. The focus was on the addition of the entrance and new corridor 'to facilitate access around the building without disturbing teaching spaces'. In the schedule of proposed ground floor accommodation the four workshops were not identified as teaching spaces but as "heavy workshop spaces". The space readily identifiable as associated with teaching was limited to break out study space and 1 seminar lab.

152. The DAS section on Access referred to "the new function, although being a workshop, will be to accommodate students and staff" by creating a new means and direction of access. Nothing was said in the document about numbers of staff, students, the type of teaching activities or how, if at all, the

[44] The room marked Technician + staff need not be teaching staff

workshops would be used for teaching as opposed to research. All in all the brief descriptions in the DAS lacked detail to support a proposed material change of use of the building to a primary higher education/teaching use. It is not for a local planning authority to change the description of a development without the agreement of an applicant. In all probability the case officer was aware that the building would be used as a Faculty of Engineering but there was nothing in the officer report to indicate that a material change of use was proposed that required assessment. There is a distinction between the intention of the development, namely to accommodate use by the Faculty and whether that intention involved a material change of use on the evidence within the planning application.

153. Looked at in the round from a development management planning perspective, the building was to continue in use primarily as workshops, facilitated by relatively small alterations to the entrance and internal circulation. The new external walling systems were directed at updating the appearance and efficiency of the building. Importantly the application related to a single building, not the six buildings in the EN1 appeal and the section 78 appeal or the site as whole in the EN2 appeal. That being so, I disagree with the appellant that reliance can be placed on the fact the Council and Essar presented cases that a material change of use was involved[45]. The case for a material change of use of a single building is not directly comparable to the ground (c) appeals and, on the information for building 58, much harder to make out. Clearly there is also a tension in the appellant's case on building 58 and that on the ground (c) appeals and LDC appeal.

154. I conclude that the planning permission was not for a material change of use of building 58 but related only to physical works of alteration to the building. The permission did not explicitly or implicitly involve a material change of use such that there was a new purpose for the building – the use was to remain principally as workshops. The information indicated that the primary activity within the building would remain the same and in that context a change merely in the identity of the occupier carrying on the use does not amount to a material change of use. It follows from this conclusion, with reference to the *Peel* Court of Appeal judgement, that section 75(3) is not engaged.

155. It also seems to me that *Stevenage* does not assist the appellant. Reading section 75(2) and section 75(3) together, no purpose was stated in the planning permission. Notwithstanding the extended definition of "erection" in section 336, in so far as the works the subject of the application were for "the erection of a building", the building in question was only the parts of building 58 to which the application related. The application was not for the erection of the building as a whole. Having regard to *Stevenage*[46], it makes no sense to ascribe a higher education use to the altered exterior and associated accommodation. In this case, section 75(3) cannot operate to enable planning permission to be construed as granting permission for a change of use of the whole of building 58.

156. To conclude, use of building 58 for a higher education faculty for the primary purpose of teaching did not become lawful by reason of the planning

[45] Document A.16 paragraph 56
[46] *Stevenage* op cit paragraph 69

permission dated 7 February 2014. The permission authorised operational development only. Therefore higher education teaching did not become a lawful principal component of the mixed use of the planning unit as a whole. The legal submissions of the Council and Essar are preferred to those of the appellant.

Conclusions on LDC Appeal

157. I have concluded that at the beginning of 2014 the lawful use of the TSP site was a sui generis mixed use comprising research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use.

158. The establishment of the FSE, after the acquisition of the TSP site by the University of Chester resulted in a material change of use. The new mixed use has not become lawful through the passage of time because the requisite period of 10 years continuous use to gain immunity from enforcement action cannot be demonstrated. The use has not become lawful through the grant of a planning permission. Consequently the appellant is not successful in securing through the appeal an educational component as part of the lawful mixed use.

159. The description of the lawful use I have identified is not the same as stated in the certificate issued by the Council. The Secretary of State, or an Inspector, can exercise the same power under s191(4) on an appeal as local planning authority. Furthermore, the *Panton* judgment[47] indicated that an Inspector is obliged to issue a LDC for any use of the planning unit which the evidence shows is lawful, and to modify or substitute the descriptions of the use and the land if necessary.

160. Within that context I will substitute a more appropriate description of the use found to be lawful. In accordance with s195(2) I shall modify the LDC granted by the Council, rather than issue a new LDC. This approach will avoid any doubt which could result from having two LDCs in different terms being in force in response to the same application. In this respect s191(6) states that the lawfulness of any use for which a certificate is in force shall be conclusively presumed. The modified description will be for the same mix of uses as described by the Council during the course of the appeal. No reference to a use class is necessary or appropriate when describing a sui generis mixed use. The content of the modified certificate will adopt the form set out in Schedule 8 to the Town and County Planning (Development Management Procedure) (England) Order 2015.

161. Therefore, following s195(2), the Council's refusal in part was not well-founded in so far as the lawful use was not accurately described. I have, however, agreed with the Council that higher education should not be included as a component of the mixed use found to be lawful.

Conclusions on grounds (b) and (c) EN2 appeal

162. Office use has taken place on the Land as a matter of fact since the late 1940's. The office use became a primary or principal use, as a component of

[47] *Panton and Farmer v Secretary of State for the Environment Transport and the Regions and Vale of White Horse District Council* [1999] JPL 461

the mixed use, as the Research Centre developed over time. The appeal on ground (b) fails.

163. After the acquisition of the Land by the University of Chester in March 2014 the lawful use, described in paragraph 157 above, changed to a mixed use comprising research and development, laboratories, office use and a University science and engineering faculty for the provision of undergraduate and postgraduate education.

164. I have concluded that the new use resulting from the addition of an educational use (teaching, training and research) to the mix of uses on the Land, is materially different in character and effects to the previous use of TSP. A material change of use of the planning unit has occurred.

165. The material change of use amounted to development requiring planning permission. The planning permission granted in February 2014 did not authorise a material change of use of Building 58 to use by a Faculty of Engineering for a higher education use including teaching and hence that use has not become a lawful principal component of the mixed use of the planning unit as a whole. The material change of use has not been authorised by any other planning permission. I have not found the new sui generis mixed use to be lawful.

166. It follows that a breach of planning control occurred. The appeal does not succeed on ground (c).

167. The Council's request for a correction to the wording of the development described in the breach of planning control is justified. To retain consistency with the original wording, the enforcement notice in paragraph 3 should be corrected to state "Without planning permission a material change in the use of the Land **from** a mixed use for research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use **to** a mixed use comprising a University science and engineering faculty providing undergraduate and postgraduate education, research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use.

EN2 APPEAL GROUND A / DEEMED PLANNING APPLICATION AND SECTION 78 APPEAL

Main Issues

168. The development for assessment in the deemed planning application is derived directly from the corrected description of the breach of planning control, as set out fully above, and is a mixed use. The application site is equivalent to the Land outlined in red on the plan attached to the notice and therefore covers all TSP.

169. The section 78 development is not exactly the same. To recap the amended description is: "A material change in the use of buildings 38, 40, 58, 62, 304 and 305 to use by the University of Chester Faculty of Science and Engineering for the purposes of teaching, training and research as an integral part of the Science Park". The site outlined in red on the plan is confined to the footprints of the six buildings.

170. However, the main issues for assessing the planning merits of each appeal are the same:

- The effect of the development on public safety, having particular regard to the proximity of TSP to Stanlow Oil Refinery, an upper tier COMAH establishment;
- The effect of the development on the continuing operation of Stanlow Oil Refinery within the Stanlow special policy area;
- The effect of the introduction of the FSE education use on research and enterprise at TSP and in the wider area, taking into account the business and educational environment created at TSP.

171. Other planning considerations include:

- The effect of the change of use on the heritage assets at the TSP site;
- The effect of the development on the Mersey Estuary SPA/Ramsar site.
- Whether any identified harm may be addressed by the use of planning conditions.

172. No planning obligations were proposed by the appellant or sought by the Council.

Planning Policy

173. The development plan comprises the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (adopted January 2015) and the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (adopted July 2019).

174. For the purposes of these appeals, the most important policies in the Local Plan (Part One) are STRAT 1 sustainable development, STRAT 4 Ellesmere Port and ECON 1 economic growth, employment and enterprise. In addition, Policy SOC 5 is concerned with health and well-being and Policy ENV 6 promotes sustainable high quality design that promotes safe, secure environments and access routes where appropriate.

175. In the Local Plan (Part Two) the most important policies are EP 3 Stanlow special policy area, EP 5 Thornton Science Park, and DM 34 development in the vicinity of hazardous installations. Policy EP 1 is also relevant and is aimed at delivering Policy STRAT 4. I will refer to additional relevant development plan policies when addressing the other planning considerations outside of the main issues. I note that Policy CH 4 University of Chester focuses on development at the campus sites in Chester. The reasoned justification (para 2.30) refers to Policy EP 5 for the University's campus and activities at TSP.

176. All the development plan policies are up-to-date and have full weight.

177. The National Planning Policy Framework (the Framework) sets out the Government's planning policies for England. Planning Practice Guidance (PPG) advises on how these policies are expected to be applied.

178. The Framework requires consideration of whether unacceptable development could be made acceptable through the use of planning

conditions or planning obligations. Planning conditions should be kept to a minimum and only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (known as the six tests).

Effect on Public Safety

179. The public safety issue arises from the location of TSP adjacent to Stanlow Oil Refinery. Public safety is reflected in the social objective of sustainable development that supports strong, vibrant and healthy communities. Ensuring a safe built environment contributes to this objective. The Secretary of State considered public safety to be "such an important area" in the Silvertown Tunnel decision dated 10 May 2018[48].

Stanlow Oil Refinery

180. The Stanlow Oil Refinery complex is located to the west, north west and south west of, and has common boundaries with, TSP. Aerial photographs[49] illustrate well the very close proximity, the difference in scale and the contrast in layout, buildings and infrastructure on the two sites. A local railway line has an east/west alignment through the refinery complex and runs to the north of the main TSP site.

181. Stanlow Oil Refinery is one of the six major oil refineries in the United Kingdom. The site covers an area of approximately 769 ha and has been in operation since about 1924. The refinery is a source of fuels and refined products including gasoline, diesel, kerosene, naptha, fuel oil, propane and other chemicals. The Oil Refinery Major Accident Hazards establishment is designated as an upper tier COMAH site. This status arises from the exceedance of hazardous inventory thresholds as prescribed in the Control of Major Accident Hazards (COMAH) Regulations in respect of flammable and toxic substances[50].

182. Essar has outlined the existing operation, drawing attention to the range of refinery processes, including distillation, catalytic cracking and removal of contaminants such as sulphur. The refinery operates as a single chain as a highly integrated system and as a result it is not possible to isolate individual units[51].

183. On the part of the site located towards the boundary with the appeal site historically there have been solvent units (highly flammable liquids plus methanol), a sulpholane unit (butadiene and sulphur dioxide) together with additives plants (flammable liquids) and a resin plant. Existing plant and equipment include a loading gantry (flammable liquids) and alcohols production areas (toxic and flammable gas, flammable gas and flammable liquids). In addition, there is fully operational plant integral to the ability of the refinery to operate and produce on grade petroleum products such as gasoline and diesel and which gives rise the presence of toxic and flammable gas and highly flammable gases[52].

[48] HSE/REBUTTAL/1 Appendix 1 paragraph 66
[49] Appendices 1 and 2 to Mr Lyle's proof
[50] HSE/HPT/1 paragraph 5.3
[51] EOL/IL/04 paragraphs 3.32 to 3.35
[52] CD5.11 paragraphs 7.9 to 7.13

184. In a statement of common ground between Essar and the Council (the Hazardous Substances Authority) information is included on the original Hazardous Substances Consent (HSC) and a continuation consent dated 3 October 2011. A spreadsheet identifies the various vessel areas across the site, the relevant categories of substance permitted for each vessel area (or moveable storage area) together with any known restriction on quantity plus the relevant consent for each area[53].

185. The HSE has provided a summary table of the amounts of substances permitted to be held at the refinery site, including up to 4.59 million tonnes of highly flammable liquid [54]. In addition, the HSE has divided the site into 4 sections and provided a short summary description for each section[55].

186. The North East area is located to the north of TSP and the railway. Within this area the highly flammable liquid may be stored in large capacity liquid tanks, each with a capacity up to 99,168 m^3.[56]

187. The South East area is located to the south of the railway line, adjacent to TSP. This area has consent for substances classified as (i) very toxic and toxic in fixed tanks (with the largest tank having a 503 m^3 capacity) and moveable containers; (ii) hydrogen fluoride, sulphur dioxide and highly flammable liquids in both fixed (with the largest tank having a capacity of up to 10,700 m^3 capacity) and moveable containers; (iii) flammable liquids/gases stored at elevated pressure in vessels (with the largest tank having a 98 m^3 capacity), and (iv) methanol, very toxic and toxic to aquatic organisms.

188. The North West and South West areas are located further away from TSP. The North West area has consent for (i) very toxic and toxic substances and (ii) highly flammable liquids, in fixed tanks and moveable containers, and (iii) very toxic and toxic to aquatic organisms. The South West area has consent for (i) highly flammable liquids in fixed tanks (the largest tank having a capacity of 23,163 m^3) and moveable containers, (ii) LPG, tetra ethyl lead, tetra methyl lead, toxic to aquatic organisms.

189. This information indicates the highly complex nature of the refinery site, the broad range of hazardous substances and the large and very large quantities of substances/class of substances that are able to be stored there. It is important to bear in mind that the HSC was a deemed consent based on the inventory present during the establishment period and as such it was not granted after a merits-based assessment.

