



Appendices to Proof of Evidence of Ben Pycroft BA(Hons), Dip TP, MRTPI in relation to Housing Land Supply including Affordable Housing Land Supply

Erection of up to 595 dwellings (Use Classes C3), land for a Primary School (Use Class D1), up to 700m² for a Retail and Community Hub (Use Classes A1, A2, D1), a network of open spaces including parkland, footpaths, allotments, landscaping and areas for informal recreation, new roads, a sustainable travel link (including a bus link), parking areas, accesses and paths and the installation of services and drainage infrastructure (Outline) with access to be determined and all other matters reserved – Land to the west of Park Farm, Butt Lane, Thornbury

for Barwood Development Securities Limited and the North West Thornbury
Landowner Consortium

Emery Planning project number: 21-658

PI ref: APP/P0119/W/21/3288019

LPA ref: PT18/6450/O

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Appendices

EP1A – Audlem Road, Nantwich appeal decision
EP1B – Cox Green Road, Surrey appeal decision
EP1C – Woolpit appeal decision
EP1D - Woburn Sands, Milton Keynes appeal decision
EP1E – Darnhall School Lane appeal decision
EP1F – Gleneagles Way, Hatfield Peveril appeal decision
EP1G – Popes Lane, Sturry appeal decision
EP1H – Great Torrington appeal decision
EP1I – Sonning Common appeal decision
EP1J – Winterfield Lane, East Malling appeal decision
EP1K – Bath Road, Corsham appeal decision
EP1L – Pinhoe appeal decision

EP2 – Example proforma for category a) site

EP3 – Example proforma for category b) site

EP4 – Note re disputed sites

EP5 – Lichfield's "Feeding the Pipeline"

EP6 – Information in relation to Cribbs / Patchway

EP7 – Information in relation to land east of Harry Stoke

EP8 – Information in relation to land at Harry Stoke

EP9 – Extract from Council's website re: Homechoice

EP10 - Extract from Council's website re: Frequently Asked Questions re: Homechoice

EP11 – Council's response to Appellant re: affordable housing

EP12 – Freedom of Information Request re: affordable housing

EP13 – Appellant's affordable housing 5 year trajectory

EP1A



Ministry of Housing,
Communities &
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Patrick Downes
Harris Lamb Ltd
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Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF
PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

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Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.
6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
 - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.
 - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.
 - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.
 - The revised National Planning Policy Framework, published on 19 February 2019.
 - Updated guidance for councils on how to assess their housing needs.

The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.
15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.
18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.
19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.
21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.
22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.
23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.
28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.
29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.
31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.
34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.
35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.
36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A

Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019
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Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019
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Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019
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Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019
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Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019
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Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019
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Cheshire East Council	8 November 2019
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Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019
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Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019
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Cheshire East Council	13 January 2020
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Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020
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Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020
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Cheshire East Council	12 February 2020
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Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- a. the hours of construction work and deliveries
- b. the parking of vehicles of site operatives and visitors
- c. loading and unloading of plant and materials
- d. storage of plant and materials used in constructing the development
- e. wheel washing facilities
- f. measures to control the emission of dust and dirt during construction.
- g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

- h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
 - i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
 - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development, and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA. The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC
an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Inquiry Held on 20-24 February 2018

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire
Land off Peter Destapeleigh Way, Nantwich, Cheshire

File Ref(s): APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

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List of Abbreviations

5YS	5 year housing land supply
appx	Appendix
AF	Adrian Fisher – 5YS witness for CEC
BMV	Best and most versatile agricultural land
b/p	bullet point
CEC	Cheshire East Council
Cllr	Councillor
CNRLP	Crewe and Nantwich Revised Local Plan 2006
DPD	Development Plan Document
FN	Footnote
FOI	Freedom of Information
GLVIA	Guidelines for Landscape and Visual Assessment (3rd edition)
HMU	Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB	Jon Berry – landscape architect for Appellants
LCA	landscape character area
LCT	landscape character type
LDS	Local Development Scheme
LHA	Local Highway Authority
LP	Local Plan
LPA	Local Planning Authority
LPI	Local Plan Inspector – Stephen Pratt
LPS	Local Plan Strategy
LPpt2	Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPPD
LVIA	Landscape and Visual Impact Assessment
MW	Matt Wedderburn – 5YS witness for the Appellant
NP	Neighbourhood Plan
NPPG	National Planning Practice Guidance
OAN	Objectively Assessed Needs (usually housing)
OPP	Outline Planning Permission
PD	Pat Downes – planning witness for Appellant
PoE	Proof of evidence
PP	Planning Permission
PTQC	Paul G Tucker QC – counsel for the Applicants
PPG	Planning Policy Guidance
ReX	re-examination
RfR	reason for refusal
rNPPF	revised National Planning Policy Framework
RJ	Reasoned Justification of the Development Plan
RM	reserved matters
RTQC	Reuben Taylor QC – counsel for LPA
RT	Richard Taylor – planning witness for the LPA
SADPD	the Site Allocations and Development Plan D (aka LP pt2)
SHLAA	strategic housing land availability assessment
SOCG	statement of common ground
SoS	the Secretary of State for the Ministry of Housing Communities and Local Government
SPB	Spatial Planning Board – CEC’s planning committee

SPD Supplementary Planning Document
TA Transportation Assessment – here undertaken by SCP
XC examination in chief
XX cross examination
XX'd cross examined
WB William Booker – the **Appellant's highway consultant**
WMS Written Ministerial Statement

Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich,
Cheshire CW5 7DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m **GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.**

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.
2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.
4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.
5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).
6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.
7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated an amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.
8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take them into account in the determination of this case.
9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.
10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.
11. **Although concerns over highway safety do not form part of the Council's case**, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.
12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destapleigh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.
14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.
15. To the north of Peter Destapleigh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.
16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing **development constructed in the 1970's. Audlem Road turns into Broad Lane** south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.
17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.
18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

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19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.
 20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destapleigh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.
 21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.
 22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destapleigh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.
 23. The site will connect to the Peter Destapleigh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.
 24. Planning permission was granted on the 4th January 2001 for the **"construction of new access road into Stapeley Water Gardens"** (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destapleigh Way / Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

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26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG¹.
 27. As a result of a Referendum held on the 15 February 2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now **considered 'made', and thus now forms part of the Development Plan.**
 28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.
 29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement², Suffolk Coastal Supreme Court³, St Modwen Appeal Court Judgment⁴, and the Shavington High Court Judgement⁵.

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the **planning officer's** recommendation⁶.
31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter **dated 17th March 2015, the Secretary of State rejected this Inspector's** recommendation and refused **both appeals. (The 'Original Decision')** The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The **'Second Decision'**).
32. In the Second Decision the Secretary of State refused planning permission **Appeal A on two grounds, the first being that, 'the proposals would cause**

¹ Paragraph 5.1 ID2.

² CDQ1.

³ CD C12.

⁴ CDQ2

⁵ [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.

⁶ CD K2

*harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, **the Inspector's conclusions and the parties' subsequent** representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.*

33. *The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*
34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies and the Framework taken as a whole.'*
35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:
 - a) Progress of the Emerging Cheshire East Local Plan Strategy;
 - b) The current position regarding the five year supply of deliverable housing **sites in the Council's area;**
 - c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be **material to the Secretary of State's** further consideration of this application.
36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.
37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

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38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.
39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)⁷. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
41. These would comprise five elements as follows:
- Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
 - Parcel 2 is located to its south and could have up to 62 dwellings.
 - Parcel 3 is to the south of the employment area could deliver 15 dwellings.
 - Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
 - Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.
42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) **and a children's equipped play area** in the form of a LEAP. The primary school site will be reserved for future education expansion.
43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

⁷ CD H12.

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.
45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission⁸.
46. Appeal B proposes an access onto Peter Destapeleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.
47. Planning permission was granted on the 4th January 2001 for the **“construction of a new access road into Stapeley Water Gardens”** (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).
48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

⁸ Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis⁹ in relation to key facilities and services in the context of the site, which include:
- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
 - Secondary Schools – Brine Leas Secondary School;
 - Health Facilities – Kiltearn Medical Centre, a pharmacy and numerous dentists;
 - Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops
50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original **application that** *'on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms'*. **The Council** has reaffirmed this position in the report to committee of 22nd November 2017.
51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.
52. In addition to the topics set out above further additional matters are agreed between the parties;
- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
 - Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
 - Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
 - It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
 - It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

⁹ 4.13 Planning SoCG ID2.

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- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
 - **The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.**
53. The Housing Land Supply SoCG also covers other significant areas of agreement. **This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.**
54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different **scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.**

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly **couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.**
56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based **upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been**

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of **the LPA's standard methodology on lead in times and build rates has gone wrong immediately**. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.
58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply **position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory**. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall **realism of CEC's claimed supply (past and future)**. **The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.**
59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.
60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should **still be allowed, since on the LPA's best case the position is a marginal one** given its substantial under-delivery compared to the position endorsed by the LPI.
62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there **is a range which is just above or just below 5 years but the LPA can't** demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:
- a. Deliverable sites include those with permissions in the LP, unless there is **clear evidence that the site won't be implemented within 5 years**. From this:
 - i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear **the "robust, up to date evidence" is required on the deliverability – i.e. the yield**. It is difficult to see how an assessment of supply can be undertaken if that an **assessment of yield is not undertaken**. On AF's approach the **decision maker would be obliged to accept the LPA's judgments** when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this **particular LPA's predictive ability** over many years.

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- ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.
 - iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.
- b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.
 - c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. It self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.
 - d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
 - i. A robust annual assessment;
 - ii. A timely annual assessment;
 - iii. Using up to date and sound evidence;
 - iv. Considering the proposed and actual trajectory of sites in the supply;
 - v. Considering the risks to a proposed yield;
 - vi. Include an assessment of the local delivery record;
 - vii. All of the above assessments must be realistic; and,
 - viii. The approach must be thorough.
64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The **questions seemed to be put on the basis that the word “robust” is not** included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If **the Council’s approach was right (which no Inspector has to our knowledge endorsed)** then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.
65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

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66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

67. CEC were unable to say whether or not they were **identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites** assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved **around the meaning of the term "deliverable"– a point which just doesn't** arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to **the appellant's approach to "probable yield"**. **If CEC's position is merely what the site is "capable of delivering" then it is bound to be higher** than what is probable and therefore betrays a fundamental error on the part of CEC which may **explain why the LPA's predictive ability has proven to be** wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:

- i. **The appellant's** assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:
- ii. LPS 1 and the **Crewe opportunity area is not a "specific deliverable site" in NPPF§47 terms and should not be** included within the supply.
- iii. The **Appellant's** assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. **Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach.** Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a **self-serving data set in Mr Fisher's rebuttal proof of evidence (Appendix 2). Mr Fisher's assessment is** partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).
- iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. **Whilst that may be a correct statement that doesn't mean it** comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – *"we increasingly see single builders doing 50+ units a year on a site"*. **The Council's own assessment of build out rates in the 2017 HMU (Appendix MW17) does not support Mr Fisher's statement. Statements such as this cannot be given any weight when the Council's only evidence does not support them.**

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- v. **The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered.** As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.
- vi. MW and the Inspectors in the WMQ¹⁰ and Willaston¹¹ inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with **respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.**
- vii. AF at one point made the bold point that both Mr Inspector Rose in the **White Moss Quarry ("WMQ") inquiry**¹² and Mr Inspector Hayden in the Willaston inquiry¹³ both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was **that of 'precaution', in fact both Inspectors reached an orthodox** conclusion with regard to paragraph 47¹⁴, having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both **Inspectors'** reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies **himself with the conclusions of those previous Inspectors'** that time and again the Council failed to bring forward evidence to rebut the **Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.**¹⁵

Even if the Council is correct on their least attractive argument that **they are not required by policy to rely upon "robust" evidence to demonstrate a 5YS,** they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

¹⁰ C.D29 Appendix MW1.

¹¹ CD D29 Appendix MW2 at [103].

¹² Ibid.

¹³ Ibid.

¹⁴ Subsequently paragraph 11 incorporating footnote 7.

¹⁵ CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]– [89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not **produced any evidence to rebut the Inspectors’** conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were **on the verge of being made haven’t** resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).

ix. **The Council has adopted a hybrid “Sedgepool 8” approach** to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector¹⁶. The LP Inspector concludes at paragraph 72:

“CEC therefore proposes to fully meet the past under-delivery of housing within the next 8 years of the Plan period (“Sedgepool 8”). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations.”

It is plain from this part of the LP Inspector’s report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

methodology should be applied. Had the Inspector wanted the 8 year period in Sedgpool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgpool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road **Inspector didn't agree with** this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

- x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local **Plan Strategy ("CELPS") in the first year after that** assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.
- xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory¹⁷. However, he somewhat inexplicably sought to argue against the 2955 figure being **CEC's realistic prediction on the basis that there was no adopted plan** during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgpool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

¹⁷ CD A40 paragraph 68.

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The **yardstick of the LPA's judgment is of course its own predictive ability**, and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:
- (i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 246617 as AF now maintains, that is still 27% below the level it should have been;
 - (ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of **2466 on AF's case or 2955**, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?
 - (iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;
 - (iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;
 - (v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;
 - (vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

to pre-2017 rates. **The LPA's case was tough before the LPI but is now implausible.** In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place **compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.**

(vii) Importantly, the **failure of the LPA's predictive ability has been in the first year of delivery** – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with **manageable planning harms to come forward. The Council's closing** submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.
72. **The Council's closing go on to say that if the SoS** concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.
73. **The Council sought to argue that lapse rates shouldn't be applied,** when it accepts that permissions do in fact lapse at a rate which is presently unknown. **It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't** – one relates to appraising supply, whereas the other relates to establishing the requirement.

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.

Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate **onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance**, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this **Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgemoor 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years.** It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 if the rFramework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;

b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the **base date and then close one's mind to** knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong;

- i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;
- ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

- iii. It is not the approach of Inspectors in countless appeals across the Country;
- iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);
- v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-**judicial review to review the LPA's** assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions¹⁸ both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.
76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.
77. **The Inspector's decision in Shavington is being challenged, as the Council is** eager to point out. The basis of challenge seeks, through the Shavington decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

¹⁸ Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very **long process to secure adoption of the LPS only to discover that houses aren't** being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

*"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of **five years'** worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".*

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("**the LPS**"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS **was used in the appellant's evidence heard** at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. **The appellant's approach** is therefore considered appropriate with regard to the revised NPPF.

I Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to **apply to the assessment. The appellant's evidence on 5 year HLS applied** a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the **Local Planning Authority's** Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

"The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- *5% to ensure choice and competition in the market for land; or*
- *10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
- *20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."*

82. Footnote 39 of the rFramework **explains that from November 2018 "significant under delivery" of housing will be measured against the Housing Delivery Test**, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

"For the purposes of paragraph 73B and 74 a plan adopted between 1st May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until 31st October in the same year".

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as "**recently**

adopted” until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.
88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.
89. The Framework is clear that the measurement of what amounts to **“significant” under-delivery** will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.
90. Whilst footnote 39 may not apply until November 2018, and because the **Framework is silent on how one should determine what is “significant in the interim**, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.
91. **“Significant” under-delivery** is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. **The appellant’s 5 year HLS calculation** is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be **addressed, however it does set out the Government’s objective of “significantly boosting the supply of homes”** (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: **“How should local planning authorities deal with past under-supply?”** provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will **need to work with neighbouring authorities under the 'Duty to Co-operate'**, presumably with adjacent authorities looking to help to address the backlog by making immediate provision.

94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance **is consistent with the appellant's position** given in evidence and maintained at the inquiry. **The appellant's position** was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the **'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach** would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. **The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.**

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework **is particularly relevant to the appellant's** 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where **'deliverable'** was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of **"Deliverable"** is set out in the Glossary at Annex 2, and this states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:
- Category A - Sites that are not major development (i.e. 9 dwellings or less¹⁹) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
 - Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging **the LPA’s 5 year HLS**, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.
99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the **appellant’s position** and **undermines the Council’s approach to the supply** in the evidence before this appeal.
100. **In general, it does not alter the appellant’s position on the sites that were challenged in the appellant’s evidence** in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the **appellant’s approach** at the inquiry was

¹⁹ As per the definition of “major development” within Annex 2 of the rFramework.

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with **"clear evidence that housing completions will begin on site within five years"** (and without seeking to reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name/ Reference	Category A	Category B
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

102. The change in approach to considering whether a site is deliverable does **however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.***
103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided **within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.**

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is **to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).**
105. It is considered that, given the reference to a 10% buffer in rFramework para **73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.**

Updated version of Table 16 of the Appellant’s Proof of Evidence “Conclusions on 5 year land supply CEC / Appellant” to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant’s position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appellant’s position when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	Net annual requirement (2010 to 2030)	1,800	1,800
B	Housing requirement 1 April 2017 – 31 March (A x 5)	9,000	9,000
C	Shortfall 1 April 2010 - 31 March 2017	5,365	5,365
D	Shortfall to be addressed in 5 years	3,832	3,832
E	Requirement + shortfall (B+D)	12,832	12,832
F	Buffer (20% of E)	2,566	n/a
	Buffer (10% of E)	n/a	1,283.2
G	Requirement + buffer (E+F) = supply required	15,398	14,115.2
H	Assessment of Supply (updated)	13,101	13,101
I	Supply demonstrated (H/G x 5) in years	4.25 years	4.64 years

106. The table above sets out that, where **the appellant’s** approach to supply is preferred, even if a 10% rather than 20% buffer is applied the **Council’s 5** year HLS figure remains below the requirement.
107. **The appellant’s position in the light of the rFramework** therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the **latest revisions to the illustrative masterplan. In JB's view the appeal site is** an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and **illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious** capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary **to officer's recommendations) as a result of the adjacent development** (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr **Gomulski CEC's** landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. **The Council's case is in essence that there is no need for additional housing** and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') **whose policies should be treated as** not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.
111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). **As set out in appendix 2 to PD's POE** (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site **"would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinative (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.**

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.
113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPPD/LPpt2, which will also **consider allocating additional sites so as to meet CEC's needs, for a plan** whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text²⁷.
114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries **are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by** the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring it's out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPPDP or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. **There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.**

117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, **RT was unable to answer the "so what?" point** – i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into **the 'harmful' side of the scales. In XC it was argued that the position is** directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.
119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.
120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.
121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited³⁰, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.
123. **The first attack was both an attack “ad hominem”, or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have **compromised AF’s credibility**. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) **hadn’t delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.****
124. **The argument was then put that based upon MW’s delivery rates, and assuming that the SOS wouldn’t issue his decision quickly that the delivery rates for the site would be low. AF’s picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;**
- (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;
 - (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.
125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.
128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. **It is the Appellant's case that the LPA can demonstrate at most 4.25 YS** (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further²⁰. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.
130. **Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS**, then that does not mean that the appeal should necessarily be dismissed:
- a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;
 - b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;
 - c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;
 - d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,
 - e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

²⁰ These account for the revised figures submitted after the revisions to the Framework **have been accounted and differ from the Appellant's assessment in closings after the Inquiry.**

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). **The Council's** arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.
132. Furthermore, **the Council's claim that permitting this site would lead to** housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably **(the Council conveniently don't show their working) arrived at by taking the** 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.
133. The Scheme also provides significant employment, housing and social benefits set **out in Mr Downes' evidence. Despite the Council's protestations** in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understand that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.
134. A section 106 agreement has been concluded providing for affordable housing education, public open space and transportation.
135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.

137. The Development Plan consists of:

- a. Saved Policies of the Crewe and Nantwich Plan 2011;
- b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
- c. **The Cheshire East Local Plan Strategy 2017 (“the CELPS”).**

138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:

“I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy.” (Examination Inspector’s Report p21 para 78)

139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:

- a. Lead-in times; and
- b. Deliverability of sites.

140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:

“CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers’ information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy...

I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future **5-year supply of around 5.3 years.” (Examination Inspector’s Report p19 para 69)**

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at **Willaston. The Inspector's in those appeals reviewed the evidence presented** to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.
142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.
143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.
145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:

"where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be **restricted."**

146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.
147. As Lord Carnwath explained in *Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 at paragraph 59:

"The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed”.

148. It is submitted that, as a result of the words of paragraph 14 and Hopkins Homes, in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.
150. Paragraph 47 of the NPPF provides that local planning authorities are to **“identify and update annually a supply of specific deliverable sites sufficient to provide five-years’ worth of housing against their housing requirements...”**
151. **Footnote 11 of the NPPF then explains what a “specific deliverable site” is as follows:**

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

152. Further guidance is provided in the National Planning Practice Guidance:

“What constitutes a ‘deliverable site’ in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe”.

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply.”
(emphasis added)

154. In St Modwen, Lindblom LJ explained at paragraph 38:

“The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be “available now”; second, that they should “offer a suitable location for development now”; third, that they should be “achievable with a realistic prospect that housing will be delivered on the site within five years”; and fourth, that “development of the site is viable” (my emphasis). Each of these considerations goes to a site’s capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to “[sites] with planning permission”. This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words “realistic prospect” in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been “a record of persistent under delivery of housing”. Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a “realistic prospect” – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as “deliverable” it must necessarily be certain or probable that housing will in fact be delivered **upon it, or delivered to the fullest extent possible, within five years.”**

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required in produce a housing trajectory **“of the expected rate of delivery”**:

“One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the “housing trajectory” referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as “a housing trajectory for the plan period” (my emphasis). Likewise, the “housing implementation strategy” referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. *St Modwen has been applied in an important Inspector's decision in the East Riding of Yorkshire.* In that decision an Inspector, in the light of *St Modwen* explained:

"the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."²¹

158. *Accordingly, St Modwen* clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. *Assuming* that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. *The Framework* does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

²¹ Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position **that the local planning authority had to present "robust and up to date"** evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.

164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence **that the Council's approach to sites with planning permission or with an allocation is unrealistic** (see the East Riding of Yorkshire case).

165. The part of the NPPG that the Willaston Inspector relied upon as the **foundation of his test for "robust and up to date evidence" is not dealing with** sites with planning permission or with an allocation as Mr Weddernburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.

166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:

- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.
- If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as **“the more central issue” in housing land supply cases (see Wedderburn p26 footnote 19)**. He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.
168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the **approach really were “the more central issue” and really did form part of** National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.
169. **The second point is that the Appellant’s approach is totally logically inconsistent.**
170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.
171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.
172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.
173. Indeed, as can be seen from the analysis above, to apply the **Appellant’s** approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.
174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant’s approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.
176. **Mr Wedderburn's assessment of the likely contribution of** sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.
178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP **and Policy PG6 both seek to restrict housing in the "open countryside"**.

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.
180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

“Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The “open countryside” is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADDPDP, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADDPDP. This is an appropriate and effective approach, given the strategic nature of the CELPS. ” (Examination Inspector’s Report p28 para 111)

He concluded:

“Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy.” (Examination Inspector’s Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

“Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:

- A) meet the criteria for infilling contained in policy NE.2; or
- B) are required for a person engaged full time in Agriculture or forestry, **in which case permission will not be given unless...”**

The Policy then lists a series of exceptions.

184. **The proposed development is located in the “open countryside” as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.**

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found **to be “appropriate, effective, positively prepared, justified, soundly based and consistent with national policy”**

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

“In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability.”

187. The Examination Inspector explained at paragraph 79:

“This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2.”

188. At paragraph 82 of his report the Examination Inspector concluded:

“the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy.”

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

“a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement. Since that time, there is no fundamental or compelling new evidence which suggests that **these conclusions should be reviewed.**” (Examination Inspectors Report para 83 – Emphasis added)

193. **The Examination Inspector’s overall conclusion in relation to the Spatial Distribution** contained in the CELPS at paragraph 92 of his report was:

“Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan. I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report.” (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination **Inspector’s Report**):

“Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing **needs.**”

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADPPDP.
197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the **Council’s administrative area in the remaining plan period.**
198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.
199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

- a. Whether there is a need for the development proposed?
- b. If so, has it been demonstrated that development of BMV is **“necessary” i.e. that there is no area of poorer quality agricultural land to locate the development upon?**

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204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.
205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.
206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.
207. It follows that it has not been established that the proposed development is needed.
208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.
209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.
210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.
211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.
212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.
214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

“Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.

Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other **relevant policies of this Plan.”**

217. The proposed development is outside the settlement boundary. As such as **Policy H5 provides it is subject to Policy PG6 and “other relevant policies of this Plan”.** Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFLICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. **Nevertheless, it appears to be the Appellant’s case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given “very limited weight” (see Downes XX and Taylor Proof p 18 para 5.6).** This is a remarkably brave contention.

220. In summary, the Appellant contends that:

- a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;
- b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;
- c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;
- d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

"Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC." (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

"CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy. The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

“On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted.”

227. He concluded in terms that the provision for housing and employment land within the CELPS including the **5-year housing land supply position “is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy.”** (Examination Inspector’s Report p21 para 78)

The Inspector’s Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

- a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;
- b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to **demonstrate that it has a “robust” five-year housing land supply**. Nor is there **any policy requirement that a “precautionary approach” should be adopted to five-year housing land supply considerations**.

The Housing Monitoring Update August 2017

230. **The Council’s Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position**. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the **Examination Inspector as resulting in a “robust, comprehensive and proportionate assessment” housing delivery** (Examination Inspector’s Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.

235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgfield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.

236. **Further and more significantly, Mr Wedderburn's point was taken and rejected** in the Willaston appeal where the Inspector concluded (document D30 para 45):

"The Sedgpool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgpool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgfield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgpool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgfield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the **Plan process. The Appellant's case in this regard must be rejected.**

Build Rates

238. **Mr Wedderburn's position accepted the build rates on sites adopted by the Council** (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.
239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.
240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promoters cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.
241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly **higher than the Council's methodology assumed in many** cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.
242. **It is submitted that Mr Wedderburn's evidence on this issue should be rejected.** Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. **Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken.** This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.
244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

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245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.
246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).
247. These are all reasons why the timing adopted in the past in relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Wedderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.
248. Indeed, they cannot be viewed as such given that the lead-in times utilised in **the Council's evidence were accepted by the Examination Inspector as** appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.
249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?
250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. **But of course, unlike Mr Wedderburn, the Council's appraisal is not simply** reliant upon the application of generic time periods from a study of 70 sites in the past.
252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.
253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in **Appendix 2 to Mr Fisher's rebuttal.**
254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.
255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this **illustrates the reasonableness of the Council's approach and that sites are not** only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.
256. A further and important point to note **from Mr Fisher's analysis of this data is** that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.
257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that **Mr Wedderburn's approach is seriously unrealistic.**

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258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.
259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.
260. These are all matters known by site owners/promoters and no-one else. Yet **Mr Wedderburn's approach was to ignore this. He negated all of this by** asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.
261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.
262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.
263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5% Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.
265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly. Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.
267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.
268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.
269. **Even more significantly, however, Mr Wedderburn's approach if adopted** would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to **"to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land"**. Thus the 20% buffer rate is **already applied in order to achieve the objective of Mr Wedderburn's discount**. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.
270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.
271. The dangers of applying a discount for the decision maker can be seen in the case of *Wokingham Borough Council v Secretary of State* [2017] EWHC **1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate**. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. **In that case the Secretary of State agreed with the Inspector's reasoning** on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that “the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites”. He added:

“there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation.”

272. The same reasoning applies to the present case. For all these reasons Mr **Wedderburn’s suggested 5% lapse rate must be rejected.**

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking **at the “allocation” for windfall for the Crewe area.**

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produce on behalf of the Appellant to illustrate the points being made. These points were put forward **as a basis for suggesting that the Council’s identification of housing land supply is suspect in some way.** The comparison in fact does not such thing.

275. As the Court of appeal emphasised in St Modwen, paragraph 49 of the NPPF requires a local planning authority “demonstrate a five-year supply of deliverable housing sites”. This is not the same things as comparing against the requirement that the authority must “illustrate the expected rate of housing delivery through a housing trajectory for the plan period” as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertake is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come **forward in an earlier year in significant number. That is why the Council’s trajectory in the HMU for next year increases;** that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. **For the reasons set out above, the Appellant's case on housing land supply must be rejected.** If the White Moss and Willaston Inspectors had applied the **correct legal approach and not the unlawful "precautionary" one that they did,** they would have concluded that the Council had a 5-year housing land supply. **Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.**
278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in **circumstances is to fall into error and worse to undermine the public's faith in the plan led system;** what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted **that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption.** It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there **is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes** accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.
280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.
281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

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282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.
283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of **deliverable housing sites then there can be no basis for such "flexing"**.
285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.
286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.
291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have **addressed Nantwich's housing needs, including through the strategic** allocations at Kingsley fields and Snow Hill.
292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.
293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.
294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.
295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.
296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.
298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.
299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. **If, contrary to the Council's case it is concluded that there is no five-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.**
301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.
302. It is then necessary to carry out an exercise of:
- Examining harm against benefits in order to apply the tilted balance; and
- Undertaking the exercise required by section 38(6) of the 2004 Act.
303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

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304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.
305. **As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.**
306. **However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period** (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.
307. **It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.**
308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.
309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

"Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above." (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.
316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.’s judgment in Crane, paragraphs 71 and 74 of Lindblom J.’s judgment in Phides, and paragraphs 87, 105, 108 and 115 of Holgate J.’s judgment in Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin)).”

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.
320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.
321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.
322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)
- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

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- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the **borough's Principal Towns and Key Service Centres to maximise use of** existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. **The Council's evidence demonstrates that the development will result in harm** to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.
332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. **The appellant's case is that the Council cannot demonstrate a 5 year supply** of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.
335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The **Council's 5 year housing land supply assessment is based on a very** generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:
- a) approving development proposals that accord with an up-to-date development plan without delay; or
 - b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - c) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - d) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.
343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered **to be 'substantially below' the housing requirement will equate to delivery below 25% of the housing required over the previous three years.**

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.

346. The number of net homes required, will be the lower of the latest adopted housing requirement (excluding any shortfall³) or the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	Adopted annual CELPS Requirement	Household projections (annual average over 10 year period) ⁴	Net additional dwellings
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the **Council’s proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.**

348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a **minimum of five years’ worth of housing against their housing requirement** set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land; or
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.

351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a realistic prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission or planning permission in principle, allocated in the development

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed **scrutiny of sites undertaken by the appellant. The Council's evidence has been** fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the **Inspector's Decision Letter** is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by **the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has** all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
- Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
- Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
- Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobold, Chairman of Stapeley & District Parish Council²², seeks to emphasis the newness of the Stapely and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobold goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such **proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)**

358. Councillor Theobold goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their **delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report**. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

²² ID10 and ID32.

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359. Mr Patrick Cullen²³, a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.
360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.²⁴ Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an **Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road**²⁵. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense **the submission of the Appellant's evidence local bus** services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.
361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development²⁶. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.
363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

²³ ID11.

²⁴ ID12.

²⁵ APPEAL ref: APP/R0660/W/15/319474.

²⁶ ID13.

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364. These themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.
365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.
366. **Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data** as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.
367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users²⁷.

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:
- 4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
 - 6: protection of archaeological remains
 - 7, 8 & 10: residential and visual amenity and sustainability
 - 11, 12, 13 & 27: highway safety and sustainability
 - 14 & 15: sustainability
 - 16-20: protected and other species mitigation
 - 21-25: reserved matters clarification and implementation

²⁷ ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1 & 2, control is required over matters in the other conditions for the following reasons:

- 3-6: the visual amenity and landscape quality of the area
- 7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more **the case in view of Mr Cullen's** concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the previous applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes will be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and **children's play areas, justified on the basis of the increased numbers of** people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.

378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related to the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

- a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;
- b) the loss of BMV agricultural land and;
- c) the effect of the development on the safety of highway users and;
- d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.

The relevant preceding paragraphs for the Council are 310-312 & 327-329.

The relevant preceding paragraphs for the other parties are 357-359.

382. **Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary.** It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that **...'the intrinsic character and beauty of the countryside will be recognised'**.
383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.
384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.
385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.
386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.
387. **It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy.** However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) **development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'**. **Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in**

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the **Neighbourhood Area**'.

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.

The relevant preceding paragraphs for the Council are 201-212, 312-314 &328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.
390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.

The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry²⁸. It confirms as a starting point that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between 2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.
394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence²⁹.
395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a **supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply**. This number should include a buffer of either:
- a) 5% to ensure choice and competition in the market for land; or
 - b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

²⁸ CD3.

²⁹ White Moss Quarry and Park Road, CD29 & CD30.

recently adopted plan, to account for any fluctuations in the market during that year; or

- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. **Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected, 1800 target .** Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in **the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS** Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. **The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period.** However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)³⁰. This has to be the right approach unless where express circumstances dictate otherwise³¹. Whilst such an approach would not be consistent with that applied in Park Road Appeal³² it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

³⁰ CD40 Examining Inspector's Report paragraph 72.

³¹ PPG/NPPF ref.

³² Ibid.

meet past under-delivery within the next 8 years of the plan period³³. Whilst not supported by the Wrenbury decision³⁴, a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the **Government's policy commitments to boost significantly the supply of new homes**.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Councils calculation is preferred, in combination with anticipated delivery rates, **the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years**. That said, as in the two other recent appeals³⁵ the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. **The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgemoor methodology, a difference of 2,807 dwellings**. These respective positions are reached on the one hand by standard methodology (**previously referred to as the 'in principle' approach**)³⁶ and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (**previously defined as above as 'performance'**) by the appellant. These matters are now considered below.

Supply

400. With **regard to the 'in principle' differences** between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

³³ Paragraph 72 Local Plan Inspector's Report (CD A40).

³⁴ Appeal Ref: APP/R0660/W/17/317649.

³⁵ Ibid

³⁶ CD29, Paragraph 13 White Moss Appeal.

escape the conclusions of the two previous Inspectors³⁷ that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.
403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (**the 'in principle' expectation time of 2.5 years**), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances. **With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers**, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.
404. However, **by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection**, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, **and the 'in principle' evidence, needs to be considered against that presented** (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific **analysis the sum of the appellant's conclusions on lead in time to construction** anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion³⁸.
405. With such lead-in times applied to the 41 sites **identified in the appellant's case** and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

³⁷ Those who determined White Moss and Park Road.

³⁸ Paragraph 51, APP/R0660/W/17/3168917.

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406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term **'deliverable' in relation to the supply of housing, setting this out in Annex 2** therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites are no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case³⁹ that preoccupied the evidence on housing delivery heard at the Inquiry.
407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. **This being so, to Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust.** Whilst the conclusions reached by the Inspector in the Wrenbury case⁴⁰ take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the Framework and the weight to be conferred it is very significantly reduced as a result.
408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approach, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case⁴¹ (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that **the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful.** Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

³⁹ St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.

⁴⁰ APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.

⁴¹ [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as **paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).**

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by **policy. This would amount the Council suggest to 'very significant levels of unplanned growth'**. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the **Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations.** This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 & 325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to consider in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the **Council's view that the employment component of the scheme is not** required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.
413. The provision of a new primary school site to meet future educational provision, the **children's play area, and** extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.
414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.
415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.
416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence **that would convincingly rebut the appellant's view, not challenged by the**

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case⁴², that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the **'tilted balance'** in sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramework dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the borders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.
419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.
420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

⁴² Ibid.

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421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.
422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.
423. The first is that despite the conflict with countryside policies, the degree of **harm to visual amenity is in fact limited, and reflected in the Council's position** on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.
424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal⁴³.

⁴³ Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called **"the reserved matters"**) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Q_{bar}) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
 - h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:
- plans showing the extent and layout of the buffer zone
 - details of any proposed planting scheme (for example, native species)
 - details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
 - h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

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- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
 9. Prior to the commencement of development:
 - a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
 10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
 11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
 12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
 13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall include the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
 - 5% staff parking on the office units with 7kW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.
18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

Ecology (CES: 969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following: -

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

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- c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837: 2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
 24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
 25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
 26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
 27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837: 2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES: 969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel

**Instructed by the Solicitor to
Cheshire East Council**

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

**Mr Paul Tucker of Queen's
Counsel**

instructed by Patrick Downes, Harris
Lamb on behalf of Müller Property
Group

Assisted by Mr Philip Robson
of Counsel

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald Stapeley & District Parish Council

Mr P Cullen Resident

Councillor P Groves Cheshire East Council

Mr P Staley Resident

Ms J Crawford Resident

Ms G Barry Resident

Mr K Roberts

Resident

Councillor A Martin

Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. **Appellant's housing evidence amended** table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobald comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H Thompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

- 1a Final list of Core Documents
- 2a Closings Appellant
- 3a Closings Council
- 4a Grounds for Claim to High Court (Shavington case) – Council
- 5a Comments on rFramework – Appellant
- 6a Comments on rFramework – Council
- 7a Final comments on Council's submissions** - Appellant

CORE DOCUMENTS

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) (“CNRLP”)
A12	Secretary of State’s Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 (“LPS”)
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner’s Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector’s Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector’s Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector’s Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017)

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin))
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterton Lane, Barthomley, Crewe CW1 5UJ. 8 th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4 th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5 th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25 th May 2012

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12 th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector’s Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer’s Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)	
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M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)	
N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)	
O1	1 st Planning Officers Report to Planning Committee
O2	2 nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)	
P1	Removed

Appeal Court Judgements (Q)	
Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

EP1B



Appeal Decision

Inquiry Held on 20-23 August 2019

Site visits made on 19 and 22 August 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2019

Appeal Ref: APP/R3650/W/19/3227970

Land to the south of Cox Green Road, Rudgwick, Surrey

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Parkes Limited against the decision of Waverley Borough Council.
 - The application Ref WA/2018/1109, dated 25 April 2018, was refused by notice dated 7 November 2018.
 - The development proposed is the erection of 53 dwellings with associated access, car parking, open space and drainage ponds.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal seeks outline permission, with all details reserved except for access. In so far as the submitted plans include other details, I have treated these as illustrative.
3. Prior to, or during the inquiry, the appellants tabled a revised illustrative layout plan, a landscape and ecology master plan, a parameters plan, a proposed footway plan, a revised drainage strategy, and an updated reptile survey. No objections have been received to these additional documents, and I have taken them into account in my decision.
4. During the inquiry, the appellants entered into a Section 106 agreement with Waverley Borough Council (WBC) and Surrey County Council (SCC), and unilateral undertakings with WBC and West Sussex County Council (WSCC). In summary, these provide for: 30% affordable housing, a play area, a sustainable drainage system, vehicular access, a new footway along Cox Green Road, a crossing point on Church Street, improvements to off-site footpaths to the west, travel vouchers, a travel pan, and ecological mitigation.
5. In the light of these amended submissions and planning obligations, the Council withdrew a number of its original Refusal Reasons (RRs). These were RR4 which related to housing tenure and mix, RR6 relating to development north of Cox Green Road, RR7 **relating to children's** play space, RR8 regarding pedestrian access, RR9 relating to impacts on wildlife, and RR14 which related to sustainable travel.
6. Prior to the inquiry, the Council also accepted that a number of its other RRs should be withdrawn, because they related to matters that were already

covered by the Community Infrastructure Levy, which had been introduced in October 2018. These were RR11 which sought a contribution to education, and RRs 10 and 13, which in any event duplicated each other in seeking contributions to recreation and leisure facilities.

7. RR12, which sought a contribution in respect of waste and recycling, was also withdrawn, in favour of dealing with the matter by means of a condition.
8. As a result of these withdrawals, the remaining RRs are Nos 1, 2, 3 and 5, relating to planning policy, character and appearance, and heritage impact.

Main Issues

9. In the light of all the submissions before me, the main issues in the appeal are:
 - whether the Borough of Waverley has an adequate supply of land for housing;
 - whether the proposed development would accord with **the WBLP's** policies for the location of new housing;
 - **the development's effects on the character and appearance of the area** and its landscape;
 - and the effects on the setting of the listed building '**Crouchers**'.

Reasons for Decision

Supply of land for housing

10. **The Council's view of the** housing land supply, for the 5-year period 2019-24, is set out in the Position Statement published in July 2019. The requirement figure of 5,501 dwellings, is agreed between the parties, and is derived from the housing policies of the Waverley Borough Local Plan Part 1 (the WBLP), adopted in February 2018. Against this figure, the Position Statement shows a maximum supply of 5,720 units. In subsequent correspondence, the Council has conceded an adjustment of minus 12 units. The adjusted supply is therefore now 5,708 units, or a surplus of 207 units. **In terms of years' supply**, this equates to just under 5.2 years.
11. The requirement in the National Planning Policy Framework (the NPPF) is for a supply of sites that are deliverable. The **meaning of 'deliverable' in this context is set out in the NPPF's Glossary**, and further clarified in the Planning Practice Guidance (the PPG). Following the changes made to the NPPF in July 2018, sites for more than minor development, which do not have detailed planning permission, can only be considered deliverable where there is clear evidence that housing completions will be achieved within the relevant 5-year period. In the present case, the sites that are disputed between the parties¹ all come within this category.

Dunsfold

12. The former aerodrome site now known as Dunsfold Park is allocated for 2,600 dwellings, and has outline permission for 1,800 dwellings plus other uses². Out of this total, **the Council's 5-year supply** relies on 463 units being delivered by

¹ As listed in the schedule of disputed sites, jointly tabled at the inquiry

² The permission is described as a hybrid, but with the detailed elements relating to matters of roads and infrastructure only

April 2024, with the first 50 completed dwellings coming in the year 2021/22, and the build rate accelerating significantly thereafter. The dispute between the parties centres on the length of the lead-in period, prior to those first house completions.

13. The **Council's assumptions rest principally on** a pro-forma return from the site's lead developer, but the details contained in that document are scant. Although estimated numbers and dates are presented, there is no explanation of how the timing is to be achieved. There is no indication of the intended timescales for submitting and approving reserved matters, including any further public consultation. Neither is there any breakdown of the advance works that are likely to be needed on-site, for discharging conditions, site preparation, and installing infrastructure. On a development of this scale, the planning and programming of these stages is likely to be more complex than on smaller sites, but the evidence contains none of these important details. There is therefore no evidence that house completions can realistically be achieved by 2021/22.
14. I have had regard to the WBLP Examination report³, and to the Dunsfold delivery report⁴, but these clearly cannot reflect the up-to-date position now. I note that a Planning Performance Agreement (PPA) has been entered into, but this deals only with the approval stages, and anyway does not appear to set out any overall programme. There is no evidence that the award of Garden Village status will have any effect on the timescale. I also note that an application has recently been made to vary the outline permission, in respect of the site access, and there is no indication as to how this may affect the programme which was drawn up prior to that.
15. Having regard to the **NPPF's** revised definition of deliverability, I can see little if anything that amounts to clear evidence that any completions will be achieved on the site within the relevant 5-year period. Although the PPG refers to PPAs and information from developers, it seems to me that the evidential value of these must be dependant on their content. In this case there is no clear evidence of any real progress since the granting of the outline permission in March 2018.
16. To my mind, having regard to the presumptive effect of the NPPF definition, these circumstances would justify excluding Dunsfold from the current supply in its entirety. But nevertheless, the evidence before me challenges the **numbers rather than the principle of the site's inclusion**. The appellants, somewhat generously, accept a realistic prospect in respect of a reduced figure of 232 units within the relevant period, and in the circumstances I consider this an appropriate number to adopt for my calculations too. This reduces the **Council's supply** by 225 dwellings.

