



Adroddiad

Ymchwiliad a gynhaliwyd ar 15/07/03

Report

Inquiry opened on 15/07/03

gan/by John Davies BSc MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 10.12.2003

WELSH OFFICE CIRCULAR 37/84: CROWN LAND AND CROWN DEVELOPMENT

NEWPORT CITY COUNCIL

PROPOSED DEVELOPMENT BY THE COURT SERVICE OF AN IMMIGRATION
APPELLATE AUTHORITY HEARING CENTRE

AT

COLUMBUS HOUSE, LANGSTONE, NEWPORT

TABLE OF ABBREVIATIONS

CBP	Circuit Building Projects
CCJC	Cardiff Civil Justices' Court
PO	Presenting Officers (Home Office)
GDP	Gross Domestic Product
NAW	National Assembly for Wales
IAA	Immigration Appellate Authority
IAS	Immigration Advisory Service
PAT	Pensions Appeal Tribunal
PPW	Planning Policy Wales (March 2002)
RSA	Regional Selective Assistance
SOCG	Statement of Common Ground
SLA	Special Landscape Area
TAN	Technical Advice Note
UDP	Unitary Development Plan
VA	Veterans Agency
vph	vehicles per hour

File Ref: APP/G6935/X/03/514331

Site address: Columbus House, Langstone, Newport

- The development proposed is an Immigration Appellate Authority Hearing Centre.
- The Notice of Proposed Development under Circular 37/84 was sent to Newport City Council on 27 September 2002.
- The Notice was registered by the Council under Ref 02/1265.
- The Council's notice of their decision to object to the development was dated 22 November 2002.
- The Court Service notified the National Assembly for Wales on 23 December 2002 that it wished to proceed with the development.

Summary of Recommendation: that the proposal be approved subject to conditions.

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1. Background and Procedural Matters

- 1.1 In September 2000 agents acting for the Court Service submitted a “Special Urgency Notice” to Newport City Council in accordance with Part IV of the Memorandum to Circular 37/84: Crown Land and Crown Development regarding proposals for Columbus House, Langstone, Newport. This was subsequently withdrawn and a Notice of Proposed Development under paragraph 9 of Part IV was sent to the Council on 27 September 2002. Following the Council’s decision to object to the proposal¹, the matter was referred to the National Assembly for Wales by the Court Service under the provisions of Part IV of the Circular. The Assembly decided that a non-statutory public inquiry would be held.
- 1.2 I opened the inquiry on 15 July 2003 and adjourned on the morning of 16 July because the father of Counsel for the Court Service had been taken seriously ill. Sadly he died later that morning and the instructing solicitor applied for an adjournment when the inquiry resumed at 1400 hours that afternoon. This request was not opposed and I therefore adjourned until 28 October 2003. The inquiry sat for a further 3 days from 28-30 October.
- 1.3 I carried out an accompanied site inspection on the morning of 16 July when I visited the site, its surroundings and Columbus House. I subsequently made an unaccompanied visit to the site at 2230 hours on 20 October 2003, at the request of Langstone Action, to see the security lighting in operation. I also made an unaccompanied visit to Newport City Centre on 23 October 2003, also at the request of Langstone Action, when I walked from the train station to the bus station and examined the signs and stops at the bus station. After the inquiry closed on 30 October I carried out further unaccompanied site visits to the Hilton Hotel, Langstone and Underwood, Newport. Langstone Action also invited me to visit Hearing Centres at Sheldon, Birmingham and Stoke, which were referred to in evidence, should I find this necessary. I did not find the need to visit these centres, for reasons explained in my conclusions (*see para 15.28 below*).
- 1.4 This report contains a description of the site and surroundings, the proposal, the history of the site, the gist of the cases and my recommendation. Conditions are annexed to the report. Appended to the report is a list of those who appeared at the inquiry together with lists of documents, plans and photographs. Proofs of evidence have been included as documents, altered where necessary to correct factual errors. They should be read in the light of concessions made during the inquiry, which are recorded in the cases.

2. The Notification Proposal

- 2.1 The development specified in the Notice is as follows²:
- a new door in the rear elevation
 - flush ventilation grilles to side and rear elevations
 - a 2.2 metre high steel palisade fence to part of the rear car park
 - a vehicle lock³ of 2.2 metre high steel palisade fence adjoining the rear of the building, and
 - change of use to an Immigration Appellate Authority Hearing Room Centre.

¹ Doc 31(i)

² Doc 19(ii) – App 4; Plans Bi-vi; see also Statement of Common Ground – Doc 6

³ Inspector’s note: this is a secure compound enclosed by palisade fencing

- 2.2 All physical work to Columbus House included in the Notice has been carried out and the building is currently used by the Immigration Appellate Authority (IAA). The building is laid out internally substantially as shown on the submitted drawings, apart from minor changes to the names of some rooms, the location of seats and the children's play area. The IAA uses the first floor as offices. The ground floor, although fitted and furnished in accordance with the drawings, is not in use apart from storage, mainly of documents but also of furniture and equipment. There is a 'smoking' shelter in the central courtyard. The 3 vending machines in the waiting room to the left of the reception area are in place. The steel palisade fence and vehicle lock have been erected but to a height of 2.4 metres as shown on drawing No 07 Rev B. The Court Service has confirmed that it wishes to retain the fencing as erected and I have dealt with the proposal on this basis, as did the Council⁴.
- 2.3 It was apparent on my site visit on 16 July 2003 that there had been variations in the position of the ventilation grilles in the west and north elevations from those shown on the submitted drawing No 18P. An amended drawing showing the 'As Built' elevations⁵ was submitted in the adjournment with an accompanying letter⁶ dated 16 October 2003 correctly describing the changes. The Council raised no objection to this drawing being considered.

3. The Site and Surroundings

The site's location is shown on Plans A(i) & (ii); the site and surroundings are shown on Plan D at 1:2500. See also the Statement of Common Ground – Document 6.

- 3.1 Columbus House lies on the Langstone Business Park, a short distance north of the Coldra interchange, junction 24 of the M4 motorway, which is north east of Newport City Centre. This interchange is the junction of the A449 leading to the M50, M5 and the Midlands, and the A48 that leads to Chepstow. The business park lies north of the A48, between this road and the A449, with access from a roundabout on the A48. The access road runs due north to a second small roundabout. The western exit from this roundabout provides access to the Hilton Hotel. Columbus House lies immediately to the north, with access directly from the roundabout. The access road leads from this roundabout to the east, to the rest of the business park and the Ger-y-Parc housing estate.
- 3.2 The business park contains a group of 4 two storey buildings south east of the roundabout, numbered 1-4 on Plan D, as follows:
- Drake House (no 1) – vacant
 - Polo House (no 2) – occupied but on the market due to relocation
 - Raleigh House (no 3) – first floor occupied by W S Atkins; ground floor on the market
 - Livingstone House (no 4) – occupied by Ubiquity.

Plan D shows the outline of a fifth building south of Drake House. This has permission but has not been built; it is referred to in the evidence as Nelson House. Areas of undeveloped land east of Columbus House separate it from the Ger-y-Parc estate of modern houses.

- 3.3 South of the A48 roundabout providing access to the Langstone Business Park is a garage, on which there is a small snack bar serving a range of hot and cold food and drinks, of the type frequently seen in highway lay-bys. This does not have the benefit of planning

⁴ Doc 19(ii) – App 5

⁵ Plan C

⁶ Doc 22

permission⁷. West of the garage is a row of terraced houses known as Langstone Cottages. There is a footpath linking the turning head at the end of the cottages with a Travel Lodge, Beefeater Public House and McDonalds restaurant to the west. The McDonalds restaurant has a 'drive-through' service and an indoor restaurant seating area. Footpaths run alongside the access roads on the business park connecting with footpaths along the A48 and crossing points on this road. There are bus stops on both sides of the carriageway located east of the entrance to the business park.

- 3.4 Columbus House is a modern 2-storey office block of 2232m² completed in 1993. Its elevations are a mix of glass, steel and red brick⁸. Security cameras are fixed to the outside of the building and it has security lighting⁹. To the east is an area of undeveloped land. North lies the A449, which is elevated some 3-4 metres above the level of the car park of Columbus House. A dense screen of mature trees, mostly deciduous and reaching over 10 metres in height runs along the road embankment. The car park has space for some 124 vehicles. The building is rectangular with a central courtyard.
- 3.5 Reference was made at the inquiry to modern business park developments near junction 28 on the M4 motorway, west of Newport, known as Cleppa 4 (the latest phase of the Cleppa Park business development) and Celtic Springs, which is adjacent¹⁰. The shopping centre on the Underwood¹¹ estate was also mentioned. At the time of my unaccompanied visit on 30 October this comprised a Spar grocery shop, a Post Office and general goods shop, a pharmacy, a hairdresser, a shop selling new and second hand goods and a fish and chip shop. The advertised opening times of the latter were Monday 1700-2200, Tuesday-Saturday 1200-1400 and 1700-2200.

4. Planning History

- 4.1 A schedule of the planning history is contained in Appendix 1 to the Statement of Common Ground (SOCG). Outline planning permission 1/17298 was granted in February 1989 for Class B1 and hotel use at Langstone¹². Applications to remove conditions 4-7 of this permission were allowed on appeal in 1991, permitting use for Class B1(c) light industry and increasing the floorspace limit to 48679.6sq m¹³. Permission was also granted for a 2-storey Class B1 building known as Jupiter House; this has not been built. Permission No 92/0075/F for Columbus House was granted in March 1992¹⁴. Outline permission for development of the land south east of Columbus House was granted in 1994 with reserved matters granted in 1995 for Polo, Raleigh and Livingstone Houses. The erection of Drake and Nelson Houses was permitted (No 01/0950) in October 2001. Permission No 97/1116/O for residential development of the eastern part of the business park was granted in February 1998; that is now the Ger-y-Parc housing estate. In January 2001 permission was refused for residential development (No 00/0507) on the land between Columbus House and Ger-y-Parc, excluding the plot immediately east of Columbus House. Outline permission 01/0684 was granted in August 2001 for Class B1 office development on this land. Condition 7 required the development to accord with a development brief dated 1

⁷ Doc 6 – para 3.3

⁸ Photos 4

⁹ Photos 1

¹⁰ Plan E

¹¹ Plan J

¹² Doc 19(ii) – App 9

¹³ Doc 19(ii) – App 10. Note: the Inspector attached a new condition 4 limiting the floorspace to “524,000 sq ft (47,636 sq metres)” but 524,000ft² is actually equivalent to 48679.6m².

¹⁴ Doc 19(ii) – App 11

August 2001¹⁵. A further application for residential development on this land was refused in July 2003 and an appeal has been made. There is currently an application with the Council for 3 Class B1 office buildings on the land immediately east of Columbus House (03/1312).

5. Planning Policy

- 5.1 The development plan is the Gwent Structure Plan 1991-2006¹⁶. Policy E1 requires provision of 300ha of industrial and business land in Newport. Policy E2 states that industrial and business uses will be located mainly in specified areas, including the Coldra. Policy C5 designates Special Landscape Areas (SLA) to protect and enhance the landscape¹⁷.
- 5.2 The Newport Unitary Development Plan 1996-2011 (UDP) was placed on deposit in November 1999, after which it was subject to changes published in July 2001. A second set of changes to the deposit UDP was published for consultation on 3 June 2003¹⁸. Policy SP26 advocates expansion of Newport in an easterly direction south of the M4 motorway and includes redevelopment of the redundant part of the Llanwern steelworks site. This would include residential and business uses. Paragraph 5.17 states that there are 74.3ha of employment land with planning permission and readily available, including 4.5ha at the Langstone Business Park. A further 43ha with permission is not readily available. Policy ED1 allocates a further 182.9ha of employment land. Policy ED2 identifies Urban Regeneration sites. These include Llanwern Steelworks, indicating that approximately 240ha will be developed for a mix of uses, including business, commercial and residential. Langstone and the business park lie within the defined urban area of Newport.
- 5.3 Policy ED3 sets out a number of criteria against which proposals for alternative uses of employment land will be assessed. Objections have been made to this policy seeking the inclusion of extra criteria to allow the benefits of the alternative use to be considered and to take account of lack of demand shown through marketing¹⁹.
- 5.4 Other UDP policies referred to by Langstone Action²⁰ are as follows: SP1 – seeks to minimise the need to travel; SP2 and CE38 – seek high quality design; SP5 – defines and protects the SLA; CE31 – seeks to protect the environment and amenities of residents within residential areas; CE41 – protects the character of areas and amenities of residents; ED8 – sets criteria to be used to assess employment proposals in residential areas; SP12 – encourages use of public transport and sustainable modes of access. The Proposals Map shows land north of the appeal site as part of the SLA, with the A449 forming its southern boundary; neither the business park nor Columbus House lie in the SLA.

6. Other Agreed Facts

- 6.1 The Statement of Common Ground (SOCG) indicates that the use is outside any class in the Use Classes Order 1987. Appendix 1 of the SOCG is a schedule of planning applications. Appendix 2 contains tables showing the total stock of office floorspace in Newport 1990-2003, the available office floorspace 1997-2003 and the floorspace take-up 1998-2003. Appendix 3 contains a schedule of the bus services to Langstone.

¹⁵ Doc 19(ii) – App 12

¹⁶ Doc 32(i)

¹⁷ Doc 36

¹⁸ Doc 19(ii) – App 14; Doc 32(ii)

¹⁹ Doc 29, para 3

²⁰ Docs 34 & 36

7. **The Case for the Court Service:** *the main points were -*

Introduction

7.1 The Court Service was wrongly advised at the outset, as a result of which the proper procedures were not followed. For this the Court Service and IAA apologise. The proper procedures are now being followed to bring this to a public inquiry. The matters that have taken inquiry time such as accessibility would have arisen if the proposal had simply been for a hearing centre for the Pensions Appeal Tribunal (PAT). One has to wonder whether the Council or local residents would have objected to such a proposal. It makes no material difference what the nature of the cases being heard is; the centre could be used for other tribunal cases²¹. The words “immigration” and “asylum” produce an emotive response but what is proposed is a building to be used for the hearing of tribunal cases which if approved by the Assembly will carry on its work quietly, efficiently and unnoticed, as is the experience elsewhere.

The Background to the Proposal

7.2 The Court Service is an executive agency of the Department of Constitutional Affairs and is responsible for a number of tribunal jurisdictions, including the IAA and PAT. The IAA has 2 appeal jurisdictions, the Immigration Adjudicators and the Immigration Appeal Tribunal, a second and higher tier of appeal. Columbus House would be used for Adjudicator hearings. The PAT would use the building to hear appeals against decisions by the Veterans Agency (VA) relating to War Pensions. Although the Government proposes to move to a single tier of appeal²² this would not affect Columbus House.