190. An effect of the HSC is that Essar has very considerable flexibility on how it may lawfully operate on its site without recourse to any further consents. As agreed between the appellant and the HSE the deemed consent allows substances to be kept anywhere in the specified vessel area. The maximum vessel size that can be located within the vessel area is identified. However, there is no specification of the location, size or operating conditions of smaller

[53] CD15.2 Appendix 1
[54] HSE/JR/1 page 7 paragraph 4.2
[55] HSE/JR/1 page 8 paragraphs 4.5 – 4.9
[56] HSE/JR/1 paragraph 4.6 has been subject to a correction and is clarified at HSE/REBUTTAL/1 at paragraph 2.6(b). The 4.59 million tonnes of highly flammable substances allowed to be stored across the refinery would equate to more than 40 of the largest vessels theoretically in situ, several of which could be physically accommodated in Area 17.

inventories or a maximum number of vessels, all of which have the potential to contribute to major accident hazards beyond the vessel area or off-site[57]. The consent does not limit the location of hazardous substances within the site at quantities below 10% of the controlled quantity. In addition, there is a complex of pipes, valves, pumps and loading gantries that are not covered by the hazardous substances consent.

191. The COMAH Regulations requires Essar as operator to take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment. Therefore it must be accepted that the risks arising from the installation are as low as reasonably practicable (ALARP). The risk that unavoidably remains is the residual risk.

Legislative and policy framework and guidance

192. Major accidents and their serious consequences, such as at Bhopal, Seveso and Flixborough, have resulted in the development of controls on major accident hazards involving hazardous substances. Details of the relevant legislative and policy framework have been provided in the core documents, evidence and submissions and so do not need to be repeated at length. The Seveso III Directive[58] emphasises the need to ensure a high level of protection of human health and the environment. Article 13 sets out expectations on land use planning, which includes taking account of the need in the long term to maintain appropriate safety distances between hazardous installations and residential areas, buildings and areas of public use, recreation areas and, as far as possible, major transport routes. The Directive was implemented in this country principally through the Control of Major Accident Hazards Regulations in 2015.

193. Planning Practice Guidance on Hazardous Substances, last updated very recently in November 2019, deals with the land use planning aspects of the Seveso III Directive under planning legislation. The PPG provides up to date national advice on the planning controls relating to the storage of hazardous substances and, of particular relevance to the current appeals, on how to handle development proposals around hazardous establishments. In this respect the PPG confirms the requirement to consult the HSE as the expert body and COMAH competent authority.

194. The PPG also confirms the general principles on which the HSE will base its advice[59]. With reference to the matters that have been in dispute, significantly the principles state that where it is beneficial to do so the advice takes account of risk as well as hazard. Also, that advice should take account of (i) the size and nature of the proposed development and the inherent vulnerability of the population at risk, and (ii) the risk of serious injury, including that of fatality.

195. The HSE's role is advisory but the PPG confirms that in view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances any advice from the HSE against the grant of planning permission should not be overridden without the most careful consideration.

[57] CD15.3 paragraph 2.1.3 and HSE/JR/1 paragraph 5.3.9
[58] Directive 2012/18/EU of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently appealing Council Directive 96/82/EC
[59] Paragraph 068 Reference ID: 39-068-20161209 PPG Hazardous Substances

The courts have expressed support for this approach, recognising that the HSE is the expert body that has statutory responsibility for providing decision makers with advice on such technical issues. The Secretary of State in the Silvertown Tunnel decision placed great weight on HSE's advice given their expertise with respect to the effective regulation of major hazard industries.

196. The HSE has strongly advised against the FSE development. The HSE's assessment of overall residual risk for the development was determined through application of a codified decision matrix described in its Land Use Planning Methodology document[60].

Appellant's Case

197. The appellant's case on the public safety issue for the inquiry was primarily set out in the evidence of their principal consultant. The evidence included consideration of the risks of fire or explosion resulting from the loss of containment of oil or gasoline from a storage tank in Area 17 (the oil spill modelling) leading to a pool fire. As a result of his analysis TSP was placed in the Outer Consultation Zone or beyond and therefore threshold levels of risk are not reached. This evidence and conclusion were relied on by other witnesses appearing for the University.

198. The public safety technical evidence was subject to detailed expert scrutiny through the cross examination by the HSE. The witness accepted that the thermal modelling should be withdrawn and on that basis I will make no further reference to the withdrawn report. He also agreed that there was no possible rational basis for any decision maker to override the HSE on the basis of any of the technical material he presented. Subsequently in the following week, the Executive Dean, when pressed, placed no dependence on the technical evidence and understood that it had been withdrawn. The appellant's planning witness accepted he had to revise his position as he was no longer able to rely on the technical evidence.

199. Nonetheless, the final stated position of the University[61] is that the development does not result in a significant increase in numbers of people subject to thresholds of risk, when the numbers are examined and because HSE's assessment is a theoretical exercise as compared to the actual degree of risk in the real world. The appellant's technical evidence, in line with Seveso, sought to address the real likelihood of harm rather than focussing on just hazard consequences. The modelling work on tank failure was not withdrawn. Account must be taken of the presence of the existing population and development at Ince and the fact Policy EP 5 allows for further development at TSP. The HSE sensitivity levels are considered an exercise in unreality. The level of risk in the real world is the test to be applied, as illustrated by the Oval decision and in the Local Plan (Part Two) through the 2nd part of Policy DM 34. None of these considerations rely on the points conceded in cross examination.

Location

200. In terms of the development plan the compatibility and identification of a higher education use at TSP was considered through the consultation and

[60] CD7.5
[61] Inquiry Document A.16 paragraphs 61-97

examination stages of the Local Plan (Part Two). Representations included those made by the University and the HSE. The Publication Draft was specifically amended to delete reference in Policy EP 5 to teaching and a Class D1 use at TSP in response to HSE development advice in respect of hazard consultation zones and potential risks. This amendment was accepted through the examination, even though a further representation was made by the University[62] and was carried through into the adopted plan.

201. Development at TSP has to satisfy both Policy EP 3 and Policy EP 5. In considering the application of these polices I have taken full account of the submissions of the appellant, the Council and Essar and the case law referred to[63]. The Council neatly summarised the conclusion to be drawn from *Cherkely* – that supporting text explains, but cannot add to, take away from or amend policy. *Canterbury* concerned the interpretation of policies worded permissively.

202. Policies EP 3 and EP 5 are part of a comprehensive spatial strategy for Ellesmere Port that embraces Stanlow and TSP. Policy STRAT 4 specifically identifies Stanlow as being important for petrochemical and related industries with suitable employment land for development being taken forward through the Local Plan (Part Two). Policy ECON 1 identifies the Stanlow area as a key employment location.

203. Policy EP 3 states that within the Stanlow special policy area Stanlow Oil Refinery is of national importance and safeguarded for continued use for petrochemical and related industries. Encouragement is given to the redevelopment of any vacant, under-used or derelict land that is surplus to the primary operational use of the site for employment use (use classes B1, B2 and B8), subject to any security restrictions and the policy criteria. New employment development (use classes B1, B2, B8 and suitable sui generis uses) will be supported where all the relevant stated policy criteria are met. Development proposals at TSP must take into account the Policy EP 3 criteria, as well as the additional criteria of Policy EP 5.

204. The emphasis is on employment development that is compatible with Stanlow Oil Refinery and in general the special policy area is regarded as the most suitable location within the plan area to accommodate hazardous and potentially polluting industry. With further reference to the reasoned justification (para. 3.37) it is clear that the intention of the policy is to allow for sui generis uses that are complementary to the operations of the oil refinery and small scale developments such as waste management facilities.

205. The development in the section 78 appeal does not fall within the category of new employment development. The sui generis mixed use development in the EN2 Appeal includes employment use components but also a primary education use. This type of mixed use is not identified by the policy as being 'suitable'.

206. Policy EP 5 identifies TSP for research and enterprise development. Employment development (use classes B1 and B2) will be supported where all the relevant stated policy criteria are met. The reasoned justification (para.

[62] CD7.17.2 The university requested provision for appropriate and defined higher education uses on the TSP site.
[63] *R (Cherkley Valley Campaign Limited) v Mole Valley District Council and another* [2014] EWCA Civ 567 and *Gladman Developments Limited v Canterbury City Council* [2019] EWCA Civ 669.

3.48) recognises that TSP is a site for the University's FSE. However, the text gives no positive indication that a major teaching role would be supported, which is consistent with the history of the formulation of the policy. Emphasis is placed on providing space for new business start-ups [and] for the expansion of businesses operating in the sectors of energy, environment, engineering, advanced manufacturing chemicals and automotive.

207. The policy does not identify or include support for a sui generis mixed use including higher education as a primary component. The scope of acceptable uses is more narrowly defined than in Policy EP 3.

208. Policies EP 3 and EP 5 do not explicitly preclude or rule out an educational use at TSP. However, these polices have to be considered as part of the spatial strategy for the area and the approach to the uses that will be permitted at the TSP site within the special policy area. The educational FSE even as part of a mixed use is not identified as an acceptable use in this location. My initial view is that there is not only a lack of support for but also policy objection to the appeal developments in respect of land use.

209. I will return to the criteria set out in Polices EP 3 and EP 5 later in the decision, following detailed consideration of the public safety issue.

210. Policy DM 34 gives effect to Policies SOC 5, ENV 6 and ECON 1 of Local Plan (Part One). The policy supports development in the vicinity of hazardous installations "providing it would not result in a significant increase in the number of people being subjected to threshold levels of risk." A second limb to the policy provides for exceptions in defined circumstances. The reasoned justification demonstrates that the policy relies on the HSE's Land Use Planning Methodology. It explains that "threshold levels of risk" are those which are sufficient for the HSE to advise against the development concerned being granted planning permission (para. 13.51). Hence there is support and endorsement by the development plan for the application of the Land Use Planning Methodology.

People at risk

211. The appellant disputed that the development has resulted in a significant increase in the number of people at TSP for two main reasons. First, during the occupation by Shell and by the University the overall numbers of people present are broadly comparable – the maximum total number of people currently on site at any one time now is 1,084 compared to around 1,000 in the Shell days. Secondly, the number of people could significantly increase in any event, without the need for planning permission (the fallback).

212. The documentary evidence suggests that during Shell's ownership the peak employment on the site was in the 1960s and 1970s when around nearly 1,000 people worked there[64]. Thereafter staff numbers declined and by the 1990's employment was around 600 people, even though there had been a period of expansion of research and improvements to the functioning of the site. The probability is that following the review and refurbishment of accommodation the numbers of employees in the early years would not be repeated.

[64] CD14.45 page 1630. CD14.47 page 4: In 1976 the Centre employed 'some 950 people'.

213. The information on existing occupation (November 2019) shows University staff totals 140 people, with 660 students and 540 employees in the commercial units, giving an overall total of some 1,340 people. Whilst not all students and staff may be on site at one time, I do not consider an adjustment should be made because there is not the information to make a similar adjustment for employees being away from the site in the pre-2014 period. The evidence of a former employee at Thornton shows his time working elsewhere was considerable (approximately 50%)[65]. In 1962 it was reported "It is not unusual to find members of Thornton staff working temporarily in some other research establishment outside the Group."[66]

214. Comparing nearly 1,000 with 1,340, the number of people at TSP has significantly increased following the material change of use. Furthermore, buildings are used more intensively when in a primary higher educational use, as indicated by the data on floorspace and occupation. The FSE is not at full capacity, a second LDC application indicating that up to 1,000 students were envisaged[67]. The appellant stated in oral evidence that the plan is to grow student numbers, a reason being the income that is generated.

215. Even if the comparison was between nearly 1,000 and 1,084 the increase would be just less than 100 people, which given the percentage increase and policy context would be significant.

216. As to the fallback, it is the case that there is no existing planning condition or planning obligation restricting the number of people on the site. However, to support the point on numbers no evidence has been presented that examines such factors as range of authorised uses, likely intensity of use of the buildings, characteristics and any alterations to accommodation. In the absence of such detailed reasoning I am not persuaded that an increase in people necessarily would be a possible outcome in the future. In particular I have in mind the historic decline in numbers employed at the Research Centre even during periods of expansion and when it was one of the world's leading laboratories.

217. Furthermore, the inconsistency in the appellant's case does not assist the argument. When considering the future of the TSP, the appellant indicated that the TSP would no longer be viable without the FSE. If that was correct, the scenario of increased occupation would not be a real prospect. On both grounds I attach very little weight to this consideration. The policy test is directed at the development requiring planning permission giving rise to the significant increase in the number of people subjected to threshold levels of risk. There has been a change from one mixed use to a new mixed use, where the appellant emphasised the integral nature of the educational use. In those terms the relevance of the fallback is very questionable.

218. As a third and very important consideration the Council drew attention to the fact the Local Plan relies on the definition of the consultation zone by the

[65] Council's Appendices, Appendix B iii paragraph 2.4
[66] CD14.45 page 1636
[67] An application was made in October 2018 for a certificate of lawfulness of proposed use or development for use of the TSP for a sui generis mixed use, comprising elements of research and development, laboratory, teaching and workplace training, including accommodating up to 1,000 higher education students and ancillary uses (ref 18/0405/LDC). The Council refused to issue a certificate by a decision dated 28 February 2019.

