



## Appeal Decision

Hearing held on 18 and 19 January 2023

Site visit made on 19 January 2023

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 6<sup>th</sup> February 2023**

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**Appeal Ref: APP/L3245/W/22/3305992**

**Land to the east of Adcote School and to the South of Adcote Barn, Little Ness, Shrewsbury, Shropshire**

- 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 Mr Richard Walker of Adcote School Ltd against the decision of Shropshire Council.
  - The application Ref 22/01947/FUL, dated 22 April 2022, was refused by notice dated 20 June 2022.
  - The development proposed is three new detached dwellings.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. At the hearing the parties confirmed the appeal site address as that set out in the banner heading above.
3. A signed and dated Unilateral Undertaking was submitted by the appellant at the hearing. This seeks to achieve a financial contribution to fund restoration works to the adjacent Grade I listed building. I shall return to this matter below.

### Main Issues

4. The main issues in this appeal are:
  - Whether the site is a suitable location for residential development, having regard to the local development strategy for the area; and
  - Whether the proposal would preserve the setting of Adcote and adjoining forecourt walls, a Grade I listed building

### Reasons

#### *Suitability of location*

5. The appeal site is an irregular parcel of land that forms part of a larger agricultural field located to the immediate east of Adcote School, a private school for girls and a Grade I listed building. The site is bound to the north by the narrow public highway along Back Lane, known locally as Bunny Lane. To the south and east, the site is generally surrounded by open countryside, reinforcing its intrinsic rural character. The proposal would see the site developed to provide three detached dwellings, with access off Bunny Lane.

6. The development plan comprises the Shropshire Local Development Framework Core Strategy 2011 (the Core Strategy) and the Shropshire Council Site Allocations and Management of Development Plan 2015 (the SAMDP).
7. Policy CS4 of the Core Strategy sets out the Council's strategic approach to development in the rural area, with development directed towards Community Hubs and Community Clusters. It specifically states that development will not be allowed outside these settlements unless it meets the requirements set out in Core Strategy Policy CS5. A list of defined Community Hubs and Community Clusters is set out in Schedule MD1.1 of Policy MD1 of the SAMDP. At the hearing, it was established that the appeal site does not fall within any of these defined hubs or clusters. Furthermore, it is common ground between the parties that the site is located in the open countryside for the purposes of planning policy, and I agree. However, the parties also agree that the site is not isolated.
8. Policy CS5 is clear that new development in the countryside will be strictly controlled in accordance with national policy. Furthermore, market-led housing is not a development type specified for support by Policy CS5, nor would it meet any of the criteria for managing the development of housing in the countryside as set out in Policy MD7a of the SAMDP.
9. I acknowledge that Policy CS5 supports development proposals on *appropriate sites* which maintain and enhance countryside vitality and character and where they improve the sustainability of rural communities by bringing local economic and community benefits (my emphasis). However, this policy provision cannot be considered in isolation, therefore regard must be had to the development plan's spatial strategy as a whole, in order to establish if the appeal site represents an appropriate site for the proposal.
10. The provisions of Policy MD7a are clear and unambiguous in that the policy will only support housing development in the countryside in certain circumstances, which have not been demonstrated in this case. Therefore, I cannot conclude that the proposal is an appropriate site for the proposed development. Thus, the proposal would conflict with Policies CS5 and CS4.
11. The appellant acknowledges that the proposal would not meet the criteria listed in Policy MD7a and so they accept that the proposal would be in conflict with this policy. In this regard, the main point of dispute at the hearing was whether this policy, and the Council's general strategy in relation to development in the countryside, is consistent with the approach to rural housing as set out in the National Planning Policy Framework (the Framework).
12. It is the appellant's view that the restrictions set out in Policy MD7a do not take account of what they consider to be the more general approach to rural housing advocated by paragraphs 78 and 79 of the Framework. However, during our discussion at the hearing, no specific policy inconsistencies were identified. Nevertheless, there is nothing within the Framework that precludes the Council from setting out detailed criteria to manage housing development in the countryside, as is set out by Policy MD7a.
13. Furthermore, through the application of Policy MD1 of the SAMDP and Policies CS4 and CS5 of the Core Strategy, the development plan makes provision for housing development within Community Hubs and Community Clusters that have been identified across the rural area. This is consistent with the Framework's approach to promoting sustainable development in rural areas acknowledging

that where there are groups of smaller settlements, development in one village may support services in a village nearby. Therefore, for the purposes of this appeal, these policies are up to date and carry full weight.