Milford and Coxbridge sites

17. The land opposite Milford Golf Course has outline permission for 200 dwellings, and some progress has been made on submitting reserved matters and discharging conditions. The Council envisages the whole site being built-out within the relevant 5-year period. However, the Council relies principally on a pro-forma sheet dating from 2017, and even that information seems to offer

³ The WBLP Examination Inspector's report dated 1 February 2018, based on hearings held in June and July 2017

⁴ 'Dunsfold Aerodrome Delivery Rates Assessment', Troy Associates, Nov 2016

limited support for **the Council's current** assumptions. There is no evidence **from the site's current developer, and no evidence of any dialogue** with that company. **The Council's evidence to the present inquiry is contradictory** as to whether the first completions are expected in 2021/22 or 2022/23⁵. The latter programme would depend on a build rate of 100 units per annum, from the start, and the Council agrees that this could only be achieved with two outlets throughout. None of these assumptions are corroborated. There is further uncertainty regarding a restrictive covenant, which may need reference to the Lands Tribunal. **The Council's assumptions** are not necessarily unrealistic, but neither have they been shown to be clearly realistic; for the site to be deliverable, the evidence would need to be more convincing and more up to date. But again there is a measure of agreement between the parties with regard to at least some completions, 130 units in this case. In the circumstances, I accept that this figure should replace the Council's.

18. Coxbridge Farm is an allocated site and has a current outline application for 350 dwellings. The Council has included 200 units in its 5-year supply, with the first of these coming in 2021/22. There is a programme from the developer, but this is acknowledged to be over-optimistic, and is stated to be subject to the outcome of Section 106 negotiations. The Council has substituted its own more conservative assumptions as to the lead-in time and the annual build rate, based again on evidence prepared for the Local Plan examination⁶. I accept that this report is based on research specific to the local housing market, but even so, it does not look at the specific circumstances of individual sites. It is therefore not a substitute for site-specific information and knowledge. In the absence of a reliable programme **from the site's own developer, and in view** of the early stage of the planning process, the current evidence does not clearly **show the Council's assumptions** to have a realistic prospect of being achieved. For similar reasons to those applying to the Dunsfold and Milford sites, I consider the appellants' estimate, which again is 130 units, to be more realistic than **the Council's** figure.
19. In the **remainder of the first section of the 'disputed sites' schedule**, the nature of the disputed matters is such that the differences do not affect the outcome of the 5-year supply calculation, and I have therefore not considered these six sites further.
20. The effect of the two adjustments that I have identified, for the Milford and Coxbridge sites, is to reduce the **Council's** deliverable supply by a further 140 dwellings.

Other disputed sites

21. In view of my findings on the above, it is clear that **the Council's** 5-year supply must fall below the number that is required within that period. However, it remains necessary for me to get an approximate view of the **shortfall's likely** full extent. In the light of this, I have considered the other 24 disputed sites, in the second part of the joint schedule, more briefly.
22. None of the other disputed sites has any planning permission. Twelve of the sites are proposed allocations in emerging plans, but this does not ensure that they will be confirmed. About four others are on the Brownfield Register, which

⁵ Shown as 2021/22 in the July 2019 Position Statement, and 2022/23 in the joint schedule of disputed sites

⁶ 'Housing Land Supply and Housing Trajectory Contextual Note', Troy Associates, May 2017

indicates their suitability in principle, but not their capacity, nor their viability. Two sites are identified only in the SHLAA⁷, and this does not guarantee that permission would be granted. Three sites have no planning status at all. Seven of the sites have previously been refused permission, including five on appeal, and one other has an appeal outstanding. Four sites are in the Green Belt, and one in the AONB. At least two others are subject to other unresolved planning objections. At least three sites are currently occupied by existing uses, and are therefore not yet available. Two of these are dependant on new premises being built for their relocation. Several of the sites form extensions to sites that are already included, and thus their timing is contingent on that of the larger site. Some sites are dependent on agreements yet to be reached between two or more landowners.

23. None of these circumstances make it impossible that these sites could contribute to the housing land supply, but that is not the test of deliverability. To justify including sites of these types it would be necessary to produce clear and specific evidence, in sufficient detail, to show that the sites were available, suitable, and achievable, with a realistic prospect of delivery within the required timescale. I appreciate that this would be a large task, but self-evidently the size of that task is related to the number of sites without full planning permission that the Council seeks to rely on. On the evidence before me now, none of the sites in the second section of the schedule can currently justify being included in the 5-year supply.
24. I therefore consider that all 24 of these sites, in the second part of the disputed sites schedule, should be deleted. The result of this is to reduce the deliverable land supply by a further 563 units.

Lapse rate

25. I accept that, even with the above adjustments, the actual housing delivery over the next five years may well prove to be less than what is envisaged. But the exercise is not meant to be a forecast, it is simply a means of identifying sites that are capable of delivering the required numbers. Provided the assumptions and evidence are robust on a site-by-site basis, I see no need for the application of a lapse rate to achieve that purpose.

Conclusion on land supply

26. With the necessary deductions that I have identified, totalling 928 units, the **Council's deliverable supply** is reduced to 4,780. Against the agreed requirement figure of 5,501 units, this amounts to a supply of around 4.3 years.
27. It follows that the benefit of providing 53 dwellings, including 16 affordable, carries particular weight in the planning balance.

*Accordance with **the Local Plan's** locational policies for housing*

28. The principal policy for the location of housing is WBLP Policy SP2, which sets **out the spatial strategy for the district. The policy's aims are to maintain the area's character and to meet development needs in a sustainable manner.** To that end, the policy defines a settlement hierarchy, in which development is to be focussed at the four largest settlements, with moderate and limited levels of

⁷ Strategic Housing Land Availability Assessment

development at the second and third-tier villages respectively. After these, the fourth and final tier of the hierarchy is **'all other villages'**, where only modest growth is allowed, to meet local needs.

29. In the present case, Rudgwick is not identified as a settlement for development in any of the first, second or third tiers of **the WBLP's** settlement hierarchy (Sections 2, 3, and 4 of Policy SP2). Nor is the appeal site located at, or related to, any of the other settlements thus identified in any of these tiers. With regard to the third tier, the site does fall within the parish of Ewhurst, but it was accepted at the inquiry that the provisions in **Policy SP2's** Section 4 are intended to apply only to the named villages themselves, and not to whole parishes. I agree with that interpretation. In this case the appeal site is well away from Ewhurst village, and as such, it clearly does not benefit from the provisions of Section 4.
30. The site therefore falls to be considered, at best, within the bottom tier of **Policy SP2's settlement hierarchy, where Section 5 of the policy permits modest growth, for local needs. In this context, the WBLP's text at 5.18 also refers to** extremely limited, small scale development. Having regard to both the policy **and the text, I can see no basis on which the expression 'modest growth' could** be taken to include a development of 53 dwellings such as that now proposed. Nor is there any indication that this development would serve only local, as opposed to general, housing needs. It follows that the proposed scheme does not fall within the type or scale of development that Policy SP2 permits in locations such as this. Policy SP2 as a whole therefore offers no support to this proposed development.
31. **In addition, the WBLP's housing policies also include Policy ALH1, which sets** out the broad distribution of development. This includes 100 dwellings in Ewhurst, and in the context of this particular policy it is agreed that the **distribution is based on parishes. However, it not disputed that Ewhurst's** requirement has now been met, through planning permissions granted on other sites. Policies SS1 – SS9 allocate strategic sites throughout the District, but the appeal site is not included in any of these. Again therefore, none of these housing policies supports the appeal proposal. Nor has any such support been identified in any other development plan policy.
32. I accept that Policy SP2 is permissively worded, and does not expressly presume against development in other locations. I also agree that Policy ALH1 is primarily a plan-making, rather than a decision-taking, type of policy. But together these two policies, together with the strategic allocations, represent **the WBLP's housing strategy.** There are no other policies relevant to housing location. The plan therefore does not provide for development at sites like the appeal site. There is nothing in these policies with which the appeal proposal can be said to accord, and the scheme therefore conflicts with the most relevant policies in this respect.
33. Having regard to the shortfall in the District's land supply, I agree that there is an urgent need to find additional sites. There is no certainty that sufficient numbers can be found without some degree of compromise, particularly in respect of the locational elements of policies such as SP2 and ALH1. But in these kind of circumstances, the way that the NPPF envisages that matters should be resolved is by adjusting the relative weight given to those policies, not by stretching their meaning. For the reasons already explained, I consider

that the relevant policies are not designed to accommodate the appeal proposal.

34. I also agree that alongside these matters, it will be relevant to consider the **site's suitability, its sustainability credentials, and its relationship the WBLP's** underlying aims. In the context of the appeal as a whole, these are material considerations. But that does not make them relevant to determining whether or not there is compliance with the particular policies that I have identified. I will return to these other material considerations later in my decision.
35. For the reasons stated, I conclude that the appeal proposal conflicts with the **WBLP's strategy for housing location**, and in particular with Policy SP2.

Effects on the character and appearance of the area and its landscape

The existing situation

36. The appeal site is part of a larger parcel of farmland which, in the appellants' LVIA⁸ report, is given the **descriptive name 'Rudgwick Park Fields'**. This distinct landscape compartment comprises primarily open grass pasture, used for sheep grazing. The topography shelves gently at first, and then more steeply, away from the village, and towards Cox Green Road and the lower-lying fields beyond. Within the site, the grassland is punctuated by scattered tree groups and individual trees, mainly of oak, ash, hornbeam and other native broadleaved species, and these give the land a parkland quality. The small pond on the northern boundary is an attractive natural feature. Although the northern boundary is partly open, the other edges are strongly contained by tree belts and rear gardens, creating an enclosed, intimate character. Together, these ingredients combine to create an attractive and highly distinctive, small-scale, pastoral landscape, of considerable scenic quality. The appeal site itself forms an integral part of this landscape.
37. The appeal site is seen mainly from Footpath No 448 and from Cox Green Road. Approaching along the footpath, from the south-west, the path crosses the western part of the Rudgwick Park Fields, passes through a line of trees, and arrives at the south-western corner of the appeal site itself. From this relative high point there is a sweeping vista, down across the whole of the site. From this point, the undulating slope, the irregular-shaped partial enclosures of the tree groups, and the contrasting textures of the trees and grassland, form a striking composition. As the footpath continues north-westwards across the site, the view changes subtly, with different angles opening up, and new glimpses appearing through and beyond the trees. As I saw on my visits, the morning and evening shadows, from both the trees and the undulations, add a further dramatic visual element at these times of day. In addition, from the upper parts of the path, the site is framed by distant views of the Surrey Hills AONB⁹. Although the backs of some of the houses in Church Street are visible, the views from the Footpath 448 are focussed in the opposite direction, and thus the presence of this existing development does not detract from the **site's** rural tranquillity.
38. Seen from Cox Green Road, the site is viewed in the context of a quiet rural lane. On my visit I saw that, in summer, views are filtered by the boundary

⁸ Landscape and Visual Impact Assessment

⁹ Area of Outstanding Natural Beauty

hedge and occasional trees, but nevertheless, the site can be clearly seen, and its park-like nature is clearly evident. In winter, it seems likely that these views will be more open and its landscape qualities even more readily appreciated. Approaching from the west, the **historic building 'Crouchers'** is glimpsed, but there are no other signs of any nearby settlement, and thus the appeal site appears in a context that is almost entirely rural and undeveloped.

39. In addition, from the direction of Church Street, although the appeal site cannot be directly seen from here, there is an evident sense of the openness which exists behind the houses on the road frontage, including Crouchers and the adjoining properties. This openness is discernible from the absence of buildings, roofs, or other artefacts, and from the resulting glimpses of sky and more distant landscape features, as seen through the occasional gaps between the frontage development. Again, in winter these would be more readily perceived than at the time of my visit. The openness to the rear of the frontage buildings in this part of Church Street contributes to its distinctive character, as a transition zone between the village and the countryside.
40. To sum up with regard to the site as it currently exists, it seems to me that the appeal site embodies and exemplifies those qualities of intrinsic countryside character and beauty that are referred to in the NPPF, and which national policy requires to be recognised in planning decisions. I accept that public views of the site are largely confined to those that I have identified, and the site does not have any significant wider visibility. But nevertheless, in this case **the site's value lies in its own intrinsic qualities**, and in its contribution to the rural character and appearance of this particular part of the countryside.
41. In addition, in this case the appeal site is included within an Area of Great Landscape Value (AGLV), which is a designation originating at County level, and thus indicating its landscape importance in the context of the county of Surrey as a whole. As such, the site falls within the **scope of the NPPF's advice relating to 'valued landscapes'**, which are to be protected and enhanced in a manner commensurate with their quality. In the light of the appeal **site's** own intrinsic qualities that I have identified, I see no reason to question its inclusion in the AGLV. It therefore seems to me that the designation reinforces the value that attaches to the **site's** landscape, and its contribution to the character and appearance of the area.

The impact of the development

42. The development now proposed would introduce onto the site 53 dwellings, roadways, gardens, fences, vehicles, lighting, a play area, and associated residential paraphernalia. Although the submitted plans are illustrative, they show that such a development could be attractively designed and laid out, and could create a pleasant residential environment. To my mind however, they do not suggest any way in which such a development could avoid completely **changing the site's character** from what exists now. I have no doubt that most of the existing trees could be retained, together with the pond, and indeed it might be that these features could be enhanced to a degree, by means of better and more active management. The development would also potentially have sufficient space for substantial new planting and landscaping. But the inclusion of positive elements such as these would not alter the fact that the **site's present rural character and landscape quality would** inevitably be lost,

and would be subsumed within the very different character that would result from any new residential development on this scale.

43. Seen from Cox Green Road, the development would involve physical changes both within the site and outside it. The existing views of open parkland, albeit partial and glimpsed, would be lost, irrespective of any new planting. The proposed new vehicular access would open up additional views into the development. There is no evidence that these views could be effectively screened. The access itself would have a 6m-radius bellmouth, a 5.5m roadway, and visibility splays, accompanied by road widening on the southern side. In addition, there would be a new footway along a 100m stretch of Cox Green Road, and into Church Street, replacing part of the existing verge, and further road widening on the opposite side. All of these would be urbanising features, on a largely undeveloped rural lane. Moreover, the new access would be sited more than 200m from the junction with Church Street, and thus well outside the perceived threshold of the village. The whole development would therefore appear as an isolated and incongruous incursion into an otherwise wholly rural environment.
44. For users of Footpath 448, the effect would be that the section of that path that runs through the appeal site would be urbanised. Instead of running through open fields, the path would run between houses and managed spaces, the surface itself would necessarily have to be made more durable, and the rural ambience would be lost. The experience of walking this route via Footpath 448 would thus be completely changed.
45. With regard to views from Church Street, although the development would not be prominent from this direction, it is likely that roofs, chimneys, lighting columns, or other taller elements would be visible from some view points. Although the submitted plans seek to show how development immediately behind Crouchers might be minimised, it seems unlikely that views from Church Street could be avoided altogether. The visible presence of built development in the background would erode the semi-rural character of this part of the village fringe.
46. I accept that the density proposed is not excessive, and that the illustrative scheme does not appear noticeably cramped. Judged on its own merits, the style of development and the overall approach shown in the submitted plans seems to me generally appropriate for many semi-rural locations. In this respect I find no conflict with WBLP Policy TD1. But these considerations do not outweigh the harmful impact that any residential development on this particular site would have, due to the loss of the existing valued landscape.
47. I conclude that the proposed development would have a seriously adverse effect on the character and appearance of the area and its landscape. As a result, the scheme conflicts with WBLP Policies RE1 and RE3, which seek to protect the intrinsic character and beauty of the countryside beyond the Green Belt, and the distinctive landscape of the AGLV.

Effects on the setting of the listed building 'Crouchers'

48. The property known as Crouchers comprises a timber-framed house in the form of two parallel ranges. The front range faces Church Street, and the rear looks out towards what is now the appeal site. The building dates from at least the 17th century. It was re-fronted in the 18th century, and further alterations

occurred in the 19th. The house originally had a smaller curtilage, which has been extended over time. From its earliest days, the property formed part of the small hamlet of Cox Green, which also included the surviving properties Dukes Cottage and Trade Winds. All three are listed, and form a recognisable group.

49. The significance of Crouchers as a heritage asset lies partly in the evidential value of its historic fabric, but also in **the building's** illustrative value with regard to the social history of the locality, and its aesthetic value as a charming and characterful structure in its own right.
50. The appeal site lies directly to the rear of the present day curtilage, and forms the dominant element in outward views from the **listed building's first floor** windows, and from its rear garden. From within the site, there are clear and unobstructed views of the building's **rear elevation**, including public views from Footpath 448. The appeal site is also seen in the foreground of views towards Crouchers from Cox Green Road, and forms the background to the important frontal views from Church Street. Consequently, the site is a major visual **element in the listed building's setting**.
51. Although there is no evidence of any functional or ownership connection between Crouchers and the appeal site, the physical proximity and visual relationship are not in doubt. In all of the available views, the appeal site contributes a sense of the openness, space and rural tranquillity of the surroundings, that the dwelling would have enjoyed up to the mid-20th century. Despite the changes that have occurred in field patterns and boundaries, the **site's** continued agricultural use reflects the role that it has had throughout the **building's lifetime**. Thus the appeal site, in its present use and undeveloped condition, helps to preserve a sense of timelessness and a connection to the past which contributes to **the listed building's** heritage significance.
52. As has already been set out above, the development now proposed would change the nature and character of the appeal site dramatically. Instead of looking out over a scene of agricultural pasture land, the view would be of a housing development. I accept that the central part of the site could be left free of buildings, as shown on the amended plans tabled at the inquiry, and that its treatment could be geared towards a more naturalistic appearance. But this would be little more than a corridor between areas of built development, which would still have to accommodate a play area and drainage basin, and would be crossed by roads and vehicles. **The change in the site's** character would therefore be immediately obvious in all of the relevant views, either to, from, or around the listed building. The adverse nature of this change would not be diminished by any attempt to recreate former field boundaries, as the new housing would be by far the most dominant element.
53. **The loss of the appeal site's** openness and agricultural character would therefore cause permanent and **irreversible harm to the listed building's** setting. In view of the duty imposed by the relevant legislation¹⁰, this harm carries considerable weight in the final planning balance.
54. Given the importance of the setting, it follows that the harm caused to it would also result in a loss of **the building's** significance. Although this harm to its significance would be 'less than substantial', the NPPF advises that the

¹⁰ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

conservation of designated heritage assets should be given great weight. This reinforces my view as to the weight in the present case. I will consider the relative weight of this harm against the **scheme's** benefits, later in my decision.

55. In the light of the above, I conclude that due to the harm that it would cause to the setting of the listed building Crouchers, the proposed development would conflict with Policy HA1 of the WBLP, and saved Policy HE3 of the Waverley Local Plan 2002.

Other Matters

Sustainability of the location

56. Rudgwick has a range of facilities broadly on a par with some of the **WBLP's** third-tier settlements. Had it been located within the Borough of Waverley, it is possible that the village might have been included in that category, although this is somewhat hypothetical. In the equivalent settlement policy for Horsham District¹¹, it is classified as a medium village, where the level of local facilities is described as moderate. Although there is no evidence that any relevant Horsham policies would allow a development of the size now proposed, I accept that in principle Rudgwick is the type of settlement where opportunities for sustainable rural development on some level might be found. I also agree that a development of 53 dwellings could potentially provide support for existing services, both in the village itself and in the wider area.
57. However, the appeal site is at the furthest end of the village from most of the main facilities. It is beyond reasonable or regular walking distance from the local shops, schools, nursery, and village hall. The shortest route to these facilities, southwards via Footpath 448, is across open fields and a muddy track. The alternative of going east on the same path, to Church Street, involves climbing over a brick stile. Although the appellants are willing to pay for improvements to these routes, some sections are in other ownerships. The proposed new footway via Cox Green Road would be more user-friendly, but longer. Although buses can be hailed close to the site, there is no shelter and the service is limited.
58. Waverley is a predominantly rural Borough, and much of its new housing is therefore likely to be in locations that are at least partly dependent on car travel. But that does not mean that locational sustainability is irrelevant. In this case the appeal site is poorly integrated with the village, and the development would therefore not be well located to take advantage of the facilities that Rudgwick has to offer. The site is therefore not one which meets the aim of WBLP Policy ST1, to locate development where the opportunities for sustainable transport are maximised.
59. I note the contents of the Statement of Common Ground agreed between the appellants and SCC as Highway Authority. But for the reasons given, I do not necessarily agree with all the opinions expressed in that statement, particularly with regard to pedestrian accessibility. Since SCC was not represented at the inquiry, I have been unable to explore their reasoning further. Instead I have formed my own view, taking account of all the evidence before me.
60. I appreciate that the appeal site is outside the Green Belt and AONB, which together cover a good deal of the District. But this does not change the fact

¹¹ Policy 3 of the Horsham District Planning Framework, adopted November 2015

that, despite its proximity to Rudgwick, the site is poorly related to the village. **Overall, I consider that the site's location** in relation to Rudgwick adds no material weight in favour of the proposal.

Planning obligations

61. The obligations contained in the S.106 agreement and undertakings are summarised on the first page of this decision. In the light of the evidence presented, I agree that these obligations are necessary, directly related to the development, and reasonable in scale and kind. I have therefore taken them all into account in the overall planning balance.
62. The obligations in respect of the affordable housing, the play area, the crossing point on Church Street, and the provision of kissing-gates in place of stiles on some off-site public rights of way, would all have potential benefits for the general public. However, in the case of the crossing, that benefit would be very limited, as the likely level of usage by the public would be low. All of the other obligations are essentially mitigatory in nature, and their effect on the planning balance would therefore be neutral.

Other benefits of the development

63. In addition to the benefits already noted elsewhere in this decision, the proposed development would generate benefits to the local and national economy, in the form of capital investment, construction employment, local spending, and tax revenues. I have taken these into account in my decision.

Planning Balance and Conclusions

64. For the reasons set out in this decision, I have found that the proposed development would conflict with WBLP Policy SP2 with regard to the **Local Plan's housing** strategy. It would also conflict with Policies RE1 and RE3 due to its impact on the landscape and countryside, and with WBLP Policy HA1 and saved Policy HE3 because of its impact on the setting and significance of the listed building Crouchers. There are no development plan policies that weigh positively in favour of any development, on this site. The appeal proposal therefore fails to accord with the development plan as a whole.
65. In addressing the planning balance, WBLP Policy SP1 requires a presumption in favour of sustainable development, similar though not identical to that in paragraph 11 of the NPPF. Where relevant policies are out of date, this includes the application of **a 'tilted balance'**. In the present case, since there is less than a 5-year supply of housing land, it follows that Policy SP2 must be considered out of date. All other policies relevant to the appeal remain up to date. My attention has been drawn to a recent High Court judgement¹² in which it was held that the out-datedness of a single policy did not necessarily trigger the tilted balance. But that case turned on NPPF paragraph 11, whereas Policy SP1 differs slightly in that regard, in that it **refers to 'relevant policies' rather than the 'most important' policies**. I have therefore applied the tilted balance provisions of Policy SP1, on a precautionary basis.
66. I now turn to the **proposed scheme's planning benefits**. In view of my finding **that the housing land supply only amounts to 4.3 years' worth, the addition of 53 dwellings to the housing stock commands substantial weight in favour of the**

¹² Wavendon Properties Limited v SoS and Milton Keynes DC [2019] EWHC 1524 (Admin)

appeal. In addition I note that there is a very high level of need in the affordable housing sector, including a long waiting list for properties specifically at Rudgwick. I therefore give particular weight to the 16 proposed units that would be affordable. With regard to the other benefits, I consider that the economic effects carry moderate weight; the play area and the kissing gates have modest weight; and the crossing point on Church Street has negligible weight.

67. Having regard to the heritage balance required by NPPF paragraph 196, if the less than substantial harm to the listed building were considered on its own, then on balance I consider that the benefits identified above would outweigh that impact. It follows from this that the tilted balance is not dis-applied on the basis of specific NPPF policies relating to heritage assets.
68. However, the overall planning balance requires **consideration of the scheme's** benefits against the totality of the harm. When the heritage harm is weighed together with the serious harm that I have found to the character and appearance of the area, then my view is that the position is reversed, and the benefits are significantly and demonstrably outweighed by the combination of these two adverse impacts.
69. The scheme therefore does not constitute sustainable development. It follows that the conflict with the development plan is not outweighed by the other material considerations.
70. I have had regard to all the other matters raised, but none leads me to any other conclusion than that planning permission should be refused. The appeal is therefore dismissed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga, of Counsel

He called:

John-Paul Friend HND(LGD) BA(Hons) DipLA CMLI	LVIA Consultants
Sophie Piper BA MSc IHBC	Principal Conservation Officer
Kate Edwards BA MA MRTPI	Principal Planning Officer
Graham Parrott MRTPI	Planning Policy Manager
Rob Hutchinson	Surrey Wildlife Trust Ecology Services

FOR THE APPELLANTS:

Richard Turney, of Counsel

He called:

Sarah Davidson BSc(Hons) MSc IHBC	Instructed by Mr J Beckwith-Smith of Parkes Ltd
Andrew Cook BA(Hons) MLD CMLI MIEMA CEnv	Heritage Collective
Joanna Lee BA(Hons) MA MRTPI	Pegasus Group
Janet Long BA(Hons)DipTP MRTPI	Peter Brett Associates
Julian Thornber BSc(Hons) MCIEEM	Planit Consulting
Stuart Jones BSc(Hons)MCIHT	AA Environmental
Gillian Hanson BSc DipTP MRTPI	RGP Transport Planning
	Planit Consulting

OTHER INTERESTED PERSONS:

Craig Thomson	Local resident
Paul Kornycky	Local resident
Michael Ellis	Local resident

DOCUMENTS TABLED DURING THE INQUIRY

DOCUMENTS TABLED BY THE COUNCIL

C/1	Council's opening remarks
C/2	St Modwen Developments Ltd v SoS and Others: [2017] EWCA Civ 1643
C/3	Nathaniel Lichfield & Ptnrs: 'Start to Finish', Nov 2016
C/4	Bus timetable – service 63 and 63X
C/5	Table: planning permissions alleged to have lapsed
C/6	Closing submissions
C/7	Wavendon Properties Limited v SoS and Milton Keynes DC: [2019] EWHC 1524 (Admin)

DOCUMENTS TABLED BY THE APPELLANTS

AP/1	Revised Location and Illustrative Layout Plan, No 2140/01
AP/2	Landscape and Ecology Masterplan, No. P19-1670-05
AP/3	Opening submissions
AP/4	Reptile survey report, August 2019
AP/5	'Dunsfold Aerodrome: Delivery rates Assessment', Nov 2016
AP/6	Ecological Addendum, 22 August 2019
AP/7	GCN and Reptile Mitigation Plan
AP/8	Proposed footway plan, No 2016/3244/008
AP/9	Extracts from 2002 Proposals Map
AP/10	Table comparing village services
AP/11	List of witnesses' qualifications
AP/12	Unilateral undertaking to Waverley Borough Council
AP/13	Unilateral undertaking to West Sussex County Council
AP/14	S.106 agreement with Waverley Borough Council and Surrey County Council
AP/15	Closing submissions

OTHER PARTICIPANTS' DOCUMENTS

OP/1	Mr Thomson's statement/speaking notes
OP/2	Appeal Ref. T/APP/Z3825/A/98/292135/P8 – 'Timberley', Cox Green (tabled by Mr Thomson)
OP/3	Refusal notice Ref. WA01/1753 – 3 dwellings, land at Horsham Rd/Church Rd, Cox Green (tabled by Mr Thomson)
OP/4	Refusal notice Ref. WA01/1754 – 1 dwelling, land at Horsham Rd/Church Rd, Cox Green (tabled by Mr Thomson)
OP/5	Mr Kornycky's statement/speaking notes

GENERAL DOCUMENTS

GEN/1	Jointly prepared summary table of disputed sites
GEN/2	'Housing Land Supply and Housing Trajectory Contextual Note', May 2017
GEN/3	Final list of draft conditions, with parties' comments (tabled jointly on day 3)

EP1C



Appeal Decision

Inquiry held on 31 July, 1, 30 and 31 August 2018

Site visit made on 2 August 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018

Appeal Ref: APP/W3520/W/18/3194926

Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Landex Ltd against the decision of Mid Suffolk District Council.
 - The application Ref 2112/16, dated 2 May 2016, was refused by notice dated 6 September 2017.
 - The development proposed is the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access at Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF in accordance with the terms of the application, Ref 2112/16, dated 2 May 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Revised Transport Assessment, a Planning Statement, a Contamination Report Part 1 and Part 2, an Ecology Report and Skylark Survey, a Flood Risk Assessment, a Foul and Surface Water Drainage Strategy, an Archaeological Report and a Landscape and Visual Appraisal.
3. At the Inquiry, a S106 Unilateral Planning Obligation was submitted by the Appellant.¹ This addresses all of the matters sought by the District and County Council in connection with the provision of community and other services arising from the development. The Planning Obligation is signed and dated 29 August 2018 and is a material consideration in this case. A Community Infrastructure Compliance Statement has been submitted by Suffolk County Council (SCC).² I return to the Planning Obligation later in this decision.
4. In addition, the Appellant submitted an Agreement with Flagship Housing Group Limited, conditional upon planning permission being granted, to enter into a Deed of Easement³ to secure pedestrian and cycle access to the north

¹ APP8

² INQ5

³ APP7

via Steeles Close. I shall return to the proposed easement later in the decision.

5. Statements of Common Ground (SoCG)⁴ between the Appellant and SCC were agreed and have been signed by both parties in respect of: (i) Archaeology Matters; (ii) Drainage Matters; (iii) Early Years and Education Matters; and (iv) Highways and Transport. An additional SoCG on Planning Matters including Housing Land Supply was agreed between the Appellant and Mid Suffolk District Council (MSDC).
6. The main parties confirmed the List of Drawings on which the appeal should be determined and this is set out at Document APP1. The List of Drawings includes the House Types (1-9), a Site Location plan PA33, a Site Layout Plan PA31 Rev H and an Offsite Highways Works Plan 112/2015/04 - Rev.P2.
7. The revised National Planning Policy Framework (NPPF 2018) was published on 24 July 2018 shortly before the Inquiry opened and was addressed by participating parties both during the event and in closings. I have taken it in to consideration in my conclusions.⁵
8. Following the close of the Inquiry I sought the views of both main parties in respect of the revisions made to the PPG⁶ on 13 September 2018 on Housing and economic land availability assessment. The comments received have been taken into account in my consideration of the appeal proposal.

Main Issues

9. In the light of the above I consider the main issues are: -
 - the effect of the proposed development on highway and pedestrian safety;
 - the impact of the proposed development on designated heritage assets including the setting of listed buildings and the character and appearance of the Woolpit Conservation Area; and
 - whether the Council is able to demonstrate a five-year supply of deliverable housing sites sufficient to meet the full objectively assessed need (OAN) for housing and the implications of this in terms of national and local planning policy.

Reasons

The proposed development and appeal site

10. The appeal proposal is for 49 dwellings including 17 affordable dwellings (35%) together with a new access to be constructed to serve the development of Green Road. The dwellings would have associated garages and parking areas and pedestrian access from the site onto Green Road and pedestrian/cycle access to Steeles Close. There is a dedicated on-site play area proposed as well as extensive on-site open space and linking footpaths.

⁴ INQ3

⁵ Paragraph 212 Annex 1: Implementation

⁶ Planning Practice Guidance

11. Woolpit is the third largest village in Mid Suffolk and has a good level of local services and infrastructure including health care, education and two business parks/employment sites and is designated as a Key Service Centre in the **Council's settlement hierarchy**. The appeal site is located on the southern edge of Woolpit village, to the south of its centre but with access to facilities which are in close proximity – a primary school, health centre, village shops and services are within walking distance.
12. Whilst, for planning policy purposes, the site is located in the designated **'countryside', its northern and eastern boundaries adjoin the defined** settlement boundary for the village in the Mid Suffolk Local Plan 1998 (Woolpit Village Inset Map). There is existing residential development on the eastern side of the site on Steeles Road and immediately adjacent to the north lies Steeles Close and the main body of the village; on the opposite side of Green Road, but at the northern end of the appeal site lies residential development in the form of Priory Cottage, a Grade II Listed Building. There is therefore residential development on two sides of the appeal site. Land to the south and west comprises open agricultural land.
13. The appeal site comprises a total site area of about 2.3 hectares. It consists of a rectangular shape block of land which is part of an agricultural field. It is enclosed with an existing tree/hedge line on three sides. The appeal site is broadly level but there is a gentle slope west to east. There is an existing **tree/hedge line to a part of the site's Green Road frontage and there** are trees to the northern boundary which separate the site from Steeles Close. A public **footpath passes north to south along the site's eastern boundary**. This footpath connects to the southern part of the village and then to the wider countryside to the south.
14. There is a designated Conservation Area in Woolpit Village its nearest boundary being located about 250m to the north from the appeal site at the junction of Drinkstone Road and Green Road. The appeal site is not within the boundary of a protected landscape and there are no designations which apply to it. No Listed Buildings about the application site but the listed Grade II, 17th century, Priory Cottage is situated on the west side of Green Road opposite the north-west corner.

Planning policy

15. The statutory development plan includes the following documents:
 - (i) The Mid Suffolk District Local Plan 1998 (MSDLP) which was saved in **accordance with the Secretary of State's Direction dated 14 September 2007**;
 - (ii) The Mid Suffolk District Core Strategy 2008 (CS), as adopted in September 2008 covering the period until 2025; and
 - (iii) The Core Strategy Focused Review 2012 (CSFR) as adopted on 20 December 2012 covering the period until 2027.
16. The Council is in the course of preparing a new Joint Local Plan with Babergh District Council which will replace the CS and will be used to manage development in both districts up to 2036. The Councils have published the Joint Local Plan for consultation (Regulation 18) but the emerging Plan is in its very early stages and thus carries limited weight in the context of this appeal.

A Neighbourhood Plan is currently being prepared for Woolpit. It too is in its very early stages and draft policies have not yet been published so no weight can be attached to the Neighbourhood Plan.

First Issue - Highway and pedestrian safety

17. SCC, as Highway Authority, does not object to the proposal subject to conditions being attached to a grant of planning permission. The Council did not refuse the proposal on the basis of highway and pedestrian safety grounds because a highway improvement scheme at the pinch point on Green Road was proposed as part of the development and was to be secured by means of a planning condition. Rather, the Reason for Refusal (RfR) indicates that the proposed development would increase vehicular traffic in the village centre and require the provision of highway works to the north of the site in the vicinity of a number of unspecified listed buildings and within the Conservation Area. The Council then argues firstly, that the nature of the works and the increase in traffic would neither preserve or enhance the character of this part of the Conservation Area and secondly, would not preserve or enhance the setting of the unspecified listed buildings causing less than substantial harm to both.
18. The areas of debate at the Inquiry comprised:
 - Increase in vehicular traffic through pinch point
 - Increase in pedestrian flow through pinch point
 - Personal Injury Accidents (PIA) Analysis
 - Accessibility

Increase in vehicular traffic

19. North of the appeal site between Drinkstone Road and just beyond Mill Lane, Green Road narrows significantly to about 4.3m creating a pinch point about 60m long. On the western side there is no footway as the buildings and fences are hard against the edge of the road. On the eastern side there is a narrow footway measuring less than 1m in width, reducing to only 0.85m in parts. This road width is insufficient for two vehicles to pass with pedestrians on the footway being vulnerable to being hit by vehicles. The footway at this width is insufficient to allow pedestrians to pass each other without stepping into the road. It is also too narrow for wheelchair users and pram use so the only alternative for many is to walk along the road.
20. The footway here is also vulnerable to being driven over by vehicles as the kerbed separation is too low to offer sufficient protection. The kerb upstand is between 20mm and 60mm – this does not prevent or deter vehicles from driving over the kerb onto the footway. The Parish Council and others are concerned that at times Green Road can become congested. Both highway experts agree that Green Road is relatively lightly trafficked but this does not mean at times it cannot become congested.
21. I see no reason to **doubt the underlying validity of the Appellant's Traffic Assessment (TA)** as considered by the Highway Authority. The TA estimated that the proposed development would generate, overall, 33 vehicular trips in the AM peak hour and a total of 38 trips in the PM peak hour which would give

rise to 295 additional trips over a 24 hour period. The majority of this traffic would travel northbound through the pinch point to the transport links and facilities in the village beyond. Based on these TA figures, two-way traffic on Green Road would increase by 15% in the AM peak and by 16% in the PM peak as a result of the development traffic. This equates on average during the AM and PM peak hours to an additional vehicle passing through the pinch point every 2 minutes. In my view this represents at worst, a very modest increase in vehicular traffic through the pinch point.

Increase in pedestrian flow

22. The Council has assessed the additional pedestrian flows associated with the development: an additional three pedestrians walking northwards in the AM peak and 2 in the PM peak and an additional one pedestrian walking **southwards in each of the AM and PM peak hours. The Council's assessment** determines the theoretical likelihood of a northbound vehicle, a southbound vehicle and a pedestrian negotiating the pinch point together at any one time during the peak hour for both the existing scenario and that with the proposed development. It concludes that such events would increase threefold with the development in place, which equates to ten additional pedestrian injury risk events per year. These figures were accepted by the Appellant.
23. **I appreciate that the Council's assessment is a theoretical risk analysis and** that the ten additional pedestrian injury risk events compared to the baseline is relatively small – not even one per month. Nevertheless that increase is significant when considered over time, and it is noteworthy that any conflict between vulnerable road users (pedestrians) and motor vehicles will often result in an injury requiring hospital attention, even allowing for the slight reduction in vehicle speeds through the pinch point. In my view there would be a modest increase in the number of pedestrian injury risk events.

Personal Injury Accidents (PIA) Analysis

24. The TA demonstrates that there is no recorded accident data for Green Road itself, but there were four accidents which led to injury in the period between 2010 and 2015 (Appendix I). The Appellant accepted that when considering accident data, it is relevant to look more widely than the road on which the development is proposed, and that it is not just about the overall number of accidents but the details of them. Two of the accidents involved pedestrians being struck by passing cars (on The Street and on Heath Road) and that in one of those accidents the narrow width of the road was recorded as a causation factor by the police. Another accident involved a driver striking a line of cars in The Street during the hours of darkness. In my view the circumstances of the accidents which have occurred in the wider area are not inconsistent with a highway safety concern.

Accessibility

25. I accept that the proposed pedestrian and cycle link via Steeles Close and Steeles Road is likely to be used for a good percentage of pedestrian trips to give access to village services. It would be used for: (i) dropping off and collecting children from the primary school and pre-school as well as after school clubs; (ii) to access childcare services in the grounds of the primary **school, such as a "Holiday Club" during school holidays;** (ii) attending health appointments; (iv) picking up prescriptions from the dispensary; (v) shopping

at Costcutter Convenience Store with its extended opening hours (0600-2230 hours) and (vi) accessing the Brickfields Business Park, where around 25 companies are based. Moreover, the proposed easement to the north⁷ would be entirely adequate for the purposes of guaranteeing access at all times. The terms on which it is granted make it entirely enforceable and I cannot foresee any circumstances which would lead to the grantor being in a position to restrict or prevent its use.

26. Nevertheless, it is noteworthy that the proposed development provides a footpath link from the Green Road access on the west of the appeal site which links to the pavement outside Vine Cottage. Anyone seeking the shortest route to walk to the village centre, to access facilities including the village shop (Co-op), the post office within it, the bus stops, the village pubs, the bakery, the tea room, the hairdressers, the Village Hall, the Church and the petrol filling station would have to negotiate the pinch point and the increased traffic going through it. Even with the Steeles Close access, anyone using it to take the shortest route to the village centre would still travel through the pinch point on Green Road. Use of the access via the Greenway at the south east of the site onto the public footpath would be far from desirable for anyone accessing facilities in the village centre.
27. Taking all of these matters into account I consider that the increase in vehicular and pedestrian traffic from the new development having to negotiate the pinch point on Green Road would exacerbate highway dangers unless appropriate safety improvements can be made. I conclude on the first issue that the off-site highway works specified in Drawing 112/2015/04 Revision P2 are necessary to mitigate the increased safety risk as a result of the development. If an appropriately worded planning condition(s) is imposed to secure the off-site highway works then there would be no unacceptable residual highway or pedestrian safety impact arising from the proposed development.

Second Issue - Heritage Assets

28. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the LBA requires special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
29. Paragraph 193 of the NPPF 2018 states that when considering the impact of a proposed development on the significance of a designated heritage asset, **great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be)**. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
30. Whilst there is no statutory protection for the setting of conservation areas, paragraph 194 of the NPPF 2018 requires that consideration be given to any harm to or loss of significance of a designated asset, which includes conservation areas, from development within its setting. The main parties confirmed that no harm would be caused to the setting of the Conservation

⁷ APP7

Area in this case and I agree.