7.3 Before moving to Columbus House the IAA had been using courtrooms and facilities at the Cardiff Civil Justices Centre (CCJC) but they were asked to vacate by November 2002. Cardiff Magistrates Court was also used but the facilities were inadequate. On 29 October 2001 the Home Secretary announced that the IAA would be required to expand its capacity from 4000 to 6000 appeals per month by November 2002. New premises were therefore needed. The elimination of small satellite courts using 1 or 2 hearing rooms, a very inefficient use of resources, was another important objective. Alternative premises were considered in Bristol but it was decided to remain in the Cardiff/Newport area for operational reasons and to maintain a presence in Wales. A report into the options available in Cardiff and Newport was prepared in February 2002²³. This considered both the need to relocate from Cardiff and the need for expansion of the IAA capability. It was coincidental that the date for vacating the CCJC and the Home Secretary’s deadline were the same. *[Additional information on the site selection process was provided in response to requests from Langstone Action and is at Document 10.]*

7.4 Since December 2002 administrative staff and adjudicators have occupied Columbus House. But all hearings have been held at satellite courts in Pontypool, Blackwood, Bath, Cardiff, Newport and Ludlow. Since 30 June 2003 the Magistrates Court in Pentonville, Newport has been used²⁴. But from January 2004 Cardiff Magistrates Court will not be available, reducing the number of hearing sitting days per week from 24 to 14. PAT does not have a venue for hearing appeals in Wales. The use of satellite courts divorced from the administrative functions at Columbus House has caused a number of problems including:

²¹ Doc 8(i) - 5.23-5.27

²² Doc 13(i), Annex A

²³ Doc 38, App 6

²⁴ Doc 12

- inability to make use of court time when cases are adjourned
- confusion for appellants and representatives because of the different locations
- need to send files to satellite courts 3 days prior to the hearing
- Home Office Presenting Officers find it difficult because of the different locations
- additional travelling time
- increased expense due to extra travelling, transportation of files by courier, additional staff at satellite locations, duplication of facilities and need for extra interpreters.

7.5 Columbus House has the potential for 8 hearing rooms to be used each day, with all the facilities in one building, for both staff and all the parties²⁵. The catchment area served by Columbus House includes south and mid Wales, and south-west England²⁶. This was drawn up after Columbus House had been selected on the basis of travelling time and the volume of appeals and capacity around the country. Four hearings are listed for each Hearing Room daily, giving a maximum of 32 hearings. All are listed to start at 1000 and the IAA leaflet²⁷ asks appellants to arrive at least 20 minutes earlier; most arrive by 0940 and generally everyone has arrived by 1100 hours. Users of the Centre would include legal representatives including volunteer groups, Presenting Officers who represent the Home Office on each appeal, appellants and their friends and family, and interpreters for the 120 or so languages used. Hearings are not held over to the next day but are adjourned to another date; 84% of hearings are completed by 1630 on the day. In response to my questions the witness for the Court Service stated that the overall adjournment rate is 16% and some 20-24% of the adjournments were for lack of court time. Having more hearing rooms in one place would allow greater scope for switching cases between rooms to bring them forward. Although the building has facilities to handle detainees in terms of a secure entrance and detention suite in the building, Columbus House would handle few such cases. The issues raised by the Inspector are now considered.

Issue 1: whether the use is appropriate for a business park and the effect on the availability of sites for prestige office development in Newport.

7.6 This is the only objection by the Council, contrary to the recommendation of its Head of Planning and Economic Regeneration²⁸. He did not object on the grounds that the Hearing Centre would not “oil the wheels of commerce” or “add to the GDP” as the Council now claims. He considered that the use was an employment generator and that the proposed level of employment was compatible with Policy ED3, albeit that the number of jobs would be less than the former occupier, Alcatel. The use was considered compatible with the character of this business park. These are important judgements by the chief officer of the Council responsible not only for the emerging UDP’s policies but also the economic regeneration of Newport.

7.7 There is no Structure Plan policy specifically protecting this prestige site. Policy E2 allocates land at the Coldra area for industrial and business uses. Policy ED3 of the emerging UDP is a material consideration and the Court Service is content for the proposal to be judged against its criteria. The weight to be given to it should be appropriate for a policy which has yet to go to inquiry and to which there are three objections seeking to add criteria recognising the benefits of alternative uses. Its purpose is to protect the supply of

²⁵ A description of the proposed use of Columbus House as a Hearing Centre is contained in Doc 8(i), sect 5, based on the operation of the Birmingham Hearing Centre, Sheldon Court.

²⁶ Doc 19(ii), App 17

²⁷ Doc 9(i) & (ii)

²⁸ Doc 19(ii) – App 5

employment land to ensure that land that could or does provide employment is not lost to other uses which do not provide jobs or which provide fewer jobs.

- 7.8 Criterion (i) looks at the likely employment level of the alternative proposal. The Head of Planning and Economic Development was satisfied the proposal satisfied this on the basis of the 22 administrative jobs. This undercounts the jobs at the Hearing Centre because the 12 IAA adjudicators²⁹ and 3 PAT members are also permanently based here. And there are 3 permanent security officers. In addition 8 Home Office Presenting Officers will be at the Centre, with 1 staff from the VA and 1 from the Royal British Legion, with up to 32 legal representatives and 32 interpreters³⁰. Consideration would be given to moving the Presenting Officers' base from Cardiff to Langstone if the proposal is approved³¹. Notwithstanding such arguments, a significant number of good secure jobs would be provided in Newport for the administrative staff and adjudicators.
- 7.9 Criterion (ii) looks at the supply of employment land that would remain if the proposal took place. Paragraph 5.5 of the UDP states that 200ha of employment land is needed in the period 1996-2011. The draft UDP states that the amount of land identified in Newport in overall terms exceeds the requirements for the period 1996-2011 and that the supply includes a variety of sites capable of supporting a range of uses. The supply well exceeds the requirement, some 74.3ha with planning permission plus 182.9ha without taking account of redevelopment sites within the urban area or the Eastern Expansion Area.
- 7.10 Criterion (ii) also considers the need to retain prestigious land for uses falling in Use Classes B1 and B8 that has good access to the motorway or southern distributor road. Paragraph 5.17 of the draft UDP identifies Langstone as a "Use Class B1 Motorway site for prestigious development". The Council's evidence is that there are 20.7ha of Class B1 motorway related sites presently being marketed and available for development³². Statistics produced by the Council show that the average take up of B1 space 1991-2001 was 1.1ha annually. At this rate the land currently on the market in Newport would last almost 19 years. But 7.8 ha was taken by the 'LG' development in 1996, which inflates the average. The Council's witness accepted at the inquiry that there is plenty of prestigious land well related to the motorway available for development. Even if the Hearing Centre provided no jobs and was not considered prestigious, it only takes 1ha of the 20.7ha available. On that basis alone the proposal satisfies criterion (ii).
- 7.11 The Council argues that whilst there may be plenty of land for development there are not enough buildings. Policy ED3 only talks of the supply of employment land. In any event, there are plenty of smaller buildings, including at Langstone. Polo House is being vacated. Drake House is vacant; two potential buyers have dropped out and a third has been in the hands of solicitors for 2 months even after the rent has been reduced³³. The ground floor of Raleigh House is vacant. Nelson House has not been built even though it would be one of the larger buildings at 1,385m². There has in fact been steady growth in the total office floorspace in Newport since 1990³⁴. The supply of prestige office space in particular has increased significantly in the last 2 years primarily as a result of the development of Cleppa 4 (14,864m² when complete) and Celtic Springs (65,000m² when complete). To date 7244m² has been built on Cleppa 4, including a building of 2787m² for Cogent Defence

²⁹ Doc 11 – 1 Adjudicator is currently posted to Hatton Cross pending the outcome of this appeal.

³⁰ Doc 19(ii) App 15

³¹ Doc 20

³² Doc 33 para 3.2.7

³³ Doc 15

³⁴ Doc 6 – App 2

Systems and Cedar Court, which has smaller units and some 1425m² vacant³⁵. A 5000m² unit known as CS1000 is currently vacant on Celtic Springs.

- 7.12 The available office floorspace was 22,808m² in 1997, increasing to 26,242m² in 2002, falling to 19,404m² in 2003 due to lettings of Columbus House, at Cleppa Park and older properties in the city centre. Take up reached a maximum of 11,391m² in 2003, which was due to the letting of Columbus House at 2232m² and the Cogent Defence Systems building at Cleppa 4. The new application on the Alcatel land next to Columbus House is for smaller units even though the site can accommodate a larger building. This is in spite of the Council's development brief, which seeks larger units³⁶. The Council's witness argued that he could let a large building at Langstone very quickly yet there is plenty of land to build such buildings with favourable planning conditions. Developers are there to make profits. If there were the demand it would be met. The landowners and developer do not see a demand for larger buildings or they would build them. The larger CS1000 building is empty despite having been marketed for 18 months. The agents have confirmed orally that they are prepared to rent it as a whole, by floor, or to split one floor in half.
- 7.13 Langstone has had permission for over 48,000m² of prestigious B1 development since 1991. Less than 10% has been built and much of that is empty. This lack of demand is due to the perception of Newport as a secondary location compared with Cardiff and Bristol, Newport's localised market and the absence of Regional Selective Assistance (RSA) grant on this site³⁷. The CS1000 building shows there is not the demand, even when it has the benefit of grant aid. A marketing review of Langstone Park³⁸ in February 2003 concluded:
- it is unlikely speculative development would have occurred here without WDA subsidy
 - developers have insufficient confidence to undertake speculative development at Langstone and there is little indication that the site is attractive to tenants
 - there is intense competition from other sites along the M4 all of which with 1 exception attract RSA, a major financial advantage
 - new initiatives following the partial closure of Llanwern steelworks, led by the City Council and Newport Unlimited, will be likely to result in a fresh pool of B1 sites in areas attracting grants.
- 7.14 The Council argues that the Brynglas tunnels on the M4 motorway are a disincentive and that developers seek to locate east of the tunnels. But their significance will reduce in the next 12 months when the Southern Distributor Road opens, allowing an alternative route for traffic to the west. The reality is that the demand primarily comes from the west and Cardiff. In the future demand will be diverted to new sites in other parts of the City as a result of initiatives following partial closure of the steelworks.
- 7.15 So criterion (ii) is satisfied. Taking into account historic levels of demand and take up, use of Columbus House by the Court Service would have no significant impact on the supply of prestige offices in Newport. The Council's evidence is that there is plenty of B1 motorway related prestigious land available. The planning system can help make the land available. Buildings will be built on the available land to meet the market's demands. The evidence does not show that there is a need to protect 1ha of prestigious land or prevent one of the prestigious buildings already built being occupied by a blue chip tenant providing good

³⁵ Mr Gibbons' proof Doc 14(i) states that 1577m² was available but a 152m² unit was let before the inquiry resumed

³⁶ Doc 19(ii) – App 12

³⁷ Plan I

³⁸ Doc 19(ii) – App 13, sect 13

secure jobs which in one half of the building is entirely consistent with the existing planning permission.

- 7.16 Criterion (iii) requires consideration of the Hearing Centre's suitability in terms of the adjacent or surrounding uses again in the context of maintaining employment land supply. The Council suggests that the effect on the rest of the business park is uncertain. But the landowner and developer would not have applied to build new prestigious units on the adjoining land if they were concerned about having a Hearing Centre as a neighbour. The agent to Rombourne Ltd the other major freeholder at Langstone whose land is allocated for employment does not object to the proposed use. This is powerful evidence of developers who have to attract buyers and tenants seeing no uncertain future due to the Hearing Centre.
- 7.17 Criterion (iv) requires consideration of the scale, location and design of the proposal and its environmental, traffic and access implications. This is still within a policy dealing with employment land supply and should be interpreted accordingly. The Council does not consider that this criterion is material to its objection so considers the criterion is met. The use would take place in the existing building and the changes are not significant. The Highway Authority was consulted and raised no objection. Langstone Action's witness accepted that the Hearing Centre would generate less traffic than a class B1 office use (*see 7.27 below*).
- 7.18 Criterion (v), which requires consideration of other land for the alternative use, is seeking to ensure that the use proposed does not go on employment land if it can be accommodated on land not designated for jobs. So if housing was proposed one would first look to see if it could be accommodated on land allocated for housing: if retail was proposed, one would examine retail allocations. It is not a general exhortation to look at alternative sites. It is there to protect the supply of employment land. The Hearing Centre would have to be on employment land in another office building so it has no relevance to the protection of employment to look at alternative sites. The Council agrees with this.
- 7.19 Criterion (vi) considers improvement to the amenities of local residents, referring to situations where a non-employment use such as housing may be acceptable on employment land whose existing use causes a nuisance. It has no relevance here.
- 7.20 Criteria (vii) and (viii) dealing with pollution and retail matters are not relevant.
- 7.21 In summary, the Hearing Centre would be entirely appropriate for this business park and would have no significant effect on the availability of sites for prestigious office development in Newport.

Issue 2: The effect on the character and appearance of the surrounding area:

- 7.22 The Council raises no concerns. The Head of Planning properly considered the effect of the fencing and his assessment is commended. Security lighting is a typical feature of modern business parks and can be assessed now as it is in place. It would have no effect on the character and appearance of the area. Langstone Action's main concern seems to be the presence of appellants in the area. It is in appellants' interests to behave well and appropriately. No decisions are given on the day so there is no risk of expressions of disappointment and upset. The Immigration Advisory Service (IAS) in their letter were "*impressed by the facilities which have been provided in Newport in order to ensure that appellants wait in convivial surroundings.*"³⁹ Appellants will not want to risk not being in

³⁹ Doc 8(iv)

the building when their case is called. The Stoke and Sheldon surveys⁴⁰ confirm that appellants generally do not leave the Centre during the day. And appellants are people just like those who would work in Columbus House if it were used as an office block. There would be no effect, let alone an adverse effect, on the area.

Issue 3: the effect that the use would have on vehicular and pedestrian safety

7.23 The Council takes no issue on these matters. They are the responsibility of the highway authority which was consulted and raised no objection. Measures have been taken to improve safety on the A48⁴¹. Traffic surveys confirm that the flows allow safe gaps for pedestrians to cross and that flows on the A45 at the Sheldon Hearing Centre in Birmingham are considerably higher (1500 vph compared with 600 vph)⁴². Provision can be made to improve pedestrian safety by barriers and signs at the A48 crossings⁴³. There would be fewer vehicles with the Hearing Centre than with B1 office use (*see 7.27 below*).

Issue 4: whether Columbus House is suitable for use as a Hearing Centre

7.24 The level of bus service is agreed in the SOCG. Some 6 or 7 buses arrive in Langstone from the Bus Station before 1000 hours. The proposed minibus service outlined in the draft legal agreement⁴⁴ can convey up to 21 of the maximum 32 appellants from the railway station to the Centre. Newport is well served by train services, particularly Reading to Swansea⁴⁵. The details of where appellants come from in the catchment area of Columbus House show that some 70% of appellants can be expected to come from that corridor⁴⁶. Swansea to Newport takes 1.5 hours. Reading to Newport takes 1 hour 20 minutes. The IAA would know those appellants who come from further away and flexibility in listing is possible and sensible for them.