14. The site is not served by any means of public transport and, as I observed during my visit, Bunny Lane is a narrow road with no pedestrian footways or lighting. As such, even when recognising the transport differences between urban and rural areas, the future occupiers of the development would be heavily reliant on the use of private vehicles to access day to day services and facilities in nearby settlements. Such a lack of accessibility by means of transport other than the private car weighs significantly against the proposal and is contrary to the sustainable transport aims of the Framework. The proposal's location would therefore give rise to unsustainable patterns of movement.
15. Bringing these points together, I find that the proposal would frustrate the Council's spatial strategy and run contrary to the provisions of the development plan when considered as a whole. In doing so, the proposal would undermine public trust and confidence in the established plan-led approach to managing development and lead to an over-reliance on the use of private vehicles to access services and facilities. Therefore, I conclude that the site is not a suitable location for residential development, having regard to the local development strategy for the area.
16. The proposal is therefore in conflict with Policies CS4, CS5 and CS11 of the Core Strategy and Policies MD1 and MD7a of the SAMDP, and the associated policies of the Framework, which together seek to achieve sustainable patterns of development and an appropriate type and mix of housing that meet the needs of rural communities.

*The setting of Adcote and adjoining forecourt walls*

17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest.
18. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral. The Framework is clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight is to be given to the asset's conservation; the more important the asset, the greater that weight should be. In this regard, the Framework also advises that the significance of a designated heritage asset can be harmed or lost through development within its setting, and such harm requires clear and convincing justification.
19. The significance of a heritage asset is defined in the Framework as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.

20. The appeal site lies to the immediate east of Adcote School, a former country residence and Grade I listed building identified on the national list as 'Adcote and adjoining forecourt walls', hereafter referred to as Adcote House. There is no dispute between the parties that the appeal site forms part of the setting of the Grade I listed building.

*Special interest and significance*

21. Adcote House and its landscaped surroundings originate from the latter part of the 19<sup>th</sup> century, having been developed between 1876 and 1881 for Mrs Rebecca Darby, a member of the wealthy and influential Darby Ironmasters of Coalbrookdale. The house was designed by the renowned architect Richard Norman Shaw, and despite its short history as a country residence and the fact that it has been used as a boarding school for well over 90 years, the main house remains largely unaltered from its original design. As a Grade I listed building Adcote House is acknowledged as being of exceptional national importance and a designated heritage asset of the highest significance.
22. The house is a fine example of a vernacular revival style, with Shaw's design comprising a complex multi-gabled arrangement with tall chimneys influenced by late-medieval and Tudor styles in a relatively seamless manner with an abundance of mullioned and transomed windows throughout. At its core is the impressive great hall, a full-height medieval-style hall spanned by moulded transverse stone arches, springing from moulded stone corbels and supporting a crown-post roof construction. There is a sizable minstrel's gallery over a decorative wooden screen passage entrance, a baronial-style fireplace, and decorative wood panelling, with the space lit by a huge oriel window to the southwest corner.
23. Of particular interest is the association with Richard Norman Shaw. Shaw is considered to be one of the most important and influential architects of his time, with his work having influenced English architecture for decades. Adcote House is one of the largest of Shaw's country manor houses and is broadly recognised as one of his best works. The building exemplifies his vernacular revival style and is designed to suggest the gradual and seamless evolution of a high-status country dwelling over several centuries; from a house based on the communal medieval great hall to the many-windowed mansions of the Tudor and Jacobean periods.
24. Therefore, I find the significance of Adcote House to be primarily derived from its special architectural and historic interest, as a building of outstanding architectural merit, and designed by one of the most influential and renowned architects of the day.