Woolpit Conservation Area

31. The Woolpit Conservation Area Appraisal (2012) tells us that the Conservation Area covers the historic core of the village and was first designated by the Council in 1972. The Appraisal notes that the built form is marked by a variety of dates, architectural styles and building materials including a variety of roof finishes. The Conservation Area includes the Grade I listed Church of St Mary with its flint and stone chequered flushwork. The remaining listed buildings, the majority being Grade II, are identified as **'timber-framed houses, many now re-fronted in brick'**. The variety of building materials is noted, with exposed timber-framing and bricks from the local brickworks, comprising **'Suffolk whites'** and **'soft red brick'**.
32. In terms of its plan form and layout, Woolpit village has a distinct central triangular island, which **'is a well defined focal point'** which forms the focus for three **'important vistas' identified on page 11 of the Appraisal**. In vista (1) looking north along Green Road towards the village triangle, the view is eroded somewhat by the presence of street signage and the extent of parked cars **around this 'island'**. Each important vista contributes to the character and appearance of the Conservation Area.
33. I consider the significance of the Conservation Area derives from its character interest which includes a mixture of medieval, post medieval and later buildings, of a variety of styles and material finishes, arranged around a **central village 'triangle' which is laid out and maintained as a green-edged 'island', from which radiate outwards three main thoroughfares; Green Road, Church Street and The Street;** and from there extends a wider network of smaller sub-roads. In connection with this, the vehicular traffic is regular enough to be noticeable particularly along the three main roads, but it is not an overbearing element. It contributes to the appearance of the Conservation Area, as does the traffic control measures that form part of the street scenes, most obviously in the form of a variety of bollards.
34. The Council alleges that there would be a significant impact on the appearance of the important vista along Green Road towards the central market place at the centre of the Conservation Area and that the important **historical character of the southern 'gateway' and the important historic street scene** would be harmfully altered by the introduction of the highway improvements, resulting in a more urban appearance. In particular, reference is made to the kerbed build out with bollards, the footpath widening with raised kerbs, the erection of a TSRGD 516 sign on the pavement between Pepys House and Tyrells, the disruption of sightlines which have a natural downward slope and the noticeable increase in both vehicular and pedestrian traffic which it is said would detract from the perception of relative tranquillity. I disagree.
35. The changes such as they are would only be appreciable in relatively limited views north and south along Green Road from about the area of the village triangle to the southern edge of the Conservation Area. The proposed off-site highway works would only bring about a change to a limited and localised part of this designated heritage asset. In terms of the revision of road markings, when taken in the context of the existing roadway and indeed the appearance of the wider network of roads within the Conservation Area that are generally

of **`black tarmac with white network markings'**; it would not be out of character and would not harm its special interest.

36. In terms of footpath widening, the existing pathway is a standard kerbed tarmac path, about wide enough for one person to traverse. The appeal proposals envisage the widening of this footpath to 1.8m with the kerb face raised to 125mm. Again, whilst this would represent a change to the current situation, it would not be incongruous with the character and appearance of the Conservation Area which includes a large number of kerbed footpaths of varying widths. The final form and finish of these proposals would be subject to detailed design at a later stage and there is an opportunity to include a higher quality surface finishing such as sandy bedding gravel to improve the appearance of this stretch of footpath, more in keeping with the current character of this area of the asset.
37. In my view, the proposed widening of the footpath would also allow better appreciation of the character and appearance of the Conservation Area by providing a more convenient means of accessing the asset to enjoy the quality of the historic built environment.
38. In terms of road signage there are currently numerous examples of instructional road signs elsewhere within the Conservation Area, not least **within the village `triangle' itself**. The introduction of a new road sign would be needed at the southern end of the highways works to forewarn drivers heading north into the Conservation Area of the narrowing roadway. The exact location of this sign is not yet fixed and is subject to future agreement. It could, for instance, be located outside the southern boundary of the Conservation Area. Even if located within the asset I see no reason why it could not be sympathetically integrated into the street scene.
39. The kerbed build out with bollards adjacent to Model Cottage would be the most evident change resulting from the proposals, as the current location for this is a featureless part of the black tarmac roadway. However, the use of a variety of bollards for such traffic calming/building protection measures is already widely evident within the wider Conservation Area, with others also used to control parking. In my view, the use of bollards in this location and for this purpose, employing a sympathetic design to be agreed with the Council, would plainly not be intrusive or incongruous with the character and appearance of the wider Conservation Area and would not result in any harm.
40. In terms of the built form of the off-site highway works, the appeal proposals would only be evident from a small part of the wider Conservation Area, would not be incongruous with its current character and appearance, and, with regard to the widened footpath, could actually deliver an enhancement.
41. In relation to the increase in vehicular traffic and any effect on the character and appearance of the Conservation Area, I have identified that there would be a **very modest** increase in the amount of traffic using the immediate road network and on Green Road leading into the village centre. This very modest increase in vehicular traffic would not introduce an element into the Conservation Area that is not already present within the designated area and neither would it increase **that existing element of the Conservation Area's** character and appearance to any more than a modest degree. The very modest increase in traffic flow would have no effect on the special interest of the Conservation Area and no harm would be generated.

42. I consider there would be no harm caused to the Woolpit Conservation Area as a result of the appeal proposals. The proposals would as a minimum 'preserve' the character and appearance of the Conservation Area, if not actually enhance it through the improvement of the footpath.

Listed Buildings

43. When assessing the indirect impact of proposals on heritage assets such as those beyond the boundary of a development site, the question which should be asked is whether change within its wider 'setting' would result in a loss of (or damage to) its 'significance' as a heritage asset.
44. The NPPF 2018 defines significance in Annex 2: Glossary as: '***The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.***'
45. The current Historic England (HE) guidance⁸ is clear in stating that change within a heritage asset's **setting need not be harmful; the implementation of development proposals within a heritage asset's setting can be positive**, negative or neutral. The HE guidance presents an approach to setting and development management based on a five-step procedure. The key issue is whether and to what extent, the proposal would affect the contribution that setting makes to the significance of the heritage asset in question. In the following analysis I give considerable weight and importance to the desirability of preserving the settings of Listed Buildings.

Mullions, Tyrells and The Cottage

46. These three Grade II Listed Buildings are closely associated with each other and are all late medieval or early post medieval houses and should be considered as a group in terms of the contribution which setting makes to their significance. They also share this group value with those other listed buildings within this same historic core area. Such associations provide positive contributions to the significance of these buildings by providing context in which to appreciate the layout and hierarchy of the earlier settlement. In particular, Tyrells and The Cottage derive significance from their historic and functional associations, as two parts of the same original late medieval dwelling.
47. Insofar as the setting of these three listed buildings contributes to their significance, it does so in terms of (i) their associative relationships within the group, as well as with other surrounding aspects of the historic built environment defining the street scenes around and south of the triangle; (ii) in respect of historic, functional and aesthetic relationships with the positions and alignments of both Green Road and Mill Lane; and (iii) in respect of their historic and functional inter-relationships with spaces forming their garden enclosures.
48. In terms of Mullions, Tyrells and The Cottage, the Council alleges that their settings would experience change as a result of the off-site highway works and increased vehicular traffic. In terms of the off-site highway works, as

⁸ The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) Historic England 2017

previously stated, these can be broadly divided into the following elements: (i) revision of road markings; (ii) footpath widening; (iii) new road signage and (iv) a kerbed build-out with bollards, adjacent to Model Cottage.

49. The proposals would effect physical change to only a short stretch of Green Road, which is already experienced as a modern tarmac road with white markings and street furniture. Although these three listed buildings are identified as deriving some significance from their association with this road, in terms of historic and functional associations, this is in no way dependent on its current appearance.
50. The three listed buildings would be broadly opposite where the kerbed build-out and bollards would be located. However, such a change would not reduce the ability to appreciate these buildings from Green Road or alter their evidential, historic or functional relationships with it. Moreover, the footpath widening adjacent to Mullions, would also be a noticeable change, particularly if the quality of finish was improved from tarmac to a more sympathetic surfacing, but in the context of the tarmac path already present, it would be inconsequential to the significance of the listed building. There is no substance to the allegation that the highway works would have an impact on the structural integrity of Mullions. The other changes, comprising new road signage and revised road markings, in the context of the existing setting would be such a marginal peripheral change as to be all but unnoticeable.
51. **It is noteworthy that Dr Duck, the Council's Heritage Officer, did not raise the possibility of harm accruing to the listed buildings within the Conservation Area - including any of these three listed buildings as a result of the implementation of the off-site highway works.** Given the very limited change and the existing context of these listed buildings I consider that the off-site highway works would preserve the setting of these listed buildings and would not harm their significance.
52. The appeal proposals would result in a very modest increase in traffic on average in the peak morning and evening hours. This increase would evidently be so marginal as to be barely perceptible and would not result in an apparent change to the experience of these listed buildings. As such, the traffic generation, such as it is would also not harm the significance of any of these listed buildings.

Priory Cottage

53. The Grade II listed Priory Cottage is the most southerly property in Woolpit and forms the southern gateway to the village. It comprises a cottage dating from the early 17th century, with 19th century additions. It is assessed as drawing its significance mostly from its architectural and historic interest, as evidenced in its built form. There is also some limited artistic and archaeological interest, which is derived from the few architectural embellishments and limited phasing which it possesses and exhibits. The building is set within private and well-tended gardens that provide an attractive space in which to appreciate its significance.
54. The property is adjacent to Green Road and the regular traffic along this roadway is also a notable feature within its setting. The roadway possesses historic and functional links with Priory Cottage and it forms the predominant means whereby the structure is appreciated. As the Cottage is located on the

edge of the village, there is some limited relationship with the street frontage immediately to the north, which represents pre-20th century dwellings. To the south and west, the wider setting of the building comprises open agricultural land, as it is also on the east side of Green Road (i.e. the appeal site).

55. The appeal site is assessed as falling within the setting of Priory Cottage, given that it is possible to experience the Grade II listed building from the farmland it comprises through a gap at the north end of the otherwise bushy and robust hedgerow. This hedgerow largely encloses the east side of Green Road and contains and curtails eastward views outwards from the listed building to the confines of this north-south thoroughfare of Green Road, thus separating the asset from the appeal site.
56. **Therefore, whilst the appeal site does fall within the asset's setting, it makes only a very limited contribution to the significance of this building because of the screening effect of the boundary hedgerow and the concentration of the asset's relationships on (i) its garden enclosure (ii) the Green Road frontage north and south and (iii) the agricultural farmland that adjoins it to the west and south. All of these relationships are focussed to the west of the road.**
57. The appeal proposals envisage two dwellings (Plots 15 and 16) in the north west corner of the development site served by a private drive that would run parallel to Green Road. A new footpath link with Green Road would run between Green Road and the private drive and thread through a gap in the roadside hedge opposite Priory Cottage. The hedgerow would be retained albeit on a slightly set back alignment.
58. Therefore, the change to the setting of Priory Cottage would only be noticeable as a change from partial views of an agricultural field to partial views of modern properties in the north west corner of the site. This would cause some erosion to the rural context of the area albeit limited by the partial retention of the hedgerow and the setback of the new properties from the Green Road frontage. Otherwise it would not affect the rural setting to the west and south, the relationships with its well-tended private gardens, Green Road or those properties in close proximity to it.
59. I consider that this limited change would result in a very low level of harm to the significance of this listed building at the lowest end of '**less than substantial harm**'. This conclusion is broadly in agreement with Dr Duck's original consultation response on the planning application where he states that the '**overall impact on the setting of Priory Cottage is notably less than substantially harmful**'.⁹ No further mitigation is suggested.
60. In line with statute, policy, and case law¹⁰, considerable weight and importance must be given to the presumption against granting permission for development that would harm the character or appearance of a conservation area or the setting of a listed building. If less than substantial harm is found of whatever magnitude, the decision maker needs to give considerable weight to the desirability of preserving the setting of the asset. In this case I have found a lack of identifiable harm to the Woolpit Conservation Area and the proposals would, **as a minimum 'preserve'** its character and appearance. However, the overall impact of the proposal needs to take into account the

⁹ Mr Crutchley's Appendix AC5

¹⁰ East Northamptonshire DC v SSCLG [2014] 1 P & R 22 at paragraph 29

less than substantial harm to Priory Cottage and this harm should be weighed against the public benefits of the proposals.

61. The public benefits of the appeal proposals comprise:

- An increase in the provision of housing numbers at a time of pressing need (see my conclusion on the following main issue)
- An increase in choice and type of homes
- 35% affordable housing provision
- Employment opportunities during the construction phase
- Residents would be likely to use the local shops and services within Woolpit making a positive contribution to their vitality and viability
- Provision of 0.5 ha of community open space with green infrastructure features – delivering high quality green spaces available to all
- Footpath improvements to the village centre and the wider countryside
- Highway works in the village centre would deliver benefits to the Listed Buildings and the Conservation Area.

62. In accordance with the test set out in paragraph 196 of the NPPF 2018, I find that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

Third Issue - Housing Land Supply (HLS)

63. It is common ground that the Council's strategic policy for housing numbers is more than five years old and has not been reviewed. Accordingly, paragraph 73 of the NPPF 2018 indicates that the Council's housing land supply is to be assessed against the standard method for calculating local housing need. The Council's local housing need is 585 dwellings per annum (dpa) and a 20% buffer is to be applied. This amounts to 3,510 dwellings for the next five years, or 702 dpa. The difference between the parties is solely down to supply.

64. No under supply/previous under delivery is taken into account when using the standard method. Therefore, no 'backlog' of unmet need should be taken into account when calculating the Council's housing land supply position.

65. The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of 'Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites.

66. The Council relies upon the same sites in its supply as were contained in its

Annual Monitoring Report (AMR) dated 11 July 2018. The only new site referred to at the Inquiry was that known as Land on the West of Barton Road, Thurston which was missed out of the AMR in error and for which planning permission was granted on 5 July 2018. The Council has carried out a sense check of the supply against the terms of the NPPF 2018 and referred to events that have occurred after the base date of the AMR.

67. **In my view the definition of `deliverable` in the Glossary to the NPPF 2018** does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.¹¹ There is therefore a clear cut-off date within the AMR, **which is 31 March 2018. The Council's supply of deliverable sites** should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the **Council's supply**. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.
68. Sites with outline planning permission make up a very large proportion of the Council's claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years. I accept that there was clear evidence of what was necessary on one site provided in Mr Robert's evidence¹² and so the 200 dwellings in respect of that site should be **added to the Appellant's supply calculations. As** for the other 1,244 dwellings with outline permission, the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.
69. The up-dated PPG on Housing and economic land availability assessment sets **out guidance on what constitutes `deliverable sites` and covers the evidence** that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. **An assessment of the Council's AMR against the updated PPG** reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.¹³
70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018¹⁴ it does not alter

¹¹ Paragraph 1.1 of the Annual Monitoring Report

¹² Mr Robert's POE A4 Build out rates for Chilton Leys

¹³ See paragraphs 36 (ID:3-036-20180913); 047 (ID:3-047-20180913) and 048 (ID3-048-20180913)

¹⁴ LPA4

the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years.

71. Paragraph 73 of the NPPF 2018 requires the Council's housing supply to be made up of 'specific sites'. The Council was presented with three opportunities to demonstrate that the figure of 858 dwellings recorded in its trajectory table for small sites is robust. Firstly, on production of the AMR. Secondly, the Appellant asked for a list of sites on 30 July 2018 and was supplied with a list of 561 planning permissions, which the Council said made up its 858 dwellings. In this list there was insufficient evidence to either accept or challenge this figure, although a number of defects quickly became apparent to the Appellant. The Council was asked to provide more information but failed to do so. Finally, the Council indicated that it was going to submit a final rebuttal proof of evidence on HLS but it did not do so.
72. The Council argues that the St Modwen case¹⁵ continues to provide sensible guidance on the context, as applied to NPPF 2018 and claims that it can demonstrate a 5 year HLS of 5.39 years. However, I cannot accept that the 858 is a robust figure. I agree that it would be a time consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR. The Appellant has completed a partial review and from the evidence that is before me it appears that there are at least 108 defective planning permissions within the list of 561 permissions¹⁶ but does not know by what number one should discount the figure of 858. As the NPPF 2018 carries a presumption that small sites are deliverable until there is clear evidence that they will not be delivered, the **858 has been left in the Appellant's HLS calculation** but I consider it is likely to be an overestimate.
73. Drawing all of these threads together I consider that **the Appellant's** assessment of supply, **set out in Mr Short's rebuttal proof of evidence**, is the more realistic taking into account the St Modwen judgment. The only change is that the site West of Barton Road, Thurston should now be removed from the supply. **This leaves the Council's HLS at 3.4 years.** If the small sites **problem is taken into account, it is highly likely that the Council's HLS is less than 3.4 years.** I conclude on the third issue, therefore that the Council cannot demonstrate a five year supply of deliverable housing sites.

Other Matters

74. I have taken into account all other matters raised including the representations from the Woolpit Parish Council, the Suffolk Preservation Society, the landscape assessment of Woolpit by Alison Farmer Associates and other interested persons. I have also taken into account the various appeal decisions submitted by the main parties. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the local highway network or the heritage impact which I have dealt with under the main issues.

¹⁵ St Modwen Developments Ltd v SSCLG et al [2017] EWCA Civ 1643 paragraph 35

¹⁶ APP6

75. The issue of landscape impact was raised in the representations. However, the Appellant has provided a comprehensive Landscape & Visual Impact Appraisal (LVIA) and the Council takes no issue with this. It is proposed to reinstate the former field boundary to the southern part of the site which would include a mixture of trees and hedging and a landscaped Greenway directly to the north of it which would form part of the pedestrian links throughout the site. The existing trees and hedging along the northern boundary and eastern boundaries of the site would be retained with some new planting proposed along the most southern part of the eastern boundary. Within the site itself, trees and hedging are proposed between dwellings and the public spaces to provide an attractive soft environment.
76. The appeal site would result in the loss of an agricultural field to development and whilst this would have some direct landscape impact, it would not be significantly adverse given its suburban backdrop. The proposed landscape framework would screen and filter views of buildings from the surrounding countryside. The visual impact of the development would be successfully mitigated into the rural edge of Woolpit and would provide an attractive environment for both new residents and those living in the surrounding locality. I therefore find no harm in this regard.
77. Reference is made to alternative housing sites identified in the emerging Joint Local Plan which are located to the north of the village centre. However, as I noted at the start, the emerging Joint Local Plan is in its very early stages and any conflict with this plan carries limited weight at this time and in the context of this appeal.
78. Concerns have been raised in relation to drainage, archaeology and ecological matters. However, it is noteworthy that the Council has not raised any objections in relation to these matters. In my view the concerns which have been raised can be adequately dealt with through the use of planning conditions in accordance with the advice in paragraph 54 of the NPPF 2018.

Planning Obligation

79. The S106 Unilateral Planning Obligation includes the provision of 17 affordable **units on site which broadly equates to the Council's requirements for 35%** provision. In this respect the Obligation is in line with both paragraph 62 of the NPPF 2018, which requires on-site delivery of affordable homes and Altered Policy H4 of the MSDLP.
80. With regard to open space covenants within the Obligation, the appeal scheme provides open space and a 360m² play area with play equipment within the **site which meets the Council's policy requirements**, notably Policy RT4 of the MSDLP.
81. With regard to covenants with SCC, the Obligation includes contributions in relation to primary school and Early Years provision and Public Rights of Way Improvements. A SoCG on Early Years and Education Matters has been agreed between the Appellant and SCC. There is also a Community Infrastructure Levy (CIL) Compliance Statement submitted by SCC.¹⁷

¹⁷INQ5

82. The Obligation includes the following matters in respect of SCC functions:

- Primary School Construction contribution – £180,719 (equates to £3,688.14 per dwelling). This is necessary if there are no surplus places available at the time of commencement, and if expansion of the existing primary school is confirmed, this Obligation would cease or be returned.
- Primary School Land contribution - £12,936 (equates to £264 per dwelling)– as above; and
- Contribution towards the build costs of a new Early Years setting - £33,332 (equates to £680.24 per dwelling).

83. The proposed development is estimated to generate up to four pre-school children. The proposed development should make a proportionate contribution towards the build cost of the new Early Years setting which in total would cost £500,000 and provide 60 places. The proposed development would generate 11 primary aged pupils but the Woolpit Primary Academy does not have enough places to accommodate all of the development being proposed in Woolpit. Due to the layout of the current school site it is not possible to add further permanent accommodation unless additional land is acquired.

84. Therefore the SCC strategy for primary school provision is to deliver a new 420 place primary school for Woolpit to ensure that there is adequate provision to support housing growth and basic need. The proposed development should make a proportionate contribution to the land and build costs of the new primary school in respect of the 11 pupils generated by it.

85. There are currently forecast to be surplus places available at the current secondary schools serving the proposed development, so no secondary or sixth form contributions would be required from the proposed development.

86. Paragraph 98 of the NPPF 2018 promotes the need to protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users for example by adding links to existing rights of way networks. The anticipated increased use of the PROW network from the development would result in the need for offsite improvement work involving heavy clearance on Woolpit Public Footpath 4. The total financial contribution required is £915. The requirement for the footpath improvement arises directly from the increased population which would be generated by the development in the local area and it would also meet Council policies.

87. The Council has confirmed that none of the obligations would conflict with Regulation 123 requiring that no more than five contributions are pooled towards any one specific infrastructure scheme.

88. In my view, all of the provisions set out in the Section 106 Planning Obligation are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore they all meet the tests with CIL Regulations 122 and 123 and should be taken into account in the decision.

Planning Balance

89. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with

the development plan, unless material planning considerations indicate otherwise. Whilst the RfR cites only a limited number of policies which are said to be breached I deal with all policies that have a bearing on the proposals and in line with the new approach of the NPPF 2018¹⁸ identify those which are most important for determining the appeal and whether they should be considered to be out-of-date.

90. The CS was adopted in 2008 and the MSDLP in 1998. Both plans predate the publication of the NPPF 2012 and the more recent NPPF 2018. The CSFR has had little impact on the saved or CS policies that remain in place and Policy FC1 really only and unnecessarily repeats what was in paragraph 14 of the NPPF 2012. It is now out-of-date because of the test it employs. Policy FC1.1 is policy of a very broad nature with one requirement that development must conserve and enhance the local character of the different parts of the district. It is up-to-date but is not otherwise of significance. The appeal proposal complies with these policies.
91. Policy CS1 of the CS merely sets out the settlement hierarchy. However, it includes the words ***"the rest of Mid-Suffolk, including settlements not listed in the above (hierarchy) will be designated as countryside ... renewable energy"***. By virtue of this latter requirement it offends paragraphs 77 and 78 of NPPF 2018. It perpetuates the theme of protection of the open countryside for its own sake and its limitations are inimical to the balanced approach which the NPPF 2018 exhorts. It is one of the most important policies and it is out-of-date. The appeal proposal complies with the hierarchical requirements of Policy CS1 but it conflicts with the latter part of this policy as the site is located outside the settlement boundary.
92. As the proposed development is in open countryside, it also offends the requirements of Policy CS2. Policy CS2 is a most important policy and it is out-of-date. The NPPF has never and still does not exhort a restrictive approach to development outside settlements in this manner. It does not protect the countryside for its own sake or prescribe the types of development that might be acceptable. The policy as worded obviates a balancing exercise and precludes otherwise sustainable development by default and thereby defeats the presumption in its favour. It is also contrary to paragraphs 77 and 78 of NPPF 2018.
93. Policy CS5 provides that all development will maintain and enhance the environment including the historic environment, and retain local distinctiveness. It requires development actually to maintain and enhance the historic environment which exceeds the statutory duty (LBA 1990) and goes further than paragraph 192 of NPPF 2018 which requires decision makers to ***"take account of the desirability of sustaining and enhancing the significance of heritage assets"*** (my underlining). This is a most important policy and it is out-of-date. It does not make enhancement a requirement where no such requirement is reasonably possible or appropriate to the nature of the proposed development. The policy also fails to acknowledge the balancing exercise which the NPPF 2018 requires to be undertaken in circumstances where the harm is less than substantial.
94. Moreover, I have found that the appeal proposal would accord with national policy advice in the NPPF 2018, notably paragraph 192, and there would be no

¹⁸ Paragraph 11

conflict with Policy CS5. The proposed development constitutes a high quality design as it proposes a form of development that reflects the character and appearance of the surrounding streetscape. The DAS provides details on materials and finishes. The materials selected for the new dwellings reflect the colours and shades of the Suffolk vernacular buildings of Woolpit in their simple forms and thus retain local distinctiveness in accordance with Policy CS5 and the NPPF 2018 in Section 12. Nor would there be any conflict with Policy CS5 in relation to the off-site highway improvements works in the Conservation Area.

95. Policy GP1 is a most important policy and it is up-to-date. The proposal complies with its requirements. Policy HB8 is also a most important policy and it is up-to-date despite the fact that it predates its CS equivalent. As I **disagree with the Council's case on the impact of the proposal on the character and appearance of the Conservation Area, the proposal complies with its requirements. Policy FC2 is the Council's strategic housing policy** within the development plan. However, in the light of paragraph 73 of the NPPF 2018, this policy is out-of-date, which is accepted by Mr Roberts.¹⁹
96. Drawing all of these threads together I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.
97. However, in the context of paragraph 213 of the NPPF 2018, I have found that some of the most important policies for determining this appeal are out-of-date, notably Policy CS1 and Policy CS2. I have attached only moderate weight to the conflict with these policies which lessens the significance of that conflict.
98. At paragraph 62 of this decision, I found that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.
99. The tilted balance in paragraph 11 of the NPPF 2018 is engaged because firstly, policies that are most important for the determination of this appeal are out-of-date and secondly, the Council cannot demonstrate a five year supply of deliverable housing sites.
100. Balanced against the identified conflict with the development plan I give substantial weight to the provision of 32 market dwellings and 17 affordable dwellings on a site which is visually and functionally well related to the existing village. Paragraph 59 of the NPPF 2018 states that to support the **Government's objective of significantly boosting the supply of homes**, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. This comprises a substantial social benefit.
101. I have attached moderate weight in terms of the economic benefits that would arise from the provision of employment opportunities during the construction phase and the spending power from 49 new households within the local area.
102. Furthermore I am satisfied that the proposed development would fulfil the aims of the NPPF 2018 by promoting a high quality design of new homes and

¹⁹ Proof of evidence paragraph 2.3

places. I find that the provision of on-site community open space with green infrastructure features, the footpath improvements to the village centre and the wider countryside and the highway works in the village centre would all provide environmental benefits. I apportion moderate weight in terms of the environment.

103. Taking all of these matters into account, including all other material considerations, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the NPPF 2018 as a whole and that the proposal represents sustainable development. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

Planning Conditions

104. I have considered the conditions suggested by the Council²⁰ in the light of the advice in paragraphs 54 and 55 of the NPPF, the model conditions retained at **Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions**. I have made minor adjustments to the suggested conditions in the interests of clarity. Condition 1 imposes a shorter timescale than the normal three years but this is justified given the pressing housing need and the advice in paragraph 76 of the NPPF 2018. Condition 2 is necessary for the avoidance of doubt. Condition 3 is required to safeguard heritage assets of archaeological interest. Condition 4 which relates to Construction Management is necessary to ensure minimal impact on the public highway and residential amenity but I have deleted the element relating to haul routes as this relates to land outside the site and thus cannot be controlled by condition. Conditions 5-7 are necessary in the interests of ecology, safeguarding habitats/species and visual amenity. Conditions 8 -10 are required to ensure the development does not cause increased flood risk or increased pollution to the water environment.
105. Conditions 11-23 are necessary in the interests of highway safety, traffic management, safe and suitable facilities for pedestrian and cycle movement and to comply with paragraph 110 of the NPPF. Condition 24 is required in the interests of safeguarding ecology, biodiversity and amenity within the site. Condition 25 is required to ensure the site is suitably served by fire hydrants in the interests of public safety and fire prevention. Condition 26 is necessary to ensure that the development is equipped with access to high-quality telecommunications in accordance with paragraph 112 of the NPPF.
106. Condition 27 is required to ensure that recycling bins are not stored on the highway in the interests of highway safety. Condition 28 which relates to screen walls and/or fences is required in the interests of residential amenity. Condition 29 is required to ensure the appropriate recording and analysis of archaeological assets. Condition 30 is required to ensure the provision and long-term maintenance of adequate on-site space for the parking and manoeuvring of vehicles. Condition 31 relates to a Residents Travel Pack to reflect the national policy aim of achieving the fullest possible use of public transport, walking and cycling.

²⁰ INQ4

Conclusion

107. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-31)

TIME LIMIT FOR IMPLEMENTATION

- 1) The development hereby permitted shall be begun not later than the expiration of two years from the date of this permission.

LIST OF APPROVED DRAWINGS

- 2) The development hereby permitted shall be carried out in accordance with the following drawings:

5018 PA01 House Type 1
5018 PA02 House Type 1
5018 PA03 Single Garage
5018 PA04 House Type 2
5018 PA05 House Type 2
5018 PA06 House Type 3
5018 PA07 House Type 3
5018 PA08 House Type 3
5018 PA09 Rev. A House Type 3
5018 PA10 Rev. A House Type 4
5018 PA11 House Type 4
5018 PA12 Rev. A House Type 4
5018 PA13 House Type 5
5018 PA14 House Type 5
5018 PA15 House Type
5018 PA16 House Type 6
5018 PA17 House Type 6
5018 PA18 Rev. A Cart Lodge
5018 PA19 House Type 7
5018 PA20 House Type 7
5018 PA21 House Type 7
5018 PA22 Rev. A House Type 8
5018 PA23 House Type 8
5018 PA24 House Type 8
5018 PA28 House Type 9
5018 PA29 House Type 9
5018 PA31 Rev H Site/block roof plan
5018 PA32 Rev C Street Elevations
5018 PA33 Site Location Plan
5018 PA34 rev A Typical Elevations
5018 PA35 rev B Street Elevations
5018 PA36 ASHP SIZES

PRE - COMMENCEMENT CONDITIONS

Archaeology

- 3) No development shall take place within the site until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has previously been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- g. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

Construction Management

- 4) Prior to the commencement of development details of a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall incorporate the following information:
 - a. Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
 - b. Details of the storage of construction materials on site, including details of their siting and maximum storage height.
 - c. Details of how construction and worker traffic and parking shall be managed.
 - d. Details of any protection measures for footpaths surrounding the site.
 - e. Details of any means of access to the site during construction.
 - f. Details of the scheduled timing/phasing of development for the overall construction period.
 - g. Details of any wheel washing to be undertaken, management and location it is intended to take place.
 - h. Details of the siting of any on site compounds and portals.
 - i. Monitoring and review mechanisms.

The construction shall at all times be undertaken in accordance with the agreed methodology approved in writing by the Local Planning Authority.

Landscaping and Biodiversity

- 5) All ecological mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecological report (MHE Consulting August 2015) as already submitted with the planning application and agreed with the Local Planning Authority prior to determination.
- 6) No development shall commence until a detailed 'hard' and 'soft' Landscaping Scheme, which shall include any proposed changes in ground levels, has been submitted to, and approved in writing by, the Local Planning Authority.

The 'hard' landscaping shall include details of all hard surface materials and boundary treatments to be used within the development with a timetable for implementation, including all means of enclosure and boundary treatments, residential screen walls and fences.

The 'hard' landscaping shall be implemented and completed in accordance with the approved details and agreed timetable.

The 'soft' landscaping shall include details of the existing trees and plants on site to be retained together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication 'BS 5837: 2012 Trees in relation to design, demolition and construction'.

The 'soft' landscaping shall include details (including species, size of stock at time of planting, location) of all new plants and trees to be provided as well as any areas for seeding. The new landscaping should comprise of native species only as defined in Schedules 2 and 3 of the Hedgerow Regulations 1997.

The 'soft' landscaping shall be implemented in accordance with the approved details within the first planting season (October - March inclusive) following the commencement of development.

Any trees, hedges, shrubs or turf identified within the approved Landscaping Scheme (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

The approved Landscaping Scheme shall be carried out in its entirety and shall accord with the approved drawings under this permission.

- 7) Prior to the commencement of development on the site a skylark mitigation strategy, including a timetable for implementation, shall be submitted to, and agreed in writing by, the Local Planning Authority. The agreed strategy shall be implemented in full to mitigate the loss of potential nesting habitat.

Site Drainage

- 8) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
- 9) No development shall take place until a surface water drainage scheme for the site, including a timetable for implementation, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year + Climate Change storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be

implemented in accordance with the approved details and timetable before the development is completed. Details of which will include:

- a. Details of further infiltration testing on site in accordance with BRE Digest 365 to verify the permeability of the site (trial pits to be located where soakaways are proposed and repeated runs for each trial hole). Borehole records should also be submitted in support of soakage testing.
 - b. Infiltration devices should be no more than 2m deep and will have at least 1.2m of unsaturated ground between base of the device and the groundwater table.
 - c. Dimensioned plans illustrating all aspects of the surface water drainage scheme including location and size of infiltration devices and the conveyance network. A statement on the amount of impermeable area served by each infiltration device should also be illustrated on the plans and should be cross referenceable with associated design calculations.
 - d. Full modelling results (or similar method) to demonstrate that the infiltration device has been adequately sized to contain the critical 100yr+ Climate Change event for the catchment area they serve. Each device should be designed using the nearest tested infiltration rate to which they are located. A suitable factor of safety should be applied to the infiltration rate during design.
 - e. Infiltration devices will have a half drain time of less than 24 hours.
 - f. Modelling of conveyance networks showing no above ground flooding in 1 in 30 year event, plus any potential volumes of above ground flooding during the 1 in 100 year rainfall + Climate Change.
 - g. Infiltration devices shall only be used where they do not pose a threat to groundwater. Only clean water will be disposed of by infiltration devices due to the site being inside a Source Protection Zone. Demonstration of adequate treatment stages for water quality control shall be submitted - SuDS features should demonstrate betterment to water quality, especially if discharging towards a watercourse or aquifer.
 - h. Topographic plans shall be submitted depicting safe exceedance flow paths in case of a blockage within the main surface water system and/or flows in excess of a 1 in 100 year rainfall event. These flow paths will demonstrate that the risks to people and property are kept to a minimum.
 - i. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
 - j. Arrangements to enable any surface water drainage within any private properties to be accessible and maintained including information and advice on responsibilities to be supplied to future owners.
- 10) No development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the Local Planning Authority. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction. The approved CSWMP and shall include:
- a. Method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:

- i. Temporary drainage systems.
- ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.
- iii. Measures for managing any on or offsite flood risk associated with construction.

Highways

- 11) No development shall commence until details of the estate roads and footpaths (including layouts, levels, gradients surfacing and means of surface water drainage, lighting and traffic calming measures), have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and completed in accordance with the approved details and agreed timetable.
- 12) No development shall commence until a detailed scheme for highway improvements to Green Road, comprising traffic calming measures and footway widening provision which shall be in general accordance with those details as shown on Drawing no. 112/2015/04 Revision P2, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Local Highway Authority.
- 13) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority, of the means to prevent the discharge of surface water from the development onto the highway. The development shall be carried out and completed in accordance with the approved details and agreed timetable.

PRIOR TO OCCUPATION OR OTHER STAGE CONDITIONS

Highways

- 14) No part of the development shall be commenced above slab level until the new vehicular access onto Green Road has been laid out and completed in all respects in accordance with Drawing No. 5018 PA31 Rev H Site/block roof plan and with an entrance width of 5.5 metres and been made available for use. Thereafter the access shall be retained in the specified form.
- 15) Prior to the access from Green Road into the site being constructed, the ditch beneath the proposed access shall be piped or bridged in accordance with details which previously shall have been submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter in its approved form.
- 16) The new estate road junction with Green Road, inclusive of cleared land within the sight splays to this junction, must be formed prior to any other works commencing or delivery of any other materials.
- 17) No development shall commence above slab level until a scheme for the provision and implementation electric car charging points for the development has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the occupancy of the development. The scheme

shall be implemented, and the measures provided and made available for use, in accordance with such timetable as may be agreed.

- 18) Details of the gateway feature identified on drawing 5018 PA31 Rev H to be located to the southwest corner of the site shall be submitted to and agreed with the Local Planning Authority and shall be completed prior to occupation of the first dwelling and thereafter retained in the approved form.
- 19) Before the access onto Green Road is first used, visibility splays shall be provided as shown on Drawing No. 5018/PA31 Revision H, as submitted, and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays at any time.
- 20) No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least binder course level or better.
- 21) No dwelling shall be occupied until the area(s) within the site, shown on approved drawing 5018 PA31 Rev H for the purposes of loading/unloading, manoeuvring and parking of vehicles, including electric charging points and secure cycle storage, serving that dwelling has been provided and thereafter that area(s) shall be retained and used for no other purpose. Thereafter those areas applicable to that dwelling shall be retained and remain free of obstruction except for the purpose of manoeuvring and parking of vehicles.
- 22) A metalled footway/cycleway, as shown on Drawing 5018 PA31 Rev H of a minimum 2.0 metres width, shall be provided from the site into Steeles Close, northwards to connect with the existing access in Steeles Close. The metalled footway shall be provided and made available for use prior to the first occupation of any dwellings in the development.
- 23) No dwelling shall be occupied until the highway improvements secured under Condition 12 above have been constructed in strict accordance with the approved details and made available for public use and thereafter retained post construction in the approved form.

Site Infrastructure/Other

- 24) Within three months of the commencement of development a detailed lighting scheme for all public areas to be lit shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show how and where external lighting will be installed, (through technical specifications and the provision of appropriate lighting contour plans which shall include lux levels of the lighting to be provided), so that it can be:
 - a. Clearly demonstrated that areas to be lit have reasonably minimised light pollution, through the use of minimum levels of lighting and features such as full cut off cowls or LED.
 - b. Clearly demonstrated that the boundary vegetation to be retained, as well as that to be planted, will not be lit in such a way as to disturb or

prevent bats using their territory or having access to their breeding sites and resting places or foraging areas, through the use of minimum levels of lighting and features such as full cut off cowls or LED.

All external lighting shall be installed in accordance with the specifications and locations as set out in the approved scheme and shall be maintained thereafter in accordance with that scheme.

- 25) Within three months of the commencement of development details of the provision of fire hydrants for the development, including a timetable for installation, shall be submitted to and approved in writing by the Local Planning Authority. The fire hydrants shall be installed in accordance with the approved details in their entirety and in accordance with the agreed timetable.
- 26) Within three months of the commencement of development, details of how superfast or ultrafast broadband infrastructures will be delivered to every household in the development, subject to network capacity being available, shall be submitted to and approved in writing by the Local Planning Authority. The approved superfast broadband infrastructures for each dwelling shall be installed prior to first occupation of that dwelling.
- 27) Within three months of the commencement of development, details of the areas to be provided for the storage of refuse/recycling bins shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the first occupation of the dwelling to which it relates and shall be retained thereafter and used for no other purpose.
- 28) The residential screen walls and/or fences as may be approved pursuant to the Landscaping Scheme under Condition 6 above, shall be erected prior to the dwelling/s to which they relate being first occupied and thereafter shall be retained in the approved form.
- 29) No dwelling shall be occupied until the archaeological site investigation and post investigation assessment, secured under Condition 3 above, has been completed and submitted to, and approved in writing by, the Local Planning Authority.

POST OCCUPANCY MONITORING/MANAGEMENT

- 30) Notwithstanding the provisions of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development shall be carried out in such a position as to preclude vehicular access to those vehicular parking spaces and no alterations shall be carried out to the approved garage units that would preclude the parking of vehicles within them without planning permission being granted in that regard.
- 31) Within one month of the first occupation of any dwelling, the occupiers of each of the dwellings shall be provided with a Residents Travel Pack (RTP). Not less than three months prior to the first occupation of any dwelling, the contents of the RTP shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority and shall

include walking, cycling and bus maps, latest relevant bus and rail timetable information, car sharing information, personalised travel planning and a multimodal travel voucher. The RTP shall be maintained and operated thereafter.

End of Conditions Schedule

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Asitha Ranatunga of Counsel	Instructed by the Council
He called:	
Luke Barber HND BSc FD C Eng.	Principal Engineer Suffolk CC
Nicholas Joubert MSc	Heritage Consultant
Andrew Ryley BA (Hons) MSc MRTPI	Associate Director DLP Planning Ltd
Alex Roberts BSc (Joint Hons) Associate RTPI	Director DLP Planning Ltd

FOR THE APPELLANT:

Mr Paul Shadarevian QC	
He called:	
Gerry Bullard C Eng. MICE	Partner GH Bullard & Associates LLP
Andrew Crutchley BA (Hons) PG Dip (Oxon) MCiFA	Director The Environmental Dimension Partnership Ltd
Leslie Short BA MRICS MRTPI	Director Artisan Planning and Property Services Ltd

INTERESTED PERSONS:

John Guyler	Chairman of Woolpit Parish Council
John Christie	Local Resident
Susan Eburne	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ1 Notification Letter
- INQ2 Letters of Representation
- INQ3 Statements of Common Ground
- INQ4 Suggested Planning Conditions
- INQ5 Suffolk County Council Community Infrastructure Levy Regulations (CIL) Compliance Statement dated 27 March 2018

DOCUMENTS SUBMITTED BY THE LPA

LPA1 Opening Remarks

LPA2 Pytches Road, Woodbridge – Traffic Calming scheme with buildout

LPA3 Letter from Storey Homes dated 13 August 2018: Land at Gardenhouse Lane, Rickingham

LPA4 Mid Suffolk District Planning Permission: Reference 4455/16

LPA5 List of sites disputed by the Appellant

LPA6 Closing Submissions

DOCUMENTS SUBMITTED BY THE APPELLANT

APP1 List of Drawings

APP2 HCC Decision *CPRE v Dover DC* [2015] EWHC 3808 (Admin) [APP2]

APP3 Agenda Document for MSDC Development Control Committee A 29.8.2018

APP4 Appeal Decision APP/N1730/W/17/3185513

APP5 Hart District Local Plan 1996-2006 Saved Policy RUR2

APP6 MSDC Minor Sites Outstanding Planning Permissions (April 2018)

APP7 Agreement to enter in to an Easement conditional on Appeal dated 29 August 2018 between Flagship Housing Group Limited and Landex Limited

APP8 Certified Copy of Unilateral Undertaking dated 29 August 2018

APP9 Letter from Burgess Homes Limited re site at Back Hills, Botesdale

APP10 Closing Submissions

INTERESTED PERSONS' DOCUMENTS

IP1 Statement by John Guyler

IP2 Statement by John Christie

IP3 Statement by Susan Eburne

EP1D



Ministry of Housing,
Communities &
Local Government

Timothy Waller
Waller Planning Ltd
Suite A, 19-25 Salisbury Square
Old Hatfield
Hertfordshire
AL9 5BT

Our ref: APP/Y0435/W/17/3169314

25 June 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WAVENDON PROPERTIES LTD
LAND TO THE EAST OF NEWPORT ROAD AND TO THE EAST AND WEST OF
CRANFIELD ROAD, WOBURN SANDS, BUCKINGHAMSHIRE MK17 8UH
APPLICATION REF: 16/00672/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC, who held a public local inquiry from 14 - 23 January 2020 into your client's appeal against the decision of Milton Keynes Council to refuse your client's outline application, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016.
2. On 31 October 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal in his letter dated 5 December 2018. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 14 June 2019. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 5 December 2018 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed.
5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to dismiss the appeal.