HSE to confirm that an increase is significant [68]. As a matter of course the definition of the zone takes account of the size and nature of the proposed development. To consider the matter further would open up the possibility of a second definition of acceptable risk, which would negate the intention of the policy.

219. I conclude that the teaching and training use introduced by the University has resulted in a significant increase in the number of people at TSP, who are being subjected to threshold levels of risk within the meaning of Policy DM 34. The following sections consider whether the HSE's 'Advise Against' is justified.

HSE's advice

220. By way of background, it appears that the University first became aware of the location of TSP within the Inner Zone in November 2015, when the HSE indicated that if planning permission was needed, it would advise against the development because of the introduction of a large student population into the Inner Zone[69]. In the latter part of 2016 the HSE confirmed its objection to the University's activities at TSP when consultation was undertaken on a draft Local Development Order.

221. The HSE has explained its advice is based on the residual risk to people which remains after all reasonably practicable measures, as required by the Health and Safety at Work etc Act 1974 and its relevant statutory provisions, have been taken at the establishment which has the benefit, and entitlement, of hazardous substances consent. There are two key elements to the HSE's assessment of residual risk for a proposed development when providing advice to a local planning authority (i) the setting of Consultation Zones, and (ii) establishing whether the proposed development falls within any of the zones in conjunction with the development type and risk.

Consultation Zones

222. In this case, the zones have been set using the protection concept. This concept is based on the principle of protecting populations potentially exposed to a hazard. The aim is to maintain a separation distance between the development and the hazard to provide a high degree of protection against more likely smaller major accidents and also very worthwhile protection against unlikely but foreseeable larger ones. A representative worst case scenario is chosen and used as a proxy to represent the range of events that could occur, those foreseeable and those whose causality is less certain.

223. At TSP the HSE considered the main risk to the development comes from the range of highly flammable substances that are permitted to be stored in the area to the north. The assessment is based upon the independent catastrophic failure of a 99,168 m^3 storage tank in Area 17 of the Oil Refinery, leading to surge overtopping of a bund, the spreading and formation of a pool of highly flammable liquid, vapour forming above the pool due to evaporation, ignition of the vapour above the pool and a large scale pool fire (the RWCMA). This fire would produce a risk by potentially exposing people to high levels of thermal radiation. The reasons for the choice of this type of representative

[68] CD7.2.1 paragraph 13.48
[69] Inquiry document H.2

scenario are detailed in the HSE's evidence and supported by reference to extensive research.

Protection Concept

224. I consider that use of the protection concept is justified in this case for the following main reasons. First and foremost, and as outlined above, Stanlow Oil Refinery is a highly complex and large site with the capacity to store and process an extensive range of chemicals, toxic substances and flammable liquids. The hazardous substances consent, essentially a deemed consent based on the historic inventory, is very broad and flexible with major multiple hazards elements. There is the ability for site conditions to change in future without further control, in part because the site operator is able to make use of the full entitlement at any time without requiring further permission. Identifying and predicting the exact nature of all potential hazards is near impossible, bearing in mind scope for escalation and unknown or poorly understood mechanisms.

225. Therefore the use of a proxy is highly appropriate to provide public safety advice for the long term because of the inherent unknowns concerning the range of hazards that can or could occur from failures involving the large scale storage of highly flammable substances together with the freedoms inherent in the hazardous substances consent. The importance of this representative approach was illustrated in 2005 by the Buncefield incident involving a vapour cloud explosion, which highlighted the uncertainties in anticipating all types of incidents.

226. The protection-based approach has been subject to reviews dating back to the 1980s. It was endorsed by the Government's Advisory Committee on Major Hazards in 1989. In 2004 the ERM report found HSE's risk analysis methodology, such as those used to set zones arising from toxic hazards, generally fit for purpose and recognised the protection concept had an important continuing role in certain situations[70]. The Buncefield Major Incident Investigation Board (MIIB) in 2008 considered the concept and made recommendations in the context of a wider review of control of land use planning around major hazard sites. The recommendations regarding HSE's role and formal risk assessment were not taken forward by the Government. Prevailing national policy and regulations governing planning and hazardous substances are summarised in the relevant PPG.

227. The use of the protection concept to derive a cautious best estimate of risk from a representative worst case major accident is a well established and widely accepted approach that has been endorsed by the Secretary of State and Planning Inspectors as a means of assessing the compatibility of land use adjacent to a major hazard site. Notable appeals concern development at the Brit Oval (2009), Ram Brewery Wandsworth (2010) and Land at Brewery Tap Ipswich (2006). As a general principle the PPG supports the use of the protection concept, while allowing for the use of a quantified risk assessment (QRA) where beneficial.

228. The alternative approach based on QRA is not suitable to be applied to the complex Stanlow Oil Refinery site. This method requires the identification of

[70] CD9.8 (see paragraphs 12-16) and CD9.15 (see Executive Summary)

all the significant risks, the range of events that could occur, their scale and their frequency. The assessments of the impacts of each event are summated to give a quantified assessment of the total risks from the major hazardous installation to a person at the identified premises or site from all the relevant hazards. The task of applying this analysis to the Refinery site would be particularly daunting as it would have to model and assess all foreseeable events including escalation events. The quantification of the risk would be extremely difficult and probably impossible, the outcomes highly uncertain or potentially very misleading. The purported QRA put forward by the appellant highlights the inherent difficulties of this type of assessment for the Refinery site. The chosen event, even if correctly modelled, understood and assessed, would only indicate the risk to students from that single event.

229. The RWCMA, as a proxy, does not necessarily have to exactly reproduce existing storage and processes at the Oil Refinery. The aim of the proxy is to cover a range of real events and effects that could present an equivalent or greater level of harm. When considered in that way, the description of the approach as 'theoretical' is inappropriate and misunderstands the basis for and reasoning behind the choice of the RWCMA. The refinery site has the benefit of a HSC that authorises the presence of very large volumes of a range of highly flammable liquids. The HSE advise that a large number of different release events could occur within or associated with the vessel area. These could include releases from high volume transfer operations that are not defined or controlled by the HSC. The events could lead to the generation and spread of flammable vapour over hundreds of metres from the release point.

The RWCMA

230. The representative event[71] is described as 54,000 m^3 of flammable liquid overtopping the bund and travelling at very high speed in the form of a tsunami. The predicted calculated diameter of the resultant pool is 744 m, which is then used to set the extent of the Consultation Zones by predicting the thermal consequences of a pool fire on the surrounding population. The thermal hazard represented by the Inner Zone is assessed to be in excess of a dose that would lead to 50% fatalities of an average population. The extent of the Inner Zone covers all six buildings in educational use[72]. Assuming a population of 600 students within the Inner Zone, the expectation is that at least 300 students would be killed and a further percentage would suffer serious harms because of the low protection provided by the buildings. This indicates the potentially devastating impact on TSP.

231. A number of elements were agreed between the appellant and the HSE, which are set out in the statement of common ground[73]. In summary, there was no dispute that the Inner Zone is defined by the distance to which a dose of 1800 thermal dose units (tdu) would be received and that in order to qualify as the Inner Zone this has to occur at a frequency of no less than 10 chances per million (cpm) per year. Tank failure rate data and the use of a pool fire to represent a range of potential hazards/risks associated with inventories of highly flammable liquids were agreed. In terms of pool fire

[71] HSE/JR/1 paragraphs 7.1 to 8.10 provide further details and references
[72] HSE/JR/1 Appendix N
[73] CD15.3

modelling, agreed matters include the use of specified computer models and the volume overtopping a bund (based on 54% overtopping).

232. In relation to the assessment of risk or likelihood of an event happening, the appellant maintained that worldwide there has never been a catastrophic failure of a tank containing crude oil causing fatalities or injuries to off-site populations during the last 100 years or so. Even if this is factually correct, the relevance is minimal because of the proxy nature of the catastrophic tank failure as a component of the RWCMA. It is HSE practice to adopt a catastrophic tank failure as a representative event for all flammable liquid vessels because it is reasonably foreseeable and relatively straight forward and reliable to model. There is the documentary evidence to show numerous catastrophic tank failures have occurred. More generally, storage of flammable substances/liquids has led to serious incidents, where vapour cloud explosions resulted in injuries and fatalities (for example at Flixborough, Jaipur (2009) and at Amuay Refinery, Venezuela (2012)[74]).

233. In view of the reasoning behind the use of the protection concept, the fact that the RWCMA is based on the storage of gasoline in the tanks and not crude is acceptable. Furthermore, the HSC allows the tanks in Area 17 to hold any substances that are classified as B8 – Highly Inflammable. This category includes gasoline. The HSE's witness confirmed in cross examination that gasoline is the exemplar substance for highly inflammables. Significantly, Essar confirmed that not only crude oil is stored in Area 17 currently and outlined how future operational changes could occur realistically in that area. The appellant's witness was unable to demonstrate and explain how crude would spread differently.

234. The appellant made much of the fact that the RWCMA ignored topography, notably the gradient of Oil Sites Road away from the FSE and the railway cutting that physically separates the FSE from Area 17. However, the representative event, as a proxy, covers scenarios which may not be restricted in any way by terrain features. To illustrate the point the HSE refers to the potential for a spreading vapour cloud and the potential hazards from an ignited vapour cloud such as a flash fire or vapour cloud explosion that would not be impeded by topographical features such as a railway cutting. HSE deliberately did not take topography into account and in my view has suitably supported that approach by expert reasoned argument.

235. The HSE explained[75] that the failure rate for the representative tank failure has to take into account the number of tanks that may be present in the consented area. Due to the maximum size of tanks allowed and the consented quantities it was reasonably assumed there could be more than 3 large tanks in Area 17. Based on research and analysis, the combined failure rate for one tank is 5 cpm. The failure rate for 3 tanks (15cpm) was considered to be a sufficiently high rate for the scenario to be used to set the Inner Zone. I take no issue with this reasoning, having regard to the scope of the HSC. No allowance was made for escalation events between tanks.

[74] CD9.16
[75] HSE/JR/1 paragraphs 6.2.1 to 6.2.3

236. The appellant sought to demonstrate that the event frequency of the RWCMA is significantly lower than 10 cpm[76]. Related to this, a scenario was outlined, based on the location of the 3 nearest tanks to TSP, that reduced the event frequency to 5cpm. The outcome was considered to be cautious because it did not take into account a directional probability between the tank and the sensitive population, topography and a lower calculated rate for tank failure.

237. This exercise has a number of failings, which have been comprehensively set out by the HSE[77]. In particular I am troubled by the fact the methodology was not transparent and a number of variables were not supported by modelling or technical analysis. Too much reliance was placed on the existing tank layout and the position of the 3 chosen tanks, which fails to take account of the scope and flexibility of the HSC. The focus was on the frequency of a single tank failure alone, rather than the representative event as a whole. All matters considered, the exercise does not lead me to doubt the appropriateness, relevance and results of the representative event analysed by the HSE.

238. In conclusion, based on the representative event the HSE's evidence explains the consequences of a catastrophic failure of a tank, with reference to the appropriate specialist modelling undertaken and the relevant expert research, technical documents and review underpinning the analysis. In my view none of this analysis was successfully challenged. A number of elements were agreed by the appellant. Given the scientific study and expertise involved and underlying the methodology I attach very substantial weight to the HSE's conclusions.

Appellant's assessment

239. The appellant's assessment of the likely consequences from loss of containment of oil or gasoline from a storage tank in Area 17 was shown to be seriously misleading. The ERM modelling took account of topography and the report concluded that (i) none of the crude oil or gasoline released would flow into the TSP site, and (ii) if the pool of crude oil were to be ignited the teaching buildings would be outside the 1,800 thermal dose unit. It emerged through cross examination that the ERM modelling was based on a release over the bund equivalent to that from a small pipe at $2m^3$ per second over 8 hours 20 minutes. Therefore the modelled event was very different to and does not address the proxy event. It provides no appropriate or credible alternative to the catastrophic tank failure considered by the HSE.

240. The appellant, in closing, maintained that the results were reliable for a significant failure involving a 350mm leak, an incident considered significantly more representative than a total catastrophic tank failure[78]. However, the author of the ERM technical report on tank failure did not appear at the inquiry and the questioning of the appellant's witness raised a number of unanswered matters about the appropriateness of the chosen model and the robustness of the study. He accepted however that the cautious best estimate

[76] This argument is set out primarily in Inquiry Document A.16 paragraphs 73 to 78.
[77] Inquiry Document H.13 paragraph 81
[78] The appellant notes that this example would fall within the definition of a catastrophic tank failure cited in an Energy Institute Research Report (CD14.2 para 3.2.1). However, that report makes clear that the definition is for the purposes of the research report.

approach was not used, which is contrary to generally accepted practice. The ERM report did not stand up to scrutiny and I attach no weight to the results.

241. The approach adopted was to consider just a single possible event, whereas the distinguishing feature of the Oil Refinery site is the large number and types of potential incidents. A QRA was not carried out because the study failed to address the all hazards/risks from the multiple sources and mechanisms across the site. Overall the study is of no assistance to understanding the consequences of potential incidents and the risk to people at TSP.

242. Very significantly, the PPG advice was not applied in that no account was taken of the maximum quantities of substances permitted by the HSC and the assessment also failed to address all general principles identified by the PPG.

243. Overall I consider the analysis is very limited and narrow in scope and which in any event suffers from serious deficiencies. Contrary to the submission of the appellant, the technical evidence does not adequately or reliably consider actual risk in line with the requirements of the Seveso Directive[79]. The pool modelling was withdrawn.