*Setting and contribution to significance*

25. The setting of Adcote House is formed by the extensive grounds in which it sits and the wider rural landscape that surrounds the property. Map regression analysis, provided as part of the appellant's heritage impact assessment<sup>1</sup>, demonstrates that Adcote House once comprised a far more extensive parkland that appears to have had a conscious design associated with the house. This has diminished over time due to changing ownership and more intensive agricultural practices that have eroded some of its parkland characteristics. This, along with

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<sup>1</sup> A Heritage Impact Assessment of Proposed Development by Richard K Morris, dated April 2022

some modern development within the grounds of the school, has weakened the historical and functional associations between the listed building and its setting.

26. Nevertheless, today Adcote House is set within an extensive rural landscape, with its former parkland setting still legible to a large extent. Although the immediate setting of Adcote House and its associated buildings is relatively well defined, the general spaciousness of the wider area, including the appeal site, provides a rural context which forms an integral part of its historic setting. Being positioned on an area of raised land, the house exerts a commanding presence over the surrounding area. This rural landscape setting accentuates the historic and architectural interests of Adcote House as a grand country residence and local landmark.
27. The western and southern extent of the asset's setting make a greater contribution to the significance of the heritage asset, nevertheless, this does not diminish the contribution made by the rest of the parkland setting, which includes the appeal site. Therefore, despite some erosion of the site's former parkland character, its historic association with the listed building and existing undeveloped rural character allows an appreciation of the interrelationship between the listed building and the surrounding landscape, thereby contributing positively to the significance of the heritage asset.

*The proposal and its effects*

28. The proposal would introduce three detached two storey dwellings into the appeal site. The siting of three sizable dwellings of a form and design more akin to a suburban context into this historically undeveloped land would detrimentally alter the spacious rural character of the site and adversely weaken the land's historical and functional associations with Adcote House. The development would be particularly perceptible on the approach along Bunny Lane and be seen as an obvious incursion into the rural setting of the listed building. This would detrimentally compromise the setting of the heritage asset and in doing so diminish the contribution it makes to the significance of Adcote House.
29. Whilst the heritage asset, particularly the main house, could be argued to be visually separated from the appeal site by vegetation and topography, the absence of a strong visual connection is not a determinative factor. This is because 'setting' is not just about a visual juxtaposition, but rather the historic context of the heritage asset, in this case, the building's rural landscape setting and its historical association with this former parkland, that makes a contribution to its significance and integrity as a heritage asset. Therefore, it is the physical presence, form and character of the proposal that would be harmful to the setting and its contribution to significance.
30. In any case, my site visit confirmed a visual connection between the appeal site and the eastern boundary wall of the former kitchen garden. Therefore, whilst the proposal would not detract from principal views of Adcote House, such as those along the main approach, it would nevertheless detract from views of the robust boundary wall to the former kitchen garden, altering how this important component of the listed building is experienced and appreciated.
31. Accordingly, whilst the site may not afford key views of the principal elevations of the main house, it, nevertheless, affords some limited views of the robust eastern boundary wall of the former kitchen garden and, in doing so, enables an appreciation of Adcote's commanding position in relation to the appeal site and

the surrounding landscape. This appreciation and relationship with the surrounding landscape within the eastern extent of the asset's setting would be harmfully eroded as a result of the proposal.

32. My attention has been drawn to a grant of planning permission<sup>2</sup> for the development of two accommodation buildings that would also be located within the setting of the listed building, to the northwest of the main house. However, I do not have the full details of this scheme before me or the circumstances in which it was found to be acceptable. In any case, it appears to represent a different type and form of development at a differing location, therefore it is not directly comparable to the appeal scheme.
33. Bringing all these points together, the proposed development would fail to preserve the setting of the Grade I listed Adcote and adjoining forecourt walls. As a consequence, therefore, the proposed development would not satisfy the statutory duty set out at Section 66(1) of the Act. For these reasons, the proposed development would also be contrary to Policy CS17 of the Core Strategy and Policy MD13 of the SAMDP, which together seek to protect and enhance Shropshire's historic environment by ensuring that wherever possible, proposals avoid harm or loss of significance to designated heritage assets, including their settings.