7.25 The IAS has the interests of the asylum seekers as their primary concern and are impressed by the facilities. They see the disadvantages of satellite courts as “enormous” and the Centre can overcome administrative problems. They would prefer a Bristol centre but recognise they are not party to all considerations. The IAA considers a presence in Wales important; the judiciary supports this location and they have a good view of how cases actually work. They now generally live locally to Newport⁴⁷.

7.26 Whilst all hearings do not commence at 1000, the majority of appellants do not leave the centre during the day because it is not possible to accurately predict the times of hearings. A case due to be heard later in one room could be brought on earlier in a different one. The facilities in the Centre are spacious and comfortable. Waiting rooms are provided together with consultation rooms for representatives to speak to their clients prior to the hearing. Many bring their own food for dietary reasons. Vending machines for hot and cold drinks, snacks and sandwiches would be provided. A smoking shelter would be provided in the central courtyard, to which all would have access. If people wish to leave, facilities are available within walking distance in the surrounding area and the staff would give directions. These facilities should not be dismissed as easily as Langstone Action suggests.

Issue 5: sustainable patterns of development

⁴⁰ Doc 16(iii) – App 14, Tables 7a & b; App 15, Tables 7a & b

⁴¹ Doc 19(ii) App 6 – Letter dated 15 May 2003

⁴² Doc 16(i), paras 4.20-25, App 3 & 4

⁴³ Doc 19(ii) – App 7; Doc 27, 3.1.3; Doc 28 – condition 4

⁴⁴ Doc 27, Schedule 1; Doc 28 – condition 1

⁴⁵ Docs 16(iii) App 3 & 19(ii) App 19

⁴⁶ Doc 16(iii) – App 2

⁴⁷ Doc 11

- 7.27 It is important to remember that the Hearing Centre is proposed in a building that already exists, built because of its access to the motorway, which is still promoted by the Council for this reason. If not used for the Hearing Centre it is likely to be used as an office building. Langstone Action's witness on transport issues accepted in cross-examination that an office development of similar size would generate 335 trips per day, as calculated by the Court Service's witness⁴⁸, and that his calculation of 283 daily trips was incorrect. He also accepted that his figure of 298 for the number of trips generated by the use as a Hearing Centre was wrong and that the Court Service's figure of 244 was correct⁴⁹. A B1 office use would hence generate 20,475 more car journeys per year than would the Hearing Centre and probably more because this is based on only 45 weeks working⁵⁰. Journeys between Columbus House and the satellite courts by staff would be eliminated, saving overall travel.
- 7.28 In addition, the IAA is committed to introducing a Green Travel Plan⁵¹. Any other B1 occupier of Columbus House could introduce one but is not required to do so under the existing planning permission. The disparity in car journeys would then be even more. Langstone Action's point that there are more car parking spaces than is required is correct, but these are existing. The Hearing Centre makes no difference to that number. The use of those spaces can be addressed in the IAA's Green Travel Plan; there is no mechanism for addressing their use with a normal B1 office use.
- 7.29 Much of the travel to a Hearing Centre is by public transport. The three surveys at the Hearing Centres at Sheldon, Birmingham⁵² and at Stoke⁵³ demonstrate this. The bus service here with the minibus service is good enough to achieve that.
- 7.30 This is not a proposal to initiate new operational development but to use an existing building for a purpose that generates far less traffic than its alternative, where use of public transport can and will be encouraged.

Issue 6: fear of crime and the perception of public safety

- 7.31 Although a controversial proposal that produced an understandable response from people living nearby, concerns such as crime and disorder have not figured highly during this inquiry because they are recognised as not being founded in fact. The fear of crime and disorder amongst local residents is contrary to the experience of the IAA in operating other hearing centres. The Council interviewed 4 councils who have hearing centres in their areas and none reported any problems associated with them, with 3 confirming that there are houses close to the centres⁵⁴. The police did not object. There is no evidence that asylum seekers commit crime disproportionately. The IAS confirms this from their experience⁵⁵. They also confirm that detainees are detained because of the risk they might abscond, rather than for criminal offences. There is no evidence that fear of crime can be considered to cause psychological harm⁵⁶. Neither crime nor the fear of crime justified dismissing the Bicester appeal; nor do they here.

⁴⁸ Doc 16(i) – paras 3.18-25

⁴⁹ Doc 16(i) – paras 3.1-17

⁵⁰ Calculated thus: 335-244 = 91; 91 x 5 (working days per week) x 45 (working weeks per year) = 20,475

⁵¹ Doc 27, Second Schedule; Doc 28 – condition 2

⁵² Doc 19(ii) – App 18 & Doc 16(iii) – App 14, Tables 3a & 4a

⁵³ Doc 16(iii) – App 15, Tables 3a & 4a

⁵⁴ Doc 19(ii) – App 5, page 62

⁵⁵ Doc 8(iv)

⁵⁶ Doc 25(i) – 14.52; Doc 25(ii) – para 40

7.32 The appellants would be coming to Columbus House hoping to pursue their appeal successfully. The result of their appeal would be communicated some weeks later and they would hence have every reason to behave properly whilst at the centre. There are no IAA centres that include accommodation facilities: nor would there ever be. The IAA has agreed to site small hearing facilities next to 3 Home Office removal/accommodation centres. However, an existing IAA hearing centre would not be a reason to establish a removal or accommodation centre, particularly in the case of Columbus House.

Conclusion

7.33 The requirements of the IAA need to be taken into account. If a single tier appeal system is introduced these will be heard in centres like Columbus House. The IAA target of determining 65% of appeals in 4 months is not being met⁵⁷. This is an internal target as Langstone Action points out, but it is one that affects people awaiting the outcome of their appeal. Only 43% of the appeals are dealt with in 4 months. The requirements of the IAA are therefore a factor to be set in the balance. Further, tribunal services are to be integrated and other tribunals could be held in Columbus House. No negative response has been identified on any of the 6 issues that would outweigh the needs of the IAA and the Court Service that justify the use of Columbus House.

8. The Case for Newport City Council: the main points were -

- 8.1 The Council's objections concern a matter of great importance – the maximisation of economic development opportunities resulting from Newport's strategic position, one of the economic development objectives of the draft UDP. This is part of the national objective set out in paragraph 7.1.3 of PPW, of developing the economy of Wales to boost economic performance and to raise Welsh GDP per capita in a sustainable manner.
- 8.2 The Structure Plan recognises the link between the planning system and economic development and prosperity. Paragraphs 3.2 and 3.21 stress the need for a range of supply to meet the needs of local firms and attract inward investment. The Court Service's planning witness acknowledged in cross-examination that Policy E2(ii) identifies the Coldra area, which includes the Notification Site for "*industrial and business uses*". This refers to B Class uses, rather than others which may or may not involve employment. This distinction is significant, because boosting economic performance is more than simply concentrating jobs in one particular location. The proposed use will not boost economic performance or raise Welsh GDP. It was also acknowledged in cross-examination that the commitment of the Structure Plan to meeting local business/inward investment in a balanced way, which has regard to protecting the environment and conserving energy, means that best use must be made of existing assets to serve the economic objectives. Although the development plan does not provide a determinative policy, it sets a framework which stresses the role of the site for industrial/business uses, which is the starting point.
- 8.3 Turning to the draft UDP, in cross-examination the Court Service's planning witness described Policy ED3 as the "*key*" policy. It relates to B Class uses, as is evident from its reasoned justification. Paragraph 5.49 says that the policy "*aims to provide a basis for assessing proposals for other uses on both existing land in industrial/business use or land identified for such purposes*" (emphasis added). These uses are contrasted in the supporting text with retail and leisure uses, both of which generate employment. The Court Service seeks to demonstrate that the proposal meets criterion (i). It does not argue that the

⁵⁷ Doc 37(i)

proposal is not an “*alternative use*”. It is common ground that the proposal is for a sui generis use, therefore the policy is relevant. It is also evident from the reasoned justification that Policy ED3 relates not only to undeveloped land but also land in industrial/business uses. Plainly “*employment land*” in the policy therefore includes buildings on land. This proposal must be assessed against the criteria of that policy. For the purposes of the Council’s objection criteria (i), (ii) and (iii) are relevant.

- 8.4 Dealing with criterion (i), the original employment figures given by the Court Service⁵⁸ were updated during the adjournment and the latest figures are to be preferred⁵⁹. These show that the only staff who will be based in the Centre and spend every working day there will be 11 adjudicators and 20 full time staff, with no part time. In addition there is 1 British Legion employee and 3 security staff, a total of 35 full time. Other adjudicators will visit from time to time, drawn from an existing panel.
- 8.5 The other part time people and Home Office Presenting Officers (PO) are visitors to the Centre. In the case of interpreters, it was confirmed in cross-examination that there would be an unquantified reduction in work due to efficiency (1 interpreter covering more than 1 case per day). The same might be true of POs. The figures given by the Court Service for interpreters and solicitors are maximums and it was confirmed in cross-examination that on at least 4 days per week the Centre would be under-utilised. The part time staff figures must be interpreted with care, as the latest figures do not show any part time staff. Interpreters and solicitors are visitors, like participants in a planning inquiry; they are not attached to the building. It was also accepted in cross-examination that employment is not directly attributable to the Notification proposal because the Government direction to dispose of cases at a certain rate will remain in any event.
- 8.6 To summarise, the outcome of these proceedings will have no effect on jobs, save that rejection might increase work for interpreters and POs. The work will remain and it will have to be done. Further, the activities will not contribute to the economy of Wales – the outcome of these proceedings will have no effect on Welsh GDP. The floorspace will be under-utilised on 4 days a week.
- 8.7 It is clear from the additional information⁶⁰ and the answers by the Court Service’s planning witness that the Government is taking steps to reduce the number of cases. They have already halved since 2002, when the Notification process was initiated. What is unclear is how the building might be used or what the employment implications might be in the event of these policies taking effect. The Court Service’s planning witness said that alternative tribunal use referred to by the witness from the Court Service was “just a concept”.
- 8.8 The Court Service confirmed that there is no operational need for the Centre to be on a prestigious business park, near a Motorway junction, in a landscaped backdrop or with proximity to high-class hotels/leisure facilities. It is therefore understandable that their planning witness confirmed they do not rely on need to override conflict with Policy ED3.
- 8.9 The employment implications of the change of use are poor: 35 employees in 2200m² floorspace. The comparison with the previous use is not determinative, but in any case misplaced. Alcatel Telecom employed 40-50 full time staff plus 50 trainees⁶¹. The trainees do not equate to transient visitors for hearings. They were part of Alcatel’s staff, contributing to its business and thus the economy, like Cogent Defence Systems who, as

⁵⁸ Doc 19(ii) – App 15

⁵⁹ Doc 11

⁶⁰ Docs 13(i) & (ii)

⁶¹ Doc 19(ii) – App 16

confirmed by the Council's witness on commercial property, was competing with the Court Service for Columbus House in 2002.

- 8.10 On criterion (ii) it is agreed that Columbus House is unique. It was agreed by the Court Service's witness on property issues that it is the only sizeable, prestigious building at Langstone Park; the only one east of the Brynglas Tunnels; and the only one in Newport offering self-contained accommodation. The supply of land is agreed to be good, but this cannot meet the requirements of many of those seeking buildings. The Council's property witness confirmed that there are many enquiries, but nothing is on offer in the higher size range except the building known as CS1000. Consequently, occupiers will either have to wait 12 months while a building is constructed, like Cogent Defence Systems who had to move into temporary accommodation, or go elsewhere like Gwent Consultancy, whose preference was for Newport but had to go to Torfaen, as confirmed by the Council's property witness. Either way, given that Columbus House is potentially available (if these proceedings fail) this is placing unnecessary burdens on enterprise contrary to national planning policy in paragraph 7.1.5(2) of PPW. It is also unsustainable, insofar as the IAA has no need for the environment and motorway connections offered by Columbus House; these could be available for uses that contribute positively to the economy.
- 8.11 The argument that the demand for such sites generally is poor and for Langstone Park in particular is not borne out, in the case of Columbus House, by the evidence. Unlike the other premises at Langstone Park and unlike CS1000, Columbus House was snapped up as soon as it went on the market. The letter from Baroness Scotland dated 21 November 2002⁶² confirms that Alcatel vacated in March 2002 and the Court Service completed the lease in July 2002. Even more significantly there was another bidder, Cogent Defence Systems, a B1(a) use, which was disappointed. Policy ED3 does not contain a specific "marketing" criterion at present (though there is an objection seeking one⁶³), but this is still highly material evidence. It is the best evidence of the market in this case because it is recent and relates to the Notification Premises. It justifies the Council's property witness' optimism during the inquiry at the prospects of letting Columbus House were it marketed now. Although the Court Service place great weight on the non-availability of RSA at Langstone Park, the Council's property witness did not consider this to be an over-riding consideration compared with the other attractions of Columbus House. The results of marketing the property in 2002, which had 2 bidders very quickly, demonstrate this. There is no automatic entitlement to RSA and there are small grants available at Langstone.
- 8.12 In any event, policy does not require demonstration of a current market demand. PPW at paragraph 7.1.7(1) advises that sufficient employment land should be designated to meet "*identified and as yet unidentified needs*". Newport Docks and the Eastern Regeneration Area may produce further opportunities, medium to long term, but much remains to be done, physically and in terms of planning processes. The evidence overwhelmingly supports the retention of Columbus House in the use for which it is identified in the adopted Plan.
- 8.13 On criterion (iii), there can be no certainty that this is a suitable use. The Court Service could point to no comparable case where a Hearing Centre had been established on a business park. Their planning witness acknowledged that the Stoke Business Park where that Centre is located is smaller and different. The planning application on the site adjacent to Columbus House may or may not result in development. It is not much of a commitment as it is still at the application stage. To the extent that the market generally is fragile, it

⁶² Doc 38 – App 4

⁶³ Doc 29

would be foolish to take risks, especially as the Court Service has acknowledged that this prestige location is unnecessary.

- 8.14 Therefore the proposal is not in accordance with Policy ED3 in relation to these 3 related criteria, contrary to the Court Service's contention. Given that they do not rely on need to override conflict with this policy, there are no other determinative material considerations. Both planning witnesses agreed that Policy ED3 should be accorded considerable weight in view of the lack of material objection. The Notification Proposal should be rejected.

9. **The Case for Langstone Action:** *the main points were –*

Introduction

- 9.1 Langstone Action was formed in response to the IAA's proposed use of Columbus House. The Court Service should at the outset have used the normal "Notice of Proposed Development Procedure" set out in Circular 37/84 and not, as it initially tried, the urgent procedure. Nor should they have sought to prevent the important issues raised by the application being considered at a public inquiry by seeking to have the matter determined by written representations⁶⁴. The Court Service's actions have engendered fear and mistrust among residents both as to its real intentions for the building and the effects on them of the proposed use. The issues raised by the Inspector are dealt with in turn.