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gov.uk

A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

6. On 18 May 2020, the Secretary of State wrote to the main parties to afford them an opportunity to comment on a letter from Milton Keynes Council dated 12 May 2020 which included a recent appeal decision relating to Rectory Farm, Woburn Sands Road, Bow Brickhill, Milton Keynes, MK17 9JY. A list of the representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 27 May 2020 and 3 June 2020. The Secretary of State is satisfied that all representations received have been given full and due consideration, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies may be obtained on written request to the address at the foot of the first page of this letter.
7. In his letter of 16 August 2019, confirming the reopening of the inquiry, the Secretary of State explained that one change in circumstance he considered material to the redetermination was the announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway (IR1.16). The Secretary of State has noted that, in March 2020 Highways England announced that work had paused on the Oxford-Cambridge Expressway while they undertook further work on other potential road projects that could support the government ambition on the Oxford-Cambridge Arc (<https://highwaysengland.co.uk/project-update-12-march-2020/>). The Secretary of State has also noted that none of the parties have made representations to him on this announcement. The Secretary of State does not consider the pausing of the work raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of Plan:MK 2016-2031 (Plan:MK), Woburn Sands Neighbourhood Plan 2014 (WSNP) and Site Allocations Plan 2018 (SAP). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.9.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals or their settings, or any features of special architectural or historic interest which they may possess.

Main issues

Housing Land Supply

12. The Secretary of State has considered the Inspector's analysis at IR12.4-12.64. For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11). Like the Inspector, the Secretary of State does not consider it necessary to apply a 1 October 2019 base date (IR12.12). For the reasons given at IR12.13-12.15, the Secretary of State agrees with the Inspector that a proforma can, in principle, provide clear evidence of a site's deliverability (IR12.14). The Secretary of State also agrees with the Inspector that it would not be appropriate to automatically disregard all the sites owned by Homes England and Milton Keynes Development Partnership (IR12.15). For the reasons given at IR12.16-12.25 the Secretary of State agrees with the Inspector that there is no reason to apply a greater discount than the Council's rate (IR12.19). The Secretary of State agrees with the approach the Inspector has taken to prior approval sites in this case (IR12.22).
13. The Secretary of State has noted that the Globe and Castlethorpe Road appeal decisions came to different conclusions on whether the Council could demonstrate a 5-year housing land supply (HLS) (IR12.23), but he agrees that, as the Inspector's conclusions in this case are based on the evidence before him, this should be regarded as being sufficient to explain any difference from the findings of the Castlethorpe Road or Globe Inspectors (IR12.25).
14. The Secretary of State has considered the Inspector's assessment of disputed sites at IR12.26-12.60. For the reasons given, the Secretary of State agrees with the Inspector that the Council can demonstrate a HLS of 5.5 years for the base date of 1 April 2019 (IR12.61). The Secretary of State has also noted that the Inspector finds that, for a base date of 1 October 2019, there would be a 5-year HLS of 5.99 years (IR12.62). However, as already indicated in paragraph 12 above, the Secretary of State agrees with the Inspector that it is not necessary to apply a 1 October base date. The Secretary of State also agrees with the Inspector that the Council's Scenarios 2 and 3 do not affect his findings on HLS (IR12.63-64).
15. Overall, the Secretary of State agrees with the Inspector's conclusion at IR12.65 that the Council can demonstrate a 5-year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of the Council's lapse rate.
16. The Secretary of State has noted that, in their correspondence of 26 May 2020 and 12 June 2020, the appellant has referred to the potential impact of the current Covid-19 pandemic on house building. He has also noted that the appellant submitted a document with their correspondence of 26 May 2020 issued by the Council entitled 'Rectory Farm decision and the Implications for Five-Year Housing Land Supply', published on 29 April 2020. The Secretary of State considers that, as the quantification in that document is based on the appellant's modelling using a past event and they have not put forward specific evidence about the deliverability of individual sites, it does not affect his judgement in this case.

The location of the development

17. For the reasons given at IR12.66-12.71 and IR12.74, the Secretary of State agrees with the Inspector that the location and type of the appeal development does not comply with Policies DS1, DS2 and DS5 of Plan:MK and WSNP policies WS5 and WS6. He further agrees that there is no inconsistency with the Framework in terms of how WSNP Policies WS5 and WS6 seek to safeguard the countryside and direct developments to specific locations, and that these policies can be given significant weight (IR12.71). The Secretary of State agrees with the Inspector that the housing would not be in an appropriate location having regard to the development plan and national policies (IR12.74). He further agrees that the conflict with the development plan in terms of the location of the proposal carries substantial weight (IR12.101).
18. For the reasons given at IR12.72 the Secretary of State agrees with the Inspector that the proposal does not conflict with the development plan insofar as the proposed Oxford to Cambridge Expressway is concerned. He also agrees with the Inspector that there is no conflict with the development plan or other reason to refuse the proposal in relation to the East-West rail project (IR12.73).

Housing Density

19. For the reasons given at IR12.75-12.82, the Secretary of State agrees with the Inspector that the final density figure cannot be established at this point (IR12.78). Like the Inspector the Secretary of State considers that, while the final layout and density of the development has yet to be fixed, a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122 (IR12.81).

Other matters

Best and most versatile agricultural land

20. For the reasons given at IR12.83 the Secretary of State agrees with the Inspector that the loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, the Secretary of State also agrees with the Inspector that this would not, in itself, be a reason for refusal and carries only moderate weight (IR12.99).

Ecology and drainage

21. For the reasons given at IR12.84-12.87 the Secretary of State agrees with the Inspector that the development would not have an unacceptable effect on ecology or protected species (IR12.86). The Secretary of State further agrees that the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime (IR12.87). The Secretary of State considers that the environmental enhancement of ecology and the provision of drainage measures to try to address existing problems are benefits which should be afforded moderate weight (IR12.97).

Highways and parking

22. The Secretary of State notes that the appellant's updated Transport Assessment concludes that there would be very modest impacts on all junctions as a result of the

development (IR12.88 and IR12.96). For the reasons given the Secretary of State agrees with the Inspector that only limited weight can be afforded to any highway benefits (IR12.96).

Facilities and services in Woburn Sands

23. For the reasons given at IR12.89, the Secretary of State agrees with the Inspector that there is little evidence to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands.

Heritage assets

24. For the reasons given at IR12.90-12.91 the Secretary of State agrees with the Inspector that the development would result in less than substantial harm to the significance of the Grade II listed Deethe Farmhouse. He also agrees with the Inspector that the level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, paragraphs 193 and 194 of the Framework state that great weight should be given to the conservation of listed buildings and any harm weighed against the public benefits (IR12.91).

25. The Secretary of State also agrees with the Inspector that, given the existing screening and distances involved, there would be no harm caused to either the Grade II listed park and garden at Wavendon House or the Grade II* Wavendon House itself (IR12.92).

Character and appearance of the landscape

26. For the reasons at IR12.93 the Secretary of State agrees with the Inspector that the development would have a very limited effect on the character and appearance of the landscape. Therefore, the Secretary of State affords little weight to any harm.

Other benefits

27. For the reasons given in IR12.94 the Secretary of State agrees with the Inspector that the provision of affordable housing beyond the minimum policy requirement should carry significant weight. The Secretary of State also agrees with the Inspector that the provision of market housing should be afforded significant weight given the potential number of dwellings that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible.

28. The Secretary of State agrees with Inspector that there are a range of economic benefits (IR12.95) and affords these moderate weight. For the reasons given in IR12.97 the Secretary of State agrees with the Inspector that little weight can be afforded to the appellant's claim of a high-quality living environment given the limited information at outline stage and the policy requirement that all development should be high quality.

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.2, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

30. Having had regard to the Inspector's analysis at IR11.3-11.5, the planning obligation dated 27 February 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.6 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Plan:MK Policies DS1, DS2, DS5 and NE7 and WSNP policies WS5 and WS6, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
32. Weighing in favour of the proposal, the Secretary of State affords the provision of affordable housing significant weight and also affords the provision of market housing significant weight. The economic benefits are given moderate weight, and the Secretary of State also gives moderate weight to ecology and drainage benefits. The Secretary of State affords limited weight to any highway benefits; and little weight to the appellant's claim of a high quality living environment..
33. Weighing against the proposal, the Secretary of State considers the housing would not be in an appropriate location having regard to the development plan and national policies. He further considers that the conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy in Plan:MK. The Secretary of State affords moderate weight to the loss of BMV agricultural land. The Secretary of State gives little weight to any harm to the landscape or character of the area.
34. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. The public benefits have been summarised in paragraph 32 of this letter.
35. Overall the Secretary of State agrees with the Inspector at IR12.98 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal
36. The Secretary of State considers that other matters covered in this decision letter are neutral in the planning balance.
37. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
38. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016

Right to challenge the decision

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

41. A copy of this letter has been sent to Milton Keynes Council and Woburn Sands Town Council.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Party	Date
Milton Keynes Council	12 May 2020

Representations received in response to circulation of the Milton Keynes Council correspondence dated 12 May 2020

Party	
Waller Planning Ltd on behalf of Wavendon Properties Ltd	26 May 2020
Woburn Sands Town Council	26 May 2020
Milton Keynes Council	2 June 2020
Waller Planning Ltd	12 June 2020



Report to the Secretary of State for Housing, Communities and Local Government

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC
an Inspector appointed by the Secretary of State

Date 27 March 2020

Town and Country Planning Act 1990

Milton Keynes Council

Appeal by Wavendon Properties Limited

Inquiry Held on 14-17 and 21-23 January 2020
An accompanied site visit was undertaken on 20 January 2020

Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands,
Buckinghamshire MK17 8UH

File Ref: APP/Y0435/W/17/3169314

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GLOSSARY

APPxx	Appellant's proofs of evidence for redetermined inquiry
APS	Annual Position Statement
BMV	Best and most versatile agricultural land
CD	Core Document
CIL	Community Infrastructure Levy
DL	Secretary of State's first decision letter
dpa	Dwellings per annum
dph	Dwellings per hectare
EIA	Environmental Impact Assessment
GPDO	The Town and Country Planning (General Permitted Development) (England) Order 2015
ha	Hectare
HLS	Housing land supply
ID	Inquiry Document
IR	The first Inspector's report
LPApp	Council's proofs of evidence for redetermined inquiry
LVA	Landscape and Visual Assessment
MKDP	Milton Keynes Development Partnership
MOU	Memoranda of Understanding
NLP	Nathanial Lichfield & Partners
NPPF	National Planning Policy Framework
OB	Optimism bias
PINS	The Planning Inspectorate
Plan:MK	Plan:MK 2016-2031, adopted March 2019 as a development plan document for Milton Keynes
PPG	Planning Practice Guidance
RID	Redetermined Inquiry Document
S106	A legal agreement made under Section 106 of the Town and Country Planning Act 1990
SAP	Site Allocations Plan 2018
SEMK	South East Milton Keynes site
SME	Small and medium-sized enterprises
SOCG	Statement of Common Ground
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TA	Transport Assessment
TCPA 1990	The Town and Country Planning Act 1990
TPO	Tree Preservation Order
WSNP	Woburn Sands Neighbourhood Plan

File Ref: APP/YO435/W/17/3169314

Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands, Buckinghamshire MK17 8UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Wavendon Properties Ltd against the decision of Milton Keynes Council.
- The application Ref 16/00672/OUT, dated 20 July 2016, was refused by notice dated 5 December 2016.
- The development proposed is an outline planning application with all matters except the means of access reserved for subsequent approval described as '**residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure**'.
- This report supersedes that issued on 2 February 2018. The original decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal be dismissed.

1. Procedural Matters

- 1.1. **This section is based on the first Inspector's report** and has been updated as necessary.

Summary of appeal chronology

- 1.2. The original inquiry into this appeal opened on 11 July 2017 and closed on 19 July 2017. Although requests that the appeal be determined by the Secretary of State (SoS) were refused in August 2017¹, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017². The **original Inspector's report was** submitted on 2 February 2018 with a recommendation to allow the appeal and grant planning permission subject to conditions. The SoS disagreed and dismissed the appeal³. The appellant challenged the decision in the High Court. The decision was quashed by order of the High Court on 14 June 2019⁴ and sent back to the SoS for redetermination. The SoS decided to re-open the inquiry, which opened on 14 January 2020 and ran for 7 days. The inquiry was closed in writing on 28 February 2020 once outstanding documents were received, including a completed and executed Section 106 (S106) agreement.

The proposal in outline

- 1.3. The appeal site extends across almost 15.2ha. It consists of about half a dozen fields, often enclosed behind mature hedges and trees, that wrap around the assorted residential streets and cul-de-sacs that project behind Newport Road and either side of Cranfield Road at the northern end of Woburn Sands. The main part of the town lies to the south beyond the Bletchley to Bedford railway line and a level crossing. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. An illustrative

¹ ID26

² ID27

³ CD10.33

⁴ CD10.34

layout plan and a parameters plan⁵ show how up to 203 dwellings and a **doctor's surgery** could be laid out across the site along with associated landscaping and open space.

The application and the Council's decision

1.4. The original planning application was reported **to the Council's** development control committee on 1 December 2016⁶. In the absence of sufficient housing land being identified as available to meet requirements over the next 5 years, the scheme was recommended for approval, subject to conditions and the execution of a S106 Agreement securing contributions towards the provision of health and education facilities, parks, play and community facilities, together with the maintenance of open space. The reasons for the recommendation were as follows:

"With the lack of a five year housing land supply, the strategic policies of the Development Plan are out of date, as outlined by the National Planning Policy Framework. Having weighed all other matters, the proposed development is considered to represent a sustainable form of development in terms of its social, environmental and economic functions and the proposed development is therefore acceptable in principle. Access to the site is considered appropriate and would not put undue pressure on the local road network and there are no other fundamental issues that would warrant a refusal of the application. All other detailed matters would be considered under reserved matters applications at a later date. In the light of these comments and the report above, approval is recommended."

1.5. However, the committee decided to refuse the application contrary to the recommendation. The reasons for refusal were⁷:

1. The Committee resolved to refuse planning permission on the basis that any such development of this site would result in the loss of future development and infrastructure options, causing significant and demonstrable harm and is therefore not sustainable development in accordance with Resolution 24/187 of the United Nations General Assembly definition of sustainable development and the National Planning Policy Framework (NPPF) in respect of future generations. The development would also therefore be contrary to paragraphs 14 and 19 of the National Planning Policy Framework, Saved Policy D1 of the adopted Milton Keynes Local Plan 2001-2011 (adopted 2005) and policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 14 of the National Planning Policy Framework.
2. Furthermore the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically.

1.6. **In the Council's Statement of Case for the first inquiry, the first reason for refusal was effectively amended to read:**

1. The development would be contrary to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2016 ([sic] adopted 2014). This does not constitute

⁵ CDs1.4, 1.5 and 1.7

⁶ CD3.2

⁷ CD3.4

sustainable development in terms of paragraph 14 of the National Planning Policy Framework.

The reasons for recovery

1.7. An initial request to recover this appeal for determination by the SoS was made on the basis that the development exceeded the threshold of 150 dwellings and on whether the *Liverpool* or *Sedgefield* method of calculating the available provision for housing was the 'correct' approach to adopt in this case; that request was refused on 30 August 2017⁸. However, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017⁹. The reason for recovery was that:

... the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

The need for Environmental Impact Assessment (EIA)

1.8. **Although this 'urban development project' falls within the descriptions set out** at paragraph 10b of Schedule 2 and exceeds the thresholds in column 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2015, the Screening Opinion issued by the Council on 7 December 2016 indicated that the effects were likely to be mainly local and, given that the site was not in a specially sensitive location, that an Environmental Statement was not necessary, bearing in mind the advice in Schedule 3 to the Regulations. Accordingly, the scheme is not EIA development and an Environmental Statement is not required. Nevertheless, the application was accompanied by the following documents¹⁰:

- Planning Statement
- Design and Access Statement
- Transport Assessment (TA)
- Flood Risk Assessment
- Archaeology Report
- Tree Survey
- Landscape and Visual Assessment (LVA)
- Ecology Assessment
- Protected Species Report
- Noise Survey and supplementary report
- Statement of Community Involvement
- Sustainability Statement
- Geo-environmental Audit

1.9. The **appellant's evidence to the second Inquiry included** updates to the Ecological Assessment, the TA, and the Sustainability Statement, as well as updates to the Heritage Assessment and Economic Benefits Statement that had been presented to the first Inquiry¹¹.

⁸ ID26

⁹ ID27

¹⁰ CD1.10-CD1.29

¹¹ APP9

*Public consultation*¹²

- 1.10. Pre-application discussion with Council officers together with statutory and non-statutory consultees preceded the application; meetings were held in December 2015 and February 2016. As a result, the intention to pursue a low **density scheme, creating a 'soft edge' to the settlement**, was endorsed. In addition, the link road through the site between Newport Road and Cranfield Road was considered to help relieve congestion at the junction beside the level crossing. Technical evidence was requested, relating to noise emissions from the Deethe Farm Industrial Estate, surface water drainage, ecological assessments and the setting of the Grade II listed Deethe Farmhouse.
- 1.11. A public consultation event (publicised in advance) was held in the Summerlin Centre, Woburn Sands on Friday 22 January 2016. This attracted 218 people. Concerns were raised about the existing junction between Cranfield Road and Newport Road, considered unsafe and subject to congestion, particularly when the level crossing was closed, and the need for traffic calming on Newport Road and Cranfield Road. There was support for the low density and the large **gardens proposed and for the possibility of an additional doctor's surgery** to ease perceived capacity problems at the existing facility.
- 1.12. Discussions with officers continued after the submission of the scheme and a revised illustrative site layout responded to specific points made at a meeting in June 2016. In addition, an LVA was undertaken, surveys of protected species carried out and the TA updated.

*The first Inspector's report*¹³

- 1.13. **The first Inspector's report** (IR) dated 2 February 2018 recommended that the appeal be allowed and planning permission granted subject to conditions. The Inspector concluded that a 5 year housing land supply (HLS) could not be demonstrated and the development plan policies pulled in both ways at a location he considered to be sustainable (IR9.48). He concluded on matters relating to the character of the landscape and surrounding area, the setting of the listed farmhouse, the traffic, car parking and facilities in Woburn Sands, housing density, ecology, and drainage (IR9.49), and considered that these matters were not sufficient to prevent a sustainable housing development from proceeding especially in the absence of a 5 year HLS (IR9.50). Weighing up the harms against the benefits, he concluded that the planning balance was firmly in favour of the proposed development (IR9.51-IR9.55).

*The SoS's decision*¹⁴

- 1.14. The SoS's **decision** letter (DL) dated 5 December 2018 agreed with the Inspector on matters such as the effect of the development on the character of the area (DL27), heritage assets (DL28), traffic, parking and facilities in Woburn Sands, ecology, and drainage (DL30). He disagreed regarding the 5 year HLS and concluded that the supply was approximately 5.9-6.2 years (DL15-18). He also disagreed regarding housing density and concluded that there was conflict with the relevant development plan policy (DL24-26).

¹² Document 11 and CD1.28

¹³ CD10.33

¹⁴ CD10.33

Weighing up the benefits of the scheme against the adverse impacts including the conflicts with the development plan (DL34-37), he disagreed with the **Inspector's recommendation and** concluded that the appeal should be dismissed.

High Court challenge

1.15. The appellant appealed to the High Court on 6 grounds. It succeeded in the case of 2 which related to the **SoS's** findings in relation to the estimated deliverable supply of housing. The Court found that the SoS had failed to provide adequate reasons in relation to the HLS figure adopted in his decision. As a consequence, the decision was quashed in a judgment¹⁵ dated 14 June 2019 and the appeal returned to the SoS for redetermination.

Re-opening of the Inquiry

1.16. The SoS wrote to parties on 16 August 2019¹⁶ confirming that the inquiry would be re-opened. He considered that there had been significant changes in circumstances since the first Inquiry which were material to the redetermination of the appeal. These included:

- The adoption of a new local plan (Plan:MK) with the associated identification of housing expansion areas;
- The announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway; and
- Changes to national policy and guidance.

1.17. A Pre-Inquiry meeting was held on 1 November 2019 which was followed by a note¹⁷ setting out the likely main issues and how they would be addressed. At the meeting, the Council provided a note¹⁸ updating the reasons for refusal to reflect changes in national and local policy. The updated reasons are as follows:

(1) The development by virtue of its location would be contrary to spatial policies DS1 (Settlement Hierarchy), DS2 (Housing Strategy) and DS5 (Open Countryside) of Plan:MK 2016 – 2031 (adopted March 2019) and to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 11 of the National Planning Policy Framework (2019).

(2) Furthermore, the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically, contrary to policy HN1 (Housing Mix and Density) of Plan:MK 2016 – 2031 and paragraph 122 of the National Planning Policy Framework (2019)

1.18. The second Inquiry was held on 14-17 and 21-23 January 2020. I carried out an accompanied site visit on 20 January 2020. On the same day, I also carried out unaccompanied visits to locations in the surrounding area including within

¹⁵ CD10.34

¹⁶ CD10.42

¹⁷ CD10.44

¹⁸ CD12.3

Woburn Sands as highlighted on the site visit itinerary¹⁹. The Inquiry closed in writing on 28 February 2020 once all outstanding documents, including the completed and executed Section 106 agreement, had been received.

2. The Site and Surroundings

- 2.1. The following summary of the site and its surroundings is based on Section 2 of **the first Inspector's report** and the Statement of Common Ground (SOCG)²⁰ submitted to the second Inquiry which provides a number of updates.
- 2.2. The appeal site is almost 15.2ha. It consists of about half a dozen arable and pasture fields to the east of Newport Road and to the east and west of Cranfield Road. Part of the site is designated as Grade 3a agricultural land²¹ in the Agricultural Land Classification. To the north is the former Wavendon Golf Academy which closed in 2018 and is laid out as a golf course with a formal parkland character. Further to the north of the former academy is the Grade II* listed Wavendon House and a Grade II registered park and garden of the same name which was designated on 1 November 2019. To the east is agricultural land and to the south and west are residential properties at Parkway, Hillway, Tavistock Close and Ridgeway as well as the car park of the Wyevale Garden Centre. The site wraps around the Deethe Farm Industrial Estate. Deethe Farmhouse is listed Grade II and sits in the southern corner of the estate with commercial shed-type buildings to the north.
- 2.3. Internal boundary features include hedgerow and scrub. Mature trees and hedgerows bound the Newport Road and Cranfield Road frontages and the northern boundary with the former golf academy. A hedgerow also marks the boundary with a public footpath which runs through the site between the former golf course and the industrial estate. A Group Tree Preservation Order (TPO) protects trees at the proposed access point with Newport Road. A wider Area TPO²² was designated on 8 January 2020 on land which includes the appeal site.
- 2.4. The site lies on the northern edge of Woburn Sands and beyond the development boundary for that settlement. The site is split between the parishes of Woburn Sands and Wavendon. There are neighbourhood plan areas covering both parishes although only Woburn Sands has a made neighbourhood plan. Woburn Sands is a small town with a range of shops and services including schools and a medical centre. There are bus links to Milton Keynes and a railway station on the line between Bedford and Bletchley. There are plans to upgrade the railway line as part of the east-west rail link between Cambridge and Oxford, while the area surrounding Woburn Sands is within the preferred corridor for the Oxford to Cambridge Expressway road proposal.

3. Planning Policy

- 3.1. The relevant development plan documents for this appeal now comprise Plan:MK 2016-2031 (which has replaced the Milton Keynes Local Plan 2001-2011 and the Milton Keynes Core Strategy 2013) and the Woburn Sands

¹⁹ RID14

²⁰ RID06

²¹ RID24 and LPA4

²² TPO1

Neighbourhood Plan 2014 (WSNP). There is also the Site Allocations Plan 2018 (SAP) which is of relevance for some of the disputed HLS sites (see subsequent sections of this report).

- 3.2. The National Planning Policy Framework (NPPF) was updated in February 2019 and a new section on housing supply and delivery in the Planning Practice Guidance (PPG) was published in July 2019.

*Plan: MK*²³

- 3.3. The appeal site lies adjacent to one of only 3 key settlements (Woburn Sands, Newport Pagnell and Olney) in the rural area of Milton Keynes as identified by Plan:MK. They comprise the second tier of the settlement hierarchy in Policy DS1 and are considered to be the most sustainable rural settlements taking into account their population, constraints, transport links and the capacity of services within each town. Policy DS1 states that most new development within the rural area will be concentrated within these 3 settlements.
- 3.4. Policy DS2 **sets out Plan:MK's housing strategy and seeks to deliver a** minimum of 26,500 dwellings across the Borough of Milton Keynes over the plan period. The policy states that new housing development will be focused on, and adjacent to, the existing urban area of Milton Keynes as well as the 3 key settlements. There are 13 criteria within the policy setting out how this development will be delivered.
- 3.5. Policy DS5 defines open countryside as all land outside the development boundaries defined on the Policies Map. Planning permission in the open countryside will only be granted for development which is essential for agriculture, forestry, countryside recreation, highway infrastructure or other development, which is wholly appropriate to a rural area and cannot be located within a settlement, or where other policies within this plan indicate development would be appropriate.
- 3.6. Policy HN1 covers housing mix and density. Part C states that net densities of proposals for 11 or more new dwellings should balance making efficient use of land with respecting the surrounding character and context, and that higher density development will be encouraged in locations with good accessibility to facilities, that are well served by public transport, and where it can be accommodated by existing or improved infrastructure.
- 3.7. Although not mentioned in the updated reasons for refusal, Policy NE7 is **referenced in the Council's planning proof** of evidence which seeks to protect the best and most versatile agricultural land (land in grades 1, 2 and 3a meet this definition in the NPPF). In assessing proposals for greenfield sites, the policy states that the Council will take into account the economic and other benefits of such land. Development involving the loss of agricultural land should seek to use areas of poorer quality land (grades 3b, 4 and 5) in preference to that of a higher quality unless other sustainability considerations suggest otherwise.

*Woburn Sands Neighbourhood Plan*²⁴

²³ CD5.31

²⁴ CD5.3

- 3.8. A small part of the site between Hillway and Ridgway falls within the boundary of the WSNP area²⁵. Policy WS5 states that the preservation of the countryside setting, existing woodland and footpath links into the countryside is key to the future of Woburn Sands. The policy goes on to state that accordingly no extension to the current Woburn Sands Development Boundary will be permitted other than in the following exceptional circumstances:
- Plan:MK identifies a specific need for an amendment to the Development Boundary, and
 - Any proposed amendment is brought forward following full consultation with, and agreement by, Woburn Sands Town Council, and
 - The implications of any revised Development Boundary has been assessed in terms of the need to protect and maintain the character and countryside setting of Woburn Sands.
- 3.9. Although not mentioned in the original, amended or updated reasons for refusal, Policy WS6 was referenced at the second Inquiry. It states that **existing housing developments in Parklands and on the Greens' site are** expected to meet the needs for large scale housing development in Woburn Sands during the plan period. It goes on to state that additional housing in the plan area will be limited to small scale infilling between existing properties or redevelopment of existing properties other than in the following circumstances:
- The review of the MK Core Strategy [Plan:MK] identifies a specific housing need in Woburn Sands, and
 - Land proposed for development is brought forward after consultation, and agreement, with Woburn Sands Town Council, and
 - Development is of a scale and in a location that complies with the Vision and policies of the Neighbourhood Plan, and
 - Any such development is phased to take place in the latter part of the plan period in order to allow the assimilation of the increased population created by the already approved substantial developments.

National policies and guidance

- 3.10. NPPF paragraph 11 sets out a presumption in favour of sustainable development. For decision-taking this means either approving development that accords with an up to date plan without delay or where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless one of two exceptions apply. The first is whether the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development. The second is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

²⁵ CD12.4

- 3.11. Footnote 7 to paragraph 11 clarifies that out of date includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer set out in paragraph 73).
- 3.12. NPPF paragraph 73 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of **five years' worth of housing against their housing requirement set out in adopted strategic policies that are less than five years old**. The supply of such sites should in addition include a buffer of 5%, 10% or 20% depending on the circumstances.
- 3.13. The NPPF glossary defines deliverable as sites for housing that should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. The definition goes on to state that, in particular:
- (a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
 - (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
- 3.14. NPPF paragraphs 122 and 123 seek to achieve appropriate densities for development within the context of making effective and efficient use of land. Paragraph 122 sets out 5 criteria that need to be taken into account including **(d) the desirability of maintaining an area's prevailing character and setting** (including residential gardens), or of promoting regeneration and change.
- 3.15. Paragraph 123 states that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. It then sets out three considerations of which the first two are relevant to plan-making. The third sets out the following:
- (c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
- 3.16. Paragraph 170(b) recognises the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile

agricultural land. Paragraphs 193-196 deal with the impact of development on designated heritage assets.

3.17. The Housing Supply and Delivery section of the PPG sets out a number of paragraphs relating to demonstrating a 5 year HLS. This includes a paragraph²⁶ **on what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.** It states that robust and up to date evidence needs to be available. Sites in category (a) of the NPPF definition are considered deliverable in principle. Sites in category (b) require further evidence to be considered deliverable. The paragraph states that such evidence may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the **site developer(s) which confirms the developers' delivery intentions** and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

4. Planning History

4.1. Two outline planning applications were previously submitted on land forming part of the appeal site. The first (11/00936/OUT) was for the erection of 102 dwellings and associated garages/parking, creation of two new accesses and provision of open space and associated works, which was refused in July 2011. The second (12/01502/OUT) was a resubmission of the first application and was refused in October 2012. Neither refusal was appealed. Two planning applications similar to the one at appeal were submitted in January and February 2017, but were withdrawn prior to determination.

5. The Proposal²⁷

5.1. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. The access arrangements are shown on drawing nos. WO1188-101 rev. PO5 and WO1188-1021 rev. PO3 indicating junction geometries with, respectively, vehicle tracking and visibility splays. Each access is shown as a simple T-junction with 2.4m x 70m visibility splays. **There are 4. Two are designed to serve a new 'spine road' running** through the proposed development from Newport Road (at a position north of Frosts landscape business and the Wyevale Garden Centre) to Cranfield Road (at a point beyond the Deethe Farm Industrial Estate and Spinney Lodge); those

²⁶ PPG reference ID: 68-007-20190722

²⁷ Based on section 3 of the first Inspector's report and section 3 of RID06

access points are shown with 9m radii and are intended to serve a road some 6.2m wide suitable to accommodate buses. The access onto Newport Road entails the removal of 2 category A trees and 2 category B trees protected by the Group TPO. It also necessitates the relocation of a badger sett. Other trees protected by the Area TPO may be affected depending on details at the reserved matters stage.

- 5.2. The 2 other access points are shown on Cranfield Road, one on the outside of the bend beyond Ridgeway and the other opposite the Deethe Farm Industrial Estate; they are also shown with 9m radii, but with carriageways only 5.5m wide, as they are mainly intended to serve discrete parts of the scheme.
- 5.3. All other matters are reserved for subsequent approval, although an illustrative layout plan and a parameters plan show how the new road between Newport Road and Cranfield Road could serve a series of residential streets created partly around cul-de-sacs taken from that new road and partly around the 2 additional junctions on to Cranfield Road. Open space would be provided along with additional boundary screening, landscape buffers, play areas and surface water attenuation ponds.
- 5.4. The Design and Access Statement indicates that the dwellings would range in type and size and include both houses and some flats. 33% of the housing would be affordable dwellings equating to 67 units out of the proposed maximum of 203 units (25% would be affordable rented and 8% shared ownership).
- 5.5. The illustrative plans **show the potential site for a doctor's surgery** which would be provided if NHS England or the local Clinical Commissioning Group indicate that they would be willing to take advantage of such provision. It would either be a standalone facility or a satellite building for the existing surgery in Woburn Sands which has limited room to expand. Should the provision not be taken up, then 3 homes would be provided instead up to the maximum 203. This matter is addressed in the S106 agreement²⁸ and includes a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. The S106 agreement also makes a range of financial contributions towards matters including education, open space, transport, community assets and social infrastructure. It also secures the provision of affordable housing on site.
- 5.6. Suggested conditions²⁹ are intended to ensure that the scheme would be implemented as intended and that the reserved matters and other details (including hard and soft landscaping and boundary treatments) would be submitted to the local planning authority for approval. In addition, foul and surface water drainage systems would be installed and controlled: a Construction Management Plan (including hours of operation) would be devised and implemented: a Landscape and Ecological Management Plan, including measures to safeguard protected species, would be prepared: a Travel Plan would be instigated: further archaeological investigations would be **undertaken: the provision of 'green infrastructure', the retention of trees and the creation of new pedestrian and cycle facilities would be secured.**

²⁸ RID37

²⁹ Section A2 of RID06

6. Other Agreed Facts

6.1. The main SOCG³⁰ sets out a number of agreed matters including:

- The proposal would not have an adverse effect of facilities and services within Woburn Sands;
- The proposed highway junctions onto Newport Road and Cranfield Road would have sufficient capacity to serve the development and additional through traffic and there are no objections to the junctions in highway terms;
- The junctions will remain well within capacity and will not create any queuing or congestion issues on the existing highway network;
- The effect on the listed Deethe Farmhouse would result in a low level of less than substantial harm;
- There are no national landscape designations that require consideration, effects on the locally designated area of attractive landscape will be negligible **and the site and adjacent areas are not 'valued landscapes'** in the context of NPPF paragraph 170;
- The landscape impacts would be limited to the site and immediately adjacent fields and would carry limited weight against the proposal. It is agreed that the same approach should apply at the current Inquiry;
- The proposal should not be refused because of the Oxford-Cambridge Expressway or on the grounds of prematurity;
- The proposal is acceptable with regard to surface water drainage and matters of detailed design can be addressed via planning conditions;
- Matters relating to noise from the adjacent industrial estate can be addressed via planning condition; and
- Matters relating to biodiversity and protected species are not an issue for this appeal and can be addressed via planning conditions and reserved matters applications.

6.2. An addendum to the SOCG³¹ was received after the inquiry addressing the recently designated Area TPO. It confirms that:

- The TPO covers a wide area including the appeal site. It is directed to a wide area rather than in relation to individual trees or groups of trees.
- It is subject to a 28 day legal challenge period up to 5 February 2020 and will remain in effect for 6 months up to 8 July 2020 and thereafter if it is confirmed or replaced in the meantime.
- It is agreed that this new TPO does not materially alter the planning evidence or planning balance as presented by each party

³⁰ RID06

³¹ RID35

- Should outline permission be granted, this would allow for the removal of trees within the area covered by the TPO once details have been fully agreed at the reserved matters stage.
 - The TPO protects trees on site until the implementation of the planning permission.
- 6.3. There is also a SOCG relating to housing land supply³², which sets out the following agreed matters:
- Plan:MK provides the basis for the calculation of the five-year housing land requirement. This states that there is a minimum requirement of 1,767 dwellings a year in the period April 2016 to March 2031;
 - There have been 4,529 net completions in the Plan:MK plan period to 31 March 2019;
 - There is a backlog of 772 dwellings as at 1 April 2019;
 - All of this backlog should be met in the next 5 years (the Sedgefield method); and
 - A 5% buffer should be applied to both the annual requirement and the backlog based on the published 2018 Housing Delivery Test results (February 2019).
- 6.4. The areas of disagreement relating to housing land supply are as follows:
- Whether or not a 5 year supply of deliverable housing sites can be demonstrated
 - The timescale of the assessment (1 April or 1 October 2019)
 - The timing of meeting the definition of deliverable
 - The definition of deliverable
 - Forecast completions
 - The “optimism **bias**” (discounting dwellings from the supply)

³² SOCG1

7. The Case for the Appellant³³

The previous decision letter and the first Inspector's report

- 7.1. The Council asserted that the previous SoS decision letter (DL) remained a material consideration relying on *Davison v Elmbridge BC* [2019] EWHC 1409³⁴. That judgment is on appeal to the Court of Appeal and relates to a **planning committee's decision not an** appeal decision which is an important distinction. The most recent judgment in relation to a challenge against an appeal decision held that the quashed decision is of no legal effect and should not be sub-divided in respect of those matters on which it was quashed: *R (West Lancashire BC) v Secretary of State for Communities and Local Government* [2017] EWHC 3451 (Admin), [27]-[38].
- 7.2. The Council in opening accepted that the SoS DL was not material in terms of HLS and conflict with expired Policies S10 and H8 (location and density respectively) due to the court order and change in circumstances including the adoption of Plan:MK. The Council identified the **DL's finding of failure to accord** with WSNP Policy WS5 was relevant but made clear that the weight to be accorded to that policy would need to be considered afresh. The appellant accepts there is policy conflict but there remains dispute about datedness.
- 7.3. The Council confirmed that the DL findings on landscape and character, heritage, traffic, ecology and drainage remained relevant where the DL simply **endorses the conclusions of the first Inspector's report**.
- 7.4. The only basis upon which the Council maintains the SoS is bound by consistency as to both policy conflict and weight is DL paragraph 26 (and the finding that the proposals were contrary to NPPF paragraph 122 and 123)³⁵. That is contentious and fundamentally incorrect. The approach does not correctly reflect the position that a quashed DL is of no legal effect. It ignores important changes in circumstances in the evidence before the Inquiry including:
- (a) **the Appellant's updated evidence at this inquiry as to the actual net density of the scheme and the changes in housing mix;**
 - (b) the changes to the development plan following adoption of Plan:MK; and
 - (c) **the Council's concession through the evidence of its planning witness³⁶ that density is a matter to be addressed at the reserved matters stage in the context of layout and does not provide a basis for refusal.**

The Development Plan

Plan:MK

- 7.5. The Appellant acknowledges that the development is in conflict with Policies DS1, DS2 and DS5 of Plan:MK³⁷. However, it is important to examine the extent of the conflict and how precisely it arises. The development is contrary

³³ Largely taken from the appellant's closing submissions RID33

³⁴ RID03

³⁵ RID02, paragraph 8(d)(iii)

³⁶ Cross-examination and re-examination of Niko Grigoropoulos on Day 5

³⁷ APP8 page 7 para 3.1

to the terminology of the policies, given their reference to Policy DS5. DS5 is a counterpart policy. Where a proposal conflicts with DS5, it will be contrary to DS1 and DS2. However, it accords with the strategy underlying DS1 and DS2 insofar as directing development to the three key settlements in the rural area **as locations that the Council has "chosen for development"**³⁸.

- 7.6. Woburn Sands is the only key settlement to have its own train station. Plan:MK does not identify any constraint on housing delivery or place any cap on the number of dwellings to be located at Woburn Sands. The first Inspector found Woburn Sands to be a sustainable location for growth (see IR9.48). The WSNP was adopted more than 5 years ago and 3 years prior to Plan:MK. It does not make any allocations and has not been reviewed.
- 7.7. The settlement boundary is tightly constrained. The application of and weight accorded to Policies DS1, DS2 and DS5 must yield to the assessment of HLS. The Council accepted³⁹ that it was to Woburn Sands as a key settlement that development should go in the absence of a 5 year HLS.
- 7.8. The Council has identified conflict with Policies HN1 and NE7 of Plan:MK but confirmed that all other policies weighed in support (including Policy HN2 in respect of affordable housing and Policy EH5 in respect of health facilities) or could be addressed through reserved matters.

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- 7.9. It is accepted that the development conflicts with Policy WS5 as none of the named exceptional circumstances are presently met. The weight to be accorded to the policy must however reflect the extent to which the policy remains in accordance with the NPPF and up-to-date, for the purposes of NPPF paragraph 213.
- 7.10. The WSNP was adopted comparatively early in July 2014 and was assessed for general conformity against a now expired Local Plan backdrop and the 2012 version of the NPPF. Policy WS5 was identified at appeal as creating an unacceptable constraint on growth in circumstances where there was no 5 year HLS. It was accorded very little weight in the Frost appeal⁴⁰ and the first Inspector for this appeal stated it was contrary to the advice in the NPPF (see IR9.20).
- 7.11. The policy is not consistent with the NPPF including the second test which requires the agreement of the Town Council. This was added after the examination without the recommendation of the examiner or any further assessment⁴¹. The policy also seeks to protect the countryside for its own sake which is at odds with the more balanced approach in NPPF paragraph 170(b).
- 7.12. The WSNP makes no provision for an up to date housing requirement in line with NPPF paragraph 65 and 66 and contains no allocations or policies to provide for housing. The lack of WSNP review means that the obvious defects of Policy WS5 have not been scrutinised. The Council is incorrect to say that

³⁸ CD5.31 Glossary on page 286

³⁹ Cross-examination of Niko Grigoropoulos on Day 5

⁴⁰ CD6.6

⁴¹ CD5.17 paragraph 7.6.12 and recommendation 2B

the policy has been given a new lease of life by Plan:MK as the Plan Inspector could not and did not make any finding on the soundness of this policy.

- 7.13. **The Council's planning witness accepted no conflict with Policy WS6 in cross-examination but the Council's advocate seemed to withdraw that concession in cross-examination of the appellant's planning witness.** The policy is parasitic on WS5 and equally inconsistent with the NPPF, requiring the agreement of the Town Council and seeking to delay development to the end of the plan period. This reduces the weight to be accorded to it.
- 7.14. Irrespective of the 5 year HLS position, Policies WS5 and WS6 are out of date for at least two reasons: (1) their wording is highly restrictive and fails to accord with the NPPF and (2) the WSNP was not prepared using an up to date housing requirement and makes no housing allocations.

Housing Land Supply

Overview

- 7.15. The SOCG on HLS sets out a number of agreed matters in terms of housing requirement, net completions, the backlog, the use of Sedgfield, the buffer and the resulting requirement.
- 7.16. Plan:MK was assessed under the tests contained in the old 2012 NPPF and the Plan Inspector made no findings as to deliverability under paragraph 73 and glossary definition of the 2019 NPPF. The Council's HLS witness accepted that **the Plan Inspector's Report does not help** in determining whether the Council can demonstrate a 5 year HLS now.
- 7.17. The appellant has identified that the deliverable HLS at the base date of 1 April 2019 would be 3.55 years (7,161 dwellings) and at the base date of 1 October 2019 would be 3.76 years (7,579 dwellings).
- 7.18. **In comparison, the Council's respective figures are understood to be** 6.41 years (12,931 dwellings) for the 1 April 2019 base date and 6.91 years (13,949 dwellings) for the 1 October 2019 base date
- 7.19. Deductions of 2,844 dwellings against the 1 April base date and 3,858 dwellings against the 1 October base date would result in the Council having less than a 5 year HLS.
- 7.20. The appellant submits that a deduction of that scale is justified on three site-specific bases. Firstly, that sites with detailed permission (category (a) in the NPPF definition) require deductions to reflect unrealistic build-out rates. Secondly that sites with outline permissions or allocations (category (b) in the definition) require deductions or removal to reflect the absence of clear evidence to demonstrate deliverability at the base date. Thirdly, other sites which do not fall within either category (principally prior notification sites under Class O) require removal to reflect the absence of clear evidence to demonstrate deliverability at the base date.