#### *Heritage balance*

34. In accordance with paragraphs 201 and 202 of the Framework, it is for the decision maker, having identified harm to a designated heritage asset, to consider the magnitude of that harm. In this case, given the location, extent, and nature of the proposal relative to Adcote House and its setting as a whole, I find the harm to be less than substantial, under the terms of the Framework.
35. Whilst the appellant considers that the proposal would have a neutral effect, that would preserve the setting of the listed building, at the hearing they suggested that if any harm arises, this would be towards the lower end of the less than substantial harm spectrum.
36. Nonetheless, in *Shimbles*<sup>3</sup>, the High Court addressed the concept of a spectrum of harm to heritage assets and the necessity to make a judgement beyond the binary classification of harm identified in the Framework. The judgment concluded that decision makers were not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a 'spectrum' in order to give the necessary great weight to the asset's conservation. The Framework's division of harm into categories of 'substantial' or 'less than substantial' was adequate to carry out the weighted balancing exercise to determine whether a planning proposal was acceptable.
37. I therefore do not consider it necessary to apportion a particular metric upon any spectrum of less than substantial harm. This is because a finding that the collective harm to significance would be at the lower end of such a spectrum would not equate to a less than substantial planning objection and regardless is to be afforded considerable importance and weight.
38. When less than substantial harm to the significance of a designated heritage asset is identified, the Framework requires the harm to be weighed against the

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<sup>2</sup> LPA Ref. 13/04560/FUL

<sup>3</sup> R on behalf of Simon Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin)



public benefits of the proposal including, where appropriate, securing its optimum viable use.

*Enabling development*

39. Paragraph 208 of the Framework states that an assessment should be made as to whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. An appropriate scheme for enabling development would therefore amount to a public benefit, by securing the future conservation of a heritage asset that is of national importance.
40. The appellant has submitted a Unilateral Undertaking which they consider will secure a financial contribution of circa £300,000 from the value of the development to fund the cost of urgent repairs to the roof of the adjacent listed building, Adcote House. Despite this, the appellant asserts that the appeal proposal is not put forward as a scheme of enabling development because, in their view, the proposal does not give rise to any conflict with the development plan and would not result in harm to the heritage asset. Instead, they consider this financial contribution to simply be a philanthropic benefit offered in favour of the proposal. Nevertheless, the appellant's planning statement sets out a case for enabling development for "consideration by the local planning authority if they consider there to be a strong justifiable case on policy grounds to consider it".
41. In my judgement, in putting forward the Unilateral Undertaking for consideration as part of the appeal, it is the appellant's intent to secure funds from the development that would *enable* restoration works to the adjacent listed building, and for this to be considered as a benefit to support their case. It is therefore logical to consider whether the proposal would indeed secure these conservation works as a form of enabling development and, if so, whether this would outweigh the heritage harms along with the other policy conflicts I have identified. This assessment is not a matter of choice, but instead the correct application of the Framework's policies.
42. Historic England's *Historic Environment Good Practice Advice in Planning Note 4: Enabling Development and Heritage Assets*, published June 2020, (GPA4) sets out specific guidance and criteria to be used in the assessment of enabling development proposals. GPA4 is, therefore, a relevant material consideration to which I attach substantial weight. At the hearing, the discussion on enabling development was framed around the guidance set out in GPA4 and, therefore, it is against this that I have considered the scheme.
43. GPA4 sets out a series of tests to establish whether a case for enabling development is justified and has been robustly made, in order to satisfy the assessment required under paragraph 208 (formerly 202) of the Framework. The guidance in GPA4 is clear that a case for enabling development rests on there being a 'conservation deficit'.
44. A conservation deficit is defined as the amount by which the cost of repair (and conversion to optimum viable use if appropriate) of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs. The guidance is also clear that because the harm done by enabling development is likely to be permanent and irreversible, a scheme for