Issue 1 - whether the use is appropriate for a business park and the effect on the availability of sites for prestige office development in Newport

- 9.2 It is not appropriate to use a prestige building on a prestige business park for some alternative use. To do so will reduce the amount and choice of space available to business occupiers to the east of Newport when little or no attempt has been made to examine alternative sites. The Court Service confirmed that in physical terms there was nothing about the proposed use, other than the requirement for 2,000m², which could not be accommodated in any modern office building.

Issue 2 - the effect on the character and appearance of the surrounding area

- 9.3 This manifests itself in two ways. First, the palisade fencing has an adverse physical effect because it is not a feature that is readily associated with a business park. The security lighting on the building is also out of place. Consequently, the building has an adverse impact on the character of the surrounding area and the adjacent SLA. Second, the fact that the fencing is necessary for the safety of the IAA employees reinforces the concerns of local residents that some of the appellants are potentially dangerous and/or likely to abscond. The use is therefore not one which residents might ordinarily find themselves next to. Although not decisive these are material considerations that weigh against the proposals.

Issue 3 - the effect that the use would have on vehicular and pedestrian safety

- 9.4 A less important issue, but anyone who seeks to use the limited facilities within walking distance of Columbus House will have to cross the busy dual carriageway A48 Chepstow Road, which has no pedestrian crossing. The proposed contribution to pedestrian barriers will not make the crossing safer or easier.

Issue 4 - whether Columbus House is suitable for use as a Hearing Centre

⁶⁴ Doc 38 – App 18

- 9.5 The building is not suitable as a Hearing Centre in terms of its accessibility by public transport or the availability of facilities for appellants. As regards accessibility by public transport a number of indisputable points can be made.
- 9.6 First, given the nature of the Hearing Centre easy accessibility to Columbus House by appellants is a high priority. The Court Service's planning witness said in cross-examination that the Centre deals with life-changing decisions. But their transportation witness accepted that no transport or accessibility assessment was carried out either before Columbus House was selected as a Hearing Centre or the Notification was submitted. Still one has not been done. The Court Service's evidence is limited and post-dates the selection of the site and the submission of the Notification. It is an attempt to justify the selection in sustainability and transport terms after the event. PPW advises in paragraph 8.7.2 that a transport assessment should be carried out for major development and this advice is repeated in the 2001 consultation draft TAN 18. The failure to carry out any transport assessment is contrary to paragraph 4.2 of the Court Service's own Design Guide, which advises that there should be a Site Appraisal Report for each site under consideration which addresses each of the aspects identified, including "Local transport infrastructure".⁶⁵
- 9.7 Second, the only form of public transport serving Columbus House is the bus from Newport. The bus station is 470m from the rail station (a 5 – 6 minute walk). Its condition is described in the Newport Local Transport Plan as poor, as is the design of the passenger waiting bays, and the information provided is criticised⁶⁶. Although the published journey time to Langstone is 13 minutes, in reality it takes approximately 20 minutes, due partly to congestion at the Coldra interchange. Langstone is 5 - 6 km from Newport City Centre. The bus stop serving Columbus House for buses travelling from Newport is 350metres from the Hearing Centre and past the turning into the business park. Given this unchallenged evidence the only description of Columbus House in accessibility terms before the site was finally selected as "... *just outside Newport town centre and is well served by public transport (10 minutes bus ride from Newport station)...*" is plainly wrong⁶⁷.
- 9.8 Third, for the great majority of journeys by appellants from the catchment area the only form of public transport to Newport is by train and then bus⁶⁸. This requires the majority of appellants (if they wish to arrive in Langstone by 1000 hours) to undertake journeys of over 2 hours with 2 or more changes⁶⁹. For all origins except for Newport there is at least 1 mode change. Appellants from Truro or Torquay cannot make the journey to Columbus House by public transport and arrive on time. The Court Service has not explained what these appellants are to do. From Bournemouth (more than come from Newport) appellants have to undertake a 4¹/₄ hour journey with 3 changes. Plymouth (also more appellants than Newport⁷⁰) involves a journey of almost 4 hours and 2 changes. From Swansea (6% of appellants) the journey is over 2 hours with 3 changes.
- 9.9 Fourth, the times given by Langstone Action's transport witness are realistically the best achievable⁷¹. The journey times given by the Court Service are to Newport by rail only and do not include the additional time to walk to the bus station from the rail station and travel on the bus to Columbus House. Further, Langstone Action's times make the unlikely

⁶⁵ Doc 10(A), Annex 2

⁶⁶ Doc 34, para 3.14

⁶⁷ Doc 34 – App 2

⁶⁸ Doc 16(iii) – App 3

⁶⁹ Doc 35 – App 1

⁷⁰ Doc 16(iii) – App2, Page 2

⁷¹ Doc 35 – App 1

assumption that appellants do not have to travel to their origin station. Allowing for this would increase the time to get to Langstone, as would missed connections.

- 9.10 Fifth, there are only 5 buses between 0715-0915 hours that would allow an appellant to get to Columbus House 20 minutes before 1000 hours, when all appeals are listed. The proposed minibus service would not make any significant difference. There is no evidence that this would be timed to meet particular trains. There may not be enough seats and it is no answer that appellants can be informed on the information leaflet that there are only 7 seats. An appellant would not know how many other appellants would want to make use of the service. The suggestion by the Court Service's transport witness that there is flexibility in listing cases is not reflected in their published leaflets or the evidence of their witness.
- 9.11 Sixth, locating the Hearing Centre in Bristol City Centre would very significantly reduce both the journey time and number of changes appellants from the same catchment area would have to undertake. This was not challenged at the inquiry.
- 9.12 Seventh, the figures for the numbers of appellants coming from each of the postcodes within the catchment area show that less than 30% come from Welsh post codes and over 70% come from English post codes, with the largest concentration in Bristol. Over two thirds of appellants have to pass Bristol to get to Newport. The letter from the IAS dated 11 July 2003 states that Bristol would be a more convenient location.
- 9.13 As regards the facilities for visitors once they have arrived at Columbus House, the Court Service's planning witness accepted that the consideration to be given to appellants is a high priority given that the purpose of the Hearing Centre is to determine their right to remain in this country. The need for adequate facilities is increased by the IAA's prohibition of the consumption of hot food within its Hearing Centres and Columbus House is no exception⁷².
- 9.14 The local facilities, comprising a McDonalds and a pub, are limited and inadequate. The rebuttal evidence of the Court Service does not disagree with that description. The Court Service accepted at the inquiry that these 2 establishments comprise the full range of facilities within reasonable walking distance of Columbus House. And it was accepted that travelling into Newport or to Underwood by bus is neither likely nor desirable, particularly in view of the lack of facilities in Underwood. No other hearing centre has so little in terms of facilities within easy walking distance⁷³. The vending machines⁷⁴ are no substitute for those who have travelled a long way and face the prospect of having to stay all day before undertaking lengthy journeys home, some of whom may have special dietary needs.
- 9.15 The surveys at Sheldon and Stoke indicate the surprising result that visitors do not leave the Hearing Centres other than for a cigarette or to make a mobile telephone call⁷⁵. But the Court Service's transport witness stated in cross-examination that it is not an absence of facilities within reasonable walking distance which is the cause but a perception by visitors of an absence of easily accessible facilities. The visitor surveys at Newport and Cardiff⁷⁶ demonstrate that where appeals are heard in central locations, significant numbers of visitors leave the Hearing Centre for more than a cigarette or to make a telephone call. In its unsustainable location and without ready access to any adequate facilities, it is hardly surprising that the IAA does not anticipate that visitors are likely to leave Columbus House.

⁷² Doc 9(ii)

⁷³ Doc 38 Apps 15 & 16; Photos 2 & 3

⁷⁴ Doc 27 – 3.1.4; Doc 28 – condition 3

⁷⁵ Doc 16(iii) – Apps 14 & 15, Tables 7a & b

⁷⁶ Doc 16(iii) – Apps 8 & 9

9.16 The savings in business trips between the satellite courts and Columbus House, which the Court Service claims, only arise because the IAA has started using the building before a decision as to whether it is an appropriate location. Further, the Court Service's transport witness accepted at the inquiry that he had double-counted the trips⁷⁷ because the survey picks up both arrivals at Columbus House from the satellite courts and the trips from those courts to Columbus House. In any event, the claimed saving of £21,840 per annum (£10,920 allowing for double-counting) is insignificant compared with the £3.2m of public funds spent even before the use of Columbus House as a Hearing Centre is sanctioned. Any saving is exceeded by the cost of the proposed minibus service which, if the Hearing Centre operates only for 45 weeks a year will be £25,875⁷⁸.

Issue 5 - whether the use accords with the policy objectives of the National Assembly for Wales that seek to achieve sustainable patterns of development

9.17 National Assembly policy is to encourage development in locations that minimise the use of the motor car. Columbus House does not do that. On the contrary it is highly accessible by motor car being on junction 24 of the M4 Motorway. Given the poor public transport provision and its accessibility by car it is no surprise that the 7 August 2003 survey showed that some 94% of staff travel to work by car⁷⁹. As the Cardiff and Newport visitor surveys demonstrate and as the Court Service's transport witness accepted in cross-examination, the proposed IAA use would be susceptible to access by non-car modes of transport if it were located in a central location with good transport communications. Some 60% and 50% of visitors to Cardiff and Newport Hearing Centres respectively travelled other than by car.

9.18 The Prime Minister's statement⁸⁰ that "*talking about sustainable development is not enough... we must hold ourselves to account as a Government... the whole Government is committed to this... Government is putting sustainable development at the heart of every Government Department's work*" has not been followed in this case. The Court Service never had regard to whether Columbus House was sustainable when it was selected. The IAA's failure to take any steps to date to discourage its staff from using the motor car is an illustration of a Government department not following Government advice. It should not be claiming credit for adopting a travel plan which is conditional on the Hearing Centre use proceeding. It should be leading by example.

9.19 Provision of the mini-bus, which the Court Service's transport witness described as integral to the proposal does not make Columbus House sustainable. It was not part of the submitted proposals but is an afterthought with explicit reference first occurring in the IAA's Statement of Case over 6 months after the Notification was submitted. It is not as a matter of fact a mini-bus that would be provided but a large motorcar or 'people carrier'.

9.20 As in Bicester, Columbus House is not realistically accessible on foot or by cycle and in this regard it is irrelevant whether the site is rural, semi-rural or urban. As in Bicester the existing level of public transport is inadequate. As in Bicester the minibus does not overcome the unsustainable nature of the location. The Secretary of State did not disagree with the Inspector's conclusions. He found in favour of the accommodation centre because of the greater weight he attached to the need for it; that need does not exist in this case.

⁷⁷ Doc 16(ii), para 3.8

⁷⁸ Doc 19(ii) – App 20: cost of minibus service = £115/ day; £115 x 5 (working days) x 45 (weeks) = £25,875

⁷⁹ Doc 16(iii) – App 4

⁸⁰ Doc 25(i), para 10.7

9.21 Further evidence of Columbus House's unsustainability is provided by the Lord Chancellor's press release dated 21 October 2002⁸¹. Newport in contrast to the other identified Hearing Centres was not chosen because it had either a central location or good transport communications but because of "*existing hearing business in South Wales*".

Issue 6 - the effect that the use would have on neighbouring residents, particularly through the fear of crime and perception of risk to public safety

9.22 The fear of crime is genuinely held by residents in Langstone and is a material consideration. The weight to be given to that fear in any given case is a matter of judgement. In this case the understandable concerns of residents remain but there are more compelling reasons, in particular the unsustainable nature of the development, why the proposal should not proceed. Nonetheless those genuinely held concerns further count against the proposal.

Alternative locations

9.23 The Court Service should have undertaken a proper comprehensive search to identify a sustainable location for the hearing centre to serve the catchment area. This arises from Policy ED3 of the emerging UDP, criterion (v) of which requires proposals for alternative uses of employment land to be assessed, amongst other things, against the availability of other land or buildings for the proposed use. It does not mean that the proposal has to be considered against the supply of employment land because that is separately required by criterion (ii) of ED3. It was accepted at the inquiry that Policy ED3 is the key policy. The absence of any real examination of the availability of other land or buildings for the Hearing Centre is contrary to this policy.

9.24 The need to consider alternatives also arises from the policy requirement that development should be located in sustainable locations and the Court Service's guidance on selecting sites. The Circuit Building Projects (CBP) Procedures Manual⁸² states that "*all available sites which meet the stated criteria should be reported upon*" and "*it is a requirement of Treasury that all possible sites be considered when undertaking an investment appraisal*". The Court Service has not explained its failure to follow this advice. Bristol may not necessarily be the right location, but the Court Service did not challenge that the City has suitable space more accessible to a greater number of appellants in the catchment area.

Need

9.25 The planning witness for the Court Service stated at the inquiry that it was not their case that there was a need for the Hearing Centre which justified the proposal proceeding if it did not accord with the development plan. The corollary, which he accepted, is that if the proposed use is found to be contrary to policy he would in his professional opinion recommend that it should not proceed.

9.26 The concession that need is not a decisive factor in this case is rightly made in the light of the Home Office's most recent Asylum Statistics⁸³. Not only has the original need for the Hearing Centre, to increase the number of cases dealt with to 6,000 per month by November 2002, disappeared but the Asylum Statistics demonstrate that there is no future need for the Hearing Centre. These show a significant reduction in the number of asylum applications being made whilst the existing target of deciding 6,000 cases per month is being exceeded.

⁸¹ Doc 34 – App 5

⁸² Doc 10(A), Annex 3

⁸³ Doc 37(ii)

More appeals are being determined than applications and the backlog is being reduced. The Home Secretary's amnesty affecting up to 50,000 asylum seekers and their families will also make a contribution to reducing the backlog⁸⁴. Whatever need there was when Columbus House was selected has now disappeared.

9.27 The Court Service is continuing to promote Columbus House although it is an inappropriate location because, as a result of the Home Secretary's announcement in October 2001, it was under pressure to increase the number of cases it dealt with monthly. It instructed its agents only to look at locations in South Wales even though it had no clear idea of where the appellants would be coming from. The reason for only considering locations in Wales was, as the witness from the Court Service stated, a political desire to retain the Hearing Centre in Wales. Only Newport and Cardiff were looked at in South Wales and the advice given was that Columbus House could be delivered to meet the Home Secretary's November 2002 deadline.

9.28 Notwithstanding that the Court Service has its own guidance on how sites for Hearing Centres should be identified neither it nor its consultants followed that guidance. Consequently the evidence now produced seeks to justify the choice of Columbus House after the event and has to be treated with caution. Nowhere is the danger of this approach more apparent than with the transport evidence. Their witness relied in his rebuttal on a "survey" done on 1 July 2003 at Newport Magistrates to demonstrate that a Hearing Centre is less affected by modal split than other higher traffic generators⁸⁵. He did not qualify that survey or the reliance that could be put on its conclusions. It is only as a result of the request made for the survey data and the opportunity afforded by the 3 month adjournment that the true nature of the "survey" has been revealed. The sample is 4 people and the findings do not reflect the questionnaire responses⁸⁶. None of the respondents suggests that car parking is difficult. The questionnaires do not reveal that the majority of appellants and representatives travel together by car.