Conclusions

244. The complexity and the scale of Stanlow Oil Refinery is such that the likelihood of every specific effect occurring within a specified period or in specified circumstances is not able to be quantified. The HSE's representative event and subsequent analysis is the appropriate methodology and approach to address the circumstances in this case.

245. The choice of the RWCMA has been satisfactorily justified, the modelling is robust and the RWCMA is appropriate to define the Inner Zone in all respects.

246. Where Stanlow Oil Refinery is the major hazardous installation, the consultation zones defined by the HSE are reasonably set and provide the only basis for applying the decision matrix in the Land Use Planning Methodology. No factors or anything of substance have been identified that cause me to have any reservations and the consultation zones have full weight.

Sensitivity levels

247. The HSE's Land Use Planning Methodology defines sensitivity level (SL) as the scale used to define the vulnerability of a development population to major accident hazards. It is based on pragmatic criteria; the type of development, likely numbers present and whether any vulnerable people will be present. The scale ascends from Level 1 to Level 4 – the more vulnerable the population, the higher the sensitivity level.

248. In this case the HSE concluded the use is within the development type DT2.4 Indoor Use by Public, a category which includes adult education. Because of the large scale of the proposal and hence the numbers of people at risk, the sensitivity level is Level 3 (SL3). The HSE submitted that the SL3 is not remotely marginal because the floor space is well over 2 times the

[79] The appellant referred to recital (18) and Article 3 part 3 of the Seveso Directive

threshold of SL3; the intensity of use is about double per square foot of employment use; and being in the same category as a 5,000 m retail park or shopping centre is no surprise.

249. In justifying the application of 'Indoor Use by Public' in the Land Use Planning Methodology to the FSE development, the HSE considers the population is non-workplace and students are not employees. This distinction reflects important societal risk consequences which is integral to HSE's public safety advice. Such development results in a substantial increase in the numbers of people at risk, with those individuals gaining no direct benefit from their exposure to the risk, as opposed to employees who voluntarily accept exposure to risk as part of their employment[80]. HSE's position on the SL was fully supported by the Council and Essar.

250. The appellant submitted that, based on the facts of the case, the application of HSE's sensitivity levels is 'an exercise in unreality'. HSE's approach and SL3 equated the student population at the FSE with frail, elderly and vulnerable populations whereas students are fit young adults who are admitted to a secure site, who are fully inducted into emergency procedures and who are expected to work with potentially dangerous equipment. The reality of the situation is such that the FSE falls more appropriately into HSE SL1 workplaces, where the justification is "places where occupants will be fit and healthy and could be easily organised for emergency action. Members of the public will not be present or will be present in very small numbers and for a very short time". As a consequence the Advise Against would be reversed to Don't Advise Against.

251. Having fully considered the contrasting cases I find that the sensitivity levels are an element of the consistent and systematic approach followed by the HSE in providing health and safety advice relating to land use planning. This approach and the underlying philosophy have been informed by discussion documents to encourage public debate, been subject to review and have withstood the test of time. More specifically the rationale behind the SLs reflects one of the general principles in the up to date PPG that advice should take account of the size and nature of the proposed development and the inherent vulnerability of the population at risk.

252. On a key matter of dispute, I consider that university students are not employees but are rightly in the 'public' category. Employees are within the working population, earning a living at a chosen place of work. Employees tend to have a workplace within a building and are constrained by the employer's practices, management and their own job responsibilities. Employees cover a wide spectrum of ages and any apprentices would probably be assigned to an experienced individual or team to acquire skills and work experience. By comparison students attend a place of learning, paying for their education and with an expectation of a good level of pastoral care. The probability is that students will be of a younger, narrower age range. Because of the length of course of study, a turnover of the student population occurs every year. On a daily basis students are likely to have less regular hours of attendance and more flexibility in movement depending on

[80] HSE/HPT/1 paragraph 10.8

timetables, the different locations for formal courses of study, tuition, personal study and recreation time.

253. More particularly and additionally in respect of the FSE, the evidence has shown that the induction training on emergency procedures is not of the scope or frequency that employees of Shell Global Solutions received. Of particular note the Council's witness confirmed that it was made very clear to staff that there were risks associated with being located close to the refinery that involved toxic releases in addition to explosions and pool fires. The appellant's evidence did not demonstrate such clear advice was issued to prospective students. Reliance on attendance for an interview at TSP would be unlikely to be sufficient. The Green Square buildings to which staff and students are directed in the case of an incident were confirmed not to be blast proof or airtight. Students at the FSE undertake a range of courses including computer sciences and mathematics and consequently not all will be working with 'potentially dangerous equipment.' As the HSE observed, laboratory health and safety procedures would not prepare students to respond to the wider safety procedures in relation to a major event such as a vapour cloud explosion.

254. Whilst the TSP is a secure site, there also are occasions when the FSE has open days and other similar events where members of the public are invited to attend. They attract parents and school children of younger age than undergraduate students. The appellant drew attention to the open days during Shell's ownership and occupation but time and opinions have moved on since that time and there is now a very different legislative and planning policy framework.

255. However, a compelling distinction is the societal view of risk, a consideration that somewhat surprisingly was not identified explicitly at the outset by the appellant's planning witness dealing with SLs. The HSE's document 'Reducing risks and protecting people' explores this issue[81], acknowledging that developing criteria on tolerability of risks for hazards giving rise to societal concerns is difficult. It highlights the opportunity for avoiding risk through land use planning and the increased level of intolerance by society if fatalities were to occur as a result of a deliberate choice to accept the risk. Members of the public who have a risk imposed on them in the wider interest of society are considered to have a sensitivity ten times that of employees. I agree with the HSE and the Council that the societal view of an incident involving students, young adults with their futures before them, would be materially different and greater in comparison to an incident involving employees.

256. A second and very important element in deriving the SL is the size of the development. For DT2.4 the SL increases from SL2 to SL3 where the development involves more than 5,000 m^2 of floor space because of the substantial increase in the numbers at risk. The appellant has confirmed that the six buildings in FSE use extend to approximately 12,622 m^2 net floorspace. Even in the workplace development type, the SL is increased to Level 2 for development providing for 100 or more occupants in any building

[81] CD14.2 see particularly section on Tolerability limits page 44

or 3 or more occupied storeys in height. Applying this to TSP, size results in an Advise Against even for workplaces.

257. In conclusion, the FSE higher education use is appropriately identified as Development Type 2.4 Indoor use by public, with a SL of 3 because of the numbers of people at risk. Given these two factors and the location within the Inner Zone, the decision matrix confirms an 'Advise Against'.

Area 45

258. Under the 1999 deemed consent B2 toxic substances are able to be stored in vessel area 45. The HSE calculated the associated hazard area using recognised modelling techniques and demonstrated that TSP lies within the Middle Zone (where the chance of hypothetical house resident receiving a dangerous dose for a toxic hazard is 1cpm per year). The appellant drew attention to the fact that equipment had been removed and the area grassed over some 14 years ago. In my view the current position is irrelevant because of the PPG confirmation that account must be taken of the maximum quantity of a substance permitted by a HSC. Therefore, although not the principal consideration, the risk from Area 45 is an additional reason for the Advise Against.

Site context: Ince

259. The village of Ince lies to the north of the railway line to the east of the Oil Refinery and within the Inner Zone. The proximity of the village to Area 17 and the large oil tanks was clearly seen on the site visit. No precise information was given on the development of the small linear village but there is no doubt that it has existed for many years. The population of the Parish of Ince is 210 people. The probability is that within the population there are vulnerable residents.

260. The physical relationship that exits between Ince and Stanlow Oil Refinery hazardous installation was established well before the current regulatory regime was in place. The development was not the result of a positive decision by the local planning authority. The HSE had no say in the original deemed consent and HSE's land use planning advice is not retrospective. By comparison, the current planning circumstances involving the development of the FSE are very different.

261. The appellant's submission that the Council could use its powers to revoke planning permissions has very little relevance and fails to acknowledge that the power may be exercised only up until the time any permitted operational development or change of use is completed. Revocation has no effect against any operations already carried out. No planning permissions are identified that could be subject to revocation. A hazardous substances authority can revoke or modify a HSC. Such a course of action would be extremely unlikely here in view of the national importance of Stanlow Oil Refinery and the liability to pay compensation. The Council gave no indication that it would consider such courses of action[82].

[82] The Council's planning witness confirmed that revocation of a hazardous substances consent tended to be where a site was redeveloped and that the Council did not undertake proactive reviews.

262. The protection to Ince is derived from the Oil Refinery operating at ALARP, as it is required to do. Ince is still exposed to a residual risk, a situation that has to be tolerated. Planning policy, based on the Seveso III Directive, is directed at avoiding additional population being placed at risk through new development. When weighing up the HSE's advice the existence of Ince has little significance.

Policy context

263. The appellant relied on Policy EP 5 specifically supporting further development TSP, including use class B1 which may potentially involve significant increases in the on-site population.

264. Policy EP 5 has been considered in the Location section above. The essential point is that the policy supports employment development subject to satisfying all the stated criteria, including meeting the requirements of Policies DM 33 and 34 and Policy EP 3. Therefore in any decision a conclusion would be required as to whether there would be a significant increase in the number of people being subjected to threshold levels of risk. No inconsistency of policy approach is demonstrated.

Conclusion

265. The HSE's Advise Against is a very strong consideration when assessing the risk to public safety as a result of the development.

Other considerations: Appeal decisions

266. This section is prefaced by the usual observations that each appeal must be considered on its own merits in light of the evidence presented and that circumstances are highly unlikely to be directly comparable, especially where different sites are involved. Nevertheless, appeal decisions involving hazardous installations and public safety are informative and have relevance on such matters as the conclusions on the HSE's approach, methodology and advice, levels of risk and the weight attached by the decision maker to public safety in the overall planning balance.

267. Oval decision[83]. In June 2009 the Secretary of State granted planning permission for the construction of a new spectator stand and hotel and related development at the Brit Oval, Surrey County Cricket Ground in Kennington, London. Evidence on public safety considerations was heard in closed session at the inquiry. The Kennington Gasholder Station (KGS) was the hazardous installation in question, comprising four gasholders with a total inventory of 222 tonnes of natural gas.

268. The Secretary of State agreed with the Inspector's conclusion that the PADHI Advice Against the application was justified on a cautious best estimate basis and that if the development were to be located where no development currently exists it should not be allowed. However, in weighing up the HSE's advice account was taken of the presence of the existing development in the Consultation Zones. There were also certain factors which were considered to lessen the risk and provide reassurance that an accident was less likely than even the very low order of calculated risk would indicate.

[83] CD9.23.1-CD9.23.4

269. Reassurance was taken from the lower likelihood of accidents during the summer cricket season when the gasholders tended to be operated below full capacity. Risk from the KGS also was reduced in relation to the unused uppermost lift of one of the gasholders. The relatively low level of occupancy of the Oval (being full to capacity on 10-15 match days a year) and the seasonal use of the proposed grandstand were additional factors found to mitigate the safety risk. The Secretary of State concluded that the increase in societal risk was acceptable in terms of UDP Policy 54(g).[84]

270. The Oval decision is relevant in so far as it illustrates an acceptable approach to decision making and highlights potential considerations, including the testing of HSE advice, and the exercise of judgement both in respect of the acceptability of the risk in own right and as part of the overall planning balance. Significantly the Secretary of State concluded that where a challenge to HSE evidence is not well supported by technical evidence or proven superior expertise, the HSE evidence should continue to be accorded due weight[85].

271. The decision-making balance is distinguished from the circumstances at TSP in several ways. In terms of policy context, the relevant development plan policies favoured increased spectator capacity at The Oval, allowing for judgement as to whether any risk from an accident at the KGS would be unacceptable or not. In the current appeals, as I have already shown, Local Plan policy is not supportive of educational use at TSP or in the Stanlow special policy area. Policies EP 3 and EP 5 specifically identify these locations for employment uses compatible with the Oil Refinery.

272. The new mixed use does not fall within a B1 or B2 use class, even though it includes research and development, laboratories and offices as primary components alongside the educational use. It is a sui generis use. Policy EP 5 allows for new employment development at TSP but the criteria make very clear that the use has to be consistent with the location in a hazard consultation zone and is compatible with the existing employment uses in the Stanlow area. In other words, the starting point for assessing the acceptability of development is very different in respect of the fundamental of land use. The position at TSP involves the introduction and development of a student campus, not extending and developing an existing use (plus a new hotel), as at the Oval. The very limited relevance of Ince has been shown above.

273. I also consider that the nature and scale of the hazardous installations and scope of the HSCs are very relevant factors. Compared to KGS, Stanlow Oil Refinery is a far more complex and larger installation with a much greater range of hazardous substances on site, with the potential to give rise to a greater range of incidents. If anything, there is the scope for the intensity of use to increase at the refinery site bearing in mind the broad nature and flexibility of the HSC. Moreover, the FSE use does not have the same degree of seasonality or low level of occupancy that characterised the Oval project. There are no such factors that would act to reduce the risk.

[84] CD9.23.4 IR paragraph 13.15: Policy 54(g) resists development if it would be at an unacceptable risk from an accident at the nearby KGS.
[85] CD9.23.1 paragraph 15

274. Factors related to the representative event also display significant differences[86]. In the Oval decision the Secretary of State agreed that on a cautious best estimate it was necessary to model the most dangerous fireball outcome as a credible RWCMA and only then to consider its likely frequency. The Secretary of State agreed with the Inspector that the historic occurrence of a true fireball 'must be in doubt' and that the actual event frequency was very likely to be substantially lower than 10 cpm per year. That factor was borne in mind in the determination of the case and in the overall conclusion the risk of such an event was described as miniscule and already tolerated by a dense population. The detail of the reasoning is distinguished from my conclusion on the appropriateness of the representative event HSE adopted here.