Deliverability

- 7.21. The Council refer to the judgments in *St Modwen*⁴² as to the distinction between certainty and a realistic prospect. That latter judgment was considered further and qualified in *Babergh*⁴³. The revised NPPF in 2018 and 2019 altered the definition of deliverable in two key respects. Firstly, the requirement to demonstrate clear evidence and secondly the use of closed categories in the definition with the burden of proof distributed accordingly. These changes have been described as ensuring a stricter approach by Inspectors⁴⁴. *Babergh* is more recent than *St Modwen*.
- 7.22. A site specific approach must be applied to an assessment of deliverability to comply with the NPPF. The SoS DL on this case was quashed based on the failure to provide site specific analysis on any reasons for the final HLS figure. It is permissible to consider the broader context of HLS in terms of the size and type of sites included, historic rates of delivery and the accuracy of past forecasts, but this cannot replace site specific analysis. In this respect, the **Council states that their historic use of a generic "optimism bias" no longer meets the requirements of the NPPF nor the PPG⁴⁵**. That said, the Council continue to use it and adopt that position in the context of this appeal.

The base date

- 7.23. **The appellant's** HLS witness explained why it is essential that the evidential position ('clear evidence') is assessed by looking to what existed at the base date. **A 'backfilled' approach whereby a site was simply deemed to be deliverable and evidence then adduced and accumulated over the course of the year was not methodically sound and not compliant with the NPPF or PPG.** There is Inspectorial authority on this point from the Woolpit decision⁴⁶. It is possible to take into account information that has arisen after the base date, but only where the site passed the test of deliverability at the base date⁴⁷. This was the approach of the last decision within the Milton Keynes area at Castlethorpe Road⁴⁸. The earlier Globe decision cited Woolpit but appeared not to apply it, notably omitting to set out the state of the evidence at the base date for respective sites.
- 7.24. The Council has further cited the Colchester Road decision⁴⁹, but the example cited by the Inspector of a separate full permission being excluded, is not replicated in the instant case. Moreover, that Inspector in disagreeing with Woolpit in respect of new permissions again did not address the specific problem of completions.
- 7.25. In assessing the intention of the NPPF, it is instructive to consider the position of Annual Position Statements requiring research to be complete prior to the necessary consultation with stakeholders which must take place between notification on 1 April and submission on 31 July of the given year. It is

⁴² CD7.1 [2016] EWHC 968 (Admin) and CD7.6 [2017] EWCA Civ 1643

⁴³ RID09 [2019] EWCA Civ 2200 paragraphs 45-50

⁴⁴ CD6.18 for example

⁴⁵ LPA1 page 22 para 4.54

⁴⁶ CD6.16 paragraphs 67 and 70-79

⁴⁷ CD6.13, CD6.14 and CD6.15

⁴⁸ CD6.18 paragraphs 58-61 and 65

⁴⁹ CD6.22, paragraph 63

therefore entirely practical and consistent with the intention of national policy to ensure that the evidence base is assembled prior to a 1 April base date, including the draft written agreements. The appellant referred to two examples from Mid Suffolk⁵⁰ and Babergh⁵¹ District Councils which respectively itemise the extent of prior consultation and evidence collection, resulting in the production of Memoranda of Understanding (MOU).

- 7.26. The fundamental principle at stake is that of robustness in the evidence base to give effect to the policy imperative of boosting the supply of housing. This can only be ensured by looking to the full 5 year period (not a shortened 4 ¼ period) and by ensuring full transparency on the part of the Council when drawing up its Annual Monitoring Report. **The Council's HLS witness accepted** that none of the evidence provided in its June 2019 HLS Statement contained documentary evidence at the base date of 1 April 2019. They either substantially pre-dated 1 April 2019 (based on Plan:MK information) or substantially post-dated it (such as the proformas). No amount of chasing of proformas or sense checking could repair the fundamental deficit of evidence at the base date. **The appellant disputes the Council's claim** that the appellant promotes an artificial two stage approach as one stage should suffice.
- 7.27. It is for this reason that the appellant advances an updated base date to 1 October 2019 to allow the most up to date evidence to be adduced, but only in a manner that reflects the level of completions that have occurred since 1 April 2019.

Proformas

- 7.28. **The Council's proformas are not written** agreements in line with the PPG ID68-007. They present the trajectory with a simple box to check without identifying the extent of the evidence of progress or testing the build out rate. Supporting information by way of covering emails was often sparse. As such, the Council has had to rely on **variety of updates from its witness' proof to oral additions** in the roundtable session. This is wholly inconsistent with national policy and does not reflect clear evidence to reflect the position as at the base date.

Build-out rates

- 7.29. The evidence of the **appellant's HLS witness** sets out the national perspective⁵² which identified the highest build-out rates of 268dpa averaged over 5 years at the Eastern Expansion Area in Milton Keynes (Broughton Gate and Brooklands). Based on the local **experience of the appellant's HLS witness**, any rates significantly in excess of this figure should be treated with scepticism.

Public ownership of land

- 7.30. Another key obstacle for the Council has been the extent to which it relies on sites in public ownership including the Milton Keynes Development Partnership (MKDP), the Milton Keynes Community Foundation and Homes England. The reason for delays in releasing sites are myriad. The proformas submitted by the Council were subject to assessment by a body that included officers of the

⁵⁰ RID10

⁵¹ RID08

⁵² CD11.1 and APP3 appendix 1 paragraphs A1.18-A1.22

Council and MKDP. Contrary to **the Council's advocate's** suggestion that this impugned their professional judgment, there was an inevitable circularity in the proforma assessments submitted by these bodies, unjustifiably reinforcing misplaced optimism as to delivery rates.

Past forecasts

- 7.31. The Council has had historic difficulties in the accuracy of its forecasting. When tabulating actual completions against forecasts⁵³, there is an under-delivery against forecasts of 28-30%. Current and past trajectories have failed to be met. Historic rates are instructive in identifying persistent trends and providing a sense check with long-range date.
- 7.32. Inspectors have commented **on the way the Council's supply assumes very sharp increases in delivery beyond those experienced either locally or nationally**⁵⁴. In response to this, the Council have sought to rely on recent short-term uplifts in completion rates to suggest that there has been a change of direction. Such data is too short-term and too limited in any supporting analysis to justify any conclusion that there has been improvement in their forecasting exercise. There is no evidence that Plan:MK is responsible for recent uplift in delivery. Peaks in development activity have historically been attributable to apartment blocks. This provides limited assistance in respect of how sharp and continuing increases can occur on strategic sites.

Consistency with previous decisions in Milton Keynes

- 7.33. The Castlethorpe Road decision, being the most recent and having taken into account the earlier Globe decision remains the most helpful reference point for the Inspector and SoS. The legal challenge to the Castlethorpe Road decision was unsuccessful. The decision sets out robust approach to individual sites at paragraphs 58-60 identifying longstanding delays to delivery and an overall absence of strong evidence. The Inspector in paragraph 63 made clear that he stopped halfway through looking at sites as it was already evident that the Council did not have a 5 year HLS.

*Individual site analysis*⁵⁵

- 7.34. **The appellant's analysis is based on the evidence of its HLS witness** in his proof (Appendix 3) and rebuttal (Appendices 3 and 3a)⁵⁶. The errata document⁵⁷ updates the evidence in several respects following the roundtable session.

Site 1: Brooklands (deduct 232 units for 1 April or 267 units for 1 October)

- 7.35. Sites with detailed permission **but Council's rate of delivery is excessive**, assuming a sharp uplift in delivery from 182 dwellings in 2019/20 to 347 dwellings in the following year with only 2 developers on site across 7 parcels. This would be substantially higher than the highest figures hitherto achieved (268dpa across 12 parcels). Reduce delivery from 222dpa to 175dpa (April) or 168dpa (October).

⁵³ APP3 appendix 2, table 2 and table 3

⁵⁴ CD5.32 paragraph 145 and CD10.33 paragraph 9.9

⁵⁵ **The appellant's closing submissions sets out its case for each site in more detail**

⁵⁶ APP3, 4 and 6

⁵⁷ RID20

- 7.36. For Phases 1B and 5B-6B, **the Council's evidence comprised in proforma** responses compiled as late as June 2019. These both assume rates of 60dpa, which are at odds with an average annual rate of 45dpa across Brooklands.
- 7.37. For Land south west of Fen Street, the Council have confirmed that no proforma was submitted for this site and accordingly, the Council have essentially relied on data from other developers on other sites. **The appellant's** figures reflect the commencement of completions on the site, but deduct the completions on this strategic site as the forecast rates are unrealistic.

Site 2: Tattenhoe Park (deduct 447 units for 1 April or 530 for 1 October)

- 7.38. Sites with outline permission with the Council relying on proformas from Homes England submitted in June 2019. Tender documents for Phases 2 and 3 dated July 2018 do not declare extent of progress at 1 April 2019 base date. Council sought to add extra 83 dwellings as a result of potential delivery agreement. No developer commitment for Phases 4 and 5.
- 7.39. Detailed permissions for Phases 2 and 3 granted on 15 November 2019 and 24 October 2019 respectively after the 1 April. Sites have had outline permission for over 10 years and failed to deliver any units. Proformas insufficient for either 1 April or 1 October base date. Castlethorpe Road Inspector agreed that sites were not deliverable.

Site 3: Western Expansion Area (deduct 1,503 units for 1 April or 1,084 for 1 Oct)

- 7.40. Outline permissions only for Area 10 and Area 11 Remainders at 1 April. Council rely on proformas. Detailed permission for 152 dwellings granted 24 September 2019. Following advice from developer, the Council has removed 306 units from Area 10 and 229 units from Area 11.
- 7.41. No evidence of deliverability at 1 April for either area and no evidence for why delivery rate of 300dpa for Area 10 would be realistic. Very large strategic sites **and Council's expectations need reducing. Castlethorpe Road Inspector** agreed the site was not deliverable.

Site 4: Strategic Land Allocation (deduct 864 units for 1 April or 743 for 1 Oct)

- 7.42. The disputed sites within this allocation all had outline permission at 1 April. No lead developer. Proformas not supplied for all sites. Belated evidence at roundtable session. **Council's average delivery** rate of 399dpa should be adjusted to 274dpa based on local and national evidence.
- 7.43. No proforma for Ripper Land site, only an email about access issues, so remove all units from supply for either base date. No proforma for Land West of Eagle Farm South although reserved matters application awaiting legal agreement at 1 April, so reduce supply by 64 units for either base date. No proforma for Eagle Farm site and the information from October 2019 on **developer's** intentions is not clear evidence and so remove all units from supply for either base date.
- 7.44. For Glebe Farm site, the Council rely on updated proformas and 2 detailed permissions granted in September and October 2019. Appellant taken into account September permission if 1 October base date used. Supply reduced by either 310 units (April) or 142 (October). For the Golf Course Land, the Council

rely on detailed permission for 180 units granted on 1 November 2019 which the appellant accepts could be included in 1 October base date but not April. For the Church Farm site, the Council rely on a proforma where only one condition has been discharged from outline permission so remove all units from supply for either base date.

Site 5: Newton Leys (deduct 80 units for 1 April and 0 for 1 October)

7.45. Outline permission at 1 April with reliance on proforma means removal of all units from supply at this base date. Reference to pre-application discussions at roundtable session not sufficient evidence of progress to reserved matters. Detailed permission granted in September so can include 80 units at October base date.

Site 6: Campbell Park Remainder (deduct 300 units for either 1 April or 1 October)

7.46. Proforma from MKDP limited and does not even confirm **agreement to Council's** forecast. Council referred to development brief and ambitions for a mixed use development at roundtable and an email from December 2019 refers to a joint strategy between MKDP and two named developers, but forecasts no planning application until latter half of 2020 and no start on site until 2021. The Castlethorpe Road Inspector agreed that the site was not deliverable.

Site 7: SEMK Strategic Growth Area (deduct 50 units for either 1 April or 1 Oct)

7.47. Allocated site in Plan: MK with no outline permission. No evidence of pre-application activity and SOCG from June 2018 is relatively high level and does not provide up to date evidence.

Site 8: Berwick Drive (deduct 16 units for 1 April or 11 units for 1 October)

7.48. Allocated site in Plan: MK and Council owned. Council rely on proforma from June 2019 and November update that refers to pre-application discussions and reduces number of units from 16 to 11. Delete site from supply.

Site 9: Wyevale Garden Centre (deduct 328 units for 1 April or 142 for 1 October)

7.49. Proforma from June 2019 limited. Permission not granted until July 2019. Delete site from April base date. Can include with October base date but with a deduction to reflect likely delivery rates over 5 years as the **Council's** rates of 150 and 130 in years 4 and 5 are unrealistic. 62dpa is more realistic.

Site 10: Food Centre (deduct 298 units for 1 April or 200 for 1 October)

7.50. Allocated site with no planning application as of 1 April and no proforma until November 2019. No detail of pre-application discussions. Hybrid planning application not submitted until 23 October. Delete site from supply.

Site 11: Redbridge (deduct 19 units for 1 April or 48 units for 1 October)

Site 12: Rowle Close (deduct 18 units for either 1 April or 1 October)

7.51. These sites are adjacent and have been considered as one. They are covered by an allocation but no planning application or permission. Reliance on a proforma only. Delete both sites from supply.

Site 13: Agora Redevelopment (deduct 104 units for either 1 April or 1 October)

7.52. Allocated site with no extant permission and no application pending. Council rely on amended trajectory in June 2019 proforma. Castlethorpe Road Inspector considered site was not deliverable as at 1 April.

Site 14: Galleon Wharf (deduct 14 units for either 1 April or 1 October)

7.53. The main parties agree this site can be deleted from the supply.

Site 15: Railcare Maintenance Depot (deduct 175 units for either 1 Apr or 1 Oct)

7.54. Outline application for mixed use development with activity focussed on non-residential uses at both base dates. June 2019 proforma limited and no new information to indicate progress towards implementing the residential elements. Delete site from the supply.

Site 16: Eaton Leys (deduct 308 units for 1 April or 182 units for 1 October)

7.55. Outline permission only at 1 April with no proforma until December 2019. Submission of reserved matters application means appellant accepts site is deliverable but with a consequent reduction in completions to reflect local and national data: 52dpa from 2021/22 to reflect that the site competes with other Barrett David Wilson sites locally.

Site 17: Lakes Estate Neighbourhood Plan Sites (deduct 130 units for 1 April or 279 units for 1 October)

Site 18: Phelps Road (deduct 11 units for either 1 April or 1 October)

Site 27: Southern Windermere Drive (deduct 11 units for either 1 April or 1 October)

7.56. These sites form part of a phased Council regeneration proposal. June 2019 proforma from Housing and Regeneration Manager reveals complexity of works commencing with demolition and re-housing of Council tenants. Hybrid application mentioned in proforma not submitted in late 2019. Considerable discussion at roundtable on the correct way of assessing impact of demolition **and replacement dwellings. Appellant's approach** is that the completion of dwellings to replace those that are due to be demolished does not meet housing need and therefore should not be permitted to address the housing requirement. The maximum number of units that can be taken into account is therefore 110, although there is no clear evidence for even this number.

Site 19: Land off Hampstead Gate (deduct 16 units for 1 April or 34 units for 1 Oct)

7.57. MKDP site with proforma submitted 13 November after both base dates. The accompanying email sets out project dates but nothing else provided. Delete site from supply.

Site 20: Land off Harrowden (deduct 25 units for either 1 April or 1 October)

7.58. Council owned site with June 2019 proforma. Uncertainty of delivery and Council accept trajectory should be pushed back to 2022/23. Delete site from supply.

Site 21: Broughton Atterbury Self Build Plots (deduct 6 units for either 1 April or 1 October)

7.59. MKDP site with June 2019 proforma and no further evidence. While Council referred to wider planning permission for wider site, no clear evidence of deliverability for the specific site. Assertion of demand for custom-built plots. Delete site from supply.

Site 22: Hendrix Drive (deduct 10 units for either 1 April or 1 October)

7.60. MKDP site with June 2019 proforma limited. No clear evidence of deliverability.

Site 23: Kellan Drive 1 (deduct 10 units for 1 April or 12 units for 1 October)

7.61. Council owned site with June 2019 proforma limited. Application submitted by 1 October but not determined and no identified developer. No clear evidence of deliverability.

Site 24: Singleton Drive (deduct 22 units for either 1 April or 1 October)

7.62. MKDP site with June 2019 proforma limited. Reference to pre-application advice and development brief not documented by Council. No clear evidence of deliverability.

Site 25: Former MK Rugby Club (deduct 100 units for either 1 April or 1 October)

7.63. Council owned site and Plan:MK allocation with land on long leasehold to the Parks Trust. No application submitted. May 2019 proforma from Bellway Homes but not yet the site owner and text of accompanying email states they are not under contract. Council rely on December 2019 email from Property team recording a putative land disposal agreement in an advanced state but no clear evidence of deliverability. Castlethorpe Road Inspector found site was not deliverable.

Site 26: Timbold Drive (deduct 130 units for 1 April or 118 units for 1 October)

7.64. MKDP site and SAP allocation. June 2019 proforma limited. New outline permission being sought but no reported progress on any reserved matters applications. No clear evidence of deliverability.

Site 27 (see above)

Site 28: Land north of Vernier Crescent (deduct 14 units for either 1 Apr or 1 Oct)

7.65. MKDP site and SAP allocation. June 2019 proforma limited. Pre-application work not documented and disposal plan pushed back. No clear evidence of deliverability.

Site 29: Manifold Lane (deduct 18 units for 1 April or 33 units for 1 October)

7.66. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to application for permission. Council latterly referred to email correspondence but site still in MKDP ownership and sale dependent on permission. In roundtable Council only able to say application anticipated in January 2020. No clear evidence of deliverability.

Site 30: Daubeney Gate (deduct 90 units for 1 April or 73 units for 1 October)

7.67. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to site being marketed. Council latterly referred to email correspondence with Taylor Wimpey but site still in MKDP ownership and purchase dependent on board approval and site investigation. Site capacity already reduced to 73 units. In roundtable, Council only able to say application forecast for March 2020. No clear evidence of deliverability.

Site 31: Springfield Boulevard (deduct 12 units for 1 April or 13 units for 1 October)

7.68. Council owned site and neighbourhood plan allocation. June 2019 proforma limited. Application submitted and then withdrawn. Application submitted in November but not registered until 2 December. No clear evidence of deliverability.

Site 32: Hindhead Knoll (deduct 30 units for either 1 April or 1 October)

7.69. MKDP site and neighbourhood plan application. June 2019 proforma limited. Application submitted October 2019 but not yet determined. No clear evidence of deliverability.

Site 33: Land at Walton Manor (deduct 115 units for either 1 April or 1 October)

7.70. MKDP site and SAP allocation. June 2019 proforma limited. Council rely on outline application submitted January 2019 and approved in November. Site remains in MKDP control and further sale to development dependent on progress with site disposal. No clear evidence of deliverability.

Site 34: Land at Towergate (deduct 150 units for either 1 April or 1 October)

7.71. Homes England site with outline permission and SAP allocation. June 2019 proforma merely looks ahead to future marketing activity. Landowner sought to discharge part 1 and 2 of condition 6 in September 2019. Later application to discharge ecological mitigation was withdrawn in August 2019. Indicates marketing activity has been inhibited. No clear evidence of deliverability.

Site 35: Reserve Site 3 (deduct 22 units for either 1 April or 1 October)

7.72. MKDP site and SAP allocation. June 2019 proforma limited. No further progress with an allocation. No clear evidence of deliverability.

Site 36: High Park Drive (deduct 74 units for either 1 April or 1 October)

7.73. Site with outline planning permission. No proforma. Work to discharge condition post-dates both base dates. No clear evidence of deliverability.

Site 37: Maybrook House (deduct 25 units for either 1 April or 1 October)

7.74. Prior notification site. Appellant explained that such a site does not fall within category (a) or (b) in the NPPF definition of deliverable. The PPG reference to "conversions" in 68-029 only refers to completions, it does not designate such units as part of a supply. If sites are to be included, there is still a requirement to assess the extent to which the sites are available in light of ongoing activity in existing use and whether there is clear evidence they will deliver completions at the rate forecast. No proforma for this site and no further evidence from Council. Site is still not fully vacated and so should not be

considered for residential use. Clear evidence that the site could not be delivered at either base date.

Site 38: Mercury House (deduct 113 units for either 1 April or 1 October)

7.75. Prior notification site. No proforma and no further evidence from Council. Grant of approval for demolition as at 9 January 2020 but no evidence of any timescale for further works. Clear evidence that the site could not be delivered at either base date.

Site 39: Bowback House (deduct 107 units for either 1 April or 1 October)

7.76. Prior notification site. No proforma and no further evidence from Council. Site is still not fully vacated and still be marketed for office use. Should not be considered available for residential use. Clear evidence that the site could not be delivered at either base date.

Site 40: Land east of Tillbrook Farm (deduct 36 units for either 1 April or 1 October)

7.77. Site with outline planning permission. June 2019 proforma and follow-up email from November 2019 refer to delays of further 3 months for submission of reserved matters. No clear evidence of deliverability.

Site 41: Tickford Fields (deduct 220 units for either 1 April or 1 October)

7.78. Council owned site with no outline permission. June 2019 proforma records start date as unknown. December 2019 email refers to future application but no further progress towards securing developer partner. No clear evidence of deliverability.

Site 42: Land west of Yardley Road (deduct 210 units for either 1 April or 1 October)

7.79. Site with outline permission and allocated in Olney Neighbourhood Plan. Council rely on June 2019 proforma. Reserved matters application submitted November 2019. No clear evidence of deliverability.

Site 43: Omega Mansions (deduct 10 units for 1 October)

7.80. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 44: Cable House – duplication with Site 38 (Mercury House)

Site 45: Chancery House { deduct 40 units for 1 October)

7.81. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 46: Land south of Cresswell Lane – Central MK C3.2 (deduct 294 units for either 1 April or 1 October)

7.82. The Council did not consider that this site was deliverable as at the 1 April 2019 base date. Full planning permission was only granted on 31 July 2019. There was therefore no clear evidence that the site was deliverable as at April base date. This application did not result in an amendment to the MK Housing Statistics and as such it was considered that the site remains undeliverable.

Site 47: Castlethorpe Road (deduct 50 units for 1 October)

7.83. Outline permission granted at appeal after 1 April. No clear evidence from Council as to why it should be included in the supply.

Site 48: Station Road Elder Gate

7.84. [Not covered in closing submission or in detail elsewhere by appellant]

Sites 49-52: Council's "Year 6" sites

7.85. The Council sought to add 4 sites predicted to deliver in first half of 2024/25 year (if the base date is 1 October). **The appellant's overall position is that the timescales for delivery are extremely uncertain given that completions are only anticipated at the end of the period. None have outline permission and no recorded developers.**

Site 49: Rear of Saxon Court (deduct 20 units for 1 October)

7.86. Council referred to development brief consultation in summer 2019. MKDP acting for Council and does not provide sufficient evidence of progress. **Council's most recent assessment** in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 50: Rear of Westminster Court (deduct 15 units from 1 October)

7.87. MKDP acting for Council and does not provide sufficient evidence of progress. **Council's most recent assessment in December 2019 was that there was no** clear evidence of delivery in 5 years.

Site 51: C4.2 (deduct 22 units from 1 October)

7.88. MKDP acting for Council and does not provide sufficient evidence of progress. **Council's most recent assessment in December 2019 was that there was no** clear evidence of delivery in 5 years.

Site 52: Cavendish House (deduct 9 units from 1 October)

7.89. Part of Fullers Slade regeneration proposals now approved at referendum with a development option selected. **Proforma from MKDP states 'strong possibility'** site will come forward, but still not clear evidence of delivery.

Summary on housing land supply

7.90. The Council does not have a robust, deliverable five-year supply of housing land. This has been the case for some considerable time. The appeal site if released would be delivered within 5 years as a small site under the control of a SME developer **which the Council's** Housing Delivery Action Plan seeks to promote. Further, there has been a significant shortfall in the provision of affordable housing over the years which this site would help to address. The shortfall in housing for a new town is beyond problematic and the imbalance between jobs and housing increases in-commuting and frustrates sustainable growth.

Location of the development

7.91. The first Inspector found site to be in a sustainable location due to accessibility of public transport and local facilities and the absence of any unacceptable environmental effects.

Development plan and national policy

7.92. The adoption of Plan:MK has not altered this but recognised and reinforced it. Policies DS1 and DS2 identify Woburn Sands as a sustainable location with no cap on development. There is very limited space within the settlement boundary for development. Changes to the boundary in Plan:MK have reflected existing commitments, the Frosts appeal, the Nampak permission and the Frosts retail permission.

7.93. The revised NPPF in 2018 and 2019 has not altered sustainability. It continues to boost HLS (para 59), direct housing to sustainable locations (para 103) and ensure development is located within locations including rural locations where it can contribute to the vitality of the community (para 78). Majority of recent development at the Nampak site and of a density and general form that takes **little account of town's existing character**.

7.94. Housing would support public transport, shops and services. The existing **doctor's surgery has capacity for new patients and financial** contributions can be made for school places. Woburn Sands and the appeal site are appropriate locations for future growth. The fact that the Plan:MK Inspector did not require further allocations and the Town Council are declining to review WSNP does not alter this.

Oxford-Cambridge Expressway

7.95. The Council did not cite this as any basis for refusal of scheme and this remains their position in the SOCG and at the inquiry. The appellant has set out that plans are at the very earliest stages of consultation with the Secretary of State for Transport indicating that he will review whether there is a continuing justification for the proposal having described its benefits as finely balanced and the need to demonstrate a strong case that it will boost jobs, prosperity and has local support⁵⁸.

7.96. Examining the site and locality there is no realistic prospect of substantial road construction at the appeal site or vicinity. The appellant has explained the extent of constraints preventing road construction, most notably the registered park and garden and residential development including the Strategic Land Allocation. Further, the suggestion made by Highways England that development on the site would be contrary to the adopted development plan and potentially result in conflict with the expressway is wrong. Plan:MK only deals with the expressway in the context of the SEMK Strategic Growth Area. Therefore, the expressway does not constitute a reason to withhold consent.

⁵⁸ APP8 paragraph 4.6

Housing density

- 7.97. At this Inquiry, the appellant has made clear that the density figure should be assessed at 20.3 dwellings per hectare (dph) applying a net density approach **that subtracts the area's listed in the planning witness' proof**⁵⁹. That approach reflects the absence of any statutory definition or any extant policy or guidance. Changes to the housing mix would increase density in respect of habitable rooms per hectare⁶⁰.
- 7.98. **The Council's case at the first Inquiry sought to prolong the** initial objection on the basis of Policy H8 of the Local Plan 2005 which looked for a density of 35dph for locations like Woburn Sands. The first Inspector found no substance in this point in his paragraphs IR9.43 and IR9.45. The SoS DL paragraphs 24-26 referred consistently to conflict with Policy H8. The SoS referred only in DL paragraph 24 to NPPF paragraphs 122-123 in assessing the accordance of the policy with NPPF, notably identifying its use of a range of average net densities.
- 7.99. The development plan position and national policy position have both moved on markedly since the original Inquiry with the expiry of Policy H8. The policy framework for density is now Policy HN1(c) with contextual support from Policy SD1 and D1. Policy HN1 conforms with NPPF paragraph 122 and was found sound by the Plan:MK Inspector albeit in the contest of NPPF 2012.
- 7.100. The correct approach to assessing acceptability of density is to assess those areas immediately adjacent to the development, not an arbitrary wider **area comprising the whole settlement. The appellant's evidence carries out a** systematic calculation⁶¹ of density of area surrounding the site with regard to Policy HN1(c) and NPPF paragraph 122(d) in particular. **The Council's planning witness** accepted in cross-examination that he had undertaken no calculation of density of his own, had relied **on the Nampak Inspector's finding of density**, and had not identified any minimum density. His 27dph represented one variant of an acceptable scheme and he considered the acceptable number of dwellings on the site may be higher or lower than 203. He also accepted that NPPF paragraph 123(a) is a plan-making provision and 123(c) is to be read in the broader context of paragraph 122.
- 7.101. **The Council's planning witness conceded that the layout of the** development was a reserved matter and one the Council could control in due course. Article 2 of the Town and Country Planning (Development Management **Procedure) Order 2015 defines "layout": "means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development".**
- 7.102. **The Council's suggestion that a Council cannot control density at the** reserved matters stage relies on the solitary basis of a single paragraph of the **Planning Encyclopedia's section 3B-2200.5** citing *R v Newbury DC Ex p Chieveley Parish Council* [1998] PLCR 51⁶². The Council has not explained

⁵⁹ APP8 paragraph 5.5⁶⁰ APP8 paragraph 5.6-5.8⁶¹ APP10 appendices 2-6, especially appendix 2 which focuses on the built up area of Woburn Sands only⁶² RID23

which part of the judgment is relied upon. However, on its face the judgment **is not authority for the Council's proposition** and it focuses on the issue of floor area, not density. The same section of the Encyclopedia reveals another authority which confirms that density is indeed capable of forming a reserved matter: *Inverclyde DC v Inverkip Building Co. Ltd* 1983 SLT 81, 90.⁶³

- 7.103. On a correct understanding of the development plan, national planning policy and the legal powers available to the Council at the reserved matters stage, there is simply no basis to refuse permission on grounds of density. The **Council's attempts to retract** their witness' clear concessions in evidence should be rejected.

Landscape and impact on character of settlement

- 7.104. The issue was considered in detail at the first Inquiry. The first Inspector found the effects would be limited and give rise to no unacceptable harm (IR9.26 and 9.27). The SoS concurred in the DL at paragraph 27. The Council agrees with this position as set out in the SOCG and that any adverse effects would carry limited weight against the proposals. The appellant has explained that such harm would be significantly and demonstrably outweighed by the benefits.

Heritage

- 7.105. **The appellant's heritage consultant⁶⁴** has considered the effect on the listed farmhouse and Wavendon House and the registered park and garden. The first Inspector found less than substantial harm to the listed farmhouse (IR9.41) **and the SoS agreed in his DL at paragraph 28. The appellant's heritage consultant** has found the scheme would cause no harm to the significance of Wavendon House and the registered park and garden. The Council in the SOCG agrees that the proposal would result in a low level of less than substantial harm to the listed farmhouse and that there is no basis to refuse the scheme on heritage grounds subject to a satisfactory detailed scheme/design at reserved matters stage. The **Council's planning witness** confirmed that the public benefits would outweigh the low level of harm for the purposes of NPPF paragraph 196.
- 7.106. In summary, whilst considerable weight and importance should be attached to the desirability of protecting and enhancing the character and appearance of designated heritage assets for the purposes of s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is no basis for refusal on this ground in relation to the Appeal Scheme. For the purposes of NPPF 11d(i) there is no basis for refusal on heritage grounds.

Highways

- 7.107. Third parties raised traffic and transport concerns at the first inquiry and these have been raised to a more limited extent at the present inquiry. The first Inspector addressed these issues at IR9.35-9.38 and the SoS endorsed

⁶³ RID26

⁶⁴ APP9 appendix 4

these findings that the proposal would not give rise to unacceptable effects in his DL at paragraph 30. The TA has been updated⁶⁵.

- 7.108. The Council has confirmed in the SOCG that the proposal is acceptable in all respects, that the access is appropriate and would not put undue pressure on local road network. All other detailed matters can be considered under reserved matters applications. The TA remains robust and justifies the **conclusions of the appellant and the Council's highway officers.**

Best and Most Versatile Agricultural Land

- 7.109. The **Council's planning witness raised this issue for the first time in his** proof of evidence⁶⁶. While identifying a conflict with Policy NE7, he made clear in cross-examination that this did not amount to a freestanding basis for refusing the proposal. It is accepted that there would be a loss of Grade 3a agricultural land and that this gives rise to a conflict with NE7. However, both Policy NE7 and NPPF paragraph 170(b) make clear that this is an economic factor to be weighed against the economic benefits that would arise from the development, listed in the Economic Benefits Statement⁶⁷ and set out further below. The Council has allocated land on sites around the Borough which are of equal or greater agricultural value as the site⁶⁸.

Planning Balance

Affordable housing

- 7.110. **The appellant's** witnesses have identified a substantial need for affordable housing within Milton Keynes borough in their respective proofs⁶⁹. The Council has already seen a shortfall of 640 dwellings in the first 3 years of the plan period⁷⁰ with a chronic failure to deliver a sufficient amount from 2007 to 2018⁷¹. As set out above, there is a clear recognition in Plan:MK that additional weight should be accorded to the provision of affordable housing in **excess of the policy minimum. The Council's planning witness confirmed in** cross-examination that this was a benefit to which significant weight (the highest weight) should be attached.

Market housing

- 7.111. Significant weight should be attached to the benefits of providing market housing irrespective of the precise HLS position. The Government is committed to boosting significantly the supply of housing to meet the chronic and continuing shortfall both nationally and where it arises locally, but also to diversify the base of house builders to meet that need. One of the difficulties identified by the Government in its White Paper was the excessive concentration and dominance of the major national house builders which is seen to have a distorting and negative effect upon the continuous supply of housing up and down the country.

⁶⁵ APP9 appendix 7

⁶⁶ LPA4 paragraph 10.31-10.32

⁶⁷ APP9 appendix 6

⁶⁸ RID24

⁶⁹ APP2 chapter 7 and APP8 paragraphs 6.34-6.36

⁷⁰ APP2 table 13

⁷¹ APP2 table 17

- 7.112. The house builder in this case, Storey Homes, is a small to medium sized developer whom the Government wishes to encourage to provide housing, not only as a matter of choice but in order to meet a diversity of suppliers. The appellant's note⁷² has provided evidence both upon that, the track record of the company and the anticipation that it will be able to deliver all of the proposed housing within 5 years of the date of its permission. The proposal would deliver at least 150 dwellings within the current 5 year period up to March 2024, allowing for a year to clear reserved matters and conditions. **The Council's** suggestion that there should be any diminution in the weight to be accorded the proposal by reason that not all of the 203 dwellings might be delivered within the 5 year period (principally due to the suggested significant delay on the part of the SoS in issuing his decision letter on this appeal) is not credible.
- 7.113. The proposal will provide much-needed housing in an important growth location both regionally and nationally and where the provision of each type of housing has materially lagged over a prolonged period of time.

Economic benefits

- 7.114. There are substantial economic benefits as set out in the Economic Benefits Statement **and accepted by the Council's planning witness at cross-examination**. These comprise temporary construction employment of 180 workers per annum, or 630 workers over the course of a 3.5 year construction period, both on and off-site; demographic and labour market benefits, including a high proportion of working-age residents (75% in employment), and a cross-section of working people due to the range of accommodation offered; secondary employment generated by increased spending in the local area by new residents (£5 million total per annum), directly supporting around 40 gross full-time equivalent jobs; and New Homes Bonus paid to the Council of c.£1.4 million over 4 years.

Social benefits

- 7.115. The development will provide social benefits through housing (including much needed affordable housing) to meet future need and is accessible to the local services provided within the wider area including education facilities. The site would also **provide a social benefit in the form of the doctor's surgery to be provided on site** and the site would be within reasonable walking distance of existing local services and facilities.

Environmental benefits

- 7.116. There will be the opportunity to provide a net environmental benefit by the site having the potential to enhance the habitats within it, given that the appeal site has little value for wildlife at present. These are set out in an update report from CSA Environmental⁷³.
- 7.117. Clearly the site is outside the present settlement boundary of Woburn Sands but so would any site which is presently not allocated. Much of the **Council's** HLS is and will be located on green field sites. In that context, there

⁷² APP9 appendix 13

⁷³ APP appendix 5 paragraph 5.20

would have to be something distinct and material about this site in order to suggest that its green field location would render it unsustainable. That was certainly not the view of officers in their report recommending approval and it is freely recognised by the Council that there is no landscape or similar argument to support objection to the appeal site here.

Highways/Traffic benefits

7.118. There are highways and transportation benefits, by providing additional flexibility in the local network and an alternative to the existing Newport Rd / Cranfield Rd junction. These can be classified as both environmental and social benefits. The proposal would also help to contribute towards sustainable patterns of development and help to counteract the increasing levels of commuting which can be created by an imbalance of homes and jobs.

Summary on benefits

7.119. The proposed development is one which, by reason of its location and accessibility to a range of services, facilities and transport links, and having regard to the three dimensions set out in the NPPF, is sustainable development which properly benefits from the presumption in its favour. Even in circumstances (though not here) where an Inspector were to conclude that the Council was able to demonstrate a 5 year HLS, the sustainability and other advantages constituting material considerations in this case would be sufficient to justify the grant of consent.

Conclusions

7.120. The appeal proposal represents sustainable development adjacent to a settlement which is identified in Plan:MK as being a key settlement and which contains not only a wide range of service and facilities but also a railway station. The Council does not have a 5 year HLS and that the shortfall in both market and affordable housing is longstanding, acute and continuing.

7.121. The proposed development gives rise to substantial benefits which are not outweighed by any of the alleged detrimental impacts and is consistent with the presumption in favour of sustainable development. It is therefore respectfully submitted that the appeal should be upheld and planning permission ought to be granted.

8. The Case for Milton Keynes Council⁷⁴

Introduction

- 8.1. The Council submits that this appeal should be dismissed. In its evidence to this inquiry and questions in cross-examination, the appellant has demonstrated an obsession with process, an interpretative approach which is contrary to the plain words of local and national policy, and a selective approach to the evidence which ignores that which does not support its case. **By contrast, the Council's approach has been straightforward, consistent with national policy, and should be preferred**

Previous Decision Letter (DL)

- 8.2. The DL is a material consideration in the redetermination of this appeal, notwithstanding the fact that it was quashed by the High Court: see *R. (Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin)⁷⁵. This is to give effect to the well-established principle of consistency in decision making. In *Davison*, the judge gave specific guidance on the application of consistency to a quashed decision as follows:
- (a) The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision.
 - (b) Of itself, a decision quashed by the Courts is incapable of having any legal effect on the rights and duties of the parties. In the planning context, the subsequent decision maker is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations.
 - (c) However, the previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter of judgment of the decision maker reviewable on public law grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable decision maker could have failed to take it into account.
 - (d) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing.
 - (e) The greater the apparent inconsistency between decisions the more the need for an explanation of the position
- 8.3. Applying these principles, the Council submits:
- (a) The DL is a material consideration in the present case. No reasonable decision maker could fail to take the DL into account given the obvious relevance to the issues in dispute. However, the DL does not bind the decision maker who must start afresh, taking into account the

⁷⁴ Largely taken from the Council's closing submissions RID34

⁷⁵ Insofar as the Appellant may seek to rely on *West Lancashire v SSCLG* [2017] EWHC 3451 as establishing a different approach, *Davison* is to be preferred given that it expressly considered *West Lancashire*.

development plan and other material considerations, of which the DL is one.

- (b) The DL was quashed because the Secretary of State failed to give adequate reasons for concluding that the Council could demonstrate a 5 year **HLS**. **Accordingly, the Secretary of State's conclusions (and reasoning)** on all matters unrelated to 5 year HLS were not impugned by the High Court.
- (c) Notwithstanding **the fact that the SoS's conclusions on these matters** was not impugned, it is necessary to consider whether those conclusions remain relevant, and if so, whether they hold good, taking into account any changes in circumstances that may have arisen since the **SoS's** decision

8.4. **In respect of the Secretary of State's principal conclusions, the Council's position is that:**

- (a) 5 year HLS: The conclusion at DL paragraph 18 that the Council could demonstrate a 5 year HLS formed the basis on which the DL was quashed. Accordingly, no weight can be given to this conclusion and the issue must be considered afresh by reference to the new evidence now presented at this Inquiry.
- (b) Location of site: The conclusion at DL paragraph 19 that the development fails to accord with Policy WS5 of the WSNP is relevant and unaffected by the quashing of the DL. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to saved local plan policy S10 is no longer relevant. Further, given the changes to the development plan, it is necessary to consider afresh the weight to be afforded to the conflict with Policy WS5.
- (c) Housing density: The conclusion at DL paragraph 26 that the development fails to accord with NPPF 2018 paragraphs 122–123 is relevant and holds good given the similarity with the relevant paragraphs in the NPPF 2019. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to Policy H8 is no longer relevant.
- (d) Character of the area: The conclusion at DL paragraph 27 **that "the significant visual and landscape effects of the scheme would be very local, while beyond those immediate surroundings, the effects would be very limited" is relevant and holds good as there has been no material change of circumstances.**
- (e) Heritage: The conclusion at DL paragraph 28 that there would be less than substantial harm to Deethe Farmhouse is relevant and holds good as there has been no material change of circumstances.
- (f) Benefits of the scheme: The conclusion at DL paragraph 29 that the benefits of the scheme comprise affordable housing, temporary construction employment and secondary employment is relevant and holds good. However, it is necessary to consider afresh the weight to be

afforded to these benefits given the changed housing and economic environments.

- (g) Other matters: The conclusion at DL paragraph 30 that matters relating to traffic and parking, the impact of the development on the facilities of the town, and ecology and drainage, do not weigh against the proposal is relevant and holds good as there has been no material change of circumstances.

- 8.5. It is necessary to consider afresh the conclusions in respect of planning conditions and obligations and the planning balance given changes to the development plan and amendments to both conditions and obligations.

Housing Land Supply

The general approach to the assessment of HLS at this appeal

- 8.6. There is a need to adopt a proportionate and realistic approach to the assessment of evidence at an appeal compared to local plan examination as acknowledged by the Inspector at the Castlethorpe Road appeal⁷⁶. The policy imperative of demonstrating a 5 year HLS in NPPF paragraph 73 and the consequences of not being able to in terms of NPPF paragraph 11 is to ensure that there is an adequate supply of housing land. This is clear from NPPF paragraph 59. Contrary to the approach of the appellant, the assessment of 5 year HLS is concerned with the endpoint and a sufficient supply of deliverable land, not with the assessment process. There is a need for good planning judgment.
- 8.7. **The appellant's approach to the assessment of deliverability invites the** decision-maker to ignore evidence which is obviously material to the assessment of realistic prospects. It is well established that policy cannot lawfully make immaterial that which is material⁷⁷. The Appellant ignores this, and this is one of many reasons why its approach is wrong in law.
- 8.8. **The Council's 5 year HLS must be viewed in** the context of the recently adopted Plan:MK, which has brought about a robust supply and resulted in dramatic improvements in housing delivery. Since adoption in March 2019, the Council has achieved its annual delivery requirement in 2018/19 for the first time since 2007/08 consistent with the continual year on year improvement over the first 3 years of Plan:MK. In quarters 1-3 of 2019/20, the Council has delivered 92% of its annual requirement such that it is near certain that it will meet its annual delivery requirement again for the second consecutive year⁷⁸. The number of units under construction at the end of quarter 2 of 2019/20 was the highest number since June 2008 and quarter 3 only marginally lower. The first 3 quarters of 2019/20 is the first time since at least 2007/08 that the Council has recorded over 2000 units under construction for 3 consecutive quarters.