9.29 It was unbecoming for the Court Service to impugn the veracity of Mr Huw Griffiths⁸⁷. There is nothing to suggest that the contents of the letter are anything but true. The hand written note of the telephone conversation between Mr Lane and Mr Griffiths during the inquiry⁸⁸ confirmed Mr Griffiths' concerns and those of his company.

Conclusion

9.30 The use of Columbus House as a Hearing Centre is the wrong use in the wrong location. It is contrary to Policy ED3 of the emerging UDP and the NAW's policy on sustainable development. Had the Court Service followed their internal advice for selecting sites it would have known this and not spent £3.2 million of public money on fitting out a building which is poorly located and difficult to get to for the appellants it is intended to serve. Appellants will not have reasonable access to a range of adequate facilities. The Court Service has not looked at alternative sites that might better serve the catchment area as it should and which plainly exist. As a Government Department it should be leading by example and voluntarily applying the Prime Minister's commitment that Government is putting sustainable development at the heart of every Department's work. It should not have tried to pre-empt the proper procedure. The proposal should not proceed.

⁸⁴ Inspector's Note: the Home Secretary announced on 24 October 2003 that up to 15,000 families who sought asylum in the UK more than 3 years previously will be considered for permission to live and work here

⁸⁵ Doc 16(i), para 4.30

⁸⁶ Doc 17

⁸⁷ Doc 38, App 23

⁸⁸ Doc 39

10. The Case for Mr John Griffiths AM⁸⁹: the main points were –

10.1 He supported Langstone Action and Newport City Council. He was disappointed that work had started before the planning process had been completed, without consulting residents. The Court Service had been poorly advised regarding the planning requirements and the suitability of the location. The site was on the outskirts of the City and far from the centre, where such a use should be located. Families and the elderly, many without command of English, would be faced with difficult and unnecessary journeys. There must be suitable sites within the City centre. There were inadequate facilities at the site and there would be need to cross busy roads. This was a misconceived project, which had been refused by the City Council and it was disappointing to see it pursued. The objections of local residents, Langstone Action and the Council should stand.

11. The Case for Councillor David Atwell⁹⁰: the main points were –

11.1 As the sole Councillor, his representations were on behalf of the residents of Langstone. They are entitled to feel safe in their homes and that their property will not be interfered with. The ‘perception of fear’ was demonstrated at public meetings held in September and October 2002. All trust has been lost by the actions of the Court Service. They had behaved arrogantly, not following government advice or planning procedures. The evidence produced during the inquiry should have been available at the start. Most of it had been theoretical and none of the journeys had been undertaken to assess the actual situation. Nor were the travel surveys independent as staff undertook them and they omitted the important question of what time the appellants left home.

11.2 Appendix J of the CBP Procedures Manual⁹¹ states in paragraph 4 that sites in culs-de-sac, on busy traffic islands, in areas of tight narrow streets or adjacent to roads subject to traffic congestion should be avoided. This advice had not been followed. Paragraph 11 states that the department cannot be committed until outline planning permission has been obtained. But £3.2m has been spent on Columbus House without permission. Nor did the Court Service contact the City Council when the initial search was undertaken, contrary to paragraph 9 of this guidance. In any event, it was doubtful if Columbus House was needed any longer since the Court Service had leased Pentonville Court in Newport and their witness confirmed at the inquiry that their targets had now been met. The Rt Hon Alan Howarth CBE MP had objected, as had the Assembly Members and all elected representatives from all levels of government, from the Community Council to the Westminster Government. A democratic process had taken place. The views of the Langstone residents and the City Council should be listened to and the proposal dismissed.

12. Written Representations

12.1 The **Rt Hon Alan Howarth CBE MP** objects strongly. The site is inappropriately located for appellants who will be dependent on public transport and who may have travelled a long way by train. It will be a difficult journey by bus for elderly appellants or those with children with poor command of English. The location is convenient for officials who may arrive by car but is not easily accessible for appellants and others. A significant public service such as this should be located in the city centre, within easy reach of bus and railway stations. In addition, the site lacks facilities and it would be hazardous for people crossing the busy A48. The site is designated for business use and should remain so. It is

⁸⁹ Doc 40; Mr Griffiths also made a statement at the start of the inquiry but was unable to attend thereafter

⁹⁰ Docs 41 (i) & (ii)

⁹¹ Doc 10(A), Annex 3

wrong for unelected officials to seek to overturn the views of the elected members of the City Council, who know the local community and the site. The Court Service is seeking to push the scheme through having spent a considerable amount of taxpayers' money before the planning process was completed. The residents feel that the Court Service has handled the project in a discourteous and unacceptable way. They should look elsewhere, including the centre of Newport. This is an inappropriate location and the democratic decision of the City Council should be upheld.

- 12.2 **Kathleen Firman, Secretary, Rosecroft Drive Community Watch** writes on behalf of some 30 families. The Hearing Centre will have a detrimental effect on the area, particularly nearby houses, where there are many young children. Residents are concerned at the risk from asylum seekers, particularly since a security fence is necessary. The use is highly inappropriate for a village location. Public transport is far from adequate and the local roads are congested. A site in the centre of Newport would be more appropriate.
- 12.3 **Mr R A and Mrs P Purnell** object on the grounds that the building is in an inappropriate location. Palisade fencing is provided to protect staff and cars, which should not be necessary if there is no threat of theft or danger to residents. The numbers of people attending the Hearing Centre would have a detrimental effect on the local community and there is inadequate public transport.
- 12.4 Mr G Powys Jones, on behalf of **Rombourne Ltd**, the freehold owners of undeveloped land on Langstone Park, states that his clients have no objection to the proposal. The February 2003 DTZ report produced by the Court Service⁹² was to support his client's application for residential development (*see 4.1 above*) and nothing has given the authors of this report cause to revise their views. He provides a copy of a letter from the Council's witness on property matters, which is regarded as compelling evidence that demand for office space at Langstone Park is not as strong as the Council suggests.

13. Conditions⁹³

- 13.1 The Court Service put forward 4 conditions as an alternative to the draft legal agreement, which they submitted at the inquiry⁹⁴. On **condition 1 (minibus service)**, both Newport City Council and Langstone Action questioned why the number of minibus trips was limited to 7 when there could be a maximum of 32 appellants per day. Langstone Action also expressed concern that there was no flexibility for review and questioned what mechanism there was to adjust the service if it were inadequate. The Court Service replied that the Sheldon survey indicated that 17 people had used taxis. The proposed service to Langstone would provide 3 trips to Langstone in the morning, which would take 21 passengers. This was considered adequate. The minibus service was intended to provide 3 trips in the morning bringing appellants and visitors from the train station and 4 trips in the afternoon returning them to the train station at the end of their hearings. A shuttle service was not required or intended. Furthermore, the "scheme" to be agreed required by the condition could allow for future reviews of the service to provide the required flexibility.
- 13.2 Newport City Council agreed to **condition 2 (travel plan)**. Langstone Action considered that the condition should explicitly require that the Travel Plan set targets for the modal split and require annual surveys to be submitted to the Council to ensure these targets were

⁹² Doc 19(ii) – App13

⁹³ Doc 28

⁹⁴ Doc 27

met. The Court Service stated that this was standard practice and anticipated that these requirements would be part of the Travel Plan.

- 13.3 Neither Newport City Council nor Langstone Action had any comments on **condition 3** (*vending machines*). Councillor Atwell requested that the words “to suit all diets” were added. He also proposed that the condition require the provision of a larger children’s play area and more play equipment, since what he saw during the site visit was disappointing. The Court Service considered the play area and equipment to be adequate and referred to the letter dated 11 July 2003 from the IAS.
- 13.4 On **condition 4** (*highway safety works*), Newport City Council objected to the 6 month implementation period. The safety improvements should be carried out prior to the use commencing. But they accepted the practical problems and would be prepared to accept implementation within 3 months. Langstone Action queried whether there was need for street lighting on the south side of the A48. Councillor Atwell considered that the extra barriers would be unsightly and requested that no work was carried out until the outcome of this appeal was known. The Court Service stated that 6 months was necessary as the work had to be arranged and carried out by the Highway Authority.

14. **Obligations**⁹⁵

- 14.1 The Court Service stated that they had prepared the draft agreement under Section 299A of the 1990 Act but had failed to obtain the Council’s signature. They proposed the conditions as an alternative to the agreement. If a planning obligation were required, the draft agreement would need to be re-drafted as a unilateral undertaking.
- 14.2 Newport City Council pointed out that there was a discrepancy between paragraph 3 of the First Schedule, which indicates 7 one-way trips, and condition 1, which refers to 7 round trips. The Council wished to see 7 round trips provided. The Court Service stated that the condition should refer to 7 one-way trips. The Council requested that clause 3.1.3 of the draft agreement was amended to incorporate a time for payment. The Court Service accepted the point but was unable to put forward a period.
- 14.3 Langstone Action stated that they would prefer to see the commitment to a minibus scheme incorporated in a planning obligation. Any conditions would not be attached to a planning permission and could not be enforced against the Crown or any successors in title. At Yarl’s Wood conditions entered into by the Home Office were not complied with and a third party had been forced to carry out the necessary work. But even an obligation has difficulties as Section 299A(3) refers to private interests. The Crown therefore cannot be enforced against even if it breaches a legal agreement. Action could only be taken against a private interest, for example if the management of the Hearing Centre were privatised.
- 14.4 The Court Service pointed out that the Planning and Compensation Bill would remove Crown immunity. In any event, the same procedure had been gone through in connection with the Bicester accommodation centre. Although the position in law as put by Langstone Action was correct, the First Secretary of State had agreed in the Bicester decision that a Section 299A agreement was essential and directly related to the proposal. He clearly considered that there is force and value in such a legal agreement. The legal framework in this case is the same. As to the example of Yarl’s Wood, there was a long history of complications and there was no renegeing on conditions⁹⁶.

⁹⁵ Doc 27

⁹⁶ Doc 26

15. Conclusions

[References in the footnotes are to the previous paragraphs of this report]

15.1 I begin first by dealing with the criticisms of the manner in which the Court Service has handled the proposal⁹⁷. Any delay in notifying the Council or the initial attempt to use the special notification procedures are not relevant to the issue of whether the proposal should be approved. The fact that the Court Service may have been wrongly or poorly advised should not count against the proposal, which should be considered on its planning merits. As to the fact that a large sum has been spent on converting the building⁹⁸, that too has no relevance to the merits of the proposed use. The present use by the IAA is limited to a normal office use that falls within the terms of the existing permission⁹⁹. There is also an implied criticism of the Court Service for referring the matter to the Assembly and for seeking to overturn the decision of the City Council. But there is express provision for this in Circular 37/84 and if the proposal is to be subject to procedures analogous to a planning application the right of appeal has to be accepted as an integral part of those procedures.

15.2 At the start of the inquiry I raised 6 issues I had identified from the material before me. No objection was raised to these and the closing submissions of the Court Service and Langstone Action specifically addressed them. The Council's case was directed at the first issue only. I consider that these remain the principal controversial issues. They are, in the order I set them out, which does not reflect their relative importance:

- whether the use as a Hearing Centre is appropriate for a business park and its effect on the availability of sites for prestige office development in Newport
- the effect on the character and appearance of the surrounding area
- the effect that the use would have on vehicular and pedestrian safety
- whether Columbus House is suitable for use as a Hearing Centre in terms of its accessibility by public transport and the availability of facilities for appellants
- whether the use accords with the policy objectives of the National Assembly for Wales that seek to achieve sustainable patterns of development
- the effect that the use would have upon neighbouring residents, particularly through the fear of crime and the perception of risk to public safety.

15.3 The decision in this case is not a “*determination under the planning Acts*” for the purposes of Section 54A of the 1990 Act. However, I consider the approach to the decision should be as set out in that Section, which is that the decision should be made in accordance with the development plan unless material considerations indicate otherwise.

Issue 1: whether the use is appropriate for a business park and the effect on the availability of sites for prestige office development in Newport.

15.4 The development plan comprises the Gwent Structure Plan¹⁰⁰. There are no policies directly applicable to a change of use to a Hearing Centre. Policy E2 identifies the Coldra as an area where industrial and business uses will be located. The Langstone Business Park where Columbus House is located was developed in accordance with this policy. The Structure Plan does not define ‘industrial and business uses’ in terms of the Town and Country Planning (Use Classes) Order 1987 and it cannot therefore be argued that simply

⁹⁷ 9.1, 10.1, 11.1, 12.1

⁹⁸ 9.16, 11.2

⁹⁹ 2.2, 4.1

¹⁰⁰ 5.1

because this use is not within any particular class it conflicts with Policy E2. The text refers to the need for a range of sites to attract investment and provide for local firms. However, the Structure Plan is of little assistance in dealing with the change of use of a building to a use that does not fit neatly into the usual definition of business use.

- 15.5 The only policy of direct relevance is Policy ED3 of the emerging UDP¹⁰¹. This has yet to reach the public inquiry stage, which limits the weight that can be given to the document as a whole. Furthermore, PPW in paragraph 3.5.1 indicates the limited weight that can be given to policies to which there have been objections. But it also states that the nature of those objections will be an important consideration. In this case the objections to Policy ED3 seek the inclusion of additional criteria relating to alternative use and demand. In view of the lack of objection to its substance and the criteria in the deposit version, it is likely that the policy in its present form will be part of the eventually adopted plan, albeit possibly expanded to include the extra criteria sought. In this case therefore it would be correct to attach significant weight to the policy.
- 15.6 Policy ED3 sets out a number of criteria to be used in assessing “proposals for alternative uses of employment land” (*my emphasis*). The policy does not say that it applies to proposals for alternative uses on land allocated for industrial or business use. Since the Hearing Centre evidently provides employment it could be argued that it is an employment use on employment land and is hence not an ‘alternative’ use. Nonetheless, criterion (i) of the policy seeks to examine the employment level of the alternative use. Paragraph 5.49 states that the policy provides a basis for examining proposals for other uses on existing industrial/business land and land allocated for such purposes. It goes on to refer to retail and leisure uses, either of which is capable of generating substantial employment. I am therefore satisfied that Policy ED3 should be applied to this proposal. The Council considers that the proposal fails to meet criteria (i)-(iii). Langstone Action raises issues relevant to criteria (iv) and (v). No arguments were raised relating to criteria (vi)-(viii) and I am satisfied these are not relevant in this case. I deal here with criteria (i)-(iii) and (v) and with criterion (iv) under issue 2.
- 15.7 **Criterion (i)** deals with the employment level of the alternative use¹⁰². The latest figures show 35 full time staff working in the building, comprising 20 administrative personnel, 11 adjudicators, 1 British Legion employee and 3 security staff. In addition, if the proposal were allowed, another adjudicator would return from Hatton Cross and a Veteran Agency employee would be based here, giving a total of 37 full time jobs. The Court Service employment figures include part time cleaners, maintenance and window cleaning, but this is not employment associated with the use but with the building, which would be present whatever the use. The Home Office Presenting Officers would be working here much of the time but have an office base elsewhere and so would not be employed at the Hearing Centre. Solicitors would be based in their own practices. Interpreters are arguably different, since some could be based here almost daily. But even if no allowance is made for these, 37 full time employees does not compare too unfavourably with the previous use by Alcatel, which had between 40-50 permanent employees¹⁰³. In the same way as Presenting Officers, solicitors and interpreters have been excluded from the hearing Centre employment figure, so should the trainees be excluded from the Alcatel figure as they were not employed in the building. If both floors of the building were in office use more than 37 full time staff could be employed. But the details of the Alcatel use demonstrate the wide

¹⁰¹ 5.2-5.4

¹⁰² 7.8 & 8.4

¹⁰³ 8.9

range of employment levels that could be generated by a use that accords with the existing planning permission. I therefore find no conflict with the underlying aim of criterion (i), to ensure that employment land is put to a use that provides a reasonable and appropriate level of jobs.