- enabling development is likely to be a last resort after all other alternatives have been robustly explored and discounted, including all potential sources of public and private investment.
45. Adcote House was placed on Historic England's National Heritage at Risk Register in 2019. A Condition Survey<sup>4</sup> prepared for the appellant confirms that a number of external repairs are required, the most urgent of which are repairs to the roof. Roof repairs have been fully costed and estimated in the region of £289,000. During my visit, I was also able to see areas of water ingress from the roof over the Great Hall within the listed building. Therefore, I acknowledge that the building is in need of urgent repairs.
46. Nevertheless, the appellant accepts that a conservation deficit has not been identified in this case and there is nothing to suggest that the current use is not economically viable. It has therefore not been demonstrated that an enabling development would be the only means of securing the future of the heritage asset, as there is little evidence before me to demonstrate that the appellant has explored less harmful alternatives, or that a conservation deficit is even likely to exist.
47. Furthermore, from the submitted evidence it is not clear how the appellant has arrived at the amount of enabling development that is required to fund the restoration works to the listed building. The financial contribution is based on the uplift in the land value in the event that planning permission is granted for the appeal scheme. However, this does not account for the value of the development as a whole. I am therefore unable to conclude that the proposed development would represent the minimum required to repair the roof of the listed building and secure its future conservation.
48. In my judgement, the financial interest of the owners of the listed building is likely to be sufficient to safeguard the building from total loss or at the very least to ensure it is maintained in accordance with statutory minimum requirements. I am therefore not satisfied that it has been sufficiently demonstrated that a scheme for enabling development would be a measure of last resort and the only means by which the future of the heritage asset could be safeguarded.
49. Accordingly, under paragraph 208 of the Framework, and when assessed against the guidance set out in GPA4, the proposal would not constitute a scheme of enabling development that would secure the future conservation of a heritage asset.
50. In any case, the Unilateral Undertaking offered by the appellant seeks to address the provision of a financial contribution from the owner of the site to Adcote School, in order to facilitate renovation works to the Grade I listed building. However, the legal agreement provides no definition of the 'renovation works' nor is there an accompanying schedule to specify the extent of these renovations. The agreement provides no timescale for the implementation or completion of the works, and the delivery of the restoration works is not tied to any stage of the proposed development. Furthermore, the Council is not a party to the legal agreement and Clause 9 specifically excludes persons who are not a party to the deed from enforcing any terms of the deed.

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<sup>4</sup> Adcote School Main Buildings Survey and Condition Report by Arrol Architects Ltd, dated December 2021



51. Given these deficiencies, the effect and enforceability of the Unilateral Undertaking are highly uncertain. At the hearing, the appellant suggested that these points, and some other minor technical issues, could be addressed by way of some revisions to the agreement. However, a revised agreement was not forthcoming.
52. Consequently, the agreement provides no certainty that any heritage benefits can be secured or delivered to an acceptable standard. Therefore, the agreement is fundamentally flawed and as such, I attached no weight to this as a heritage benefit.
53. To overcome this, the appellant has suggested that a planning condition could be imposed to secure the submission of a scheme of renovation works to be approved by the LPA prior to the commencement of development and then implemented before the third house is occupied. However, this does not overcome the fact that a case for enabling development has not been demonstrated and therefore the condition would not overcome the planning harms that I have identified and the consequent conflicts with the development plan. Furthermore, the wording is such that if the development was only partially implemented, for example, if the third house was never completed or occupied, then the heritage benefits may never be realised. Nor would this provide any certainty over the completion of the works to the listed building.
54. Moreover, it would be unacceptable to leave such a substantive matter to be dealt with by condition, because in the absence of a detailed scheme, which the condition would require, I am unable to assess whether or not this would indeed be an appropriate scheme of renovation works or assess the level of public benefit this might accrue. I also note that the works are likely to be so substantial as to require Listed Building Consent, which has not been achieved.