⁷⁶ CD6.18 paragraph 51 [the Council's closing submission refer to this appeal as 'Hanslope', but for consistency this report has used the same address used by the appellant]

⁷⁷ See *Gransden & Co. Ltd. and Another v Secretary of State for the Environment* (1987) 54 P. & C.R. 86 per Woolf J (as he then was) at 94.

⁷⁸ LPA1 table 5.1 and RID07

- 8.9. The Plan:MK Inspector confirmed the Council has a clear and robust roadmap to delivering housing and was satisfied with its housing trajectory, with special circumstances for significantly higher delivery over next few years, significant number of small and medium sites and the risk of non-delivery minimal⁷⁹. The Council submits that the change in the NPPF definition of deliverable does not affect these conclusions as they go to the underlying approach of the Council and the underlying circumstances of the local area.

Other recent appeal decisions dealing with 5 year HLS

- 8.10. Both the Castlethorpe Road and the Globe appeal decisions⁸⁰ are material considerations, but neither is binding on the decision maker. Given the conflicting conclusions on HLS, the decision maker will need to disagree with at least one and give reasons. Neither decision is more lawful than the other and their planning judgments have not been challenged. The differences between the appeals relate to the different evidence presented to each appeal and the different manner in which the evidence was presented. The fact that more time was spent on site by site analysis at the hearing for the Castlethorpe Road appeal does not make it a more considered decision. The evidence was presented in advance for the Globe hearing and there was only one appellant. The HLS evidence at the Globe hearing was more up to date and was presented earlier on. While this might mean the Globe decision should be preferred on this basis, there is still a need to reach a fresh judgment for this appeal based on the evidence before this Inquiry.
- 8.11. Both appeal decisions considered the most up to date evidence like this appeal. Both decisions noted the improving housing completions. The Castlethorpe decision dismissed **criticism of the Council's proformas**. This Inquiry has the **benefit of the Council's note**⁸¹ explaining the proforma process and that respondents did amend build out rates where necessary. A statement from a developer would provide no greater certainty of delivery. The evidence presented by the appellant from Mid Suffolk District Council⁸² accepts an email confirmation to support build out rates.
- 8.12. The Castlethorpe Road decision applies an optimism bias (OB) using a midpoint between the Council and appellants (paragraph 62). It is important to note that the Council and appellants were referring to two different things when using the term OB: the Council was referring to a lapse rate while the appellants were referring to an adjustment for alleged inaccuracies in the 5 year HLS assessment. The alleged inaccuracy was the discrepancy between the **Council's previous assessments of HLS and the number of homes delivered**. The midpoint applied by the Inspector was not 17.5% but a broader approach and the Council would have been able to demonstrate a 5 year HLS otherwise.
- 8.13. The Castlethorpe Road conclusion that it was not particularly apparent that the Council had reduced its calculations of housing land supply to reflect the revised definition of deliverable in the NPPF no longer holds good as the Council has given clear evidence⁸³ to this Inquiry of the approach and

⁷⁹ CD5.32 paragraphs 136, 145 and 152

⁸⁰ CD6.18 and CD6.17 respectively

⁸¹ RID13

⁸² RID15

⁸³ LPA2 appendix 2, section 2

methodology followed. Moreover, the Council has discounted sites from the Plan:MK 5 year HLS due to the new definition of deliverable⁸⁴.

Timescale of the evidence

- 8.14. There is dispute between the parties as to the use of evidence which post-dates the base date of 1 April 2019 to assess deliverability. This is a matter of principle which falls to be determined by interpreting national policy and is not **an issue specific to the facts of the case. The Council's position** is that the calculation of 5 year HLS should not introduce new sites granted permission after 1 April 2019 which were not identified as part of the supply at 1 April in **Council's June 2019 HLS assessment**. Moreover, regard should be had to all of the evidence presented to this inquiry even it was created after 1 April or relates to events which postdate 1 April. The assessment needs to ask a simple question in respect of each site – does the evidence presented to this inquiry demonstrate that the site is deliverable in the five-year period 1 April 2019 – 31 March 2024.
- 8.15. The appellant advocated an artificial two stage approach. Firstly, to consider, by reference only to evidence which predates 1 April (either because it was created before that date or because it was created after that date but referable back to matters known before that date), whether the site was deliverable as at 1 April. Secondly, to consider whether the conclusion reached at the first stage holds good today by reference to other matters since 1 April. The Council submits this is wrong and should be rejected for the following reasons.
- 8.16. Firstly, it is an approach that has no basis in the NPPF or PPG. Reference in **paragraph 73 to a minimum of 5 years' worth of housing is simply an** expression of the need for the supply to cover at least a 5 year period. Reliance on the PPG paragraph 68-001-20190722 is misplaced **as 'next five years' operates as a contrast to 'last 3 years' to illustrate difference between** retrospective Housing Delivery Test and prospective calculation of 5 year HLS. It does not impose an evidential cut-off date. The appellant accepts that **the base date for assessment may be a date which has passed such that 'next' is** not imbued with any special meaning. There is no basis for only considering evidence prior to the base date and no basis for a two stage approach.
- 8.17. Secondly, the PPG approach accords with the Council when considering the provisions relating to preparation of an Annual Position Statement (APS)⁸⁵ where the base date is 1 April and a local planning authority has until 31 July to prepare and consult on its APS before submission to PINS and PINS issues its recommendation by October. This allows for stakeholders to agree or disagree with evidence to allow robust challenge and reasoned conclusion on deliverability which is then assessed by PINS.
- 8.18. Thirdly, neither Woolpit nor Darnall School Lane decisions⁸⁶ support the **appellant's approach. The former** discounts sites not identified at the base date from the assessment which the Council follows in its approach. The latter considered information after the base date where it was relevant to identified sites with no artificial cut-off date for evidence.

⁸⁴ RID19

⁸⁵ PPG ID: 68-012-20190722, ID: 68-013-20190722, ID: 68-015-20190722

⁸⁶ CD6.16 and CD6.14/6.15 respectively

- 8.19. **Fourthly, the appellant's approach is impractical and seeks to create an artificial process.** An HLS assessment requires understanding of actual completions which cannot be known until after the base date. The Mid Suffolk and Babergh HLS assessments illustrate this reality⁸⁷. Both refer to MOUs/SOCGs agreed after base date; these may support evidence but can only mean there was sufficient clear evidence without them. The MOUs contained matters post-dating the base date that were taken into account in calculating 5 year HLS such as build out rates⁸⁸. The assessment of deliverability requires consideration of how many homes are deliverable and not simply that the site is deliverable⁸⁹. There is no basis in policy or logic to impose artificial time restrictions on the assessment of deliverability but not the other elements of the 5 year HLS assessment.
- 8.20. Fifthly, where an APS is not used, the PPG is clear that HLS should be demonstrated using the latest available evidence and up to date evidence⁹⁰. **The Council's approach** is consistent with this. The appellant seeks to disaggregate evidence so that there is a threshold test at first stage which omits the most recent evidence as it is limited only to evidence which predates the base date. The consequence is to invite the decision maker to disregard obviously material evidence in the assessment of whether there is a realistic prospect that a particular site is deliverable.
- 8.21. **Sixthly, the Council's approach is consistent with** the Colchester Road decision⁹¹ regarding evidence after the base date, the Globe decision⁹² regarding the use of proformas after 1 April base date, and the Castlethorpe Road decision regarding the use of proformas⁹³.
- 8.22. **The appellant's approach seeks to create an obstacle course for local planning** authorities to negotiate every time there is an appeal. It bears no resemblance to national policy and departs from clear purpose of HLS mechanism to ensure that there is a pool of sites of sufficient capability to create a realistic prospect that local housing need will be met in a timely fashion in the relevant 5 year period. The appellant places process above good, sound and sensible planning.

Deliverability, not delivery

- 8.23. There is a clear distinction in NPPF paragraph 73 between delivery and deliverable. The appellant conflates the two and the error manifests itself in two principal ways: it forms the basis for the application of an inflated OB to **the Council's deliverable sites**; and it forms the basis **for the appellant's** erroneous discounting of deliverable sites.
- 8.24. The *St Modwen* judgment⁹⁴ in paragraphs 35-39 highlights the essential distinction between the two concepts. Deliverability is a less demanding test than delivery. The fact that a particular site is capable of being delivered within five years and thus deliverable, does not mean that it necessarily will be

⁸⁷ RID15 paragraphs 10, 11, 23 and 29

⁸⁸ RID15 paragraphs 24 and 25

⁸⁹ See Colchester Road decision at CD6.22 paragraph 65

⁹⁰ PPG ID: 68-004-20190722 and 68-007-20190722

⁹¹ CD6.22 paragraph 62

⁹² CD6.17 paragraphs 23 and 24

⁹³ CD6.18 paragraph 55

⁹⁴ CD7.6

delivered. The judgment also highlights that the likelihood of housing being delivered within 5 year period is no greater than a realistic prospect, not certain or probable. The revisions to the NPPF does not affect this judgment including the definition of deliverable which is materially unchanged in the first part of that definition in the 2012 and 2019 versions.

- 8.25. *St Modwen* does not create new law but explains the correct interpretation of national policy. This is confirmed in the more recent *East Bergholt* judgment⁹⁵ at paragraphs 47-51, **which highlights that 'realistic prospect' is a matter of planning judgment**

Adjusting the assessment of deliverable sites

- 8.26. This issue relates to whether the assessment of deliverable sites should be adjusting by applying an OB and if so, what method of discount for OB should be applied. The Council uses OB to refer to lapse rates while the appellant uses it to refer to a **discount to apply to the Council's HLS to address alleged inaccuracies** in the assessment. The Council applies a lapse rate to all sites with forecast delivery in the 5th year of supply by discounting delivery of the site in each year by 10%. The appellant advocates a blanket discount of 28-30% to the supply but applies no such discount in its own assessment.
- 8.27. **The Council's position is that** it no longer considers it appropriate to apply a lapse rate due to the site by site assessment it undertakes. However, to be consistent with the approach for Plan:MK, a lapse rate was included in the HLS assessment in June 2019 and in the evidence to this appeal. This is to ensure robustness. **The appellant's HLS witness** has also carried out a site by site assessment and so there appears to be little difference that a lapse rate or OB is not required. It is open to the decision-maker to conclude that it is not required as the detailed assessment of sites reduces uncertainty.
- 8.28. **The appellant's OB should not be applied as its HLS witness has compared** the assessment of deliverable supply with actual delivery. This is erroneous and an unrelated comparison contrary to *St Modwen*. Just because a deliverable site was not delivered does not undermine the assessment of deliverability. It would also be inconsistent with national policy. For the purposes of NPPF paragraph 73, it is agreed that only a 5% buffer is necessary rather than 20% which is intended to make up for the significant under delivery of housing over previous three years. **This achieves the same purpose as the appellant's OB.** To impose the OB would be inconsistent with the NPPF which has decided it is not appropriate to apply a 20% buffer. Lapse rates were not applied in **Mid Suffolk or Babergh's HLS assessments** and the appellant has confirmed that it does not support a lapse rate⁹⁶.
- 8.29. If a discount is to be applied to this appeal, then it should be the lapse rate in accordance with the **Council's methodology and not the appellant's OB.**

Permitted development prior approval notifications

- 8.30. This relates to the grant of prior approval pursuant to Class O of Schedule 2 to the Town and Country Planning (General Permitted Development) (England)

⁹⁵ RID09

⁹⁶ RID17 paragraph 1.16

Order 2015 (GPDO) and the calculation of 5 year HLS. The Council's position is that it results in detailed planning permission which falls within category (a) of the NPPF definition of deliverable. This is a matter of law not planning judgment.

- 8.31. The NPPF should be interpreted consistently with the planning acts as judgments have found⁹⁷. Section 336(1) of the Town and Country Planning Act 1990 (TCPA 1990) **defines "planning permission" as a permission under Part III TCPA 1990**. The GPDO is made pursuant to Section 58 TCPA 1990, which falls within Part III TCPA 1990. Accordingly, where article 3 of the GPDO grants planning permission for development in Schedule 2 to the GPDO (including Class O), that planning permission is a permission under Part III TCPA 1990 **and thus within the definition of "planning permission" in s. 336(1) TCPA 1990**. **On this basis, the reference to "detailed planning permission" must include planning permission granted pursuant to Class O.**
- 8.32. **The appellant's argument that the government** was aware of Class O permitted development rights when drafting the NPPF definition of deliverable and the express omission of Class O is deliberate fails because the definition of deliverable includes such permissions under Class O.
- 8.33. A development with prior approval is indistinguishable from other types of permission in category (a). No further consent is required other than discharge of conditions like a site with full planning permission. This contrasts with the sites in category (b) where further consent is required. This approach is consistent with the SoS in the Hanging Lane decision⁹⁸ at paragraph 21 where **he agreed with the Inspector's analysis** regarding the inclusion of prior approval sites.
- 8.34. If the appellant is correct, then homes created under Class O would fall outside the 5 year HLS entirely. The PPG⁹⁹ states for the purposes of calculating 5 year supply housing completions can include conversions and changes of use. Furthermore, it is inconsistent with the rationale for Class O which is to boost housing delivery. The appellant has not referred to any appeal decisions or case law to support its approach and offered no cogent reason why homes created under Class O should be excluded from the definition of deliverable. Under category (a), the burden of proof is on the appellant to show clear evidence that a site will not be delivered.

*Site by site assessment – general points*¹⁰⁰

- 8.35. **At the roundtable session, the appellant's approach was based on a number of common and erroneous themes.** Firstly, the criticism of the proformas which has been dealt with above. Secondly, the discounting of proformas from MKDP for no reason other than assertion that they would be inaccurate for the purposes of the Council preparing its assessment. MKDP is an arms-length organisation with the remit of bringing land forward for housing, it has detailed local knowledge and no reason to doubt its responses. A similar approach was taken to responses from Homes England, who are a non-departmental public

⁹⁷ CD7.4 paragraphs 19 and 20

⁹⁸ CD6.20

⁹⁹ PPG ID: 068-029-20190722

¹⁰⁰ **Appendix 1 to the Council's closing submissions sets out a summary** on strategic sites

body and statutory corporation to improve the supply and quality of housing and the regeneration or development of land or infrastructure in England.

- 8.36. The proformas make clear that the information is being sought on the basis of a year running from 1 April to 31 March, with forecasts being sought from the year 2019/20 onwards, i.e. from 1 April 2019 onwards. Accordingly, the suggested completions of the Council (and any confirmation or amendment by the respondent) can only be on the basis of starting from the base date. As such, it is evidence which can be taken into account even on **the appellant's** artificial basis because it refers to matters as they were at the base date.
- 8.37. **The appellant's distinction** between sites in the control of land promoters or landowners and developers is without consequence as there is clear evidence that the former are no more likely than the latter to landbank sites as set out in the NLP report¹⁰¹.
- 8.38. **The appellant's suggestion that the evidence gathered for the Plan:MK** preparation was of no assistance as it had been prepared with the NPPF 2012 definition of deliverable erroneously conflates the collection of evidence with the judgment made on the basis of that evidence. There is no reason why Plan:MK evidence could not be taken into account and reappraised under the revised definition of deliverable.
- 8.39. **The Council's approach to build out rates is robust, as the Plan:MK Inspector** found, because it has adopted an individualised approach to each site, sense checked against build out rates derived from local context and subject to further checking by the Joint Housing Delivery Team.

Brooklands (Site 1)

- 8.40. **Appellant's criticism of build out rates is misplaced as the Council's projected** completions are consistent with local evidence and increasing pattern of completions. Over the last 4 years, the average delivery has been 247dpa which is above the 222dpa average rate for the next 5 years which the appellant criticises. Recent monitoring data illustrates that the site has already delivered well over Council projections of 182 completions for 2019/20, with 267 homes completed by the end of quarter 3. The evidence supports that the **Council's figures are realistic** and robust since delivery is already in advance of **the Council's projections. This is also confirmed by the proformas provided by** the Council from the housebuilders involved and who are already building out some parts of the strategic site.

Tattenhoe Park (Site 2)

- 8.41. **Criticism of Homes England's involvement is misplaced for the reasons above.** Homes England provided further information as part of Plan:MK process supported by continuing dialogue. Two parcels are in the hands of developers and Homes England is engaged in a clearly documented marketing exercise to secure developer involvement on remaining parcels via tender process. This documentation contains a clear timeline for this to happen (including the build out rates and lead in times which the developers must adhere to) and supports the proforma responses from Homes England (including the most recent

¹⁰¹ CD11.1 page 12, second column, first paragraph

updated proformas). All of this progress is consistent with the two recent grants of detailed planning permission, both of which were for more homes than expected.

Western Expansion Area (Site 3)

8.42. There have been completions on Area 10 for 4 years (5 including current year). Up to 1 April 2019 there have been 712 completions since the site started delivering and 300 delivered in this year alone. This area has delivered **1000 homes and is only 32 short of meeting this year's projected figure**. For Area 11, there has been 834 completions over last 4 years and over the last 2 years the completions have been 267 and 268 homes. There have been 133 completions for this year, more than projected. Combined, the two areas are delivering in the same manner (high 200dpa almost 300dpa each). The **Council's assessment is** consistent with the proformas and supported by a documented disposal strategy. There has been a sense check of developer information with a more conservative approach adopted by the Council.

Strategic Land Allocation (Site 4)

8.43. **The Council's** careful parcel by parcel analysis is to be preferred as it is clearly grounded in the evidence of ongoing completions. For example, taking the area as a whole, 181 completions were projected across the whole site for 2019/20 and as the Q3 monitoring data demonstrates, 187 have been completed.

The Council's final 5 year HLS position

8.44. Scenario 1: removal of conceded site – Land at Galleon Wharf (Site 14) for 14 units.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,610
MKC Lapse Rate	678
Supply as at 1 April 2019	12,932
5 year	6.41
Surplus	2,845

8.45. Scenario 2: removal of conceded site – Land at Galleon Wharf for 14 units and **inclusion of all adjustments in paragraph 4.62 of Council's HLS** proof of evidence with the exception of paragraph 4.6.11 (Site C3.2 Central Milton Keynes) as this was deemed undeliverable as of 1 April 2019.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301

Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	650
Supply as at 1 April 2019	12,602
5 year	6.25
Surplus	2,515

8.46. Scenario 3: as per Scenario 2 but with Council lapse rate not applied.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	0
Supply as at 1 April 2019	13,252
5 year	6.57
Surplus	3,165

Conclusions on 5 year HLS

8.47. For the reasons above the Council submits that its approach should be preferred and that it has demonstrated a 5 year **HLS**. **The Council's approach is robust, sensible and consistent with national policy.** By contrast the **appellant's** approach is artificial, focussed on process not good planning and inconsistent with national policy.

The Development Plan

Plan:MK

8.48. **The appellant's planning witness accepted at cross-examination** that the development is contrary to Policies DS1 and DS2 of Plan:MK. He suggested that it was nevertheless in general conformity with the approach that underlines the spatial strategy, but the spatial strategy is DS1 and DS2 and so this must be rejected. Policy DS1 draws a distinction between the urban area of Milton Keynes where development should be within and adjacent to that area, and the rural area where new development should be within the key settlements, villages and other rural settlements. **The appellant's planning witness accepted** that Policy DS2 is to be read in combination with Policy DS1. Thus, it only contemplates housing within the defined boundary of the key settlements. He also accepted that the appeal site does not fall within any of the 13 criteria in Policy DS2.

- 8.49. The Plan:MK Inspector as recently as February 2019 found Policies DS1 and DS2 were consistent with NPPF 2012 subject to modifications¹⁰². The Inspector considered the overall strategy for Woburn Sands and found no need to modify the settlement boundary to make a specific allowance for additional development¹⁰³. **The appellant's witness accepted that the spatial** strategy of Plan:MK is that there is no requirement for Woburn Sands to meet. Thus, there is no inconsistency between Policies DS1 and DS2 and NPPF paragraph 65 (which requires plans to set out housing requirements for neighbourhood areas) given the findings of the Plan:MK Inspector. The policies therefore carry full weight for this appeal.
- 8.50. The objective of Policy DS5 is, amongst other things, to recognise and safeguard the character of the areas within the Borough beyond the settlement boundary. The **appellant's witness accepted conflict with this policy** and that it is consistent with the NPPF 2019 and up to date. As such, it carries full weight. The Plan:MK Inspector found the policy was sound. The NPPF allows plans to include policies that conserve and enhance the natural environment, not just protect valued landscapes.

The Neighbourhood Plan

- 8.51. The policies in the WSNP remain the same as the first Inquiry but circumstances have moved on not least with the adoption of Plan:MK. **Paragraph 19 of the SoS's** decision only gave moderate weight to Policy WS5 since it defined boundaries by reference to a Local Plan only intended to guide development to 2011. However, the role of the WSNP and its boundaries have been considered afresh within Plan:MK and particularly Policy DS2. As above, the Plan:MK Inspector concluded that no modification was required in terms of the settlement boundary. Further, he concluded that Plan:MK was the first opportunity to systematically review settlement boundaries in the Borough and he found them to be robust. Therefore, the WSNP boundary is robust and up to date.
- 8.52. Policy WS5 is not purely a countryside protection policy, it is a settlement boundary policy indicating the approach to development within the boundary. This is not contrary to the NPPF, which also allows neighbourhood plans to include policies to conserve and enhance the natural environment. The appellant cannot assert that Policy WS5 is inconsistent and out of date but agree that Policy DS5 is consistent and up to date. The two policies reflect the same policy approach. The arguments concerning the bullet points in WS5 go nowhere since they are all contingent on Plan:MK identifying a need for a boundary change which it did not. As such they do not apply. Accordingly, Policy WS5 is to be given full weight for this appeal
- 8.53. The same is true in respect of Policy WS6. The appellant only raised points regarding the consistency of bullet points in that policy, none of which are engaged as Plan:MK did not identify any need for boundary changes. Thus, Policy WS6 is consistent with the NPPF and up to date and should be given full weight.

¹⁰² CD3.32 paragraphs 31-45

¹⁰³ CD3.32 paragraph 34

Density

- 8.54. As a matter of law, the grant of outline planning permission will establish that the density of the development, however it is distributed across the appeal site and, however many units will come forward, will be acceptable in principle. Accordingly, if outline permission were granted as sought and a developer were to apply at the reserved matters stage for 203 units distributed across the appeal site, the Council would not lawfully be able to refuse planning permission on the basis that the density of what is proposed is too low and makes an inefficient use of land contrary to Policy HN1 and/or paragraphs 122/123 of the NPPF. The Planning Encyclopedia states that density is not a reserved matter referred to the court judgment in *Chieveley*¹⁰⁴. The appellant has not suggested the use of a condition to reserve density for later approval and this has not been addressed at the Inquiry. Thus, there is no evidence for the SoS to consider such a condition.
- 8.55. **The Council's planning witness was confused in cross-examination** on the matter of whether reserved matters approval could be refused on the grounds of density. That suggestion cannot be found in the written evidence of either party since it is wrong as a matter of law. The decision-maker has to determine now whether a proposal which would allow up to 203 units across the whole of the redline area would be acceptable in density terms. This is a planning judgment as to whether the development would make efficient use of land.
- 8.56. NPPF paragraph 122 sets out a number of factors to consider as to whether a development makes efficient use of land. This approach is echoed in Plan: MK via Policy HN1(c) which is consistent with NPPF paragraphs 122 and 123 and so is up to date and given full weight. The policy adopts a flexible approach to ensure appropriate densities on a case by case basis. Any judgment needs to be sensitive to the extent to which land is being released to meet a housing need. **The appellant's planning witness accepted the greater the need and/or shortfall in HLS the greater this will pull towards a higher density level.**
- 8.57. Local market conditions and viability in this case do not pull towards a higher or lower density. There is no constraint in the availability and capacity of infrastructure and services which would prevent additional housing above 203 units. This site is in a sustainable location and no evidence that any increase in units would give rise to severe consequences for the local highway network.
- 8.58. **In terms of maintaining the area's prevailing character and setting, the SoS's decision considered this matter in relation to the then extant Policy H8 which sought a density of 35dph.** The SoS must have considered that such a density was acceptable in terms of character and appearance. He noted that the scheme was a significant departure from policy in paragraph 26 of his DL.
- 8.59. Since the SoS decision, the only material change in terms of the character of the area is that Policy H8 has been replaced with Policy HN1. While the latter does not contain a requirement for 35dph, the objection of bringing forward the highest density that can be delivered while ensuring that the development would still relate well to character and appearance has not.

¹⁰⁴ RID23

- 8.60. It is evident from paragraph 26 of the DL that the SoS must have concluded conflict with NPPF paragraph 122 since in paragraph 24 he had found that Policy H8 was consistent with this paragraph. The SoS had previously found only limited effects of the scheme on visual and landscape considerations implying that the site has strong visual containment. As such, there is scope for the density to increase while maintaining an appropriate buffer and landscape boundary without unduly affecting character and appearance. There is no reason to reach a different conclusion now as the scope for additional development to be accommodated. Thus, the only reasonable conclusion is that the development does not make efficient use of land contrary to NPPF paragraph 122 and Policy HN1.
- 8.61. The appellant argues the site should be released due to a lack of 5 year HLS. NPPF paragraph 123 is highly relevant here. Where there is shortage of housing land, it is especially important to avoid low densities and to optimise the use of each site. Paragraph 123(a) relates to plan making, but the policy response of a significant uplift in the average density applies in a decision-taking context. Paragraph 123(c) is clear that proposals which fail to make efficient use of land they should be refused planning permission, even in the context that includes circumstances where there is a shortage of housing land. If sites are to be released to meet housing needs, they must be utilised efficiently to reduce the overall amount of land that has to be released.
- 8.62. Where a development comes forward that does not make efficient use of land it must be refused even in the context of additional housing need. Any conflict with NPPF paragraphs 122/123 must be given significant weight against the grant of permission. Any less weight would not achieve the policy objective of optimising densities in situations of housing need.
- 8.63. The appellant cannot argue for a site to be released due to a shortfall of sites but propose a scheme which reflects the low density of adjacent development that is below the average density for Woburn Sands (26-27dph). There is no evidence that even with 203 units the amount of development is optimal. The appellant has not produced evidence that shows a higher density would be unacceptable in planning terms¹⁰⁵. The appellant has reduced the planning judgment to a series of comparisons of density calculations.
- 8.64. **The appellant's recalculation of density was flawed in that it omitted access roads and other elements.** This excluded roads initially described as estate roads which should have been included in the net developable area as without them access to houses could not be achieved. **The Council's Urban Capacity Study** which supported Plan:MK makes it clear this approach was inconsistent¹⁰⁶. The appellant revised density figure is thus flawed and overstates the density. The reliance placed by the appellant on the 50% net developable area approach adopted in the Strategic Housing Land Availability Assessment¹⁰⁷ is also misplaced since that documents predates the revisions to the NPPF on density.

¹⁰⁵ In response before its closing submissions, the appellant noted that at the first Inquiry, an illustrative proposal by the appellant for 303 dwellings (Document 11.13) did not find favour with the Inspector at paragraph IR9.46

¹⁰⁶ CD5.12 paragraphs 1.1.3 and 1.2.2

¹⁰⁷ CD5.15 paragraph 7.7 and table 7.2

- 8.65. **The comparative exercises in the appellant's planning witness' rebuttal**¹⁰⁸ is flawed as it does not compare like with like. The areas examined include larger areas of open countryside rather than focusing on the built-up area and so does not help with whether the development makes efficient use of land. None of the above gives rise to any reason to reach a different view from that concluded previously by the SoS. It is submitted that the simple fact here is that the proposed development would not make efficient use of land and is unacceptable in policy terms as a result. Regardless of the HLS position, the conflict with the NPPF is so significant it justifies refusal in its own right.

Best and most versatile land (BMV)

- 8.66. The appellant accepted that the development will result in the loss of some BMV and that this gives rise to a conflict with Policy NE7. He accepted that Policy NE7 is consistent with the NPPF and up to date and is to be given full weight in the determination of this appeal.

Benefits of the proposed development

- 8.67. Regardless of the HLS position, it is accepted that the provision of affordable housing should be given significant weight. If there is a 5 year HLS, the benefits of extra market housing are moderate at best. The weight to ascribe should take into account that the actual amount of housing that may come forward is uncertain (up to 203). If there is no 5 year HLS then the benefits of extra market housing could be significant, depending on the number and how many units are likely to be delivered in the 5 year period.
- 8.68. It will take time for decision on this appeal. It took 18 months last time. If it is assumed that a decision to allow is reached in 6 months (July 2020) there would be a period of time to secure reserved matter approvals and discharge pre-commencement conditions before works start on site. Based on the **evidence of the appellant's HLS witness**, the average time from grant of outline permission to commencement on site is 5 years. If that were applied here, the development would make no contribution to the 5 year HLS. If commencement began at a rate 5 times faster i.e. July 2021 there would be delivery in the 5 year period. At 50dpa, this would be 150 units at most, so the weight to be given to the contribution to 5 year HLS must be reduced.
- 8.69. There have been no material changes in circumstances in terms of economic benefits, which should be ascribed moderate weight.
- 8.70. The appellant cites the provision of an alternative route to the existing Cranfield Road / Newport Road junction as a highway benefit, but the updated TA presents modelling that shows increases in queue lengths and traffic flows at both the Newport Road and Cranfield Road junctions. While a very modest impact, this does not suggest improvement. There is no appraisal of the benefit to safety and so anything suggested is just assertion. Thus, while the development is acceptable in highway terms, there are no material benefits to be weighed in favour.
- 8.71. It is unclear the extent to which the offer relating to medical facilities is justified as necessary to make the development acceptable in planning terms

¹⁰⁸ APP10

or the extent to which that offer goes beyond the mitigation of what is proposed. To the extent that it mitigates the effect of the development it is not a benefit but rather what is required to render the scheme policy compliant. To the extent that it goes beyond that position then it cannot be given weight as a benefit since to do so would be contrary to regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

- 8.72. No details have been provided to show that the development would provide potential to mitigate the risk of surface water flooding. Since this alleged benefit would involve drainage proposals which seek to address a pre-existing issue it cannot be required by condition or by a planning obligation since it goes beyond that which is related to the development proposed. To give this factor weight would thus be contrary to the requirements of NPPF paragraphs 55 and 56 and to regulation 122 of the CIL Regulations 2010
- 8.73. A high quality living environment is unknown at this stage given the outline nature of the proposal. Further, such a requirement is required to be delivered by all development in Milton Keynes as a result of Policies D1 and SD1 of Plan:MK. This is not a benefit but a policy requirement and so carries no weight.

The proper approach to the determination of this appeal

- 8.74. Policies DS1, DS2, DS5, HN1 and NE7 of Plan:MK and Policies WS5 and WS6 of the NP are all relevant development plan policies. They are also the policies which are the most important to determining the application¹⁰⁹. Further, as has been established above, they are all consistent with the NPPF and are up to date. The Council has a 5 year HLS. Thus, NPPF paragraph 11(d) is not engaged and rather it is NPPF paragraph 11(c) that should be used.
- 8.75. Plan:MK is up to date. The development does not accord with it overall since it conflicts with the spatial strategy, its policy approach to making efficient use of land and to avoiding the loss of BMV. Section 38(6) of the 2004 Act requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The development conflicts with the above policies and so is not in accordance with the development plan.
- 8.76. The **development's benefits are not of such a nature or scale to justify** departure from the constraint policies of a recently adopted plan. All of the benefits could be claimed by any housing development on greenfield land on the edge of any settlement in Milton Keynes. The weight to these benefits cannot be such as to outweigh the conflict with the development plan. Thus, the development conflicts with NPPF paragraph 11(c) and is not sustainable development. It does not accord with the development plan with insufficient material considerations to outweigh the conflict.
- 8.77. If, **contrary to the Council's case, NPPF paragraph 11(d) is engaged**, it is accepted that the application of policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development. As such, NPPF paragraph 11(d)(i) does not provide a

¹⁰⁹ Based on the cross-examination of appellant's planning witness and the evidence in chief of the Council's planning witness

reason for refusing planning permission. Accordingly, the tilted balance in paragraph 11(d)(ii) would be engaged.

- 8.78. There would be adverse impacts in a development of inappropriate density and the loss of BMV. These impacts would conflict with NPPF paragraphs 122, 123(c) and 170(b). In circumstances where greenfield land is to be released to meet housing needs due to inadequacies in the 5 year HLS it is all the more important that efficient use is made of that greenfield resource to meet as much of the unmet need as is possible (NPPF paragraph 123). The development does not optimise the use of the site but promotes a sub-optimal density and continues the inefficient low density development of the past. This clear breach of NPPF paragraph 123 should result in refusal given the importance of the issue and the clear words of paragraph 123(c). This is an adverse impact contemplated by the NPPF as justifying refusal.
- 8.79. Even if NPPF paragraph 11(d) is applied, the Council submits that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, the proposed development does not represent sustainable development even on this basis. This means that the NPPF weighs heavily in favour of refusal of planning permission. Applying section 38(6), even in circumstances where there is no 5 year HLS, the breach of the development plan together with the breaches of the NPPF weigh heavily in favour of refusal. It is submitted that the other material considerations which weigh in favour of the grant of planning permission are not sufficient to outweigh these factors. Thus, even if there is no 5 year HLS, planning permission should be refused for the proposed development.

Conclusion

- 8.80. The planning system should not be an obstacle course for local planning authorities. It should be about delivering homes that are needed at the right time and in the right place. That is best achieved via the plan-led system and not ad hoc at appeal, making judgments on the capability of housing supply with regard to all material evidence.
- 8.81. Plan:MK is not even 12 months old since adoption and yet is faced with submissions that there is no 5 year HLS. All relevant evidence should be considered for the 5 year HLS position. All that a decision maker has to guard against is skewing the 5 year period by not including schemes in the assessment that were not there at the outset. The obstacle course promoted by the appellant has no place in policy or guidance and is wholly impracticable.
- 8.82. The proposed development is contrary to a development plan which is less than a year old and up to date. It is contrary to the NPPF. The application of section 38(6) points firmly in favour of refusal.

9. The Case for Interested Parties

- 9.1. A number of interested parties made representations to the first Inquiry. Paragraphs **IR7.1 to IR7.49 of the first Inspector's report**¹¹⁰ provide an overview of their comments. In summary, the representations focused on traffic and parking impacts, ecology, flooding, development plan compliance, and the effect on existing services and facilities. The following parties made representations to the second Inquiry:

*Councillor Jacky Jeffries – Woburn Sands Town Council*¹¹¹

- 9.2. Woburn Sands was still a small town at the start of the 21st century with a population of about 2,500 in 950 dwellings. New housing since 2006 have added 622 homes, a 65% increase and an even bigger population increase. Yet, the infrastructure remains virtually unchanged and restricted by available land. Milton Keynes has always sought to preserve the character of existing settlements and the WSNP seeks to preserve green space around town to create small separation from Milton Keynes. Hence, the site is designated open countryside.
- 9.3. Education and medical services in Woburn Sands are at capacity and the **proffered doctor's site will not be taken up as it will not be viable**. The town has lost shops and the bus service to central Milton Keynes is once an hour. The library remains open thanks to volunteers. The future of East-West rail is uncertain and the line separates the development from the town. There is also the threat of the Oxford to Cambridge Expressway with the preferred corridor almost certain to go through part of this development.

*Councillor David Hopkins – Milton Keynes Council and Wavendon Parish Council*¹¹²

- 9.4. Plan:MK is recently adopted and should be afforded full weight for applications and appeals. The Plan:MK Inspector did not support the representations of the appellant made at the examination. Plan:MK sets out where development should and should not take place. The site is open countryside. The appellant can make representations to the Plan:MK Review should they wish.
- 9.5. The Council can demonstrate a 5 year HLS with enough land in excess of the Plan:MK housing requirement including the shortfall and a 5% buffer. There is clear evidence of deliverability for each site in the 5 year supply.
- 9.6. The WSNP makes it clear that the site is not included directly or as a reserve site for development. Wavendon does not have a neighbourhood plan but does have 4000 dwellings underway within the parish boundary as part of the Strategic Land Allocation first identified in the Local Plan 2001-2011.
- 9.7. The land is close to the East-West rail link and the preferred option for the Oxford to Cambridge Expressway. The Plan:MK Inspector while allowing the South East Milton Keynes allocation restricted development before 2023 to allow for full consultation and approval of the Expressway. If the Expressway does not come forward or the route goes elsewhere, then this site could be considered against other sites.

¹¹⁰ CD10.33

¹¹¹ RID04

¹¹² RID05

- 9.8. There are issues regarding density. There are issues regarding the capacity of the local highway network now and in the future with East-West rail seeing additional trains and the level crossing closed more often. The neighbouring land at Wavendon House is now a registered park and garden. There needs to be a masterplan when this site does come forward to take account of the park and garden, the need for highways infrastructure and other improvements and the provision of local services.

*Judith Barker – local resident*¹¹³

- 9.9. Plan:MK has been adopted and does not designate the land for development. Policy WS5 of the WSNP protects the field behind Tavistock Close from development. **Woburn Sands’ character and identity needs protecting. New flats at the Greens development remain unsold. The town’s infrastructure cannot cope and the railway is due to be upgraded.** When there is a problem on the M1, traffic re-routes through Woburn Sands.
- 9.10. The appellant has control over land to the east of the site and permission would set precedent for more rural development. Land along the A421 is already being developed for 4000-6000 dwellings with extra cars on local roads. New housing is not being bought by local people. Milton Keynes has a 20 year land supply in pipeline. Highways England has recommended no permission on land within the preferred route corridor until further consultation on route options in 2020.
- 9.11. If applications get turned down and the developer appeals and wins the Council has to recompensate the development with council tax money. The appellant has prejudiced the appeal outcome by giving a story to The Times complaining that smaller building companies are not getting permissions for political reasons when the reality is based on planning grounds. The importance of open countryside for nature and wildlife cannot be ignored in light of climate change issues and sustainability. There is a shortage of Council housing rather than housing in general. Firms are getting approvals and then not building to raise the land value for speculation purposes. Finally, Milton Keynes has 4 times more urban land than UK average and over 10 times less natural areas, all the more important to protect open countryside.

*Jenny Brook – local resident*¹¹⁴

- 9.12. We will need farmland even more in the context of Brexit. Curveballs are being thrown at the local planning authority. Milton Keynes was intended as a city for 250,000 people and is now planning for 500,000 people. There are national infrastructure issues with East-West Rail and the Expressway. Network Rail has said the level crossing is not their issue. Plans need to be put in place to deal with the through traffic issue.

¹¹³ RID16

¹¹⁴ Oral comments only

10. Written Representations

- 10.1. In terms of the original application and appeal, paragraphs IR8.1 to IR8.6 of **the first Inspector's report set out the comments** that were made. They covered many of the points raised by interested parties above.
- 10.2. In terms of the redetermined appeal, there have been 11 letters of objection¹¹⁵ from local people and statutory bodies, and a further written objection received at the Inquiry highlighting concerns with surface water flooding from the site to adjoining properties¹¹⁶. The concerns raised in all of the other letters highlighted similar issues to those raised above. They included the loss of open countryside, ecological and flooding impacts, the capacity for Woburn Sands to take more development, increased strain on local services including the doctors and the police, traffic effects including delays at the level crossing, and the route of the potential Expressway.
- 10.3. One of the letters was from Highways England dated 13 December 2019 noting that the site lies within the preferred corridor of the Expressway. The letter registered concerns that development of the site could affect or be affected by a potential route option either directly or indirectly. The letter noted that environmental and planning constraints in the Woburn Sands area effectively limit the potential availability of route options in this area. As such, there are risks of conflict with the Expressway particularly in relation to proposals for major development which lie outside defined settlement boundaries. Highways England supports Plan:MK which seeks to accommodate necessary growth in the form of sustainable development whilst facilitating the Expressway as a key national infrastructure project with the potential to increase connectivity in Milton Keynes. The letter concludes that the development would be contrary to the adopted development plan and as such would potentially result in conflict with the Expressway.

¹¹⁵ See bundle of representations in REP1

¹¹⁶ RID11

11. Conditions and Obligations

- 11.1. Suggested conditions are included in Section A2 of the agreed SOCG between the parties¹¹⁷. They are based on the conditions recommended by the first Inspector with an additional condition relating to housing mix. The list of recommended conditions (28) in the attached annex are broadly the same of those in the SOCG with some small drafting changes to reflect discussions at the Inquiry. The main change is to Condition 3 which only requires compliance with those parts of the plans not reserved for later approval; the previous wording required the development to be along the lines of the illustrative layout and parameters plans which would prejudice the reserved matter applications.
- 11.2. Should the Secretary of State decide to allow the appeal, I consider all of the conditions to be necessary and meet the tests in NPPF paragraph 55. The reasons for each condition, including why some need to be pre-commencement, are set out in the annex.
- 11.3. The main thrust of the S106 agreement is set out above in Section 3 of this report. The justification for each obligation was set out by the Council before the Inquiry opened with further clarification provided during the Inquiry¹¹⁸. The affordable housing obligation meets the requirements of Policy HN2 of Plan:MK. The carbon neutrality obligation meets the requirements of Policy SC1 to help offset the carbon impact of the development. The obligations relating to education facilities are in accordance with Policy INF1 of Plan:MK and the Planning Obligations for Education Facilities SPG¹¹⁹ to address the impact of the development on school places. The leisure, recreation and sports obligations¹²⁰ are in accordance with Plan:MK Policies INF1 and L4 and the Planning Obligations for Leisure Recreation and Sports Facilities SPG¹²¹ to address the on-site and off-site impact of the development on such facilities. This includes an obligation to agree the specification of public open space within the development.
- 11.4. The social infrastructure obligations¹²² are in accordance with Policies INF1 and CC1 of Plan:MK and the Social Infrastructure Planning Obligations SPD¹²³ and address various social requirements arising from the development. They include a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. There is also an obligation relating to reserving a site within the development for a potential health facility should this be required to address capacity issues in the local area that have been identified by the Council and relevant parties.
- 11.5. There is an obligation relating to the provision of bus vouchers and the distribution of travel information packs to promote more sustainable mode of transport in accordance with Policy CT5 of Plan:MK on public transport. There

¹¹⁷ Section A2 of RID06

¹¹⁸ RID12

¹¹⁹ RID32

¹²⁰ Relating to playing fields, local play, neighbourhood play, community hall, local park, district park, allotments, and sports hall

¹²¹ CD5.9

¹²² Relating to public art, libraries, burial grounds, heritage, health facilities, waste management, social care-day care, emergency services, voluntary sector, skills and training, and inward investment

¹²³ CD5.10

is also an obligation to secure the highway works necessary to form the highway accesses and connecting footpaths to the site.