- 15.8 **Criterion (ii)** deals with several matters. The first is the remaining supply of employment land, including the proportion available in the short term. There is no dispute that supply is well in excess of the need identified in the draft UDP of 200ha to 2011; 74.3ha is readily available¹⁰⁴. Second is the need to retain prestigious land for B1/B8 uses with good access to the motorway or southern distributor road. The Council's figures show that 20.7ha of land for Class B1 motorway related prestige development is available, compared with an average take-up 1991-2001 of 1.1ha per annum¹⁰⁵. Whilst it is true that this includes a period of recession, 7.8ha was accounted for by a single major development. On past rates 20.7ha must be adequate, even taking an optimistic view of immediate prospects for the property market in Newport. This clearly led to the concession on behalf of the Council that there is a plentiful supply of prestigious land available.
- 15.9 There appears to be a concentration of sites and buildings west of the City at Celtic Springs and Cleppa Park¹⁰⁶, but this would be ideally placed to benefit from good access to Cardiff and other parts of south-east Wales. The assertion by the Council that the Brynglas tunnels are a disincentive to developers is not borne out by any evidence. The tunnels may be regarded as a traffic bottleneck to an occupier interested only in access to the east, to England. But the impending opening of the southern distributor road would be likely to reduce such a consideration¹⁰⁷. In any event there is land available at Langstone Park immediately adjoining Columbus House on which there is a current application for Class B1 development. This ignores the larger area on which there is an appeal for residential development¹⁰⁸. In addition there are vacant modern buildings and a site (Nelson House) with an extant permission. On this evidence there is clearly a plentiful supply of land to satisfy the foreseeable demand for prestige, motorway related development.
- 15.10 The Council's argument is essentially that Columbus House is unique since it is the only building of its size offering self-contained accommodation east of the Brynglas tunnels. But it will generally be possible to declare a building to be unique if enough criteria are applied. I accept that Policy ED3 is to be applied to existing employment buildings since the text states that it is to be used to assess proposals on existing land in industrial/business use. Nonetheless, in a situation where there is a surplus of employment land and a plentiful supply of prestigious sites, there is no justification for preventing a use of an existing building which provides levels of employment comparable to that provided by a lawful use.
- 15.11 Nor do I accept the Council's argument that allowing this proposal would be contrary to paragraph 7.1.5 of PPW by placing an unnecessary burden on industry. The planning system should provide land in the right locations that is readily available and free of constraint so that developers can provide the buildings required to meet market demand. That in my view is the implication of the advice in PPW in the context of this appeal. It does not mean protecting employment buildings in the hope that another 'better' occupier will appear. The Council also refers to paragraph 7.1.7 of PPW¹⁰⁹, but their quotation is out

¹⁰⁴ 5.2, 7.9

¹⁰⁵ 7.10

¹⁰⁶ 7.11

¹⁰⁷ 7.14

¹⁰⁸ 4.1

¹⁰⁹ 8.12

of context and this paragraph refers to the provision of land for development for enterprise and employment uses.

15.12 Be that as it may, the facts do not indicate that there is a need to protect this building¹¹⁰. The history of Langstone Park does not show a strong demand for premises. Only 10% of the approved space has been built in over 10 years. Whilst this included a time of recession, the DTZ report is a good analysis of the reasons for lack of market interest in Langstone Park, even allowing for the fact that it was prepared to support an application for residential development. Although Cogent Defence Systems was interested in Columbus House, that firm has now contracted to move to Cleppa 4. Speculative development in recent years has been concentrated at Celtic Springs and Cleppa Park, where the availability of RSA is to my mind an important factor. Whilst there is no automatic right to grant assistance, the opportunity to apply for such financial aid would be a strong attraction to prospective occupiers. The buildings presently available in a range of sizes at Celtic Springs and Cleppa Park are therefore likely to be more attractive than Langstone Park. Whilst the subdivision of a larger building may be required for an occupier seeking 2000m² floorspace, the equivalent of Columbus House, this factor alone would not justify preventing this proposal in the light of the land and floorspace available in Newport. I therefore find no conflict with the aim of the second criterion of Policy ED3, to ensure sufficient employment land and buildings remain available, particularly for prestigious development.

15.13 **Criterion (iii)** deals with the suitability of the use, taking into account adjacent or surrounding uses. The balance of the evidence does not indicate that the Hearing Centre would have an adverse effect on the surrounding business park¹¹¹. A letter has been submitted by Langstone Action from a director of a company that has been discouraged from locating here, which I accept was written in good faith. But the basis of the concerns expressed in the letter appear largely unsubstantiated. More importantly, the owners of most of the undeveloped land do not object. An application has been made for office development on the remaining undeveloped land immediately adjacent to Columbus House. It is true that this is no guarantee that such development will materialise, but the submission of a planning application involves a significant cost and in my opinion should be seen as a serious intent to progress development of this site. On this evidence there is no basis for the Council's suggestion that the use involves risk to the surrounding business park.

15.14 There is also the suggestion by both the Council and Langstone Action that because the Hearing Centre need not be in this location it is in some way unsuitable and should not be on a prestigious business park. But the same criticism could be made of many business uses on 'prestige' sites that are there from choice, not from 'need', because they wish to be in modern premises in attractive landscaped settings. The building has been fitted out to a high standard and it provides an attractive internal and external working environment that would be acceptable to a wide range of business uses¹¹². I find nothing in the nature of the Hearing Centre use that makes it inherently unsuited to a business park or to one that is regarded as 'prestige'. I deal with the implications for neighbouring residents in issue 6.

15.15 I turn next to **Criterion (v)**, which is concerned with the availability of other land or buildings for the proposed use. This issue is specifically raised by Langstone Action¹¹³, who consider that a wider comprehensive search should have been carried out to identify a sustainable location. However, Policy ED3 is concerned with the supply of employment

¹¹⁰ 7.11-7.13 & 8.11

¹¹¹ 4.1, 9.29, 12.4

¹¹² 2.2

¹¹³ 9.23

land. It does not deal with sustainability issues and there is no basis for suggesting that criterion (v) should be interpreted in this way. The policies of the Welsh Assembly Government are aimed at achieving sustainable patterns of development but this is a separate matter that I deal with under issue 5. The aim of Policy ED3 is to maintain an adequate supply of employment land and to ensure that development for alternative uses does not have an adverse effect on the range and choice of sites. Criterion (v) should be interpreted accordingly. I share the view of the Court Service that the criterion is aimed at alternative uses such as housing, retail or leisure, where it would be necessary to consider what other land is allocated or available for the proposed use before releasing employment land¹¹⁴. No land or buildings are allocated for use as a Hearing Centre and, as the Court Service submits, it would be on other employment land or in another office building if it were not in Columbus House. Therefore the requirements of criterion (v), as opposed to other policies relating to sustainable development, which I return to in issue 5, are met.

15.16 I am therefore satisfied that in terms of employment land policies the Hearing Centre is an appropriate use for this business park. I find no objection on the grounds raised by criteria (i)-(iii) of Policy ED3. It would not adversely affect the supply of sites for business development generally in Newport or prestige development in particular.

15.17 One further point raised by the Council is that the proposal will not boost economic performance or raise Welsh GDP per capita, a reference to paragraph 7.1.3 of PPW. In as much as the use is a purely administrative function of central government this is strictly correct. But the same accusation could be levelled at all arms of both central and local government. In my view the Hearing Centre performs an essential administrative function that is a necessary part of the governance of the United Kingdom, a prerequisite for a sound economy, and such criticism has no validity. In any event, it is wrong to focus on one small phrase of PPW out of context. The Assembly Government's economic objectives are wide. Paragraph 7.1.2 of PPW emphasises the importance of increasing the number and quality of jobs and reducing economic inactivity. This use provides employment for local people and hence contributes to national and local economic objectives.

Issue 2: the effect on the character and appearance of the surrounding area

15.18 The palisade fencing that has been erected is behind the building¹¹⁵. It is not visible as one drives or walks along the access road towards the front of Columbus House from the direction of the A48. Nor is it particularly noticeable from anywhere else on the business park. The houses on the Ger-y-parc estate are too far away for there to be any visual impact and the fence is sufficiently far from the access road to those houses as to render it unobtrusive. Even if security fencing of this nature were an unusual feature of a business park, something I do not accept, it does not have any significant impact on the area. Because of its well-screened position, its relative low level and the trees along the site's northern boundary with the A449, the fence has no adverse visual impact on the SLA to the north. It does not conflict with the objectives of Structure Plan Policy C5, which designates the SLA in order to protect and enhance the landscape¹¹⁶.

15.19 As to the security lighting, I observed this during the late evening after dark¹¹⁷. The building was well lit, but I did not find the level of illumination excessive and there was little spillage of light into the surrounding area. In particular there was no light spillage

¹¹⁴ 7.18

¹¹⁵ 2.3, 3.4

¹¹⁶ 5.1

¹¹⁷ 1.3, 3.4

affecting the Ger-y-parc estate because of its distance away. Although the light illuminated the roadway in front of Columbus House, this served to light an otherwise dark section of road.

15.20 The Hearing Centre therefore would not have any adverse effect on the character or appearance of the surrounding area. It does not conflict in terms of design or environmental impact with criterion (iv) of Policy ED3 or with the relevant policies of the emerging UDP referred to by Langstone Action¹¹⁸.

Issue 3: the effect on vehicular and pedestrian safety

15.21 This was initially raised by Langstone Action but their transport witness conceded at the inquiry that the use would produce less traffic than would a comparable B1 office use occupying the building¹¹⁹. Consequently, whilst the surrounding traffic network is busy, the Hearing Centre would have no significant effect on vehicular safety given that this is an existing building with a lawful B1 office use. For similar reasons, the amount of traffic would not pose a hazard on the road serving the business park and residential area. The car park is of ample size to cater for the use.

15.22 In terms of pedestrian safety, the concern is that appellants and their families would want to use the facilities on the south side of the A48, which would require them to cross this busy road¹²⁰. Those travelling by public transport would also need to cross the A48 to catch a bus back into Newport. This is a busy road, but I found no difficulty crossing it during my site visit. This was not at the busiest time of day and it is possible that traffic would be heavier earlier in the morning, at the times when appellants would be arriving. But the Highway Authority made no objection and visibility in both directions along this straight part of the A48 is good; successful measures have been taken in recent years to improve pedestrian safety on this section¹²¹. The traffic flows on the A48 would allow pedestrians to cross in safety with reasonable care and this evidence was not challenged at the inquiry. The barriers that the Court Service proposes to provide at the crossing points would enhance pedestrian safety. I conclude that there would be no material risk to either vehicular or pedestrian safety and that the Hearing Centre therefore would not conflict in terms of traffic or access implications with criterion (iv) of Policy ED3.

Issue 4: whether Columbus House is suitable for use as a Hearing Centre

15.23 Langstone Action's arguments fall in 2 parts - accessibility by public transport and the facilities in the area. Dealing first with accessibility by public transport, Langstone Action stress the time taken to reach Columbus House from the more remote parts of its catchment area¹²². They point out that it is not possible for appellants from Truro and Torquay to journey to Columbus House by public transport on the morning of their hearing to arrive by 0940 as requested by the IAA. But the IAA operates flexibly to allow for those who travel from a distance¹²³. And the statistics provided by the Court Service show that appellants from these 2 towns attended hearings in Cardiff and Pontypool in the period April-June 2003. So appellants are already travelling these distances. The distance travelled by appellants is an operational issue for the IAA. It is for them to decide whether this is the most convenient Hearing Centre for all parts of the catchment. The relevant planning

¹¹⁸ 5.4

¹¹⁹ 7.27-7.28

¹²⁰ 9.4, 10.1, 12.1

¹²¹ 7.23

¹²² 9.5, 9.8

¹²³ 7.24

consideration is how the journeys would be made and whether they could be made by public transport, a matter I deal with in issue 5 where I assess the proposal against the Assembly's sustainability policies.

15.24 Langstone Action seeks to argue that places such as Bristol should have been considered as this would reduce the journey time and they point out that 70% of appellants come from England¹²⁴. It is true that the largest proportion of appellants come from the Bristol area, but the geographical location of the Hearing Centre within its catchment is a matter for the IAA. The Immigration Advisory Service recognises this¹²⁵. There is no justification for requiring the Court Service and IAA to demonstrate that they have considered all possible locations and that they have chosen the best. Apart from the fact that the definition of the 'best' site would depend on the criteria used and their relative weight, it would be an impractical task. It is a basic principle of development control that each application is considered on its merit. There are situations where planning policy requires alternatives to be considered, for example in dealing with retail development where the sequential approach to site selection dictates the need to look at alternatives. But that does not apply in this case. Even if there were a requirement to carry out such an exercise, it would be within the boundaries of Newport. No policy in the Newport UDP could require a search for alternative sites in the other parts of the catchment, which stretches to south west England. No other site has been put forward on the basis that it is better in terms of land use planning policies and there is no local or national policy that requires all possible locations or alternatives to be considered for this use.

15.25 Newport is a main line railway station and there are train services to the City from all parts of the Hearing Centre catchment¹²⁶. Including those from the Newport area, 70% of appellants could travel to the City by bus or train. The fact that those arriving by train have to change to the local bus services in Newport is not a drawback. The same would be true of any urban site outside walking distance from the main train station. I walked from the bus station to the train station in less than 7 minutes at a leisurely pace and found it an easy walk, with the route reasonably well signposted. The problems at the bus station in terms of passenger bays and information are recognised in the Local Transport Plan¹²⁷ and it is therefore reasonable to presume that improvements will follow in due course. I found it straightforward to identify the services to Langstone and the stop at which to wait. The IAA could provide all the necessary information in advance. The fact that it may take up to 20 minutes instead of the scheduled 13 minutes to reach Langstone by bus is not significant given the distance some will already have travelled. A 20 minute bus journey can hardly be said to be a major obstacle. Although the bus stop at Langstone for services from Newport is past the access to the business park and some 350 metres from Columbus House, this is a relatively short walk along a paved footpath. Again the IAA could give appellants instructions in advance so that they know the stop at which to get off and are able to inform the driver when they board in Newport. There are 5 services between 0715-0915 that would get appellants to Columbus House by 0940 and the proposed minibus service would add another 3 trips in this period by a 7 seat taxi¹²⁸.