275. In conclusion, I consider that the 'real world' risk at TSP is not similar to but greater than that judged to be the case in the Oval decision.

276. The Brewery Tap decision in 2006[87] is notable because Buncefield was considered by the Inspector to have brought a new level of uncertainty. The Inspector took a precautionary approach to risk and was persuaded by the benefits of the generic approach by the HSE, even though the appellant presented a credible alternative form of modelling the risk from a fire at the tank depot in question. The Inspector concluded there would be an unacceptable risk to the health and well-being of a future residential population.

277. The Ram Brewery appeal[88] concerned a mixed use development, including a large residential content, in proximity to Wandsworth Gas Holder. None of the proposed development would lie within HSE's Inner Zone, the majority of the scheme being in the Middle Zone. The Inspector's report indicates that much of the technical evidence centred on the representative fireball, ignition probability and event frequency. However, a conclusion of particular note is that the always very low likelihood of hazardous events occurring cannot be compared with an individual's daily risk, such as crossing the road[89]. This was because very low residual risk levels when combined with the consequences of a hazardous event can result in a significant impact. The Inspector related this to the particular weight given by the Government to large populations in vulnerable settings together with events resulting in many casualties. In my view this conclusion is equally true today and is very similar to a point made in oral evidence by the HSE about the importance of factoring in the size of population. I attach little weight to the appellant's comparison of the 10 cpm risk threshold for a RWCMA to daily risks of road accidents and accidents in the home.

278. Having very carefully considered the risks associated with the gasholder the Secretary of State concluded in 2010 that introducing significant new levels of population, in towers, was not justified. The subsequent planning permission granted by the Council of the London Borough of Wandsworth was for a differently designed scheme. The permission was also subject to a planning

[86] CD9.23.1 paragraphs 8 and 9
[87] CD10.9
[88] CD10.7, Inquiry document H.4
[89] Inquiry document H.4 paragraph 18.96

condition that prevented occupation of certain blocks until the HSC for Wandsworth Gasholder Station had been revoked for the storage and distribution of natural gas in its entirety[90].

279. In conclusion, these appeals provide support for the HSE's application of the Land Use Planning Methodology in the current appeals and show the substantial weight attached by the decision-maker to public safety.

Exception to Policy DM 34

280. In view of my conclusions on the HSE's advice, the unauthorised development results in a significant increase in the number of people being subjected to threshold levels of risk and the first limb of Policy DM 34 is not met.

281. Helpful insight into the background to and application of the second limb of Policy DM 34[91] has been provided through the evidence and submissions. In my view the specific policy test is distinct, although with some parallels to the 'Oval type factors'. The test only applies where it has been concluded that a development would result in a significant increase in the number of people being subjected to threshold levels of risk. Compliance with the test may only be achieved by satisfying the exceptional circumstances set out in the policy and which are explained further in the reasoned justification.

282. TSP is in an existing built-up area where an exception may be considered in order to achieve a balance between the need for investment and regeneration within the existing urban area and the degree of risk involved.

283. A purpose of the policy is to provide a degree of flexibility within the vicinity of hazardous installations, recognising that persistent refusals of planning permission may lead to blight, a consequent lack of investment and a downward spiral of decay. The Council explained Policy DM 34 is a policy that not only applies to the Stanlow special policy area but more widely within the Borough. The policy covers areas showing indices of multiple deprivation and where there is potential for development to be proposed in the middle and outer consultation zones. The balance between the need for investment and the degree of risk is a matter of judgement in all cases.

284. The likelihood is that the establishment of the FSE at the TSP has encouraged the reuse of buildings, helped to secure investment and funding of projects and supported the growth of businesses at TSP. The Faculty's presence has provided a competitive edge to the TSP by offering a business environment with a distinctive character. However, it is not evident that lack of success in these appeals would lead to blight and a lack of investment or in fact how the strategy for TSP may develop in future without a primary educational component. The viability argument of the appellant was not founded on substantive evidence.

285. In this case the HSE has issued very strong Advice Against the development. The position is not marginal, having regard to the location of the buildings in the Inner Zone, the scale and intensity of the use. The public

[90] Inquiry document H.9

[91] Policy DM 34 states in the second paragraph "Exceptions to this policy may be considered in existing built-up areas or where there is an existing commitment to development in order to achieve a balance between the need for investment and regeneration within the existing urban areas and the degree of risk involved."

safety case is of high importance and a consideration of substantial weight. By contrast the initial assessment by the appellant's planning consultant that the exception test is met was based on the understanding that TSP was within the Outer Consultation Zone and the advice that the individual risk resulting from an event is well below what the HSE considers to be broadly acceptable. At the inquiry this position was conceded to be unarguable. The witness's revised position on the test in oral evidence lacked clarity and consistency.

286. Provision is made and support given through Policies EP 3 and EP 5 for new employment development. As I have highlighted, the land uses that are supported do not include a Class D1 use (section 78 appeal) or a sui generis mixed use that includes a primary education component (EN2 appeal). Viewed from a different perspective, allowing a non-compatible use may restrict investment at Stanlow Oil Refinery. Land at TSP is not part of the employment land supply in Ellesmere Port identified in Policy EP 2 of the Local Plan (Part Two) to meet the strategic requirement for new employment development.

287. In conclusion, the degree of risk to public safety is such that when balanced against investment and regeneration the safety considerations are paramount and compelling. There are not the exceptional circumstances to justify departing from the direction in the first limb of Policy DM 34. Consequently, the higher education development and material change of use involved in the section 78 appeal and the EN2 appeal are not acceptable when considered under the second limb of Policy DM 34.

Conclusions

288. The HSE's Advise Against is firmly based on the principles set out in the PPG. The definition of the Inner Zone has been demonstrated to be sound and I have no reason to conclude that the Inner Zone is incorrectly defined.

289. There is no reasonable justification to adopt a bespoke approach and to depart from the sensitivity level tables in the HSE's Land Use Planning Methodology, even taking account of the components of the mixed use.

290. The challenge to HSE's evidence is not well supported by technical evidence or proven superior expertise. The technical evidence was shown to be lacking in scientific rigour and to be misleading. The written and oral evidence was not able to stand up to the comprehensive and detailed scrutiny of cross examination by the HSE. The Council and Essar have made their respective positions on the matter very clear in their closing submissions and fully support to the HSE's case. In sum, I regard the appellant's technical evidence as completely unreliable, lacking credibility and having very little weight.

291. Based on the location of TSP within the Inner Zone the decision matrix outcome for the appeals is confirmed as Advise Against. The application of a test as applied by the Secretary of State in the Oval decision and through the second part of Policy DM34, (the level of risk in the real world described by the appellant) do not indicate a different conclusion.

292. The changes of use would result in a significant increase in the number of people being subjected to threshold levels of risk and there are not the circumstances to justify an exception to this policy direction. There is no support from Policy DM 34.

293. The FSE use and the mixed use have been shown to be inconsistent with the location in a hazard consultation zone. It follows that failure to comply with Policy DM 34 results in a failure to comply with criterion 1 of Policy EP 5 and criterion 4 of Policy EP 3. All policy criteria have to be met. Accordingly the change of use developments are not supported by and conflict with Policies EP 3 and EP 5.

Mitigation and planning conditions

294. With reference to the Seveso Directive, maintaining an appropriate safety distance between the Stanlow Oil Refinery as the hazardous installation and new development is the land use planning solution to ensure the prevention of major accidents and limiting the consequences of such accidents on human health. In respect of the Local Plan, development is required to comply with all relevant policies. When that is the case, the expectation is that all practicable measures shall be taken to mitigate risks by careful building design and the preparation of emergency procedures, as set out in criterion 1 of Policy EP 5.

295. Planning Practice Guidance explains that when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.

296. The development is not supported by Policy DM 34 and is contrary to that policy. Nevertheless, in light of PPG advice and to fully assess risk, the planning conditions put forward by the Council and the appellant will be addressed.

297. The appellant has proposed two planning conditions – to maintain Buildings 38, 40, 62, 304 and 305 as Green Square buildings in accordance with Chemical Industry Association guidelines (or other relevant guidance), and the submission of a Health and Safety and Incident Management Scheme within 3 months of the grant of permission. I agree with the Council that the requirements set out in the proposed conditions would be more appropriately dealt with through the provisions of the Health and Safety at Work etc Act 1974 and the local planning authority would not be the relevant regulatory authority on such matters. Furthermore, the PPG advises that conditions that require compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. I consider that the proposed conditions would not be necessary.

298. Information was submitted by the appellant on the existing health and safety practices at TSP, including the access control systems and the induction required to be followed by students. The procedures are subject to regular review and adjustment and improvement. However, I agree with the Council that whatever training the students receive, it is an inadequate response. Mitigation is achieved more appropriately by following the policies controlling land use in the consultation zones of an upper tier COMAH site.

299. There was discussion on a condition that would restrict the number of students on site at any one time to 400 or 600. The appellant, in the event such a condition was thought necessary, preferred a limit of 600 students but acknowledged that it could work with a 400 limit. I consider even with the

monitoring available through the CARDAX system the local planning authority would have considerable difficulty verifying any information submitted by the University. It has not been explained how the University would ensure the number was not exceeded. Such a condition would not be enforceable and a restriction on student numbers would be an unreasonable constraint on the functioning of the use granted planning permission. Reliance would have to be placed on the physical capacity of the six buildings to control numbers of students in the section 78 appeal. In the EN2 appeal as part of the mixed use the higher education could expand into other buildings on the site unless controlled by condition. In any event, introducing 400 students has been shown to significantly increase the number of people that would be subjected to threshold levels of risk.

300. It would be possible to preclude persons under the age of 16 years from accessing the site at any time and to restrict the number of days prospective students under the age of 18 years would be admitted to the site. However, this would not affect the sensitivity level used in the decision matrix and hence the strength of the HSE's advice against.

301. In conclusion, the fundamental reason for the unacceptability of the development on public safety grounds is the location of TSP adjacent to an upper tier COMAH site and within the Inner Consultation Zone. The use of planning conditions is not able to overcome this objection.

Conclusion on Public Safety

302. The establishment of the FSE at TSP and the material change of use involved have had a detrimental effect on public safety by placing a substantial number of people, especially students at unacceptable risk.

303. In terms of the Local Plan (Part One) Strategic Policies, by reason of the location of the development adjacent to the upper tier COMAH site the development does not promote a safe environment for its student population and is not supported by Policy SOC 5. For the same reason, the development does not secure a high quality environment sought by Policy ENV 6. When assessed against the Detailed Policies in the Local Plan (Part Two) the development is contrary to Policies EP 3, EP 5 and DM 34.

304. Public safety is not promoted, leading to a conflict with national planning policy as expressed in the Framework.

Effect on operation of Stanlow Oil Refinery

Policy

305. Local Plan (Part One) Policy ECON 1 identifies the Stanlow area as a key employment location which is safeguarded to meet future economic growth in the borough. Within the Stanlow special policy area (defined on the Local Plan Policies Map) Stanlow Oil Refinery is a major land user. The Council, the appellant and Essar all agreed that for the purposes of these appeals the focus is on the potential effect of the University developments on Stanlow Oil Refinery and not any other existing businesses. There are no representations or other evidence that indicate I should take a different approach and therefore I will concentrate on the Oil Refinery complex.

306. As set out earlier in this decision Policy EP 3 recognises the national importance of the Oil Refinery and requires that any new development must not prejudice the continuing operation of the refinery. New employment development (use classes B1, B2 and B8 and suitable sui generis uses) must not conflict with the continuing operation of existing businesses in the special policy area and be consistent with a location within a hazard consultation area (policy criteria 3 and 4).

307. The thrust of the policy is on securing the continued operation of existing businesses and encouraging employment development complementary to Stanlow Oil Refinery and the established petrochemical and related industries. On the basis of the generally understood meaning of the word prejudice, I consider that to comply with the 'no prejudice' policy test new development should not cause disadvantage, harm or detriment to the operation of the refinery. This is consistent with the approach and interpretation of the Council and Essar.

Economic impact

308. The economic contribution made by Stanlow Oil Refinery to the national, regional and local economy based on data for the financial year 2018 was quantified as part of Essar's evidence. There was no challenge to this evidence, or the methodology and data behind it. I consider the evidence provides a reasonable indication and overview of the importance of the Stanlow complex.

309. Referring to some of the main findings, at national level the report concludes that the refinery's direct contribution to UK GDP was £335.6 million[92]. When account is also taken of indirect and induced economic impacts, the contribution increased to £751 million, together with about £140 million in taxes. Total employment, including indirect and induced jobs, was in the order of 7,800 jobs.

310. Relatively capital-intensive activity takes place at the refinery. Even so, around 950 people were employed at the site (and in addition some 800 to 900 contractor staff) and labour productivity was shown to be very high. In a local context the refinery is a source of well-paid employment in a relatively deprived area of the Borough. The refinery's presence benefits a number of firms located in the locality and the wider area, notably the cluster of businesses specialising in the manufacture of chemicals and chemical products that provide 6,400 jobs.