- 11.6. All of the above obligations are necessary to make the development acceptable in planning terms. They are also directly related to the development, and fairly and reasonably related in scale and kind to the development. Therefore, they meet the 3 tests set out in NPPF paragraph 56 and regulation 122 of the CIL Regulations 2010.

12. Conclusions

12.1. The numbers in square brackets refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

12.2. The main considerations for the reopened Inquiry were informed by the previous decision letter, notwithstanding submissions by both main parties on the extent to which specific sections of that letter remain a material consideration. Nevertheless, it was broadly accepted that those sections which did not form part of the High Court judgment to quash the first decision, or have not been overtaken by circumstances such as the adoption of Plan:MK, remain relevant to this redetermination. [7.1-7.4 and 8.2-8.4]

12.3. The main considerations were narrowed down at the pre-Inquiry meeting¹²⁴. At the start of the Inquiry the main parties confirmed that the effect on the character and appearance of the landscape was no longer a main consideration. It was agreed that the main considerations now are as follows¹²⁵:

- (a) whether or not the Council can demonstrate a 5 year supply of deliverable housing sites;
- (b) whether the proposed housing would be in an appropriate location having regard to the development plan and national policies, as well as routes of potential new transport infrastructure;
- (c) the acceptability of the proposed housing density; and
- (d) the overall planning balance in relation to the economic, social and environmental dimensions of sustainable development.

Housing Land Supply

12.4. A number of overarching themes were debated at the Inquiry which are discussed below before turning to an assessment of specific sites and whether the Council can demonstrate a 5 year HLS.

The definition of deliverability

12.5. The 2019 revision to the NPPF definition of deliverable retains reference to “a realistic prospect that housing will be delivered on the site within five years” as it did in the original 2012 version of the NPPF. The Court of Appeal judgment in *St Modwen* found that realistic prospect did not mean a site’s deliverability must necessarily be certain or probable. It also noted the distinction between deliverability and delivery in that a deliverable site does not necessarily have to be delivered. [8.23-8.24]

12.6. The more recent Court of Appeal judgment in *East Bergholt* noted that a decision maker could adopt a more cautious view when assessing a “realistic prospect”. It went on to say that the assessment of realistic prospect falls

¹²⁴ CD10.44

¹²⁵ It was agreed by the main parties at the start of the inquiry that the effect of the development on the character and appearance of the landscape and surrounding area was no longer a main consideration

within the realms of policy and planning judgment rather than a legal concept. The judgment did not seek to take a different view on the distinction between deliverability and delivery. Therefore, I consider that the *St Modwen* and *East Bergholt* approaches are broadly compatible and there is no need to favour one over the other when assessing deliverability. [7.21, 8.25]

- 12.7. Nevertheless, the 2019 revision to the NPPF resulted in a more precise approach to the assessment of deliverability, with two specific categories (a) and (b) and the need to provide clear evidence in both. This necessitates a site specific assessment to determine whether a site is deliverable.

The base date and timescale of the evidence

- 12.8. The Council uses a base date of 1 April 2019 for the purposes of calculating its 5 year HLS position. It published its assessment in June 2019 with the housing trajectory in Appendix 1 containing notes on deliverability. Proformas were sent out by email on 20 May 2019 asking for a reply by 7 June 2019. Where no response was received, this was followed up. It was accepted by the Council that the amount of evidence predating 1 April 2019 that informed the assessment was limited. [7.26]
- 12.9. However, there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5 year HLS has to be available at the base date itself. Instead, the PPG advocates the use of the latest available evidence. A local planning authority can prepare and consult on an APS after the 1 April base date before submission to the Planning Inspectorate by 31 July. While not directly applicable here, this indicates that evidence can be produced and tested after the base date. The HLS position statements in Babergh and Mid Suffolk for the 2019-2024 period were published in September 2019 and included data to justify supply that was only known about after 1 April. [7.25, 8.16, 8.17, 8.19, 8.20]
- 12.10. The Council has avoided adding new sites after the base date to prevent the skewing of supply in line with the Woolpit decision. While the Woolpit Inspector criticised the retrospective justification of sites after the publication of the Annual Monitoring Report, the Inspector at Darnall School Lane permitted additional evidence to support sites identified as deliverable at the base date which was a position accepted by the SoS in that case. The Longdene and Colchester Road Inspectors took a similar approach. In terms of Milton Keynes appeals, the Castlethorpe Road and the Globe Inspectors took into account the proformas used by the Council to inform its June assessment of 5 year HLS. [7.23, 7.24, 8.18, 8.21]
- 12.11. Therefore, I consider it acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019.
- 12.12. The appellant argues for a 1 October 2019 base date in order to take into account **the Council's June assessment** and quarterly monitoring data. This would result in a necessary adjustment of the 5 year supply period to 30 September 2024. There is little in national policy or guidance that advocates such an approach and it would appear to go against efforts to create greater certainty in the planning process. I concur with the Council that such an approach would mean having to argue HLS at every appeal, rather than having

a fixed base date. Moreover, the quarterly monitoring data is not intended to be an updated assessment of supply¹²⁶. Thus, I do not consider it necessary to apply a 1 October base date. Nevertheless, if the SoS disagrees on this point, my assessment of specific sites below includes an assessment of the 5 year HLS supply position using a 1 October base date. [7.27, 8.22]

The proformas

- 12.13. The **appellant's criticisms of the Council's use of proformas focused on** whether they provided sufficient written evidence in line with the guidance in the PPG 68-007 and, in some cases, whether the reliance on information provided by bodies such as Homes England and the MKDP on sites in public ownership was appropriate. [7.28, 7.30]
- 12.14. Dealing with the former, the Council clarified at the Inquiry that the proformas included a covering letter explaining their purposes for assessing 5 year HLS. Representatives of each site were asked to confirm or amend the **Council's trajectory for each site**. Although relevant boxes were not always ticked, the proformas were signed and returned with a covering email in many cases. While a SOCG or MOU could provide more information, they offer no more of a commitment to the deliverability of homes than a proforma. Therefore, I consider that a proforma can, in principle, provide clear evidence **of a site's deliverability**. Additional evidence to support a proforma can also be taken into account subject to its specific content and timing. [8.11, 8.21, 8.36]
- 12.15. Turning to the latter, it is apparent that some publicly owned sites have not come forward as quickly as anticipated such as Tattenhoe Park. However, the evidence linking slow delivery to unreliable forecasting from the bodies responsible for managing the disposal of these sites is not conclusive. Although representatives of Homes England and MKDP form part of the group that assesses the proformas, there is little to suggest that their responses to their own proformas is misleading or inaccurate in principle. Therefore, it would not be appropriate to automatically disregard all of their sites. [8.35]

Past forecasts and the application of discount rates

- 12.16. The first Inspector for this appeal noted the uncertainty, slippage and failure in the **Council's** forecasts of housing delivery and that reasonable adjustments would clearly reduce the HLS to less than 5 years. Evidence presented to this Inquiry has noted the historic under-delivery of housing against forecasts of around 28-30%. While delivery is not the same as deliverability, it is apparent that past forecasting has not been particularly accurate. However, recent evidence in terms of housing delivery has shown that the Council met its annual delivery requirement from Plan:MK for 2018/19 and is set to do so again for 2019/20. The number of units under construction is at a high rate. [7.31, 7.32, 8.8].
- 12.17. The Plan:MK Inspector found the plan sound in terms of housing delivery rates and considered the higher delivery to be realistic with minimal risk of non-delivery. I accept that the Inspector examined the plan under the

¹²⁶ LPA3 paragraph 2.9

2012 NPPF definition of deliverable and it should not be assumed that because the plan was found sound that a 5 year HLS can be demonstrated now. There is a need to review sites on the basis of the 2019 NPPF definition. Indeed, the Council has removed sites in the Plan:MK supply for completion by 31 March 2024 where it no longer considers they meet the new definition. [7.16, 8.9, 8.13]

- 12.18. Nevertheless, the appellant has not applied a discount of 28-30% to their **assessment of the Council's** 5 year HLS as they have carried out a site by site assessment. Moreover, the appellant accepted that for the purposes of establishing whether a 5 year HLS exists, it is only necessary to apply a 5% rather than a 20% buffer in Milton Keynes due to rates of delivery. [8.26, 8.28]
- 12.19. The Council has historically applied a lapse rate to its forecasting of HLS for sites with delivery in Year 5, where a 10% discount is applied across the 5 years for those sites. Given that the Council has moved to a site by site assessment, it considers that such a discount is no longer necessary. However, for robustness and consistency with the Plan:MK trajectory, the discount has been applied to this appeal by the Council. Therefore, I have taken into **account the Council's lapse** rate as part of my HLS assessment. Based on recent delivery rates and Plan:MK, I see no reason to apply a greater discount than the **Council's rate** [8.27, 8.29]

Build-out rates

- 12.20. National reports¹²⁷ are helpful in identifying previous maximum average built-out rates over 5 years for large strategic sites like Brooklands (268 dwellings per annum). However, they can only be a guide and consideration should be given to evidence relating to specific sites as set out below. [7.29, 8.37, 8.39]

Prior approval sites

- 12.21. Prior approval sites are not mentioned in categories (a) or (b) of the NPPF definition of deliverable. **However, I am persuaded by the Council's** argument that where Article 3 of the GPDO grants planning permission for development in Schedule 2, that is within the definition of planning permission in the TCPA 1990. Such approvals are designed to provide a boost to new housing and are required to be implemented within 3 years. The PPG at 68-029 only refers what can count as a completion for the purposes of calculating HLS. It refers to new build, conversions and changes of use, but only in the context of where housing has been completed. Nevertheless, the PPG and NPPF do not explicitly exclude prior approval sites from housing supply. The Inspector and SoS at the Hanging Lane decision found that such sites can be taken into account as part of a 5 year HLS assessment. [7.74, 8.30-8.34]
- 12.22. Thus, I consider that prior approval sites can be regarded as having detailed planning permission and can form part of the supply of deliverable sites within category (a). The onus is on the appellant to demonstrate clear

¹²⁷ Such as CD11.1

evidence that such sites do not have a realistic prospect of being delivered within 5 years.

Consistency with previous appeal decisions in Milton Keynes

- 12.23. The Globe and the Castlethorpe Road appeal decisions dated 5 and 26 September respectively came to different conclusions on whether the Council could demonstrate a 5 year HLS. The former said it could and dismissed the appeal whereas the latter said it could not and allowed both appeals. Both had regard to the most up to date evidence including the proformas and both noted the recent improvement in housing delivery. The Castlethorpe Road decision found that reliance on past rates of delivery to be inappropriate, but nevertheless applied an optimism bias to the supply at a point midway between the appellants and the Council. The decision also considered that clear evidence for at least 2,717 houses had not been shown.
- 12.24. The Castlethorpe Road decision was challenged by the Council, but permission to apply for statutory review was refused by the High Court. Nevertheless, it would be wrong to afford Castlethorpe Road more weight than the Globe on the premise that it was more legally robust as the Globe has not been tested in the same way. Likewise, while the Castlethorpe Road Inspector explains in paragraph 65 why he has come to a different view on HLS to the Globe Inspector, this is largely on the basis of the nature and manner in which evidence was presented to him rather than any criticism of the Globe decision. [7.33, 8.10-8.13]
- 12.25. Therefore, it is not possible to say that one decision should be preferred over the other. There is a need for consistency in appeal decisions along with clear explanations of any divergence in views from another Inspector. This report is based on the evidence before me, and where necessary, it will explain any difference in findings to the Castlethorpe Road or Globe Inspectors.

Assessment of disputed sites

- 12.26. The following assessment is based on the disputed sites set out in the **appellant's proof of** evidence for HLS (APP2/3), specifically in Table 23 and Appendix 3, along with the HLS SOCG (SOCG1), specifically Table 3. The **appellant's rebuttal proof updated** Appendix 3 and included at Appendix 3a **summarising the main parties' positions on each site** (APP4/5/6). Following the roundtable session, the appellant produced an errata document (RID20/RID36) that updates Table 23 in the proof of evidence and Table 3 in the SOCG. The errata document also contains updates to Tables 21 and 22 in the **appellant's** proof setting out the contended land supply positions at 1 April and 1 October 2019. **Appendix 6 of the Council's proof of evidence on HLS** (LPA2) contains the primary source of evidence for each site.

Strategic sites - Brooklands (Site 1) [7.35-7.37, 8.40]

- 12.27. Brooklands has detailed planning permission for all of its remaining parcels. While the projected completions are high, the rate of delivery over the past 4 years has been high at an average of 247dpa. There have been 267 completions in 2019/20 up to 1 January 2020 against a projection of 182. While one parcel did not submit a proforma response, **the Council's projections** are based on delivery across the wider site and the phasing methodology. The

appellant's criticisms in terms of the limited number of developers, local experience, past rates of delivery and national reports do not match the current build out rates since 2015/16. Therefore, there is a realistic prospect that the projected housing will be delivered in the 5 year period with no clear evidence to the contrary. This applies to the April and October base dates.

Strategic sites – Tattenhoe Park (Site 2) [7.38-7.39, 8.41]

12.28. The projected completions on Phases 2-5 at Tattenhoe Park were considered deliverable by the Council in the June HLS assessment, based on proformas returned that month. The completions were taken into account by the Globe Inspector and rejected by the Castlethorpe Road Inspector, both based on the above proformas. The 2018 tender documents for Phases 2 and 3, which were provided to the Council in November 2019, are an indication that Homes England is actively seeking to facilitate delivery of housing (including lead-in times and build out rates). Both phases now have detailed permission via reserved matter applications granted in October and November 2019. While the Castlethorpe Road Inspector found the evidence to be lacking, the additional information provides clear evidence that there is a realistic prospect of housing delivery in the 5 year period for Phases 2 and 3. This applies to both the April and October base dates. Conversely, no additional information has been put forward for Phases 4 and 5 and so there is an absence of clear evidence of their delivery. Thus, these phases are removed from both the April and October base dates (delete 195 units from Site 2)

Strategic sites – Western Expansion Area (Site 3) [7.40-7.41, 8.42]

12.29. The Western Expansion Area in terms of disputed elements consists of Area 10 Remainder and Area 11 Remainder. Both areas are covered by outline planning permission apart from one parcel that now has reserved matters approval for 152 units. The Council highlights the rate of completions for Area 10 since delivery began in 2015/16 which are now up to 300dpa. For Area 11, completions are up to 288dpa and have exceeded projections already for 2019/20. Site wide infrastructure is in place for the plots expected to deliver in the 5 year period. **The Globe decision took the Council's projections into account** whereas the Castlethorpe Road decisions did not. However, it is not evident that the latter had the benefit of the proformas dated 10 July 2019 given this was the same date as the hearing. A disposal strategy from the landowners dated December 2019 has been added to the evidence for both areas which sets out further evidence of projected completions. Based on the lack of land disposals since March 2019, this has led to the Council revising down its 5 year trajectory by 306 units for Area 10 and 229 units for Area 11 as a worst case scenario. Nevertheless, apart from these reductions, I consider that there is clear evidence of a realistic prospect of housing delivery for the remaining units in the 5 year period for either April or October (delete 535 units from Site 3).

Strategic sites – Strategic Land Allocation (Site 4) [7.42-7.44, 8.43]

12.30. The Strategic Land Allocation is divided into a number of large outline sites with several developers. There are 5 parcels that only had outline permission as of 1 April 2019. No proforma was submitted for the Ripper Land parcel and the only evidence is an email from the landowner who highlights

access issues. In line with the Castlethorpe Road Inspector, there is a lack of clear evidence regarding the deliverability of this site (delete 85 units).

12.31. No proforma has been submitted for the Land West of Eagle Farm South parcel but this has reserved matter approval. The appellant has queried the build-out rate alongside the other two Eagle Farm parcels with reserved matter approvals, but all 3 parcels have started delivering in line with or ahead of projections. As such, there is no clear evidence to indicate that Land West of Eagle Farm South will not deliver the projected housing in the 5 year period.

12.32. The remaining Eagle Farm parcel for 125 units has outline permission only with no proforma returned. An email from October indicates a reserved matter application in the summer of 2020, but it provides little else in the way of clear evidence that the projected number of units will be delivered within the 5 years (delete 125 units).

12.33. The proforma for the remaining outline permission at Glebe Farm was submitted after the June HLS assessment but indicates a strong rate of delivery of units. Two parts of the remaining outline permission now have reserved matters approvals from September and October 2019 for a total of 366 units. This surpasses the 310 projection in the 5 year supply and with two developers operating the build-out rates appear realistic. A proforma from one of the developers in November supports these rates. Although this evidence post-dates 1 April 2019, it clearly demonstrates there is a realistic prospect of delivering the projected amount of housing within the 5 year period.

12.34. The **Council's projection of 180 units** for the Golf Course Land was based on the proforma dated May 2019. Since then, reserved matters approval was granted on 1 November 2019. This additional information provides clear evidence of deliverability within the 5 year period.

12.35. The proforma for Church Farm indicates a reserved matters application by late 2019. The Globe decision found this to be sufficient information whereas the Castlethorpe Road decision considered it fell short. Further information indicates that the application submission has now slipped to Easter 2020 with issues regarding road to be agreed. This continues to fall short of the clear evidence to demonstrate a realistic prospect of delivery (delete 90 units).

Outline or pending permissions as at 1 April 2019

12.36. The June 2019 proforma for Newton Leys (Site 5) indicates the delivery of 80 units, which has been reinforced by reserved matters approval in September 2019. The Globe decision considered the site was deliverable and I consider there is clear evidence and a realistic prospect of delivery at either base date.

12.37. The June 2019 proforma for Campbell Park Remainder (Site 6) indicates the delivery of 300 units in the 5 year period. The Globe and Castlethorpe Road decisions came to opposite conclusions on the deliverability of this site. There is now further information in the form of email correspondence from December 2019 that outlines progress towards starting on site in 2021. This represents clear evidence of deliverability and as such there is a realistic prospect of the projected numbers coming forward for either base date.

- 12.38. The June 2019 proforma for Wyevale Garden Centre (Site 9) noted a resolution to grant planning permission. This was granted in July 2019. This supports clear evidence of the site being deliverable, while the build-out rates of 150 and 130 units in 2021/22 and 2022/23 appear achievable given that the development relates to apartments that can be delivered in larger numbers at one time. Therefore, there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.39. Planning permission for the Agora redevelopment (Site 13) has lapsed and the June 2019 proforma noted viability issues and a pending decision on whether to list the existing building. The Castlethorpe Road decision found clear evidence to be lacking. Further information from November 2019 notes that the listing request was turned down and there has been progress towards planning permission and building demolition in 2020. While viability issues remain over S106 contributions, this does not appear to be a significant constraint. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.40. At the inquiry, the Council accepted that Galleon Wharf (Site 14) is not deliverable. I have no reason to disagree (delete 14 units).
- 12.41. The Railcare Maintenance Depot (Site 15) has outline permission, but the June 2019 proforma provides no information on progression towards approving reserved matters. The appellant also notes that part of the site has now been developed for a supermarket. Based on the lack of clear evidence, it has not been demonstrated that a realistic prospect of delivery exists for either base date (delete 175 units).
- 12.42. Eaton Leys (Site 16) has outline permission but no proforma was submitted in June 2019. However, a reserved matter application was pending and due to be determined by January 2020. A proforma was provided by the developer in December 2019 updating projections which appear achievable for the size of development and a major housebuilder. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.43. The June 2019 proforma for Timbold Drive (Site 26) provides limited information on the delivery of the site notwithstanding an existing outline permission. The Council notes in its proof that a new outline permission is being sought. There is a lack of clear evidence of progress towards a reserved matters approval and a realistic prospect of delivery within 5 years has not been demonstrated (delete 130 units).
- 12.44. The June 2019 proforma for Land at Walton Manor (Site 33) provides little information on delivery. The site had an application for outline permission as at 1 April 2019 which was granted in November 2019. However, there is little information on start times and build out rates. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 115 units).
- 12.45. The June 2019 proforma for Land at Towergate (Site 34) notes marketing in the summer of 2019 and a start date of January 2021. Progress has been made in terms of discharging conditions, but there is limited

information on progress towards approving reserved matters. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 150 units).

- 12.46. For High Park Drive (Site 36), no proforma was submitted in June 2019. However, a reserved matters application was submitted in November 2019 along with applications to discharge conditions. A proforma from November 2019 indicates a start date of autumn 2020. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.47. For Land East of Tillbrook Farm (Site 40), the anticipated reserved matters application in the summer of 2019 did not materialise but a January/February 2020 application was indicated in further information. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.48. The June 2019 proforma for Land West of Yardley Road (Site 42) indicated the submission of a reserved matters application in July. The Globe decision found the site was deliverable. The application was delayed until November 2019, but this still demonstrates progress towards securing detailed permission. Thus, there is clear evidence of deliverability and a realistic prospect of the projected numbers coming forward for either base date.

Sites with prior notification approval as at 1 April 2019

- 12.49. Based on the above reasoning, Maybrook House (Site 37), Mercury House (Site 38) and Bowback House (Site 39) can be considered as having detailed planning permission based on their prior notification approval to convert from offices to residential. No proformas have been submitted for these sites, but the assumption should be that there is a realistic prospect of delivery unless clear evidence indicates otherwise. All 3 sites had prior notification granted in 2018 and so as of 1 April 2019 there was still ample time to implement. While the sites may not be fully vacated now and being marketed for office use, there was a realistic prospect of delivery as of 1 April 2019 with no clear evidence to the contrary. Therefore, all 3 sites can be included within the 5 year supply.

Allocated sites as at 1 April 2019

- 12.50. No evidence for the South East Milton Keynes Strategic Growth Area (Site 7) was presented to the Castlethorpe Road Inspector and so it was discounted. However, the Council note that the projection is based on the Plan:MK trajectory and the SOCG to the plan examination. There is the uncertainty of whether the route of the Oxford to Cambridge Expressway will go through the site, delaying progress with delivering housing. However, the Plan:MK Inspector referred to a modest output by 2023/24. Although there have been delays to announcements on the preferred route of the Expressway, progress is being made towards a planning application for a smaller part of the site and a wider Development Framework is being prepared. Therefore, clear evidence of a realistic prospect of delivering 50 units on the site has been demonstrated.

- 12.51. Berwick Drive (Site 8), Food Centre (Site 10), Redbridge and Rowle Close (Sites 11 and 12), Land off Hampstead Gate (Site 19), Land off Harrowden (Site 20), Hendrix Drive (Site 22), Kellan Drive (Site 23), Singleton Drive (Site 24), the former Milton Keynes Rugby Club (Site 25), Land north of Vernier Crescent (Site 28), Manifold Lane (Site 29), Daubney Gate (Site 30), Springfield Boulevard (Site 31), Reserve Site Hindhead Knoll (Site 32), Reserve Site 3 (Site 35) and Tickford Fields (Site 41) are all allocated sites where the June 2019 proformas gave little information on the delivery of these sites and the Castlethorpe Road decision found clear evidence to be lacking.
- 12.52. For Site 8, Site 23 and Site 31 there is further information from the **Council's property team dated November 2019 setting out a specific timetable** for delivery by 2021, albeit with a revised number of dwellings. For Site 10, there is now a planning performance agreement for the site, and hybrid planning applications have been submitted following positive public consultation events for a significantly larger number of units overall. The **Council's June assessment projected 298 units delivered in the 5 years**, although this has been revised down to 200 units based on the further information. For Site 19, Site 29, Site 30, Site 32 and Site 41 there is further information in the form of emails setting out the timetable for an application and construction. For Site 25, land disposal has been agreed and plans prepared. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.53. For Sites 11 and 12, an updated proforma and letter from November 2019 confirms that the sites have passed through a neighbourhood plan examination with increased unit numbers. However, there is no clear evidence of a timetable for submitting planning applications and starting on site (delete 19 + 18 units). For Sites 20, 22, 24, 28 and 35 there is no further information provided meaning that there is still a lack of clear evidence to demonstrate a realistic prospect of delivery for either base date (delete 25 + 10 + 22 + 14 + 22 units).
- 12.54. The Lakes Estate Neighbourhood Plan site allocations (Site 17 as well as Site 18 Phelps Road and Site 27 Southern Windermere Drive) gave limited information on firm progress towards the submission of an application and the Castlethorpe Road decision found clear evidence to be lacking. Further information and timings have been submitted in November 2019 providing greater detail on progress towards submitting the application and starting on site. The development would deliver a net total of 398 dwellings allowing for the demolition of existing Council homes. Phase A will involve the construction of 110 new homes, with further new homes in Phase B only once demolition has taken place in early 2022. Therefore, there is a realistic prospect of delivering the 130 units projected by the Council over the 5 year period, with clear evidence to support this for either base date.
- 12.55. The self-build plots at Broughton Atterbury (Site 21) form part of an allocated site with the wider site subject to detailed planning permission. However, the June 2019 proforma provides little information on the delivery of this site and no further information has been provided on this matter or evidence of demand for such plots. Thus, there is a lack of clear evidence to

demonstrate a realistic prospect of delivery for either base date (delete 6 units).

New sites between 1 April and 1 October 2019

- 12.56. In the event that a 1 October 2019 base date is preferred, there are a few sites that could be included in the 5 year supply, although the appellant disputes their inclusion. Omega Mansions (Site 43) and Chancery House (Site 45) are prior notification approvals for office to residential granted in July and August 2019 respectively. There is no clear evidence to indicate these sites with detailed permission will not deliver within the 3 years of their approval. Therefore, they can be included for an October base date. Cable House (Site 44) is a duplication with Mercury House and so has not been included. The appellant has also referred to a prior notification site at Station Road Elder Gate (Site 48) although I have little information on this site including any projected numbers. As such, it makes no difference to the supply either way.
- 12.57. Land south of Cresswell Lane (Site 46) was an allocated site as of 1 April 2019 but gained detailed permission for 294 flats in July 2019. A proforma from November 2019 indicates delivery within the 5 years which is achievable for two blocks of flats. There is no clear evidence to suggest there is not a realistic prospect of delivery and so the site can be included for an October base date.
- 12.58. The Castlethorpe Road decisions (Site 47a/b) granted outline permission for 50 units on one site (a) and detailed permission for 51 units on the other site (b). For the latter, there is no clear evidence to indicate non-delivery in the next 5 years. For the former, there is no clear evidence to demonstrate progress towards reserved matters approval. Therefore, I can include Site 47(b) for an October base date but exclude Site 47(a) (delete 50 units).

Sites potentially delivering between 1 April and 30 September 2024

- 12.59. If the base date is shifted to 1 October 2019, this would necessitate moving the end date to 30 September 2024 in terms of the 5 year period. Based on the June 2019 assessment, there are 13 sites currently in Year 6 (2024/25) that are shown as starting to deliver in that year. At the Inquiry, the Council only sought to argue that 4 of them have a realistic prospect of delivery. The amount for each site would be half of that shown in Appendix 1 of the June assessment for 2024/25 given that 1 April to 30 September is 6 months.
- 12.60. The sites at the rear of Saxon Court (Site 49), the rear of Westminster House (Site 50), Site C4.2 (Site 51) and the Cavendish site (Site 52) within the Fullers Slade regeneration project are all allocations in Plan:MK. There is little evidence of progress towards applications for any of these sites. Site 49 has had a development brief prepared but there is no other information. The regeneration project has been through a referendum and a development programme agreed. While an application could be submitted in late 2020 and delivery commence in the 5 year period for Site 52, there is little evidence to support this position. Therefore, it has not been shown that there is a realistic prospect of delivery for these 4 sites and they should not form part of the 5 year supply for a 1 October 2019 base date (delete 20 + 15 + 22 + 9 units).

Conclusion on housing land supply

- 12.61. For the 1 April 2019 base date, the Council considers it has a surplus of 2,845 units with a lapse rate applied to the supply (removing 678 units) in Scenario 1 above [8.44]. The appellant's closing statement reports the **Council's contended surplus to be 2,844** which is one unit lower [7.19]. The discrepancy is not clear, but I have used the lower surplus figure just in case. The above assessment deletes a number of units from specific sites coming to a total of 1,750 units deleted for a 1 April base date. This would reduce the surplus to 1,094 units and result in a supply of 11,181 units (12,931 – 1,750). Set against an agreed 5 year requirement of 10,087 units this would result in a HLS of 5.5 years. Bearing in mind that the lapse rate has only been applied to ensure robustness, I am satisfied that the Council can realistically demonstrate a 5 year HLS for this base date.
- 12.62. For a 1 October 2019 base date position, the **Council's surplus based on** its monitoring data and its approach to assessing deliverability is 3,859. The reduction in units set out above, including those sites purported to be in a 5 year supply between 1 October 2019 and 30 September 2024, comes to a total of 1,866 units deleted. The effect on the surplus would reduce it to 1,993 units and result in a supply of 12,083 units (13,949 – 1,866). Set against a 5 year requirement of 10,091 units, this would result in a 5 year HLS of 5.99 years for this base date.
- 12.63. **I have had regard to the Council's** Scenario 2 [8.45] which includes all of the adjustments in paragraph 4.62 **of the Council's proof** (LPA1) except paragraph 4.62.11 along with the removal of Site 14 at Galleon Wharf. This scenario sees an overall reduction in supply by 330 units from Scenario 1 but still provides a 5 year HLS of 6.25 years. My assessment above has already applied the adjustments to the sites in paragraphs 4.62.1 and 4.62.2 and deleted all or part of the sites in paragraphs 4.62.6, 4.62.12 and 4.6.13. It has not applied the adjustments in the remaining paragraphs, but even if it did, this would result in a minor overall addition of 95 units to the supply for the April base date. Thus, Scenario 2 does not affect my findings on HLS.
- 12.64. Scenario 3 is the same as Scenario 2 [8.46] but without the **Council's** lapse rate applied. I have decided that it would be prudent to apply the lapse rate and so this scenario also does not affect my findings on HLS.
- 12.65. In conclusion and based on the evidence before me, I find that the Council can demonstrate a 5 year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of **the Council's** lapse rate. In the event that the SoS finds that a 5 year supply cannot be demonstrated, I deal with this scenario and its implications below.

The Location of the Development

The Development Plan – Plan:MK

- 12.66. The appellant accepts that the proposal conflicts with Policies DS1, DS2 and DS5 of Plan:MK due its location in the open countryside outside of the development boundary for Woburn Sands. While adjacent to this key settlement, the proposal does not meet any of the 13 criteria set out in Policy

DS2 and neither does it meet any of the exceptions in Policy DS5. [7.5, 8.48, 8.50]

- 12.67. The appellant argues that the proposal is in accordance with the approach that underpins the Plan:MK spatial strategy given that it adjoins a **key settlement that Plan:MK defines as 'chosen for development'**. There is general agreement between the main parties that the site is in a sustainable location with regards to its proximity to a range of services and facilities in Woburn Sands. The NPPF supports housing in such locations and where it can enhance or maintain the vitality of rural communities. However, I consider that the location and type of development does not comply with Policies DS1, DS2 and DS5 which sets out the spatial strategy for residential schemes. The presence of a 5 year HLS means the weight to any conflict with these policies is not diminished. [7.5, 7.93, 7.94, 8.49]
- 12.68. While Plan:MK does not set out housing requirements for the Woburn Sands neighbourhood area as advocated in NPPF paragraph 65, the Plan:MK Inspector considered that no specific allowance for additional development was necessary for this settlement. The development boundary is tightly drawn around the settlement but it has been reviewed as part of the Plan:MK examination with amendments made to accommodate recent planning approvals. This is not to say that there is a cap on development in Woburn Sands, but there is no policy requirement to deliver additional housing in this settlement. Moreover, it has not been demonstrated that Policies DS1, DS2 and DS5 are inconsistent with the NPPF in terms of their approach to the spatial strategy and the location of housing and the objective to safeguard the countryside from inappropriate development. [7.6, 7.7, 7.92, 8.49, 8.50]

The Development Plan - Woburn Sands Neighbourhood Plan

- 12.69. The appellant accepts that the proposal conflicts with WSNP Policy WS5 as none of the exceptional circumstances currently apply to allow for an extension of the current development boundary. The appellant stressed that WSNP Policy WS6 is parasitic on Policy WS5 and only allows for a limited amount of additional housing in the plan area and none of the listed circumstances apply. [7.9, 7.13]
- 12.70. The WSNP has not been reviewed within 5 years of it being made and it makes no allocations for housing. The **previous Inspector's report and SoS** decision only gave moderate weight to Policy WS5 as it was based on tightly drawn boundaries and the old Milton Keynes Local Plan 2001-2011. The requirement in the policy for any boundary amendment through Plan:MK to be agreed by the Town Council was not recommended by the examiner. Such a requirement is at odds with the NPPF which clarifies the hierarchy of local plans over neighbourhood plans. [7.10-7.12]
- 12.71. However, as noted above, the development boundary has been reviewed and updated as part of the Plan:MK process and no specific allowance for additional development was necessary. There is no inconsistency with the NPPF in terms of how Policies WS5 and WS6 seek to safeguard the countryside and direct development to specific locations. Therefore, significant weight can be afforded to both policies and any conflict with them, particularly in light of a demonstrable 5 year HLS. Neither policy should be regarded as being out of date. [7.14, 8.51-8.53]

Proposed new transport infrastructure

- 12.72. It is conceivable that the route of the Oxford to Cambridge Expressway could travel through or near to the appeal site based on the preferred option of Highways England and the various constraints within the Woburn Sands area. However, there has yet to be a formal announcement on the next stage of this road project or further public consultation on specific options or routes. Plan:MK addresses the Expressway in relation to the South East Milton Keynes extension in terms of the timing of any planning permission but does not preclude development in specific locations as the details and future of the project are still yet unclear. The main parties agree that the proposal does not conflict with the development plan insofar as the Expressway is concerned and so does not warrant refusal of the proposal on this matter. [6.1, 7.95, 7.96, 9.3, 9.7, 9.10, 10.3]
- 12.73. The East-West rail project would see greater use of the line through Woburn Sands and interested parties have expressed concerns regarding the potential increased frequency of the level crossing being closed. However, there is little evidence that the appeal proposal would hamper the delivery of the rail project or result in unacceptable traffic conditions insofar as the level crossing is concerned. Again, there is no conflict with the development plan or reason to refuse the proposal on this matter. [9.3, 9.7, 9.8, 9.12]

Conclusion on the location of the development

- 12.74. While there are no reasons to withhold permission having regard to routes of potential new transport infrastructure, the proposed housing would not be in an appropriate location having regard to the development plan and national policies. As noted above, it would conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6.

Housing Density

- 12.75. At the time of the first SoS decision, Policy H8 of the Local Plan 2001-2011 sought a density of 35dph. The SoS found that the density of the proposed development, which was generally considered to be 16dph at the time, was a very significant departure from this policy with significant weight given to the conflict. Policy H8 has since been replaced with Policy HN1 of Plan:MK which sets no density limit but seeks a balance between making efficient use of land with respecting the surrounding character and context. [7.99, 8.58]
- 12.76. Paragraphs 122 and 123 of the NPPF have not changed between the 2018 version considered by the SoS and the current 2019 version. Paragraph 122 seeks efficient use of land taking into account various factors including the **desirability of maintaining an area's prevailing character and setting**. Paragraph 123 seeks to avoid low densities, but only in the context of an existing or anticipated shortage of land. Given my findings above, this paragraph is not applicable. Policy H8 was considered by the SoS to be consistent with the NPPF, but it is clear that he found conflict with the policy only. This is because he said that the various factors in paragraph 122 did not justify the departure from policy (DL26). [7.98, 8.60]

- 12.77. At the first Inquiry, the appellant demonstrated¹²⁸ how 16dph was broadly comparable to the densities of immediately adjoining residential streets. The first Inspector found the proposed density to be acceptable. At the second Inquiry, the appellant contended that the net density based on the illustrative layout would actually be 20.3dph. The parties disagreed on the extent of land within the site that would be developed for housing and directly associated uses including the access roads. Around 50% of the site would be developed for housing, but there is no agreement on the overall density. [7.97, 8.64]
- 12.78. The fact that there is disagreement over an illustrative layout for a proposal where all matters are reserved apart from access indicates that the final density figure cannot be established at this point. As part of any reserved matter application relating to layout, the provision and situation of buildings, routes and open spaces across the site area is to be assessed and determined. Thus, while density is not a specific reserved matter, the eventual layout could affect the density figure. If the layout was unacceptable to the Council in terms of how it related to the development and buildings and spaces beyond, it could refuse the reserved matters application. Thus, I am persuaded more by the judgment in *Inverclyde* which found density could be considered as part of a reserved matter than the judgment in *Chieveley* which focused on gross floor space. [7.101, 7.102, 8.54, 8.55]
- 12.79. No condition has been put forward to fix a specific density or developable area. The development is for up to 203 dwellings. Thus, it is not possible to be certain of the final density figure. There is no detailed analysis from the Council on a specific density figure or range of figures. Its planning witness stated that the development should reflect the overall average density of Woburn Sands which is 27dph. However, this is based on an unverified figure in the appeal decision for the Nampak site. The appellant's **analysis** indicates that the built-up area of Woburn Sands has a density of 23.7dph. Its density figures for the individual parishes are lower but less helpful as they include large area of countryside. [7.100, 8.63, 8.65]
- 12.80. Notwithstanding the disagreement over density figures and the scope of reserved matters, even if the original figure of 16dph is preferred, this would be in keeping with the surrounding character and context of the adjoining streets. The illustrative layout would reflect the spaciousness of these existing streets with the use of open space buffers to safeguard the living conditions of neighbouring properties and the setting of the listed farmhouse. Little evidence has been presented to suggest that a density beyond 16 or 20dph would be acceptable in terms of character and appearance. The first Inspector found that an indicative layout for 303 dwellings would not be desirable in terms of landscaping, amenity and context. **Although the site's location has good access** to facilities including public transport, it has not been demonstrated that higher density development would be acceptable. In the event that a 5 year HLS could not be demonstrated, there would need to be adequate justification that a higher density could work in this location. [7.100, 8.63]

¹²⁸ CD2.6 appendix 13

- 12.81. While the final layout and density of the development has yet to be fixed, I consider that a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting, and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122. While I have reached a different conclusion to the SoS in his first decision, this is based on the changed development plan context, the ability to finalise density at reserved matters, and having regard to the context and character of nearby residential streets. [7.4, 7.103, 8.65]
- 12.82. If the SoS concludes differently and finds that the proposed density would not represent an efficient use of land, then there would be conflict with Plan:MK Policy HN1 and NPPF paragraph 122. This would increase the amount of weight against the proposal.

Other Matters

Best and most versatile agricultural land

- 12.83. The loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, site allocations such as the South East Milton Keynes Strategic Growth Area encompass larger areas of best and most versatile agricultural land. The Council has not sought to argue that this matter on its own would justify refusing the development and so the policy conflict only carries moderate weight. A balance needs to be struck between the economic and other benefits of such land versus the benefits of the development. [7.109, 8.66, 9.12]

Ecology and drainage

- 12.84. The first Inspector noted that the ecological value of the site was limited due to its agricultural use with most of the existing habitats contained within the trees, hedgerows and ponds on the field margins. These habitats would be mostly retained and enhanced by the development with measures secured by condition. An updated desktop study and site assessment was undertaken in September 2019 with no major changes since the original 2016 ecology reports. [6.1, 7.116, 9.11]
- 12.85. The existing badger sett would be removed to allow for the new access from Newport Road. This would require a derogation licence to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a derogation licence to be provided prior to grant of planning permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
- 12.86. The provision of housing is in the public interest, while there is no alternative but to move the badger sett given its location. The creation of an artificial sett as close as possible to the original location would provide temporary refuge and would have to be in use before the licence application. Other mitigation measures during construction would also seek to limit risks to badgers. These measures should maintain the species at a favourable conservation status. Based on these considerations, there is reasonable prospect of Natural England granting a licence. As a consequence, the

development would not have an unacceptable effect on ecology or protected species.