15.26 Langstone Action criticises the minibus service for not being timed to meet trains and for the fact that there are only 7 seats. The minibus service would be provided in accordance

¹²⁴ 9.11-12

¹²⁵ 7.25

¹²⁶ 7.24

¹²⁷ 9.7

¹²⁸ 7.24

with a scheme to be agreed with the Council¹²⁹ and a suitable condition could require the timing of the service to be part of such a scheme. The fact that there would only be 7 seats has the potential to cause confusion and dispute when more than 7 people arrive at the station at the same time or more than 7 wait at the train station hoping to get on the next minibus service. But it must be recognised that only a proportion of the appellants and their families would arrive by train. On the evidence available the service appears adequate for the likely numbers and the practical problems are a matter for the IAA to resolve.

15.27 Turning then to the facilities available for appellants and their families¹³⁰, the building itself is equipped with children's play areas and play equipment, vending machines and rooms where appellants can meet with those representing them. The IAS is impressed with the facilities. I found the waiting areas to be bright and attractive. There is a landscaped central courtyard where people can go if they want to smoke or just sit in the open air. It would be reasonable to assume that at least some of those appellants who are told soon after they arrive that their case will not be heard for many hours would leave the centre to buy food or just to get away from the building. Few people are recorded in the surveys as leaving the Sheldon and Stoke centres, but significant numbers are shown as leaving the Pentonville Court, Newport and the Cardiff Court¹³¹. It clearly would be wrong to proceed on the basis that people would not want to leave a Hearing Centre. But the reason why people are at the centre is for their appeal to be heard, the result of which will determine whether they are able to stay in this country, one of the most important decisions in their lives. There is therefore no basis for suggesting that Hearing Centres should be located where they have access to a wide range of facilities including shopping. That is not the purpose of the centre and I find it hard to understand why an appellant would be interested in a wide range of facilities. Indeed I question the relevance of this consideration in land use planning terms bearing in mind the purpose of a Hearing Centre.

15.28 For those who wish to leave the building because their hearing would not be for some hours, the Hilton hotel¹³² would hardly be an attraction because of its price range and type of facilities. But the public house and McDonalds are within reasonable walking distance on the opposite side of the A48 and provide a range of food and drink in comfortable surroundings. I do not consider it reasonable to criticise the location because of the lack of a wider range of facilities. The available facilities, together with those provided by vending machines within the building¹³³, would be sufficient to provide for the reasonable needs of appellants and their families whose purpose in coming here is to attend their hearing. The issue of specialised food has been raised¹³⁴, but it again is a matter that could be handled by advice issued by the IAA in advance and it is reasonable to expect appellants to make some provision for themselves. This is not a matter raised by the IAS. Comparisons have been made with Hearing Centres at Sheldon, Birmingham and Stoke¹³⁵ and I was invited to visit these. I have sufficient information provided in the evidence of Langstone Action to understand the operation of those centres. The proposal before me is the acceptability of a Hearing Centre at Columbus House, which must be considered on its merits. Comparisons with other centres have limited relevance in making that judgement. I conclude that Columbus House is suitable for a Hearing Centre in terms of accessibility by public transport and its facilities.

¹²⁹ 13.1

¹³⁰ 2.2, 3.4, 7.25-26

¹³¹ 7.26, 9.15

¹³² 3.1 & 3.3

¹³³ 7.26

¹³⁴ 9.14, 13.3

¹³⁵ 9.15

Issue 5: whether the use accords with the policy objectives of the National Assembly for Wales that seek to achieve sustainable patterns of development

15.29 One of the Assembly Government's key policy objectives set out in paragraph 2.3.2 of PPW is to minimise the demand for travel, especially by car. This Hearing Centre would generate a considerable amount of long-distance travel because of the size of its catchment¹³⁶. But it would do so wherever it was in the catchment. I have explained earlier my reasons for concluding that in terms of its accessibility it is not necessary or reasonable to expect the Court Service to have investigated all alternative locations to identify the best possible. The same applies in relation to sustainability policy. Minimising travel demand does not in practice mean assessing all possible locations to arrive at a geographic location that produces the least journey miles. That would be a huge and impractical task. PPW explains in section 2.5 that the key policy objective is to be realised by measures such as locating housing and employment so as to minimise commuting and by locating major generators of travel demand within urban areas well served by public transport. I accept that a transport assessment as advised in paragraph 8.7.2 of PPW has not been done¹³⁷ but that advice is aimed at major development proposals. Although 'major' is not defined I doubt that a change of use of a building of this size would be so defined. In any event, the lack of such an assessment would not of itself justify refusing approval.

15.30 Columbus House was planned as a motorway related prestige development, located at the Coldra to take advantage of easy motorway access¹³⁸. Any alternative Class B1 occupier, as permitted by the existing permission, would probably locate here to take advantage of the easy access by road to the national motorway network and so would be heavily reliant on car travel. The fact that most of the Hearing Centre employees travel to Columbus House by car¹³⁹ is hence likely to be no different from a traditional B1 use, the majority of whose employees would also probably travel by car. In sustainability terms what distinguishes this use from most B1 uses is the long-distance travel by appellants. On this basis locating the Hearing Centre here cannot be considered likely to minimise car-borne travel. With its location close to a motorway junction, a car journey would probably be more attractive and convenient than arriving at the main bus or train station in Newport and then be faced with the journey by bus to Langstone. In the Cardiff and Newport surveys, where the courts are more centrally located than Columbus House and hence have better access by means other than the car, up to 50% of visitors used public transport. This supports Langstone Action's view that if the Hearing Court were in a more central location, appellants and visitors would be more likely to travel by public transport or other means.

15.31 I do not consider that the minibus service would be likely to appreciably affect the likelihood that people would travel by public transport. It would improve the accessibility of the Hearing Centre and would mean that some of those arriving by train would not have to walk across the town to the bus station. But it would not be possible to guarantee this for everyone and Columbus House is by virtue of its out of centre location less convenient by definition for those arriving in the centre by bus or train.

15.32 Nonetheless, compared with a B1 office use, the proposed Hearing Centre would generate significantly fewer car journeys¹⁴⁰. But the claimed saving needs to be examined with care. The B1 office use would be characterised by a high proportion of relatively short

¹³⁶ 7.5

¹³⁷ 9.6

¹³⁸ 7.27

¹³⁹ 9.17

¹⁴⁰ 7.27

commuting trips from neighbouring urban areas, whereas many of the Hearing Centre trips would be longer because of the distance many appellants would have to travel. It would be difficult to quantify the implication of the length of trips and the comparison has not been made. But the difference between the Hearing Centre and a B1 office use is not as simple as the saved 20,475 car journeys claimed by the Court Service.

15.33 The Court Service also claims a saving as the journeys from Columbus House to the present satellite courts would be eliminated if the Hearing Centre were operating. Langstone Action argues it is not correct to claim this saving as the Court Service has begun using Columbus House in advance of a decision on its suitability as a Hearing Centre. I understand the view that comparison should be made with the situation before the IAA moved to Columbus House. But the IAA had to move from their offices in the Cardiff Civil Justices Centre by November 2002¹⁴¹. They were perfectly entitled to move into Columbus House and use it as offices since that is the permitted use of the building. I therefore accept that it is valid to consider any savings in staff journeys from Columbus House to the satellite courts. Whilst the Court Service's calculation of the saving is incorrect because of double counting, it is plain that holding hearings in Columbus House would eliminate journeys by staff to the satellite courts. To this should be added the saving in the length of appellants' and other visitors' car journeys to the satellite courts at Pontypool and Blackwood. Bearing in mind that 70% of appellants come from England, any journeys using the M4 corridor to these satellite courts would be longer than to Columbus House. And the transportation of files by courier to the satellite courts would also be saved¹⁴².

15.34 To conclude on this issue, a site in the centre of Newport could contribute more to the sustainability objectives of the Assembly Government by encouraging greater use of public transport, particularly by appellants and visitors. Nonetheless, this location is not wholly in conflict with the advice in PPW since it is in the urban area of Newport as defined by the emerging UDP¹⁴³. The site is served by a regular bus service and the timetables indicate on average 4 services passing the site hourly¹⁴⁴. The proposed minibus would supplement this service. Newport itself is on the main railway network with good train connections to the rest of the country. I therefore consider that the site is reasonably well served by public transport. Furthermore, the overall number of car trips generated by the use would be significantly less than that from a B1 use of the building. Although many trips by appellants would be longer compared with office commuting trips, the reduction in the number of trips would be such that savings would be likely. Added to this would be the saving of staff journeys due to centralising at Columbus House, the reduced length of appellants' and visitors' journeys, and elimination of courier trips to satellite courts. I therefore consider that the Hearing Centre would contribute to the Assembly Government's sustainability objectives since it would contribute to an overall reduction in car travel.

Issue 6: the effect that the use would have on neighbouring residents, particularly through the fear of crime and perception of risk to public safety

15.35 Many local residents have concerns about their personal safety and the safety of their property¹⁴⁵. That can be clearly seen in the evidence given to the inquiry and the letters received both in connection with the inquiry and when the Council received the notification. Nonetheless, the evidence shows that these fears are unfounded and that people are being

¹⁴¹ 7.3

¹⁴² 7.4

¹⁴³ 5.2

¹⁴⁴ Statement of Common Ground – para 6.1 above

¹⁴⁵ 9.22, 11.1, 12.2, 12.3

worried needlessly. The experience of other local planning authorities is that Hearing Centres cause no problems, including when they are close to houses¹⁴⁶. The IAS states that in its experience appellants are law abiding and peaceful. It is difficult to understand why anyone seeking permission to stay in this country should break the law or in any way threaten people living in the area, in view of the effect this would be likely to have on their appeal. It is understandable that some would be frustrated or angry if their appeal were dismissed, but the decision would not be announced on the day but notified to the appellant by post some days later. So there is no reason to believe there would be a risk to anyone living locally.

15.36 The security fencing gives the impression of a need for security due to the nature of the appellants. But this is not the reason for it. The fencing is part of the normal and sensible precautions taken at government establishments at the present time. The fact that a secure vehicle compound¹⁴⁷ has been provided at the rear of the building and that some appellants will be brought here from detention also raises understandable concerns. However, the IAA states that few appellants would be brought here from detention¹⁴⁸. In any event, they would be brought by secure transport and would be kept in a secure area within the building. Moreover, these appellants are detained because they would otherwise abscond, rather than because they present a risk to the public.

15.37 Concern has been expressed about the effect of appellants walking about the local streets. But there would be little reason for them to do so. They would come to attend their appeal hearing, which would decide whether they stay in this country. The importance of the hearing will mean that most will want to remain in the building. There is a central courtyard for anyone who wishes to smoke or sit in the open air. Some may want to go to the public house or the McDonalds on the opposite side of the A48. There would be little reason for them to walk around the business park but should they wish to do so, there is no reason why they should be perceived as a risk to anyone. There is no reason for them to cause any problem and every reason for them to behave peacefully. If one or 2 appellants or visitors were to walk around the streets, this would to my mind be no different from any person employed on the business park who wished to do likewise.

15.38 Much of the concern of residents is because the occupation of the building by the IAA was poorly handled, for which the Court Service apologised at the start of the inquiry¹⁴⁹. Residents' perception is that the IAA has occupied the building before the proper planning procedures have been gone through. The fact that the building is to handle immigration and asylum hearings has undoubtedly fuelled rumours about the nature of the activities and the future intentions of the IAA. Lack of knowledge added to the rumours. The fears and concerns of residents are therefore understandable, but they are not based on any fact or evidence. I conclude that the use would have no effect upon neighbouring residents, that the use would not lead to an increased risk of crime or pose a threat to public safety and that there would be no basis for withholding approval on these grounds.

Other Issues

15.39 Langstone Action stressed the lack of any consideration of alternative sites¹⁵⁰. I have considered most of their arguments within the main issues. Additionally, they asked for and

¹⁴⁶ 7.31-7.32

¹⁴⁷ 2.2

¹⁴⁸ 7.5

¹⁴⁹ 7.1

¹⁵⁰ 9.23-9.24

obtained from the Court Service a considerable amount of information, in particular extracts from the Crown and County Courts Design Guide and the Circuit Buildings Projects Procedures Manual. They drew attention to the fact that the latter states that all sites should be considered and reported upon. They also point out that the Design Guide requires a Site Appraisal Report to include a transport study¹⁵¹. Cllr Atwell also voiced criticisms regarding the alleged failure to follow advice in these documents¹⁵². However, these are internal documents of the Department of Constitutional Affairs. They have no status in terms of planning policy. Where their contents are reflected in national or local planning policy or raises a material planning consideration I have taken this into account in reaching my conclusions. Other than that the extent to which the guidance and procedures in these documents has been followed is a matter for the Court Service.

15.40 Langstone Action points to the decreasing number of asylum applications and the increasing number of monthly appeal decisions, arguing that a Hearing Centre at Columbus House is no longer needed¹⁵³. But in spite of decreasing numbers and increasing monthly decisions, only 43% of cases were processed within 4 months in the year ending March 2003¹⁵⁴. There remains a serious and pressing need for the IAA to reduce the time it takes to determine appeals and to maintain the monthly number of cases determined. From January 2004 no IAA appeals will be heard at Cardiff Magistrates Court, reducing the number of sitting days on which appeals are heard by over 40%¹⁵⁵. This capacity needs to be replaced.

15.41 Be that as it may, it is not a valid argument to suggest that at some time in the future the building will not be needed as a Hearing Centre. The use of buildings will change over time and this building has already been vacated by at least one owner in response to changing demands. Most of the other buildings on Langstone Business Park are either vacant or being vacated. I have no reason to doubt that the building would be used for other tribunals as the Court Service maintains were the need to use it for asylum hearings to reduce. The building is intended to hold hearings by the Pensions Appeal Tribunal¹⁵⁶ and it has been designed as a multi-purpose facility capable of holding a wide range of tribunal hearings.

Summary

15.42 I conclude as follows:

- Issue 1: there is nothing in the use of the building as a Hearing Centre that makes it inherently unsuited to a business park location. Nor would the use have any adverse effect on the availability of sites for prestige office development in Newport.
- Issue 2: the palisade fencing and security lighting are not out of place or intrusive and the proposal would cause no harm to the character or appearance of the area.
- Issue 3: the use would generate less vehicle trips than would a B1 occupier of the building and people could cross the A48 in safety with reasonable care. The use hence would not result in any threat to vehicular or pedestrian safety.
- Issue 4: access to Columbus House by public transport is adequate and the facilities available in the locality are sufficient to cater for the needs of appellants.