*Other public benefits*

55. The appellant has put forward a number of community benefits that they consider would accrue from providing funds for the renovation of the adjacent listed building, which in their view would ensure the building's continued use for a variety of community events and activities. However, as I have found that the proposal would not secure any renovation works to the listed building, I am unable to consider these matters as public benefits.
56. I acknowledge that the proposal would make a contribution to the local supply of new homes. Economic and social benefits would flow from the construction and occupation of the new dwellings, as well as from future occupiers supporting local services and facilities in nearby settlements. There would also be public funds generated through Council Tax revenues. These benefits are tempered by the limited amount of development that is proposed but nevertheless, carry moderate weight in favour of the appeal.
57. Nevertheless, there is little evidence to suggest that the existing use of the listed building would cease in the event that the appeal was to fail. It has not therefore been demonstrated that the proposed scheme is necessary to maintain the optimum viable use of the listed building.
58. Bringing these points together, the identified harm to the significance of the listed building, by virtue of harm to its setting, attracts considerable importance and weight in the balance. Consequently, the public benefits would not outweigh

the harm I have found, and therefore the proposed development would conflict with the Framework's aim to conserve heritage assets in a manner appropriate to their significance.

### **Other Matters**

59. The appellant has drawn my attention to positive pre-application discussions and advice issued by the LPA prior to the submission of the planning application. Having reviewed this advice, I do not find it to be conclusive. I am also mindful that pre-application discussions are informal and not binding on any future decision the LPA may make once a proposal has been subject to the formal planning process.
60. Subject to the imposition of conditions, no objections were received in relation highway safety, ecology or trees. Nevertheless, these are neutral considerations that weigh neither for nor against the appeal.
61. I have already considered the public benefits of the proposal and weighed these against the heritage harm. I have found these to be of insufficient weight to outweigh the heritage harm and therefore there do not provide a justification to allow the appeal.
62. I have had regard to the other permissions and appeal decisions that the appellant has drawn to my attention. However, these other cases reflect different locational circumstances and differing amounts and types of development. Therefore, I have necessarily considered the appeal proposal on its own merits and consequent effects.

### **Conclusion**

63. I have found that the proposal would not be in a suitable location for residential development, having regard to the local development strategy for the area. In this regard, the proposal would harmfully undermine the LPA's spatial strategy. In addition, the proposal would fail to preserve the setting of an adjacent Grade I listed building, and, in doing so, would harm the significance of the designated heritage asset.
64. For these reasons, the proposal would conflict with the above-cited policies of both the development plan and the Framework. The public benefits and other material considerations advanced in favour of the appeal are not of sufficient weight to outweigh these conflicts.
65. Consequently, for the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*J M Tweddle*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|                                  |                                   |
|----------------------------------|-----------------------------------|
| Miss Rebecca Dennis <i>MRTPI</i> | Pegasus Group                     |
| Mr Simon Britt <i>IHBC MRTPI</i> | Pegasus Group                     |
| Mr David Giles                   | Freehold Owner of the Appeal Site |

### FOR THE LOCAL PLANNING AUTHORITY:

|                             |                                |
|-----------------------------|--------------------------------|
| Mrs Jane Raymond            | Senior Planning Officer        |
| Mr Andy Wigley <i>MCIFA</i> | Policy and Environment Manager |
| Mrs Karen Rolfe             | Conservation Officer           |

### INTERESTED PARTIES:

|                      |                |
|----------------------|----------------|
| Mr Richard Forrester | Local Resident |
| Mrs Mellissa Satoor  | Local Resident |
| Mrs Diana Forrester  | Local Resident |

## **DOCUMENTS SUBMITTED AT THE HEARING:**

Unilateral Undertaking, dated 17 January 2023

LPA Response to the Draft Unilateral Undertaking, dated 18 January 2023

## **OTHER DOCUMENTS:**

Pre-Hearing Note from the Inspector, dated 13 January 2023