311. The refinery is the main supplier of jet fuel to Manchester Airport via the Manchester jet line. The efficiency in fuel supply helps to reduce the airport's operating costs. The production of diesel and gasoline at Stanlow was equivalent to 13% of the UK's total demand for road fuels during the 2018 calendar year, with most fuels being sold into the North West regional market. The report acknowledges that not all this industrial activity in the North West is dependent on the Stanlow Oil Refinery and that it would not cease if the refinery were not operating. The key aspect is that because Stanlow is the only refinery in the North West it supports the competitiveness of industries across the region. The broad range of refined oil products provides a diverse

[92] All figures relate to the financial year 2018 unless otherwise stated

set of industries with required inputs of fuels, lubricants and feedstocks with minimal transportation costs.

312. The report explains the role of Stanlow, along with a small number of active refineries in the UK, to the security and resilience of the UK's fuel supplies. It is demonstrated that each refinery is a nationally important asset and a crucial contributor to consistent and affordable fuel supplies to the domestic market. By way of illustration, a three day disruption to a refinery could result in nationwide economic costs of £100 million to £500 million.

313. Essar has invested over $1 billion in Stanlow since 2011. Demand for the refined products currently produced at Stanlow is expected to persist over the medium term. The site also has the flexibility to adapt its activities and to diversify its uses beyond the production of refined oil products in order to respond to future economic and technological developments.

314. The Refinery's economic contributions are facilitated by location specific factors such as its access to seaports and oil terminals, nationwide oil pipelines, extensive road and rail infrastructure and the proximity to a complex cluster of high value industries that have evolved within the region over decades. Essar's view is that these conditions would be extremely costly, if not impossible, to replicate at another site.

315. The evidence confirms the importance of Stanlow Oil Refinery to the local, regional and national economies and the associated social importance in terms of employment and transport.

Effect on operation

316. Essar has stated that it has a relatively longstanding good working relationship with the University[93]. More particularly Essar's laboratory and testing facility for the refinery is based at TSP and Essar is currently working with the University on potential new projects at the refinery site including the HyNet project. Therefore there appears to be some advantage to Essar in the University's investment at the TSP. The new mixed use would not detract from the accessibility of the location or have any effect on the infrastructure, factors that Essar identified as being benefits of the operation being based at Stanlow.

317. On site, a safety review would inform Essar whether additional measures, mitigation, or controls or other actions would have to be introduced or carried out as a result of having a student campus adjacent. In fact Regulation 10(2) of the COMAH Regulations 2015 requires an existing safety report to be reviewed and where necessary revised by the operator where (i) justified by new facts (Reg 10(2)(b)), and/or (ii) where justified by developments in knowledge concerning the assessment of hazards (Reg 10(2)(c)). A review may be comprehensive or focused[94]. Essar confirmed that because of the complexity of the refinery a safety report review would cost in the order of £1 million and take a year to complete.

318. The carrying out of a statutory requirement would not amount to 'prejudice' but an element of uncertainty for the operator is introduced as a result of the

[93] CD5.11 paragraph 5.1
[94] Guidance on Control of Major Accidents Hazards Regulations 2015 paragraphs 185-190, 193-194

unauthorised development. In the absence of a detailed safety report review and assessment the precise scope, cost and implications of any measures in response to the changed circumstances cannot be known. The appellant accepted that a safety report could not be reasonably expected to be carried out to inform whether the University's development complies with Policy EP 3. A judgement on the policy test has to be made on the information that is available.

319. The Oil Refinery site is currently operating to ensure risk is reduced to ALARP. The appellant maintains that because all necessary measures are in place to protect the residents of Ince it is inconceivable that additional measures would be required for the purposes of protecting the adult student population at TSP, some further distance away. I disagree. For a start, the number of students on site at any one time has been shown to be double the population of Ince. Also, I have concluded that following the material change of use there has been a significant increase in the number of people at TSP and the development type has changed to one that is of greater sensitivity. It is more likely than not that the prevention and control measures required, and/or the mitigation measures considered necessary, would require adjustment to a greater or lesser extent. There would be potential financial and operational consequences for Essar.

320. As an example at the lower end of the scale, additional integrated gas detection and remote isolation has an estimated cost of £40 million. The installation of such equipment would require the closure of the refinery process for about 4 weeks at a cost on $1 million a day. This type of upgrade would result in disadvantage or prejudice to Essar directly and probably indirectly through damage to customer confidence.

321. Essar has demonstrated how the material change in the land use may be a constraint on future proposals at the refinery and reduce the flexibility offered by the HSC. Reference has been made to specific projects including a proposal to re-purpose the alcohol unit in Area 6 (close to TSP) to facilitate the storage and distribution of finished products, the location of additional sulphur units in Area 45 and housing hydrogen production and equipment as part of the HyNet project. More generally the eastern part of the refinery site, adjacent to TSP, is sequentially preferable for development in respect of flood risk. This area also contains key infrastructure to facilitate additional development. A reasonable expectation is that achieving ALARP in conjunction with new projects would be significantly more onerous if a non-compatible land use is taking place at TSP.

322. Policy ECON 1 identifies Stanlow as one of the key employment locations in the Borough, which are safeguarded as essential to meeting the future economic growth in the area. I conclude that the material change of use at issue in the EN2 Appeal and in the section 78 appeal would prejudice the continuing operation of the refinery and fail to comply with Policy EP 3. Criterion 4 of Policy EP 5 is not satisfied because of the incompatibility of the use with existing employment uses in the Stanlow area and this policy conflict is an additional reason for non compliance with Policy EP 3. This policy conflict has substantial weight in view of the national importance of Stanlow Oil Refinery.

Effect of the FSE

323. Two aspects were addressed in the evidence: (i) the contribution made by the FSE to learning and skills, research initiatives and enterprise and to the role of TSP in the local and regional economy, and (ii) the implications in the event the appeals are unsuccessful.

Contribution to date

324. The FSE was the first such faculty to be created in the UK in the last 25 years or so. The release of the research centre site by Shell and the legacy of the premises and specialist equipment offered an opportunity to establish a faculty with close associations with the business community. The triple helix model of collaboration between University research and teaching, industry and government enabled funding to be secured to establish the faculty, as well as the High Growth Centre and the Energy Centre. Additional projects are in the early stages such as the Road Test Laboratory and housing the UK Geoenergy Observatory. The strategy followed has been selective of the companies allowed to locate on site, so that only technology businesses in the key energy, environment, advanced manufacture and automotive sectors are accepted. The ability to integrate learning with industry and research, the combination of industrial park and academic campus and the high level of integration and synergy between the two elements are described as unique.

325. The development of the FSE and the growth of TSP as a whole has been outlined above when considering the use of the site post acquisition and the materiality of change. Therefore the information on such matters as numbers of students and range of courses, the number and types of commercial tenants and companies and the development of business space and accommodation is not repeated here.

326. The Regeneris report[95] identified a number of important benefits of the close links between academia and industry: students are able to access work-based experience in science and engineering; the University is able to develop its curricula to improve the employment prospects of the students and to better meet the skills needed by business; tailored training is provided for industry partners; and research activity is increased and better shared. None of these are disputed. Similarly, there is recognition of the valuable research and innovation being undertaken in important areas such as climate change.

327. The Regeneris report attempts to quantify the economic effects of the University and business activities in Cheshire and Warrington (in 2015 basic prices), as set out in the table below[96].

	University activity	Business activity	Total economic impact
GVA per annum (£m)	£8	£52	£60
FTE jobs	175	690	865

[95] CD1.12: the report was commissioned by the University to support the planning application for the change of use of the six buildings.
[96] CD1.12 Table 3.2 page 22

328. Additional quantitative assessments were made of the impacts in the North West and the UK. Whilst undoubtedly positive, these figures in isolation and without meaningful comparators give limited insight into economic impact. However, it is possible to conclude that the contribution is not on the same scale as the Stanlow Oil Refinery. A better understanding of the benefits identified in the report, particularly those on site, is gained from the evidence of the witnesses for the appellant, including the supporting descriptive material in the representations of businesses, students and staff.

329. The appellant has explained how the University has worked hard to create a dynamic workplace environment where University staff, students, researchers and businesses are encouraged to connect, combine, collaborate and share ideas in ways that are economically and socially positive. At the heart of the University's mission is the commitment to ensure an outstanding learning experience and developing work ready graduates, especially important in the STEM related subjects. Business support services and projects funded by the ERDF have provided one to one business support to around 250 businesses, supported the creation of 86 new jobs, helped companies develop over 70 new products, processes or services and assisted companies get over 30 new products to market. The nationally and internationally significant research project involving the Faculty include projects with on-site businesses, regional stakeholders and local industry.

330. The letters of support from students[97] talk of the attraction of the co-existence of industry and education and the state-of-the-art teaching facilities and laboratories. The compact campus and bespoke faculty for STEM students were regarded as strong advantages over other universities. The practical experience interlinked with lecture content made the campus unique. The students emphasised the immense value of their work placements on site to developing a range of skills and to their study and career prospects.

331. The letters of support from heads of department and lecturers at the FSE[98] reinforce the themes in the evidence of witnesses and students, particularly from the perspectives of developing curricula, attracting and retaining staff, delivery and practicalities of coursework and achieving the best outcomes for the student. The strong focus is on research being fundamental to their education and the employability of undergraduates. To this end, all first and second year students are placed with companies on site or in the immediate area for a four or five week project. The third year students undertake a design project often based at local plants. Good employment rates have been achieved for graduates, including appointments by companies on site. A number of examples are provided of ongoing research projects and benefits of interaction and collaboration between students, staff and businesses. Attention is drawn to the advantages of the FSE being on a science park next to an industrial cluster.

332. The 23 representations of support from businesses located on the TSP also provide a good indication of why they consider the model operating at

[97] Appendix 1 to Professor's Southall's proof
[98] Appendix 2 to Professor's Southall's proof

Thornton make it a special and successful place[99]. In summary, the prospect and opportunity of interaction with students and academic specialists, and the business support services were among the reasons given for choosing to locate at TSP. The close working relationship and collaboration with the FSE and the academic resource, and other companies on site, are generally highly valued. There are a number of examples of research and innovation being undertaken in partnership and with the benefit of university expertise that have helped in the expansion of the companies and the ability to attract investment. Use of the laboratories and specialist equipment has enabled and been critical to business development and innovation in their specialist work. Certain companies have employed graduates, sponsored PhD students and provided work placements for students at the FSE, with the indication that this practice will increase in the future. Overall the business outlook comes across as being very optimistic.

333. It appears that the establishment of the FSE has been a catalyst for the rejuvenation of the site, sustaining in beneficial use the physical resource (primarily buildings, equipment and infrastructure) post the Shell era. This growth has been welcomed in an area that is a Council priority for regeneration and development to assist in relieving deprivation and improving the skills and opportunities of the young, employees and residents. For example, the Ellesmere Port Development Board has confirmed its strong support for the development and regards TSP as having a fundamental role in the Cheshire Science Corridor Enterprise Zone, led by the Cheshire and Warrington Local Enterprise Partnership. The benefit to local students, workers and companies is emphasised. Firms located near to TSP have also used the facilities there to develop their products and services. The FSE is involved in various collaborations promoted in the area such as the Cheshire Energy Innovation District and the NW Hydrogen Alliance.

334. There are longer term ambitious plans to develop new commercial space at TSP. The location of TSP within the Cheshire Science Corridor and Enterprise Zone is also relevant. Looking forward, should the current uncertainty be lifted, a reasonable expectation is that the role of FSE and TSP within the social and economic framework would be consolidated and expanded.

335. In conclusion, the high quality education provided by the FSE has not been disputed. The educational and business environment created has been praised by students, employers and businesses. The FSE is of benefit to research and enterprise at TSP and in the wider area. A positive and valuable contribution (directly, indirectly and induced) has been made to the local and regional economy from the development at TSP.

Impact if unsuccessful

336. The requirement of the EN2 is 'to cease that element of the use of the Land as a University science and engineering faculty providing undergraduate and postgraduate education'. The appellant did not question this requirement or put forward a lesser requirement through a ground (f) appeal. Essentially the primary higher education use would have to cease. There is no requirement to remove any equipment, facilities or development facilitating the use. The appellant envisaged that the FSE would have to relocate, an outcome

[99] Appendix 1 to proof of Mr Vernon

described as do-able. No firm plans for an alternative site or the future operation of TSP have been prepared or progressed in advance of a decision on these appeals.

337. Major concerns of the University are that the unique offer, the integration between learning, research and industry and the access to the high tech equipment would all be lost. Staff would leave, recruitment would be very difficult, the University's high reputation as a research location would diminish and important research projects would not be able to continue. The financial consequences for the University may extend to loss of grants and repayment of grant funding. TSP would become just another science park and its viability would be threatened. The consequences of withdrawal of the FSE from the site are described as catastrophic for all parties.

338. In the Regeneris report the modelling of the impact of the loss of business activity was based on two assumptions – 50% of student activity currently based at TSP would be lost within 3 years and one third of business activity would leave the Cheshire and Warrington economy either through business relocation or business closure. The appellant accepted that there was no analysis to support such assumptions. Consequently, the stated impacts on jobs and value generated are of no assistance. Reliance will be placed on other evidence, recognising that any assessment of the impact is constrained by the outline nature and current uncertainty of future plans.

339. The consistent strong theme of the University is that the co-location of the FSE alongside business tenants makes TSP distinct. This association would no longer be able to continue in its present form. The alternative options indicated for relocation suggest students would receive their education in a different environment. The vision and aspirations underlying the Thornton project would not be able to be progressed, which would be a huge setback for those driving its development. The specific short and long term consequences are harder to identify.