¹⁵¹ 9.6

¹⁵² 11.2

¹⁵³ 9.26

¹⁵⁴ 7.33

¹⁵⁵ 7.4

¹⁵⁶ 7.2

- Issue 5: a location in the centre of Newport could contribute more to the sustainable development objectives of the Assembly Government by encouraging greater use of public transport. But the Hearing Centre would also contribute to these objectives by leading to an overall reduction in private car travel compared with a B1 office use.
- Issue 6: although the fears of residents are recognised, the evidence indicates that the use would not lead to an increase in crime or a risk to public safety.

15.43 It follows from these conclusions that the Hearing Centre would not conflict with Structure Plan Policies E1, E2 or C5. Nor would it conflict with Policy ED3 or with any of the other policies of the emerging UDP referred to by Langstone Action. The Hearing Centre would produce a number of benefits by centralising all the IAA functions in a single building and accords with the Assembly's sustainability objectives and other relevant policy advice in PPW. I conclude that the proposal should be allowed to proceed.

Conditions and Obligations

15.44 The conditions offered by the Court Service cover 4 matters – the minibus service, a Travel Plan, the provision of vending machines and safety barriers on the A48¹⁵⁷. Langstone Action prefers that these matters are included in a planning obligation under S299A of the 1990 Act¹⁵⁸. This is because any conditions are not attached to a planning permission since this is development on behalf of the Crown, which therefore does not need planning permission. Any conditions hence would in their view not be enforceable. This would appear to be legally correct but is ultimately a matter for the Assembly. Nonetheless, if a Government department is prepared to enter into conditions they are at the same time accepting the responsibilities that go with those conditions. Whatever happened initially with regard to this proposal should not be allowed to colour judgements regarding the appropriate way to control the use in the future. Assurances given on behalf of the Court Service should be accepted and I have no reason to doubt that all conditions agreed on their behalf at the inquiry would be complied with. Conditions are also preferable in principle to an agreement, as paragraph 4.7.5 of PPW makes clear, in this case because of their greater flexibility and transparency.

15.45 I turn then to the 4 suggested conditions. **Condition 1** (*minibus service*) is in my view necessary and reasonable in view of the location outside the centre of Newport and the distance to the bus station. A minibus service would be valuable for elderly people attending the Hearing Centre and those with young children. With the normal bus services this would ensure a good connection to Columbus House for those travelling to Newport by train. With regard to the number of trips, bearing in mind that experience shows that the majority of appellants and visitors travel by car, that there is a daily maximum of 32 hearings and that there is a regular bus service, 7 one-way trips would be adequate initially. Nothing would be gained by specifying 'round trips' as the Council requests since the minibus would not be providing a 2-way shuttle service but either bringing appellants from the train station or returning them there at the end of the hearing, to supplement the public bus service¹⁵⁹. I agree with the Council and Langstone Action that there should be flexibility to allow for the service to be reviewed. The Court Service suggested that the scheme required by the condition could allow this flexibility and I have revised the suggested draft accordingly and to require that timing of the service is included as part of the scheme (*see 15.26 above*).

¹⁵⁷ Section 13 above

¹⁵⁸ 14.3

¹⁵⁹ 13.1

15.46 **Condition 2** (*travel plan*) is also reasonable and necessary to meet the objectives of national policy aimed at reducing private car travel. I agree with Langstone Action that there should be provision for annual review and I have revised the draft accordingly. Since no targets for modal split have been suggested I am unable to include any in the condition. In any event this is best left to negotiations with the Council.

15.47 **Condition 3** (*vending machines*) is necessary to ensure that an adequate range of facilities is provided for appellants and visitors, bearing in mind the distance they would have travelled and the possible wait before their hearings. This would reduce the need for them to cross the busy A48 to visit other facilities. With regard to Councillor Atwell's request that food should suit all diets, vending machines normally offer a range of foods. I do not consider it reasonable to require the IAA to provide for specialised diets. Those who have special requirements would in all probability bring their own food. The children's play area and equipment I saw was in my opinion of a good standard and adequate. The IAS is of the same view.

15.48 **Condition 4** (*highway safety works*) is necessary to provide reasonable safety for people crossing the busy A48, bearing in mind that the Hearing Centre will attract many people unfamiliar with the area who may wish to cross this road to visit the public house or Macdonalds. I have considered Councillor Atwell's point about the appearance of barriers, but in my opinion pedestrian safety is paramount. I agree with the Council that it would be preferable for the barriers to be in place before hearings commence since appellants would then be using Columbus House and could wish to cross the A48. I also accept that arrangements have to be made with the Highway Authority to carry out this work. But I consider that 6 months would be an unacceptable delay. The compromise period of 3 months suggested by the Council is reasonable. It is likely that it will take a period for the IAA to bring the building fully into use for hearings and to transfer all its work. But 3 months should be the maximum period in which to provide the agreed barriers. I do not consider that additional lighting is required on the A48 since from my observations the existing lighting is adequate and in general appellants would be unlikely to be crossing at times when lighting is needed.

15.49 I have set out the complete list of conditions, revised as outlined above, in the Annexe to this report. No other conditions were suggested and in my view none is necessary.

15.50 If the Assembly considers an obligation is required, the draft submitted would need to be revised. First, it is written as an agreement but since the Council has not been prepared to sign, it would need to be redrawn in a unilateral form. Second, clause 3.1.3 would need to include a time for payment¹⁶⁰. I am unable to recommend any period because, although the Council and the Court Service agreed this point, neither put forward any period at the inquiry. Langstone Action also questions whether a S299A obligation could be enforced¹⁶¹ and their interpretation of the legal situation in respect of S299A(3) was accepted by the Court Service¹⁶². This is a matter of law for the Assembly, but I draw attention to the Bicester decision in which a S299A agreement was regarded as essential.

16. Recommendation

¹⁶⁰ 14.2

¹⁶¹ 14.3

¹⁶² 14.4

I recommend that approval be given for the change of use to an Immigration Appellate Authority Hearing Room Centre at Columbus House, Langstone, Newport subject to the conditions set out in the Annexe.

Inspector

ANNEXE: CONDITIONS

1. The use shall not commence until a scheme for the provision of a minibus service between Newport railway station and Columbus House, Langstone has been submitted to and approved in writing by the local planning authority. This scheme shall include details of the capacity of the minibus, which shall provide a minimum of 7 passenger seats, and the timing and frequency of the service, which shall provide initially for 7 one-way trips daily Mondays-Fridays inclusive. The scheme shall provide for annual reviews, as part of which the capacity and frequency of the minibus service shall be reassessed and revised as necessary in the light of its usage. The results of the reviews shall be submitted to the local planning authority for approval. Use of the building as a Hearing Centre shall not take place unless the minibus service is operating in accordance with the approved scheme.
2. The use shall not commence until a Travel Plan for staff working in the building has been submitted to and approved in writing by the local planning authority. The Plan shall promote greater use of public transport, cycling and walking; car sharing; home working and other travel methods to reduce private car use. The Plan shall include provision for annual reviews of its effectiveness and it shall be revised as necessary to take account of the findings of these reviews. The results of the reviews shall be submitted to the local planning authority for approval. Use of the building as a Hearing Centre shall not take place unless the approved Travel Plan is in operation.
3. The following vending machines shall be provided at the Hearing Centre for the use of appellants at all times: 1 canned drinks vendor; 1 hot beverage vendor; 1 confectionery vendor; and 1 sandwich vendor.
4. The use shall not commence until a scheme for improving the safety of pedestrians crossing the A48 Chepstow Road, including signs and safety barriers, has been submitted to and approved in writing by the local planning authority. The works comprised in the approved scheme shall be carried out within 3 months of the commencement of the use of the building as a Hearing Centre.

APPEARANCES

FOR THE COURT SERVICE:

Mr Rhodri Price Lewis	Queens Counsel
He called:	
Mr Martin John	Acting Director of Tribunals, Court Service
Mr Steven Gibbons FRICS	Associate Director, GVA Grimley
Mr Christopher Hicks BSc MCD MRTPI	CgMs Consulting
Mr Colin Smith CEng FICE MIHT MIOA MAE EurIng	Associate Director, White Young Green

FOR THE LOCAL PLANNING AUTHORITY:

Ms Morag Ellis	of Counsel
She called:	
Mr Peter Williams MA MRTPI	Development Control Manager, Newport City Council
Mr Richard Linnell ARICS	Managing Director, Linnells Property Consultants

FOR LANGSTONE ACTION:

Mr John Litton	of Counsel
He called:	
Mr Robert P Duff BTP MRTPI	Director, Development Land & Planning Ltd
Mr Alun G Rees BEng MIHT MCIT MILT	Director, Development Land & Planning Ltd

INTERESTED PERSONS:

Mr John Griffiths AM	Assembly Member, Newport East
Mr David Atwell	Ward Councillor, Langstone

DOCUMENTS

- 1 List of persons present on each day of the inquiry
- 2 Council's letter notifying interested persons
- 3 Letters of objection from Rt Hon Alan Howarth CBE MP
- 4 Letters of objection from (i) Rosecroft Drive Neighbourhood Watch and
(ii) Mr & Mrs R A Purnell
- 5 Letter of support on behalf of Rombourne Ltd
- 6 Statement of Common Ground

Court Service Documents

- 7 Opening Statement
- 8i-v (i) Mr Martin John's Proof
(ii) Mr John's response to Mr Rees
(iii) Mr John's response to Mr Lane
(iv) Letter dated 11 July 2003 from Chief Executive, Immigration Advisory Service
- 9i-ii (i) IAA leaflet for Sheldon Court Hearing Centre, Birmingham;
(ii) Draft IAA leaflet for Columbus House, Newport
- 10 Bundle of Additional Documents relating to the selection of Columbus House as the location for a Hearing Centre
- 11 Details of employment at Columbus House and utilisation of chambers
- 12 Current hearing arrangements using satellite courts
- 13i-ii Current items on Home Office Web site:
(i) 'New Legislative Proposals on Asylum Reform'
(ii) 'Asylum Measures to build on success in halving numbers'
- 14i-iii (i) Mr Steven Gibbon's Proof
(ii) Appendices III-V to Mr Gibbon's Proof (revised September 2003)
(iii) Mr Gibbon's rebuttal in response to Mr Linnell
- 15 Letter from Mr Richard Linnell dated 17 June 2003 regarding Drake House, Langstone Business Park
- 16i-iv (i) Mr Colin Smith's Rebuttal Proof & Appendices 1-4 in response to Mr Alan Rees
(ii) Mr Smith's Supplementary Proof
(iii) Appendices 1-15 of Mr Smith's Supplementary Proof
(iv) Corrections to Mr Smith's Rebuttal and Supplementary Proofs
- 17 Court Users Customer Service Questionnaire: Pentonville Courts, Newport, 1 July 2003
- 18 Results of Columbus House staff travel-to-work survey on 8 July 2003
- 19i-ii (i) Mr Christopher Hicks' Proof
(ii) Appendices 1-2, 4-20 to Mr Hicks' Proof
- 20 Letter dated 6 October 2003 from Home Office regarding Presenting Officers' Unit
- 21i,ii (i) Letter dated 29 July 2003 from Donaldsons' regarding accommodation for Home Office (Immigration Department - Presenting Officers' Unit)
(ii) Proposal by Rombourne Ltd for 600m² office development at Langstone Park for Presenting Officers' Unit
- 22 Letter dated 16 October 2003 from CgMs Consulting accompanying revised drawing No 98/7165/421B-18AB showing 'As Built' Elevations
- 23 Committee Report 17 Dec 1997: residential development at Langstone (Ger-y-Parc)
- 24i-ii (i) Extract from Company Registration details: IT3 Group Ltd
(ii) Extracts from Priory Crescent and Langstone Action web sites
- 25i-ii (i) Inspector's Report: Accommodation Centre for Asylum Seekers, Bicester
(ii) FSS decision letter: Bicester Accommodation Centre
- 26 Note on Yarl's Wood Removal Centre
- 27 Legal Agreement
- 28 Suggested Conditions

Council Documents

- 29 Mr Peter Williams' Statement
- 30 Council's Written Statement
- 31i-v Bundle of documents relating to processing of notification:
 - (i) decision notice
 - (ii) committee minutes 20 Nov 2002
 - (iii) committee report 20 Nov 2002
 - (iv) comments of Head of Engineering Construction 17 Oct 2002
 - (v) comments of Architectural Liaison Officer, Gwent Police
- 32i-ii
 - (i) Extracts from Gwent Structure Plan
 - (ii) Extract from Newport UDP Proposed Changes June 2001
- 33 Mr Richard Linnell's Proof & Appendices I-II

Langstone Action Documents

- 34 Mr Alun Rees' Proof & Appendices 2-8
- 35 Mr Rees' Rebuttal Proof and Appendix: Public Transport Journey Assessment
- 36 Mr Robert Duff's Proof & Appendices 1-2
- 37i,ii Mr Duff's Additional Appendices 4 & 5: Court Service Annual Report 2002-3 & Home Office Asylum Statistics: 2nd Quarter 2003
- 38 Mr Simon Lane's Statement & Appendices 1-11, 14-23
- 39 Hand written note of telephone conversation between Mr Lane and Mr Huw Griffiths of 'it3.com' on 30 October 2003

Interested Persons Documents

- 40 Letter of objection from John Griffiths AM
- 41i,ii Statements by Cllr David Atwell

PLANS

- Ai,ii Location Plans: (i)App 1: Mr Hicks' Proof; (ii) Council's location plan at 1:10,000 scale
- Bi-vi Drawings in Notice of Proposed Development [App 3: Mr Hicks' Proof]
- C Drawing No 98/7165/421B 18AB dated 25 September 2003: 'As Built Elevations'
- D Langstone Business Park & Surroundings [App 1: Mr Steven Gibbon's Proof]
- E Business Parks, Newport & Cardiff [App2: Mr Gibbon's Proof]
- F Location Plan & Transport Links, 1:25000 [Fig 1: Mr Alun Rees' Proof]
- G Newport Rail & Bus Stations [Fig 2: Mr Rees' Proof]
- H Columbus House – Surrounding Services & Facilities [Fig 3: Mr Rees' Proof]
- I Assisted Areas – South East Wales
- J Location Plan at 1:10,000 showing Underwood, Newport

PHOTOGRAPHS

- 1 Security Lighting at Columbus House [App 3: Mr Robert Duff's Proof]
- 2 IAA Hearing Centre, Birmingham [App 12: Mr Simon Lane's Statement]
- 3 IAA Hearing Centre, Stoke-on-Trent [App 13: to Mr Simon Lane's Statement]
- 4 Columbus House, Langstone – submitted by Mr Gibbon