340. The representations from University staff provide insight into the potential consequences, including the practicalities of teaching elsewhere and the adverse effects this would have on the student learning experience. In their view if the faculty were to be relocated the value of student placements and projects would be much diminished through the loss of ease of communication and interaction with the industrialists both in the setting up of such collaborations and the delivery of them. Opportunities to interact with partners on site, use of the high class facilities and the conduct of industry related research projects would be lost. This would seriously hamper the ability to train graduates that are ready for the work place and seriously inhibit the University's ability to attract the best academic talent. All the benefits of co-location would be lost.

341. The Council submitted the appellant's claim that the educational and commercial uses need to be co-located is seriously overstated and not well supported by the factual evidence such as it is[100]. Reference is made to the relatively small number of student work placements at TSP[101], the sparse

[100] Inquiry document C.7 paragraphs 120 to 128

[101] Attention is drawn to (a) the Regeneris report paragraph 2.19: of the 37 businesses on site, 7 tenants had provided places for 16 students in the year 2017-18; and (b) Appendix 1 to Mr Vernon's proof which shows that of the 23 representations 4 state they have accepted work placements and 1 may do so in the future.

evidence of postgraduate workplace study and the limited numbers of students recruited to full time employment work with businesses on site. Only one company mentioned using the University's laboratories at TSP and little detail is provided of businesses connections with teaching activities.

342. I treat the Council's review of the matter with some caution. The representations do not provide a comprehensive picture or necessarily capture all of the placements, as shown by cross referencing with the representations from University staff[102]. In oral evidence the High Growth Centre was identified as a rich source of placements. I do not read much into the fact not all tenants have written in support of the appeals – from experience this can be down to various reasons. I consider they are a good source of evidence to indicate effects from a specific point of view or at an individual level. The Regeneris report should be a more reliable systematic study of factual information. However, the information has not been comprehensively updated and the no-permission scenario has been shown to be based on unsupported assumptions.

343. Against this evidential background, it would be for the University to decide where and whether the current range of courses would continue to be offered, the form they would take and the nature of the links with TSP. Experience from other higher education institutions suggests that to run highly successful science and engineering courses does not depend on the FSE model where students are 'immersed' into a working industrial environment. There should be no reason why in a new location the practical teaching in laboratories should not be maintained alongside lectures in lecture rooms and the other types of formal and informal spaces. The obstacles to such placements continuing in the event the FSE relocated elsewhere have not been explained. The appellant accepted that it was very difficult to put an accurate figure on how many staff would leave and that none of the academic staff have said they would leave if the FSE had to vacate the site.

344. More than half the students were said to do mathematics or computer science based courses. The appellant explained how these subjects benefit from being located at Thornton, closely integrated with the engineering courses and contributing to a range of projects. However, the probability is they would be less affected than students on engineering and similar courses. Various research projects are ongoing but only one was highlighted to be in jeopardy and that was if the specialist equipment was no longer available at TSP. Open days and similar events would be possible albeit at a different venue(s). More generally, I acknowledge the appellant's concerns that funding may be withdrawn and the potential embarrassment to the University.

345. A particular capital asset at TSP, as described in the appellant's evidence, is the refurbished, updated, and equipped laboratories and workshops with state-of-the-art and industry grade facilities and high-tech equipment, incorporating wherever possible the legacy equipment from the Shell days. The appellant acknowledges that due to the size and weight of equipment there would be problems in its relocation.

[102] PMW Research and PMW Technology Limited email dated 29.08.19 and the letter dated 16.10.19 from Dr Carolina Font Palma.

346. It appears that the equipment is an integral part of the refurbished accommodation at the site. At this point in time it is just not known whether the equipment would be retained in situ or relocated and therefore no firm conclusions may be made on the likely effect on students or business tenants. No analysis has been provided by the University of the research projects that may or may not be affected. The enforcement notice does not require the business and research use of the Energy Centre or the High Growth Centre to cease. In the event the decision was taken to move the specialist equipment to a new site to support a relocated FSE, tenants would not have the same convenient and ready access to this resource.

347. In the representations there is some indication that businesses would review either their expansion plans or continued presence at TSP were the FSE to relocate. Two companies stated a high likelihood of leaving the site to move elsewhere. However, the probability is that these types of decision would be much influenced by the plans of the University on such matters as the form of retained presence at the TSP (if any), accommodation and equipment.

348. An attempt was made to argue that the loss of the FSE would make the TSP unviable. This matter was formed no part of the appellant's initial case, was raised very late in the day at the inquiry and evidence was scant. There is little evidence to suggest existing businesses would relocate away from the site and even if they did it does not follow that they would be lost to the local area. I also note that new businesses have been attracted to the site after the enforcement notices were issued, indicating that the location was considered suitable despite the possibility of the cessation of the education use.

349. In the event the appeals are not successful, the probability is that the existing close integration between learning, research and business would not be maintained to the same level and the advantages of co-location would be considerably reduced. Relocating the FSE was accepted to be possible. Such a course of action would present major challenges to the University, although in the absence of a confirmed strategy the effects on the future of the FSE and the development of TSP are uncertain.

Conclusions

350. The University has been successful to date in taking forward its Vision for TSP. The development has encouraged refurbishment and re-use of an existing site, with premises for continued employment use in the Stanlow area alongside the use of the site for educational purposes. There are strengths of co-location for students, business and for promoting valuable research. Building on the Shell legacy, conditions have been created where businesses can invest, expand and adapt and where innovation addresses the challenges of the future. TSP also is within a cluster and part of a larger area being promoted for the development of creative and high technology industries. The improvement of skills and links to main employers is consistent with the Council's support for initiatives and accessibility to higher education in the Borough. All these factors are in accordance with strategic Policy ECON 1 and consistent with the Framework's policy for building a strong, competitive economy.

351. However, Policy ECON 1 provides general support, not an endorsement of achieving such aims at TSP. Having regard to Essar's submissions on the weight that should be attached to the Vision[103], the establishment of the FSE and pursuit of the Vision at TSP has no support from development plan policy.

352. Turning to Policy STRAT 4, the appellant relies on the reference in the reasoned justification to the policy supporting the ambitions of the Ellesmere Port Vision and Strategic Regeneration Framework. However, the adopted policy focuses on delivering substantial economic growth and ensuring housing to complement the role as a key employment location. The Stanlow area is identified as being important for the petrochemical and related industries. In my view there is nothing in the policy to support the location of the FSE as a major higher educational facility at Thornton.

353. The development has been shown to contribute to meeting certain social, economic and environmental objectives but Policy STRAT 1 is concerned to do so in a sustainable way. Compliance is required with other relevant policies in the Plan. The conflict with Policies EP 3, EP 5 and DM 34 leads to a conclusion that the new mixed use does not have the support of Policy STRAT 1.

Heritage assets

354. Building 50 is a grade II listed building, built in 1940-1 as an aviation fuel research laboratory and offices, to a design by the internationally significant aviation expert Sir Alan Cobham and renowned architects Burnet, Tait and Lorne. The imposing and elegant building has architectural detailing that reflected the importance of the work carried out within the building. It has special historic and technological interest for its pioneering and crucial work in the development of modern aviation fuel and its contributions to the success of British aircraft during World War Two[104].

355. Building 38 and Building 27 are locally listed buildings that were built in the early 1940s and designed by the same architects as Building 50. Building 38 is the more imposing and was originally used for research into diesels, oils and greases.

356. Building 50 is currently mothballed and the interior requires significant refurbishment. Building 27 is also currently mothballed. As a positive contribution, Building 38 has been fully refurbished to provide learning space and facilities. The building now houses the Faculty library, engineering and ITC labs, seminar space and office accommodation.

357. The deemed application and section 78 appeal concern a change of use and do not include any building works, whether new build, improvements or alterations. Therefore the developments would not directly affect the fabric or setting of the heritage assets and no harm or loss would result.

358. The developments and commitment of the University to TSP would increase the likelihood of securing viable new uses and refurbishment of Building 50 and Building 27. There is however no indication of any specific proposals or timescales and so very limited positive weight is attached to this consideration.

[103] Inquiry document E.5 paragraph 149
[104] CD11.10

359. In so far as the developments safeguard the designated and non-designated heritage assets there is compliance with Policy ENV 5 of the Local Plan (Part One). Referring to the Local Plan (Part Two) there is no conflict with Policy DM 47 (listed buildings) or DM 48 and accordingly compliance with criterion 3 of Policy EP 5.

Mersey Estuary SPA/Ramsar

360. The Mersey Estuary SPA encompasses all or parts of the Mersey Estuary SSSI and New Ferry SSSI. It is a large sheltered estuary which comprises large areas of saltmarsh and extensive intertidal sand and mudflats with limited areas of brackish marsh, rocky shoreline and boulder clay cliffs within a rural and industrial environment. The intertidal flats and saltmarshes provide feeding and roosting sites for large and internationally important populations of wildfowl. During the winter the site is of major importance for ducks and waders. The site is also important during spring and autumn migration periods, particularly for wader populations moving along the west coast of Britain. The Ramsar designation is based on the numbers of wintering waterfowl of international importance and the presence of species at levels of international and national importance.

361. The designated site is vulnerable to physical loss through land claim, damage caused by dredging, agricultural requirements, non-physical loss, toxic and non-toxic contamination and disturbance by wildfowling.

362. The TSP is some 1.4 km from the Mersey Estuary SSSI, SPA and Ramsar site and is separated from the estuary by the Stanlow Oil refinery, the Manchester Ship Canal and industrial development. The potential hazards from the change of use would be from air and water quality impacts, which could directly impact on the habitats within the designated site and therefore on the qualifier/criterion species.

363. However, no new drainage infrastructure is proposed. The existing foul and surface water drainage systems will be used and no extra processes will require higher or different waste water outputs. No significant increase in traffic is forecast and there is no reason to consider air quality would be adversely affected. Therefore, the new use would operate within the existing parameters of the site and no significant impact is predicted. Impact from disturbance is not considered a potential source of harm because of general considerations related to poor accessibility of the European site from TSP and the fact the new population introduced by the change of use would be primarily students. For all these reasons I conclude the proposal is unlikely to have a significant effect on the designated sites.

364. Following consideration of other plans or projects within the surrounding area, the material change of use at TSP is not likely to have an 'in combination' significant effect on the European site.

365. In conclusion the change of use developments, whether for the six buildings or the TSP site as a whole, are not likely to have a significant effect on the internationally important interest features of the Mersey Estuary SPA/Ramsar site alone or in combination with other plans or projects. There is no conflict with Policy ENV 4 of the Local Plan (Part One) and compliance with criterion 1 of Policy EP 3 of the Local Plan (Part Two).

Traffic and travel mode

366. The Transport Statement[105] confirms that TSP is served by a single vehicular and pedestrian access via a roundabout junction on Pool Lane. The site access is overseen by security staff and no general public access is allowed. The majority of students use the free shuttle bus provided by the University that operates a half hourly service Monday to Friday between the site and the Parkgate campus. No on-site parking is provided for students but car parking is available to University staff.

367. Experience to date has not highlighted any traffic or highway safety issues. A planning condition is proposed to secure a travel plan in accordance with the University's Travel Plan Strategy 2015-2020[106]. As worded the condition lacks a means of enforcement in the event a travel plan is not approved. There are no mechanisms proposed that would ensure the provision of the free shuttle bus service, which is an essential service to make the site accessible to all by a sustainable means of transport. There is little certainty about what targets and outcomes would be put in place.

368. Planning conditions are proposed to secure the provision of electric charging infrastructure and cycle parking to accord with provisions of Policy T5 of the Local Plan (Part Two).

Other potential effects

369. The development raises no concerns in terms of the effect on residential amenity, potential for pollution, noise generation or visual impact. Linked to the conclusions on the Mersey Estuary SPA/Ramsar site and heritage assets criterion 1 of Policy EP 3 is met.

Interested party representation

370. I am satisfied that I have covered all the matters raised, including those in relation to the planning history of the site, the advice provided by the Council regarding planning permission, the advice of the HSE, the safety of students, the success of the academic environment and the value of the development to the local economy.

Overall Planning Balance

Development plan

371. The planning balance is similar for the deemed planning application/ground (a) in the EN2 appeal and the section 78 appeal. This approach is reflected in the closing submissions of the appellant, the Council and Essar.

372. For the reasons detailed above, the location of a University Faculty providing higher education, even as a primary component of a mixed use, is not in accordance with the strategy for Stanlow within the Ellesmere Port area set out in Policy STRAT 4. There is a policy objection to the use by reason of the provisions of Policies EP 3 and EP 5.

[105] CD1.10
[106] CD1.11

373. Furthermore, a higher number of people, especially students, are being placed at threshold levels of risk resulting in substantial harm to public safety. There is prejudice to the continuing operation of the nationally important Stanlow Oil Refinery. The very serious harms, a result of the location of the TSP site adjacent to an upper tier COMAH establishment, are not able to be overcome by planning conditions. The development is not supported by Strategic Policies SOC 5 and Policy ENV 6 and in the Local Plan (Part Two) by Policies EP 3, EP 5 and DM 34. In total, these conclusions weigh very heavily against the development.

374. The University has demonstrated a high commitment to developing a centre of excellence in learning and skills, research and enterprise, for which there is general strategic support from Policy ECON 1. In this context the valuable contribution by TSP to the local and regional economy has very significant weight.

375. In so far as the developments safeguard heritage assets there is compliance with Policy ENV 5 and no conflict with Policies DM 47 or DM 48. No conflict with Policy ENV 4 has been found in respect of the Mersey Estuary SPA/Ramsar. No traffic or highway concerns are raised. Continued future public transport provision to the site is not adequately secured.

376. Safety, health and well-being are important components of sustainable development. Having regard to the above conclusions, the sustainability principles outlined in Policy STRAT 1 are not sufficiently met.

377. Weighing all these conclusions together, my overall conclusion is that in each appeal the material change of use is contrary to the development plan when considered as a whole and is unacceptable.

Other considerations

378. The University has helped to create conditions at TSP where businesses can invest, expand and adapt and where students are able to acquire and develop skills, particularly in the STEM subjects. These factors are consistent with the Framework's policy for building a strong, competitive economy. The Vision promoted at TSP would not be able to continue in its current form if planning permission is not secured, which potentially could have very serious consequences for the University. However, the development works against the economic interests of Stanlow Oil Refinery, an installation of national importance. This consideration is of greater weight and tips the balance against the development on economic grounds. Public safety is not promoted, which given the circumstances is a serious conflict with the Framework.

379. TSP features in a various economic strategy, policy and promotional investment documents, including the Cheshire and Warrington Local Enterprise Partnership Strategic Economic Plan. However, these documents pre-date the latter stages of the preparation and the adoption of the Local Plan (Part Two) and they have no detailed consideration of the public safety aspects. They have limited weight for the purposes of these appeals.

380. When balanced overall, these national planning policy considerations support the direction provided by the development plan.

Conclusions

381. History has shown that even the best risk control measures occasionally fail and that major accidents occur[107]. The Council and the HSE make a very simple but effective and persuasive submission. In accordance with the Seveso III Directive an appropriate safety distance should be maintained between the upper tier COMAH establishment and development for public use. Public safety is a priority and is a compelling and overriding consideration against the FSE educational development at Thornton.

382. For the reasons given above I conclude that:

- The material change of use, whether in the form of the section 78 appeal proposal or the mixed use in the EN2 appeal, is not in accordance with the development plan and is unacceptable. There are no considerations of sufficient weight to indicate otherwise.
- The EN2 ground (a) appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
- The section 78 appeal should be dismissed.

EN2 Appeal: Ground (g)

383. The purpose of the notice is to remedy of the breach of planning control by requiring the education element of the mixed use to cease. Essentially the provision of undergraduate and postgraduate education by the FSE would have to cease. There is no requirement to carry out any alterations or building works or to remove equipment, plant or machinery. The issue is whether the period for compliance of 6 months is reasonable.

384. The appellant is seeking a period to the end of the academic year in June 2022 in order that the University could meet its contractual obligations to its students. In effect a compliance period of over two years is being requested. The appellant has outlined the type of decisions that would have to be taken with a view to meeting the contractual obligations to deliver each student's programme of study with reasonable care and skill and to make available learning support facilities and other services as the University considers appropriate. The decision-making would fall to a new Vice-Chancellor.

385. The appellant stated through the Vice-Chancellor's evidence that decisions would need to be made on which parts of the operation at the site would remain viable if transferred to an alternative location, whether any should close and whether obligations to students should be sought to be transferred to other higher education institutions. On the assumption that academic provision would continue, relocation would be necessary either to newly built premises on the University's Parkgate Road campus, or acquisition and refurbishment of suitable premises in or close to the centre of Chester. Commercial agents were instructed around Spring 2019 to search for a suitable existing alternative site. Existing University premises are highly constrained and are said to be fully utilised in delivering academic provision

[107] HSE/HPT/1 paragraph 5.8

and supporting services to students. The aim would be to work responsibly with parties on a withdrawal strategy.

386. By all accounts future plans have been considered, at least at a preliminary level. Even so, a high degree of uncertainty remains about contingency or longer term future plans and options. The indication is that a period of time would be required for key decisions and financial planning. However, the planning issues came to the fore two years or more before the first enforcement notice was issued. The University chose to continue as normal in its student intake and did not attempt to review its Prospectus and marketing information.

387. Nevertheless, even though the enforcement notices were issued some time ago in June 2018 and May 2019, the appellant is entitled to assume success and to a reasonable period for compliance after the notice takes effect. I recognise that the academic, contractual and financial implications for the University would be substantial. The Council has also revised its position and confirmed that it considered a year would be ample time to make the necessary arrangements whilst removing the students from the inner zone as promptly as possible.

388. As regards policy, the Framework and Planning Practice Guidance explain that effective enforcement is important to maintain public confidence in the planning system by maintaining the integrity of the decision making process. In this case public safety is of paramount importance and the HSE could not be clearer in its advice. Such circumstances indicate that the period for compliance should be as short as reasonably possible.

389. Having balanced all the competing considerations I conclude that to extend the compliance period to one year is reasonable. The appeal on ground (g) succeeds to this extent and the enforcement notice will be varied accordingly.

DECISIONS

Appeal Ref: APP/A0665/C/18/3206873

390. It is directed that the enforcement notice be corrected:

- In paragraph 2 by the deletion of the description of the Land and the substitution of the words: Building numbers 38, 40, 58, 62, 304 and 305, Thornton Science Park, Pool Lane, Ince Chester CH2 4NU, as shown in red on the attached plan ["the Land"].
- In paragraph 3 by the deletion of the words of the alleged breach of planning control and the substitution of: Without planning permission, a material change in the use of the Land to a university faculty for the provision of higher education within Use Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended) ["the Unauthorised Development"].

391. Subject to these corrections, the enforcement notice is quashed.

Appeal Ref: APP/A0665/C/19/3232583

392. It is directed that the enforcement notice be corrected in paragraph 3 by the deletion of the wording of the description of the matters which appear to constitute the breach of planning control and the substitution of the wording:

Without planning permission a material change in the use of the Land

from a mixed use for research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use

to a mixed use comprising a University science and engineering faculty providing undergraduate and postgraduate education, together with use for research and development (in connection with automotive/petrochemical/ aviation/environmental and energy industries), laboratories and office use ("the Unauthorised Development").

393. It is directed that the enforcement notice be varied in paragraph 6 by the deletion of "Within 6 calendar months" and the substitution of "Within 12 months".

394. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/A0665/X/19/3227520

395. The appeal is allowed, only in part. It is directed that the certificate of lawful use or development granted by Cheshire West and Chester Council and dated 28 February 2019 under reference 18/04182/LDC be modified by:

- At the end of the heading describing the statutory provisions, the addition of ": Article 39".
- Beneath the heading describing the statutory provisions the deletion of the two sections comprising the Description, Location and all associated wording.
- In the immediately following text, starting "In pursuance", the deletion of the wording "26 October 2018, the use/operation(s)" and the substitution of the "15 October 2018, the use", and the insertion of "of section 191(2)" after the word "meaning".
- The deletion of reasons (1) and (2), substituting the following reasons:

  On the balance of probability, the sui generis mixed use described in the First Schedule was carried out continuously without significant interruption on the land for a period in excess of ten years prior to 31 March 2014 and became immune from enforcement action by reason of the passage of time. During that period the industrial use that was undertaken, mainly associated with engineering workshops and a blending plant, was ancillary to the research and development and laboratory uses. The teaching and workplace training that took place, including apprenticeships, work placements and youth training

schemes, was an ancillary not a primary use and therefore cannot be included as a component of the mixed use found to be lawful.

After the acquisition of the site by the University of Chester on 31 March 2014 a Faculty of Science and Engineering was established on the site to provide undergraduate and postgraduate education. Subsequently up to 404 adult higher education students attended on site at any one time. The teaching and workplace training in association with the Faculty of Science and Engineering became a primary use. All the previous primary uses continued. A material change of use occurred to a new mixed use, comprising a University Faculty of Science and Engineering providing undergraduate and postgraduate education, together with use for research and development (in connection with automotive/petrochemical/aviation /environmental and energy industries), laboratories and office use. This material change of use took place less than ten years prior to the date of the application. No planning permission has been granted for this development. The use applied for is not immune from enforcement action and has not acquired lawfulness.

- The deletion of the content of the First Schedule and the substitution of: "Use of the site (outlined in red on the plan appended) for a mixed use comprising research and development (in connection with automotive/petrochemical/aviation/environmental and energy industries), laboratories and office use."
- In the Second Schedule the addition, after the postcode, of the phrase: (outlined in red on the plan appended).
- Under the heading Notes, the deletion of the description of development in the application (as amended) and the substitution of the description: "*Use of the site (Thornton Science Park) for sui generis mixed use, comprising elements of research and development, laboratory, teaching and workplace training (for up to 404 higher adult education students on site at any one time) and ancillary uses*".

Appeal Ref: APP/A0665/W/18/3206746

396. The appeal is dismissed.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC and Jenny Wigley of Counsel	Instructed by Addleshaw Goddard solicitors
They called	
Professor Timothy Wheeler	Vice Chancellor, Principal and Chief Executive of the University of Chester
Professor Garfield Southall	Executive Dean of the University of Chester's Faculty of Science and Engineering and Provost of Thornton Science Park
Mr Paul Vernon	Senior Executive Director of Commercial Operations and Chief Executive of Thornton Research Properties Limited
Mr Peter Tooher BA(Hons) BPI MRTPI	Executive Director of Nexus Planning
Mr Simon Brown BSc CEng FIET	Principal Consultant with Engineering Safety Consultants Limited

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter, Barrister	Instructed by Chrisa Tsompani Legal Manager (Environment), Cheshire West and Chester Council
He called	
Ms Jennifer Brown	Product Steward of Essar Oil (UK) Limited
Paul Friston BA(Hons) BPI MRTPI	Principal Planning Officer, Cheshire West and Chester Council

FOR THE HEALTH & SAFTEY EXECUTIVE (Rule 6 Party):

David Forsdick QC (*Katrina Yates, barrister attended in week 1*)	Instructed by Adam Paine, Government Legal Department
He called	
Harvey Tucker BSc AMIChemE	HM Principal Specialist Inspector of health and safety (*Mr Tucker adopted and presented the evidence of his colleague Mr James Rutherford who was unable to attend the inquiry*)

FOR ESSAR OIL (UK) LIMITED (Rule 6 Party):

Giles Cannock QC	Instructed by Peter Nesbit, Partner, Eversheds Sutherland (International) LLP
He called	
Ian Lyle BSc(Hons) MPhil MRTPI	Director ELG Planning

DOCUMENTS submitted at the inquiry

By the Appellant

A.1 Data on Thornton Science Park 31 October 2019
A.2 Plan of Thornton Science Park ref TSX_P000_012
A.3 Outline opening submissions on behalf of the Appellant
A.4 Erratum to Proof of Evidence of Mr Brown
A.5 Core Documents for cross examination of HSE
A.6 Proposed amendment to description of the CLEUD application
A.7 Plan of Thornton Science Park with distances to tanks at Stanlow Oil Refinery
A.8 Costs on running Thornton Science Park by Mr Vernon
A.9 *Mansell v Tonbridge and Malling Borough Council and Others* [2017] EWCA Civ 1314
A.10 *R (on the application of Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53
A.11 *New World Payphones Limited v Westminster City Council and the Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 2250
A.12 *R (on the application of Peel Land and Property Investments PLC) v Hyndburn Borough Council and Others* [2012] EWHC 2959 (Admin)
A.13 *Samuel Smith Old Brewery (Tadcaster) v the Secretary of State for Communities and Local Government and Others* [2009] EWCA Civ 333
A.14 *East Barnet Urban District Council v British Transport Commission and Another* [1962] 2 QB 484
A.15 *Wilson v West Sussex County Council* [1963] 2 QB 764
A.16 Closing Submissions on behalf of the Appellant

By the Council

C.1 Opening statement of the Local Planning Authority
C.2 Population information
C.3 Revised draft planning conditions
C.4 *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669
C.5 *The Queen on the application of Cherkley Campaign Limited v Mole Valley District Council and Another* [2014] EWCA Civ 567
C.6 Closing submissions on behalf of the Council

By the HSE

H.1 Opening remarks on behalf of HSE
H.2 Note on the HSE and the Health and Safety Laboratory early
H.2 engagement on Thornton Science Park 2015 to 2016 (*original*
v2 *document and replacement document*)
H.3 List of corrections and updates to the proof of Mr Rutherford
H.4 Report to Secretary of State for Communities and Local Government 26 March 2010 Site at Ram Brewery, Wandsworth ref APP/H5960/V/09/2099671, 2099695, 2099698, 2099572
H.5 *Wipperman and Another v Barking London Borough Council* [1965] 17 P&CR 225

H.6 Corrections to proof of evidence of Mr Tucker
H.7 Copy of correspondence between Government Legal Department and Addleshaw Goddard 22 November 2019
H.8 Copy of correspondence between Addleshaw Goddard and Government Legal Department 25 November 2019
H.9 Consultation with HSE re Ram Brewery 12 August 2013 ref 2012/5286
H.10 Thornton Science Park – The Facts posted 7 June 2018
H.11 Email correspondence 12 June 2018
H.12 Email correspondence 2 August 2019
H.13 Closing submissions on behalf of HSE

By Essar Oil (UK) Limited

E.1 Opening submission of Essar Oil (UK) Ltd
E.2 *Peel Land and Property Investments plc v Hyndburn Borough Council and others* [2013] EWCA Civ 1680
E.3 Clarification note
E.4 Response to matters raised by the Inspector
E.5 Closing submissions on behalf of Essar Oil (UK) Ltd

General

R.1 Representation and supporting documents submitted by A Miller