- 12.87. As noted by the first Inspector, the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime. There should be sufficient space to allow for the drains set out in the hydrology assessment. The site is within Flood Zone 1 which has the lowest risk of flooding and the development would provide sufficient ponds, swales and ditches to address surface water run-off. The measures and maintenance plan can be secured by conditions and so the development would not have an unacceptable effect on drainage. [6.1, 10.2]

Highways and parking

- 12.88. The development would provide a new route between Newport Road and Cranfield Road to alleviate some of the problems associated with the junction next to the level crossing. The first Inspector noted that all of the junctions would achieve suitable visibility splays and that there would be no unacceptable highway safety impacts. The updated TA for the second Inquiry provides new trip generation and distribution estimates taking into account more recent data and reviews existing and proposed junction modelling. It concludes that there would be a very modest impact on all junctions and routes with no adverse effect on highway capacity or the need for any more complex highway designs such as ghost island right turn lanes. While I note the concerns raised by interested parties about traffic impacts, the evidence before me does not indicate that the development should be restricted on highways grounds. The first Inspector noted little evidence of parking stress within Woburn Sands and the intention for a Travel Plan to encourage sustainable modes of transport. I have no reason to come to a different view on parking. [6.1, 7.107, 7.108]

Facilities and services in Woburn Sands

- 12.89. Woburn Sands retains a number of services and facilities including schools, shops and a medical centre, with a bus service and train station. While it may have lost or reduced the amount of services and facilities in recent years, the town remains designated as a key settlement in Plan:MK. Concerns regarding capacity limits at the schools and medical centre can be addressed via financial contributions in the S106 agreement, which also provides the opportunity for additional medical provision within the site. There is little evidence before me to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands. [6.1, 7.115, 9.2, 9.3, 9.9]

Heritage assets

- 12.90. The Grade II listed Deethe Farmhouse has architectural and historic interest as an 18th century property with later alterations. Its significance is also informed by its setting, which today includes the industrial estate as well as the agricultural fields of the appeal site. The former, due to their modern utilitarian appearance and use contribute little to the significance of the farmhouse, whereas the latter make a positive contribution as remnants of the **building's agricultural past. The building is not highly visible from either the road or the site due to planting and so the positive contribution of the appeal site is only moderate.**

- 12.91. The development would change the rural setting of the farmhouse but the illustrative layout plans shows that a landscaping buffer can be provided within the site to wrap around the shared boundary. Layout and landscaping details could be addressed at reserved matters stage. For the above reasons, the development would result in less than substantial harm to the significance of the listed building. The level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, NPPF paragraphs 193 and 194 state that great weight should be given to the conservation of the listed building and that any harm requires clear and convincing justification. In line with NPPF paragraph 196, this harm will be weighed against the public benefits below. [6.1, 7.105]
- 12.92. The recently designated Grade II registered park and garden at Wavendon House forms part of the grounds to the Grade II* listed Wavendon House and extends close to the northern boundary of the site. The significance of the park and garden derives from its historic and design interest as an 18th century pleasure ground and park laid out by a significant landscape improver of the time (Richard Woods). Wavendon House itself has architectural and historic interest as a country estate home of 17th century origins largely remodelled in the 18th century. A mature belt of trees on the edge of the former golf course limit views between the park and garden and the site, while the listed house is further away to the north with additional landscape screening in place. Thus, the site only makes a minor contribution to the significance of both heritage assets as part of their wider setting. The development would provide trees and a landscape buffer along the boundary nearest to Wavendon House. Details could be addressed at the reserved matters stage. Given the existing screening and distances involved, there would be no harm caused to either heritage asset. [7.105]

Character and appearance of the landscape

- 12.93. The development would have a significant visual and landscape effect on the site itself given that it would change from agricultural fields to housing. However, as noted by the first Inspector and the first SoS decision, the site does not comprise a valued landscape and is contained by existing boundary vegetation which limits views from wider vantage points. Moreover, the site adjoins the edge of Woburn Sands and the development would be seen in the context of existing housing. Although some hedgerows and trees would be lost including those subject to a TPO, the intention is to retain and enhance planting. Little has changed in visual and landscape terms since the first Inquiry and decision. Therefore, I concur that the development would have a very limited effect on the character and appearance of the landscape. [6.1, 6.3, 7.104, 7.117]

The Planning Balance

- 12.94. A number of benefits have been put forward by the appellant. The provision of affordable housing beyond the minimum policy requirement should be strongly supported in line with Policy HN2 and so carries significant weight. The provision of market housing carries similar weight given the potential number that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible. The provision of medical facilities within the site is a potential social benefit but

only if it goes beyond mitigating the effect of the development which has not been proven. [7.110-7.113, 7.115, 8.67, 8.68, 8.71]

- 12.95. The economic benefits would include temporary construction employment, the provision of a range of homes for a cross-section of working people, secondary employment through increased spending in the local area and the payment of a new **homes'** bonus to the Council, some of which could be remitted to Woburn Sands Town Council. As such, reasonable weight can be afforded to these benefits. [7.114, 8.69]
- 12.96. In highways terms, while the new road through the site between Newport Road and Cranfield Road would offer an alternative route to the level **crossing junction, the appellant's update TA notes very modest impacts on all junctions** as a result of the development. The housing would reduce the extent and distance of car-borne commuting although not remove it altogether given the distance to major areas of employment and the relatively limited train and bus services. Therefore, only limited weight can be afforded any highway benefits. [7.118, 8.70]
- 12.97. The environmental enhancement of ecology and the provision of drainage measures to try and address existing problems would provide moderate benefits. **Little weight can be afforded to the appellant's claim of a high quality living environment** given the limited information at outline stage and the policy requirement that all development should be high quality. [7.116, 8.72, 8.73]
- 12.98. Taken a whole, the benefits range from limited to significant in magnitude. They can all be regarded as public benefits and set against the low level of harm to the significance of the listed farmhouse, they would provide clear and convincing justification for that harm. Having special regard to the desirability of preserving listed buildings and their setting in line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the development would have an acceptable effect in terms of heritage assets. [12.102-12.104]
- 12.99. The development would have an acceptable effect on a range of other matters listed above. It would also be acceptable in terms of housing density. There are insufficient grounds for withholding permission based on routes of potential national infrastructure projects and the negative effect on best and most versatile agricultural land would not, in itself, be a reason for refusal. The conflict with Plan:MK Policy NE7 carries moderate weight as set out above and would be outweighed by the benefits. [12.88-12.95]
- 12.100. However, there would be conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6 due to the location of the site in the open countryside. I have found that a 5 year HLS can be demonstrated and so there is no reason to reduce the weight to the conflict with these policies on that basis. Policies DS1, DS2 and DS5 are not inconsistent with the NPPF and so carry full weight, while significant weight can be afforded to Policies WS5 and WS6 based on their NPPF consistency. As policies most important for determining the application, none of these 5 policies are out of date. As such, the tilted balance in NPPF paragraph 11(d) is not engaged. [7.119, 8.74-8.76, 12.79-12.84]

- 12.101. The **development's** conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy set out in Plan:MK. While a number of benefits would be achieved, they would be insufficient to outweigh the conflict with the development plan. In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should not be granted.
- 12.102. Alternatively, if the SoS finds that a 5 year HLS cannot be demonstrated or that the most important policies are out of date for other reasons, then the tilted balance in NPPF paragraph 11(d) would be engaged. As there are no policies in the NPPF that provide a clear reason for refusing the development (having had regard to the effect on designated heritage assets), it would be necessary to consider whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
- 12.103. Moreover, it should be noted that if the SoS finds that there is a housing land supply shortfall, then NPPF paragraph 123 would be engaged which seeks to avoid homes being built at low densities. NPPF paragraph 123(c) states that proposals should be refused where the decision maker considers that they fail to make efficient use of land taking into account the policies of the NPPF.
13. Recommendation
- 13.1 For the reasons set out above, I recommend that the appeal be dismissed.
- 13.2 Nonetheless, if the SoS is minded to disagree with my recommendation and allow the appeal, then the conditions listed in Annex 1 should be attached to any permission granted along with the obligations set out in the S106 agreement.

Tom Gilbert-Wooldridge

INSPECTOR

ANNEX 1: SUGGESTED CONDITIONS (28)

Details, phasing and lighting

- 1) No development shall commence on any phase of the development until details of the layout, scale, appearance and landscaping for that phase (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority
Reason: To meet the requirements of the Town and Country Planning (Development Management Procedure) Order 2015
- 2) Application/s for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun no later than the latest of the following dates:
 - i. The expiration of three years from the date of this permission; or
 - ii. The expiration of two years from the date of the approval of the last of the reserved matters to be approved.
Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Planning Act
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL-X-001 Rev B, PL-X-003 Rev C and PL-X-004, but only in respect of those matters not reserved for later approval.
Reason: For the avoidance of doubt and in the interests of proper planning of the development
- 4) The development hereby permitted shall not exceed 203 dwellings (Use Class C3). The use classes are those set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order with or without modification.
Reason: To ensure the development conforms to the outline planning permission
- 5) Prior to the commencement of development of any phase of the development, a phasing plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the phasing plan shall include the phasing of the delivery of all roads, footways, redway and bridleway links and Framework Travel Plan measures. The development shall take place in accordance with the approved phasing plan.
Reason: In order to clarify the terms of this planning permission and ensure that the development proceeds in a planned and phased manner. This is pre-commencement condition as the phasing plan would need to be agreed before any works begin.
- 6) The access arrangements hereby permitted shall be carried out in accordance with Proposed Site Access drawings nos. WO1188-101 Rev P05 and WO1188-102 rev.P03

Reason: To provide satisfactory highway connections to the local highway network

- 7) Reserved matters applications for each phase of the development shall include details of the proposed finished floor levels of all buildings and the finished ground levels in relation to existing surrounding ground levels for that phase. Development for that phase shall be undertaken in accordance with the approved levels.

Reason: To ensure that construction is carried out suitable levels having regard to drainage, access, the appearance of the development and the amenities of neighbouring properties in accordance with Policy D5 of Plan: MK

- 8) Reserved matters applications for each phase of the development shall include details of the proposed boundary treatments for that phase. The approved boundary treatments shall be carried out in accordance with the approved details for that phase and be completed prior to the occupation of the associated dwelling or first use of such phase of the development.

Reason: To provide adequate privacy, to protect the external character and appearance of the area and to minimise the effect of development on the area in accordance with Policy D5 of Plan: MK

- 9) Reserved matters applications for each phase of the development shall include a lighting scheme for all public and private streets, footpaths and parking areas. The lighting scheme shall include details of what lights are being proposed, a lux plan showing maximum, minimum, average and uniformity levels, details of means of electricity supply to each light and how the lights will be managed and maintained in the future. If any lighting is required within the vicinity of current or built-in bat features, it shall be low level with baffles to direct the light away from the boxes and units, thus preventing severance of bat commuting and foraging routes. The approved scheme shall be implemented prior to the occupation of each associated dwelling within that phase of the development.

Reason: In the interests of safety and amenity and in order to comply with Policies D5 and NE6 of Plan: MK

- 10) Reserved matters applications for each phase of the development shall incorporate measures to minimise the risk of crime in accordance with Secured by Design principles. All dwellings shall be designed to achieve Secured by Design accreditation (as awarded by Thames Valley Police) in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of reducing crime and disorder in accordance with Policy EH7 of Plan: MK

- 11) Reserved matters applications for each phase of the development shall be accompanied by a Sustainability Statement for that phase including, as a minimum, details required by Policy SC1 of Plan: MK. The approved details shall be implemented for each dwelling prior to the occupation of that dwelling.

Reason: In the interests of achieving a sustainable form of construction and to ensure the development complies with Policy SC1 of Plan: MK

- 12) No development shall take place above slab level until samples of the external materials to be used in the construction for each phase of the development (if any) have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved details.

Reason: To ensure that the development does not detract from the character and appearance of the area in accordance with Policy D2 of Plan: MK

Affordable housing

- 13) Reserved matters applications for each phase of development shall include details of the location and type of affordable housing pursuant to the development phase for which approval is sought. Each phase of the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development and location of affordable housing is appropriate and in accordance with Policy HN2 of Plan: MK

Drainage

- 14) Prior to the commencement of the development hereby permitted a detailed design, and associated management and maintenance plan, for a surface and storm water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and approved in writing by the Local Planning Authority. The management and maintenance plan shall include details of the way the surface and storm water drainage scheme will be implemented for each phase of development. The approved drainage scheme shall subsequently be implemented and maintained in accordance with the approved detailed design and scheme for maintenance, and in accordance with the approved phasing details and be retained thereafter.

Reason: To ensure satisfactory and sustainable surface water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan: MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

- 15) Prior to the commencement of each phase of the development, a foul water strategy shall be submitted to and approved in writing by the Local Planning Authority. No dwellings in that phase shall be occupied until the works have been carried out in accordance with the approved foul water strategy for that phase.

Reason: To ensure satisfactory and sustainable foul water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan: MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

Car parking, travel and access

- 16) Reserved matters applications for each phase of the development shall include a scheme to provide car parking and cycle parking and manoeuvring of vehicles within the development in accordance with the Milton Keynes Council Parking Standards SPG (2016) or any subsequent parking standards adopted at the time any reserved matters application is

submitted and in accordance with the Council's New Residential Development Design Guide (2012) or any further guidance on parking that may be adopted at the time any reserved matters application is submitted. The approved scheme shall be implemented and made available for use for each dwelling prior to the occupation of that dwelling and shall not thereafter be used for any other purpose.

Reason: To ensure adequate parking provision at all times and to enable vehicles to draw off, park, load/unload and turn clear of the highway so that the development does not prejudice the free flow of traffic or the safety on the neighbouring highway in accordance with Policies CT3 and CT10 of Plan:MK

- 17) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a Construction and Delivery Plan that shall outline, in accordance with the phasing as approved under Condition 5 the proposed access works and which shall include links to the existing highway, footpaths and cycle ways (including the specification thereof). Development shall then take place in accordance with the approved Construction and Delivery Plan. No other parts of the development shall begin until the new means of access for that phase has been provided and laid out in accordance with the Construction and **Delivery Plan and constructed in accordance with Milton Keynes Council's** standard specification.

Reason: In the interests of highway safety and to ensure adequate mitigation measures are in place. This is a pre-commencement condition to ensure that there is agreement on construction traffic and deliveries before works begin

- 18) Measures proposed within the approved Framework Travel Plan dated March 2016 will be implemented in a phased manner, in accordance with Condition 5. No phase of the development shall be occupied prior to the implementation of the agreed Framework Travel Plan measures relating to that phase. Those parts of the approved Framework Travel Plan that are identified therein as being capable of implementation after occupation shall be actioned and reported in accordance with the timetable contained within, with a minimum of annual reporting for the first five years.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy CT2 of Plan:MK

- 19) No dwelling shall be occupied in any phase of the development until the estate road which provides access to the dwelling, from the existing highway, has been laid out and constructed.

Reason: To provide satisfactory highway connections to the local highway network in accordance with Policy CT2 of Plan:MK

Archaeology

- 20) Prior to the commencement of each phase of the development a programme of archaeological field evaluation comprising trial trenching shall be completed. The programme of archaeological evaluation shall be detailed in a Written Scheme of Investigation submitted to and approved by the Local Planning Authority in writing. On completion of the agreed

archaeological field evaluation for each phase a further Written Scheme of Investigation for a programme of archaeological mitigation in respect of any identified areas of significant buried archaeological remains shall be submitted to and approved by the Local Planning Authority in writing. The scheme for archaeological mitigation shall include an assessment of significance and research questions; and

- i. The programme and methodology of site investigation and recording;
- ii. The programme for post investigation assessment;
- iii. Provision to be made for analysis of the site investigation and recording;
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development in any phase shall take place other than in accordance with the Written Scheme of Investigation so approved. The development hereby permitted shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable expert investigation of cultural remains at this site of archaeological interest in accordance with Policy HE1 of Plan: MK

Ecology

- 21) Any protected species survey report in excess of three years old at the time of the commencement of development of each phase of the development shall be updated and submitted to and approved in writing by the Local Planning Authority prior to the commencement of development of that phase of the development. Natural England derogation licence(s) shall be obtained for any protected species likely to be harmed prior to the commencement of the development.

Reason: To safeguard protected species and biodiversity in accordance with Policy NE2 of Plan: MK

- 22) Prior to the commencement of development of each phase of the development, a Landscape and Ecology Management Plan which covers the landscape and ecological features of the development ensuring net gains for wildlife compliance with local and national policies shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include the creation of additional habitat areas and a scheme to incorporate additional biodiversity features such as swallow cups, bird and bat boxes, bricks or cavities into appropriate buildings. Thereafter the development shall be carried out in accordance with the approved scheme and all features and access to them shall be maintained in perpetuity.

Reason: To ensure the development incorporates adequate biodiversity enhancements in accordance with Policies NE3 and NE4 of Plan:MK

Tree protection

- 23) All existing trees and hedgerows to be retained in each phase of the development are to be protected according to the provisions of BS 5837:2012 'Trees in relation to design, demolition and construction - Recommendations' prior to the commencement of any works on each phase. All protective measures shall be in place prior to the commencement of any building operations (including any structural alterations, construction, rebuilding, demolition and site clearance, removal of any trees or hedgerows, engineering operations, groundworks, vehicle movements or any other operations normally undertaken by a person carrying on a business as a builder) in that phase.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Open space, play areas and landscaping

- 24) Prior to the commencement of any phase of the development, an open space specification which includes the location, details and specification for all areas of open space including the Neighbourhood Play Area shall be submitted to and approved in writing by the Local Planning Authority. Detailed proposals for play areas shall be submitted and agreed at the same time as the detailed housing layouts or otherwise demonstrate that the minimum buffer distances between residential property boundaries and the play area active zone can be achieved in compliance with the standards set out in Plan:MK Appendix C, or any subsequent standards. The open space specification shall also include the phasing for the laying out of all areas of open space including any Play Areas and the long term management and maintenance arrangements for all open space and play facilities, to cover a minimum period of ten years. The development shall be completed in accordance with the approved details.

Reason: To minimise the effect of the development on the area in accordance with Policy L4 of Plan:MK

- 25) Reserved matters applications for each phase of the development shall include a landscaping scheme with detailed drawings showing which trees and hedgerows are to be retained in that phase and which trees and hedgerows are proposed to be felled or lopped in that phase. The landscaping scheme shall also show the numbers, types and sizes of trees and shrubs to be planted in that phase including their locations in relation to associated infrastructure and a species list to include native species and species beneficial to wildlife. The planting plans shall include existing trees and/or hedgerows to be retained and/or removed within each phase accurately shown with root protection areas and based up to date tree surveys. Any trees or shrubs removed, dying, or which become severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species to be agreed in writing by the Local Planning Authority.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Construction

- 26) Prior to the commencement of development of any phase of the development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include Noise Action Levels (based on a noise survey) and site procedures to be adopted during the course of construction including working hours, intended routes for construction traffic, details of vehicle wheel washing facilities, location of site compound, lighting and security and how dust and other emissions will be controlled. The development shall be carried out in accordance with the approved CEMP.

Reason: To ensure there are adequate mitigation measures in place in the interests of highway and pedestrian safety and in order to protect the amenities of existing and future residents in accordance with Policies CT2 and NE6 of Plan: MK

- 27) Prior to the commencement of development on any phase, the developer shall carry out an intrusive site investigation into the ground conditions at the site to determine the likelihood of any ground, groundwater or gas contamination of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring each phase to a condition suitable for its intended use, shall be submitted to and approved in writing by the Local Planning Authority before construction works commence on that phase. Any remedial works shall be carried out on each phase in accordance with the approved strategy and validated on a phase by phase basis by submission of an appropriate verification report prior to the first occupation on that phase of the development. Should any unforeseen contamination be encountered, the Local Planning Authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination shall also be carried out to the written satisfaction of the Local Planning Authority.

Reason: To ensure the site is fit for its proposed purpose and any potential risks to human health, property and the natural and historic environment area appropriately investigated and minimised in accordance with Policy NE6 of Plan: MK

Housing mix

- 28) Any reserved matters application shall be accompanied by details outlining the proposed housing mix strategy which takes account of the latest housing need within the District. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development hereby approved reflects housing need within the Borough in accordance with Policy HN1 of Plan: MK

ANNEX 2: APPEARANCES

FOR THE APPELLANT

Peter Goatley and James Corbet Burcher of Counsel instructed by Stephen Webb of Clyde and Co LLP.

They called:

Roland Burton BSc (Hons) MRTPI	DLP (Planning) Limited
Tim Waller BA (Hons) DipTP MRTPI	Waller Planning
Julian Hudson MA (Oxon) MSc MSc MCIHT	Scott White and Hookins
Stephen Webb	Clyde and Co LLP

FOR THE LOCAL PLANNING AUTHORITY

Reuben Taylor QC and Matthew Henderson of Counsel instructed by Sharon Bridglingsh of Milton Keynes Council.

They called:

James Williamson BA (Hons) MSs MRTPI	Milton Keynes Council
Niko Grigoropoulos BSc (Hons) MA MRTPI	Milton Keynes Council
Paul Van Geete	Milton Keynes Council
Nazneen Roy	Milton Keynes Council

INTERESTED PERSONS WHO SPOKE AT INQUIRY

Councillor Jacky Jeffries	Woburn Sands Town Council
Councillor David Hopkins	Danesborough and Walton Ward Councillor (Milton Keynes Council) and Chairman of Wavendon Parish Council
Judith Barker	Local resident
Jenny Brook	Local resident

ANNEX 3: DOCUMENTS

INQUIRY DOCUMENTS (FOR REDETERMINED APPEAL)

- RID01 Opening submissions on behalf of the appellant
- RID02 Opening statement on behalf of the Council
- RID03 High Court judgment R(oao Matthew Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)
- RID04 Statement by Councillor Jacky Jeffries
- RID05 Statement by Councillor David Hopkins
- RID06 Statement of Common Ground between the appellant and the Council
- RID07 Quarter 3 (1 October to 31 December 2019) monitoring data of housing starts and completions in Milton Keynes
- RID08 Babergh District Council Housing Land Supply Position Statement 2019/20 to 2023/24
- RID09 Court of Appeal judgment R (on the application of East Bergholt Parish Council) v Babergh District Council) [2019] EWCA Civ 2200
- RID10 Mid Suffolk District Council Housing Land Supply Position Statement 2019/20 to 2023/24
- RID11 Email and photograph from Stephanie Forester (local resident)
- RID12 **Addendum to the Council's** justification document for Section 106 contributions
- RID13 Note from the Council on the 2019 distribution of annual housing monitoring proformas
- RID14 Site visit itinerary
- RID15 Note from the Council on the Babergh and Mid Suffolk Housing Land Supply Position Statements
- RID16 Statement by Judith Barker
- RID17 **Note from the appellant responding to the Council's note (RID15)**
- RID18 Extract from the Encyclopedia of Planning Law and Practice 3B-2200.5 (Applications for outline planning permission)
- RID19 Note from the Council clarifying the sites removed from the 2019 five-year land supply when updated to a base date of 1 April 2019
- RID20 Errata to Roland Bolton Proof of Evidence and Statement of Common Ground on housing land supply
- RID21 Closing submissions on behalf of Milton Keynes Council
- RID22 Court of Appeal judgment City and District Council of St Albans v Hunston Properties and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610

- RID23 Court of Appeal judgment R v Newbury District Council, Newbury and District Agricultural Society, Ex Parte Chieveley Parish Council [1998] EWCA Civ 1279
- RID24 Agricultural land quality maps for urban extensions to Milton Keynes compared to the appeal site
- RID25 Order from the Planning Court regarding **Milton Keynes Council's** claim for Planning Statutory Review of Castlethorpe Road appeal decision
- RID26 Court judgment Inverclyde District Council v Inverkip Building Company Limited
- RID27 High Court judgment Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)
- RID28 High Court judgment R (on the application of West Lancashire Borough Council) v Secretary of State for Communities and Local Government [2017] EWHC 3451 (Admin)
- RID29 Closing submissions on behalf of the appellant
- RID30 Final draft Section 106 agreement
- RID31 Final draft Section 106 agreement (with tracked changes)
- RID32 Supplementary Planning Guidance on Planning Obligations for Education Facilities
- RID33 Clean and tracked changes **version of appellant's closing submissions** reflecting amendments made at the Inquiry
- RID34 **Clean and tracked changes version of the Council's closing submissions** reflecting amendments made at the Inquiry
- RID35 Addendum to Statement of Common Ground regarding Area Tree Preservation Order
- RID36 Amended version of RID20
- RID37 Completed and executed S106 agreement

PROOFS OF EVIDENCE (FOR REDETERMINED APPEAL)

Appellant:

- APP1 Summary Proof of Roland Bolton (Housing Land Supply)
- APP2 Proof of Roland Bolton
- APP3 **Appendices to Roland Bolton's Proof**
- APP4 Rebuttal Proof of Roland Bolton
- APP5 Updated Appendix **3 of Roland Bolton's Proof**
- APP6 **Rebuttal Appendix 3a of Roland Bolton's Proof**
- APP7 Summary Proof of Tim Waller (Planning)
- APP8 Proof of Tim Waller
- APP9 **Appendices to Tim Waller's Proof**

APP10	Rebuttal Proof of Tim Waller
APP11	Errata to Roland Bolton's Proof
APP12	Errata to Tim Waller's Proof (Appendix 5)

Local Planning Authority:

LPA1	Proof of James Williamson (Housing Land Supply)
LPA2	Appendices to James Williamson's Proof
LPA3	Rebuttal Proof of James Williamson
LPA4	Proof of Niko Grigoropoulos

STATEMENTS OF COMMON GROUND (FOR REDETERMINED APPEAL):

SOCG1	Statement of Common Ground on Housing Land Supply
RID06	Statement of Common Ground (overarching)
RID35	Addendum to Statement of Common Ground (TPO)

OTHER DOCUMENTS

TPO1	Area Tree Preservation Order dated 8 January 2020 and illustrative drawing of other TPOs
REP1	Bundle of representations in respect of the redetermined appeal

CORE DOCUMENTS (FOR REDETERMINED INQUIRY)

Core Doc Ref	Name	Drawing No. (or) Reference	Date
CD1 - Application Documents			
CD1.1	Application forms and certificates		Submitted 11/03/16
CD1.2	Application forms and certificates		Submitted 20/07/16
CD1.3	Site Location Plan	Drawing PL-X-001/B	Submitted 09/06/16
CD1.4	Parameters Plan	Drawing PL-X-003/C	Submitted 04/08/16
CD1.5	Illustrative Layout	Drawing PL-X-004/C	Submitted 17/10/16

CD1.6	Illustrative Layout (Transport)	Drawing PL-X-005/B	Submitted 17/10/16
CD1.7	Illustrative Layout (Landscape)	Drawing PL-X-006/B	Submitted 17/10/16
CD1.8	Illustrative Layout (Character Areas)	Drawing PL-X-007/B	Submitted 17/10/16
CD1.9	Illustrative Layout (Affordable Housing)	Drawing PL-X-008/B	Submitted 17/10/16
CD1.10	Design and Access Statement, Rev. A		Submitted 04/08/16
CD1.11	Supporting Planning Statement		Submitted 11/03/16
CD1.12	Transport Assessment, Revision C		Submitted 08/07/16
CD1.13	Use of TEMPRO to Forecast Traffic Impact in 2021, Addendum to Transport Assessment		Submitted 14/11/16
CD1.14	Residential Travel Plan		Submitted 11/03/16
CD1.15	Highway Access Drawings	WO1188-101 P05 and WO1188-102 P03	Submitted 05/10/16
CD1.16	Arboricultural Schedule		Submitted 11/03/16
CD1.17	Tree Survey	Drawings SJA115.01.0 – SJA115.01.06.0	Submitted 11/03/16
CD1.18	Baseline Ecological Evaluation and Impact Assessment		Submitted 11/03/16
CD1.19	Protected Species Report		Submitted 27/07/16
CD1.20	Flood Risk Assessment (incorporating Drainage Strategy)		Submitted 11/03/16
CD1.21	Further Details on Surface Water Drainage		Submitted 08/06/16
CD1.22	Geo-Environment Audit		Submitted 11/03/16

CD1.23	Landscape Character Areas	Drawing SJA115.10.0	Submitted 11/03/16
CD1.24	Landscape Masterplan	Drawing SJA115.11.0	Submitted 11/03/16
CD1.25	Landscape and Visual Impact Appraisal		Submitted 04/08/16
CD1.26	Environmental Noise Survey		Submitted 11/03/16
CD1.27	Supplementary Noise Impact Report: SoundPLAN		Submitted 11/03/16
CD1.28	Statement of Community Involvement		Submitted 11/03/16
CD1.29	Sustainability Statement		Submitted 11/03/16
CD1.30	Delivery Programme		Submitted 01/12/16
CD2 - Appellant Documents			
CD2.1	Housing Density	Drawing 213.3/101	Submitted 10/02/17
CD2.2	Appellants Statement of Case (V1)		Submitted 10/02/17
CD2.3	Appellants Statement of Case (V2)		Submitted 12/09/19
CD2.4	S106 Agreement		17/08/2017
CD2.5	Unilateral Undertaking		17/08/2017
CD2.6	Tim Waller, Planning Proof of Evidence		13/06/2017
CD2.7	Roland Bolton, Housing Land Supply Proof of Evidence		13/06/2017
CD2.8	Roland Bolton, Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD2.9	Mary Fisher, Landscape Proof of Evidence		13/06/2017

CD2.10	Mary Fisher, Landscape Proof of Evidence Appendices		13/06/2017
CD2.11	Katy Jordan, Wavendon Properties Proof of Evidence		13/06/2017
CD2.12	Tim Waller Rebuttal to Planning Proof of Evidence		06/07/2019
CD2.13	Roland Bolton Rebuttal Housing Land Supply Proof of Evidence		06/07/2019
CD2.14	Peter Goatley Closing Submissions		19/07/2019
CD3 - Council Documents			
CD3.1	Pre-Application Advice Letter		18/01/2016
CD3.2	Committee Report		08/09/2016
CD3.3	Minutes of Committee Meeting		
CD3.4	Decision Notice		05/12/2016
CD3.5	Note from Council's Senior Engineer, 'Highway Observations for 16/00672/FUL		28/11/2016
CD3.6	MKC Housing Land Supply Calculation and Trajectory April 2017 -2022	www.milton-keynes.gov.uk/planning-and-building/planning-policy/five-year-housing-land-supply-annual-monitoring-report	
CD3.7	Countryside Officer Reps	<u>20160423</u>	
CD3.8	Conservation Officer Reps	<u>20160425</u>	
CD3.9	Passenger Transport Reps	<u>20160527</u>	
CD3.10	Countryside Officer Reps	<u>20160623</u>	
CD3.11	Travel Plans	<u>20160628</u>	
CD3.12	Natural England Reps	<u>20160812</u>	
CD3.13	Ecology Reps	<u>20160817</u>	

CD3.14	Urban Design Reps	<u>20160817</u>	
CD3.15	Countryside Officer Reps	<u>20160823</u>	
CD3.16	Network Rail Reps	<u>20161018</u>	
CD3.17	Highways Observations Final	<u>20161128</u>	
CD3.18	Appeal Reps from MKC Website	<u>20170515</u>	
CD3.19	[Blank Record]	-	
CD3.20	Trees	-	
CD3.21	Dev Plans	-	
CD3.22	Landscape Architecture	-	
CD3.23	Wavendon PC		
CD3.24	WS Town Council		
CD3.25	WS Town Council Appendix		
CD3.26	Jon Goodall Planning Proof of Evidence		13/06/2017
CD3.27	Jon Goodall Planning Proof of Evidence Appendices		13/06/2017
CD3.28	Jon Goodall Housing Land Supply Proof of Evidence		13/06/2017
CD3.29	Jon Goodall Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD3.30	Tim Straker QC Closing Submissions		19/07/2019
CD3.31	MKC housing statistics 2019 Q2 Extract		September 2019
CD3.32	MKC June HLSP 2019		June 2019
CD3.33	Appendix 1 - Housing Trajectory 2019 - 2024		June 2019
CD3.34	MKC Assessment of Five Year Land Supply 2016 - 2021		June 2016

CD3.35	MKC Five Year Housing Land Supply Position, 2018		June 2018
CD3.36	MKC Five Year Housing Land Supply 2011-2016		November 2010
CD3.37	MKC Interim Assessment of five year land supply, 2015		November 2015
CD3.38	MKC Housing Land Supply Position 2017/18		June 2017
CD3.39	Council's Addendum Statement of Case		12 September 2019
CD3.40	Council's Addendum Statement of Case Appendices		12 September 2019
CD3.41	MKBC 2019 Annual Housing Monitoring Completed Proformas		June 2019
CD4 - National Policy			
CD4.1	National Planning Policy Framework		March 2012
CD4.2	National Planning Practice Guidance	(Electronic Only)	
CD4.3	Ministerial Statement of Greg Clark, then SSCLG		June 2010
CD4.4	White Paper 'Fixing Our Broken Housing Market', UK Government		February 2017
CD4.5	National Planning Policy Framework		July 2018
CD4.6	National Planning Policy Framework		February 2019
CD4.7	Independent Review of Build Out, Rt Hon Sir Oliver Letwin MP		October 2018
CD4.8	Independent Review of Build Out Rates Annexes		June 2018
CD4.9	Independent Review of Build Out Rates Draft Analysis		June 2018

CD4.10	Housing Delivery Test Measurement Rule Book		July 2018
CD5 - Local Policy			
CD5.1	Milton Keynes Local Plan 2001-2011		
CD5.2	Milton Keynes Core Strategy		
CD5.3	Woburn Sands Neighbourhood Plan		July 2014
CD5.4	Strategic Land Allocation Development Framework SPD		November 2013
CD5.5	Parking Standards SPD		
CD5.6	Milton Keynes Sustainable Construction Design Guide SPD		
CD5.7	Milton Keynes Affordable Housing SPD 2013		
CD5.8	Planning Obligations for Educational Facilities		
CD5.9	Planning Obligations for Leisure, Recreation and Sports Facilities SPG		
CD5.10	MKC Supplementary Planning Document Social Infrastructure Planning Obligations		
CD5.11	New Residential Development Design Guide SPD		
CD5.12	Milton Keynes Council Urban Capacity Study		February 2017
CD5.13	Milton Keynes Residential Characterisation Study: An Evidence Base For Plan: MK		March 2017
CD5.14	Landscape Sensitivity Study to Residential Development in the Borough of Milton Keynes and Adjoining Areas		December 2016

CD5.15	Milton Keynes Strategic Housing Land Availability Assessment 2012		December 2012
CD5.16	Plan: MK Topic Paper- Issues Consultation Rural Issues		September 2014
CD5.17	Woburn Sands Neighbourhood Plan - A Report to Milton Keynes Council of the Examination into the Woburn Sands Neighbourhood Plan		March 2014
CD5.18	Development Plan Policies Map Extract - Development Boundaries for Policies CS1 and H7		
CD5.19	Development Plan Policies Map Extract - Policy S10		
CD5.20	Milton Keynes School Place Planning Forward View 2017-18		
CD5.21	Newport Pagnell Neighbourhood Plan - Referendum version		
CD5.22	Milton Keynes Core Strategy Sustainability Appraisal Final Report 2010		February 2010
CD5.23	Milton Keynes Site Allocations Plan Proposed Submission Draft October 2016		October 2016
CD5.24	Plan:MK The Way Forward Development Strategy Topic Paper (2014)		
CD5.25	Milton Keynes Strategic Housing Market Assessment 2016-2031 Report of Findings Feb 2017, ORS		February 2017
CD5.26	Core Strategy Housing Technical Paper		March 2011

CD5.27	Strategic Land Allocation Development Framework SPD Adoption Statement November 2013		
CD5.28	Milton Keynes Drainage Strategy Development and Flood Risk SPG		May 2004
CD5.29	Milton Keynes Core Strategy Inspector's Report		May 2013
CD5.30	Plan:MK Draft Consultation (Reg18)		March 2017
CD5.31	Plan:MK		March 2019
CD5.32	Plan:MK Inspector's Report		February 2019
CD5.33	Plan:MK Inspector's Report Appendices		February 2019
CD5.34	Milton Keynes Council Response to Inspectors Questions for Examination Hearings - Stage 1, Matter 3		July 2018
CD5.35	Milton Keynes overall 5YLSP at April 2018		
CD5.36	Milton Keynes Council Assessment of Five Year Land Supply: 2011-2016		November 2010
CD5.37	Milton Keynes Site Allocations Plan		July 2018
CD5.38	Milton Keynes Boundary Settlement Review		October 2018
CD5.39	Sustainability Appraisal Report (to Plan:MK)		November 2017
CD5.40	Sustainability Appraisal Map		November 2017
CD5.41	MK Local Development Scheme (LDS)		September 2018
CD6 - Appeal Decisions			
CD6.1	Land North of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire	PINS Ref: 2225799	13/02/2017

CD6.2	Brook Farm, 94 High Street, Wrestlingworth, Bedfordshire, SG19 2EJ	PINS Ref: 3150607	31/08/2016
CD6.3	Land South of Nanpantan Road, Loughborough, Leicestershire	PINS Ref: 3028159	16/01/2017
CD6.4	Land North of Lenham Road, Headcorn, Kent, TN27 9TU	PINS Ref: 3151144	09/12/2016
CD6.5	Land East of Seagrave Road, Sileby, Leicestershire	PINS Ref: 3152082	27/03/2017
CD6.6	Land at Wain Close, Newport Road, Woburn Sands, Milton Keynes	PINS Ref: 2224004	01/10/2015
CD6.7	Land at Burford Road, Witney, Oxford	PINS Ref: 3005737	24/08/2016
CD6.8	Land East of Wolvey Road, Three Pots, Burbage, Leicestershire	PINS Ref: 2202261	03/01/2014
CD6.9	Land at Long Street Road, Hanslope	PINS Ref: 3177851	05/03/2018
CD6.10	Land at Linford Lakes, off Wolverton Road, Milton Keynes, Bucks	PINS Ref: 3175391	27/03/2018
CD6.11	Land at Moat Farm, Chicheley Road, North Crawley	PINS Ref: 3186814	30/04/2018
CD6.12	Land off Olney Road, Lavendon	PINS Ref: 3182048	04/05/2018
CD6.13	Longdene House, Hedgehog Lane, Haslemere	PINS Ref: 3165974	10/01/2019
CD6.14	Darnhall School Lane Appeal - Decision Letter	PINS Ref: 2212671	16/04/2019
CD6.15	Darnhall School Lane Appeal - Inspectors report	PINS Ref: 2212671	16/04/2019
CD6.16	Land on East Side of Green Road, Woolpit, Suffolk	PINS Ref: 3194926	28/09/2019

CD6.17	The Globe, 50 Hartwell Road, Hanslope	PINS Ref: 3220584	05/09/2019
CD6.18	Land off Castlethorpe Road and Malt Mill Farm Hanslope	PINS Ref: 3214365	26/09/2019
CD6.19	Land at Church Farm, Wavendon	PINs Ref 3134194	12/08/2019
CD6.20	Land at Site North of Former North Worcestershire Golf Club, Hanging Lane, Birmingham	PINs Ref: 3192918	06/12/2018
CD6.21	Land to the south of Bromley Road, Ardleigh, Colchester CO7 7SE	PINs Ref: 3185776	13/09/2019
CD6.22	Land Off Colchester Road, Bures Hamlet, Essex	PINs Ref: 3207509	27/03/2019
CD6.23	Land Off Stone Path Drive, Hatfield Peverel, Essex	PINs Ref: 3162004	08/07/2019
CD6.24	Land to the South of Cox Green Road, Rudgwick, Surrey	PINs Ref: 3227970	16/09/2019
CD6.25	Land North of Leighton Road	PINs Ref: 3203307	24/01/2019
CD6.26	Land at Well Meadow, Well Street, Malpas, Cheshire, SY14 8DE	PINs Ref: 2214400	07/01/2015
CD7 - Case Law			
CD7.1	St Modwen Developments V SSCLG & East Riding of Yorkshire Council	[2016] EVVHC 968 (admin)	28/04/2016
CD7.2	Suffolk Coastal DC v Hopkins Homes & SSCLG and Richborough Estates V Cheshire East BC & SSCLG	[2016] EWCA Civ 168	17/03/2016
CD7.3	Crane v Secretary of State for Communities and Local Government	[2015] EWHC 425 (admin)	23/02/2015
CD7.4	Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and	[2017] UKSC 37	17/03/2016

	another (Respondents) Richborough Estates Partnership LLP and Another (Respondents) v Cheshire East Borough Council (Appellant)		
CD7.5	Barker Mill Estates v SSCLG & Test Valley BC	[2016] EWHC 3028 (Admin)	26/11/2016
CD7.6	St Modwen Developments Ltd v Secretary of State for Communities and Local Government and another	[2017] EWCACiv 1643	
CD7.7	Wokingham Borough Council v Secretary of State for Communities and Local Government and another	[2017] EWHC1863	
CD7.8	Barwood Strategic Land v East Staffordshire BC	[2017] EWCACiv893	30/06/2017
CD7.9	Monkhill Ltd v SSHCLG	[2019] EWHC1993	24/07/2019
CD8 - Related Applications			
CD8.1	11/00936/OUT - Committee Report		
CD8.2	11/00936/OUT -Decision Notice		
CD8.3	11/00936/OUT -Proposed Site Layout Plan		
CD8.4	11/00936/OUT - SITE/LOCATION PLANS		
CD8.5	12-01502-OUT, Officer Report		
CD8.6	12-01502-OUT, Decision Notice		
CD8.7	12-01502-OUT, Location Plan		
CD8.8	12-01502-OUT, Resolved Site Layout		
CD9 - Additional Documents from First Inquiry			

CD9.1	MK Housing Stats - Starts 2016/2017		
CD9.2	MK Housing Stats - Comps 2016/2017		
CD9.3	MK Housing Stats Appx 1a Completions 1981-2017		
CD9.4	MK Housing Stats Appx Starts, Under Cons and Completions by Tenure		
CD9.5	MK Housing Stats Appx 1g Starts Inside and Outside MK Dev Area		
CD9.6	Total Starts by Grid Square		
CD9.6a	Starts by Grid Square (200+)		
CD9.7	Total Completions by Grid Square		
CD9.7a	Housing Completions by Grid Square		
CD9.8	Summary Note of MK Housing Statistics		
CD9.9	Summary of RB PoE delivery rates		
CD9.10	Counsel Opinion on 5YHLS		
CD9.11	Council's Instructions to Counsel & appendices on 5YHLS		
CD9.12	Council's Statement of Case		
CD10 - Documents Between First and Second Inquiries			
CD10.1	Milton Keynes Borough Council request to Secretary of State to recover appeal		24/08/2017
CD10.2	Letter from PINS rejecting call-in request		30/08/2017
CD10.3	Letter from Ian Stewart MP to Secretary of State		12/09/2017

	requesting appeal is called in		
CD10.4	Letter from Clyde & Co to the Secretary of State regarding potential call-in decision		12/10/2017
CD10.5	Letter from PINS confirming appeal called in		31/10/2017
CD10.6	Letter from Minister of State for Housing and Planning to Ian Stewart MP confirming call-in		31/10/2017
CD10.7	Letter Clyde & Co to Minister of State for Housing and Planning regarding call-in		08/11/2017
CD10.8	Letter from Minister of State for Housing and Planning to Clyde & Co regarding call-in		20/12/2017
CD10.9	PINS letter and appeal timetable		02/02/2018
CD10.10	Letter Waller Planning to Secretary of State regarding recent appeal decisions		06/04/2018
CD10.11	PINS Letter re variation of appeal timetable		01/05/2018
CD10.12	Letter from Ministry for Housing, Communities and Local Government to Milton Keynes BC regarding recent appeal decisions		08/05/2018
CD10.13	Briefing Note on recent appeal decisions by Milton Keynes BC sent to Secretary of State		22/05/2018
CD10.14	PINS Letter re variation of appeal timetable		23/05/2018
CD10.15	Letter Waller Planning to Secretary of State		29/05/2018

	regarding recent appeal decisions		
CD10.16	Letter Clyde & Co to Secretary of State		23/07/2018
CD10.17	Letter from Secretary of state re. new NPPF & Site Allocations Plan		26/07/2018
CD10.18	Councillor Hopkins response to Secretary of State		01/08/2019
CD10.19	Clyde & Co response to Secretary of State		06/08/2018
CD10.20	Woburn Sands & District Society response to Secretary of State		09/08/2018
CD10.21	Other responses to the Secretary of State		07/08/2018
CD10.22	Woburn Sands Town Council response to Secretary of State		14/08/2018
CD10.23	Clyde & Co response to Secretary of State		15/08/2018
CD10.24	Local resident response to Secretary of State		05/08/2018
CD10.25	Local resident response to Secretary of State		
CD10.26	Local resident response to Secretary of State		16/08/2018
CD10.27	Local resident response to Secretary of State		17/08/2018
CD10.28	Milton Keynes BC e-mail and enclosure re. emerging Plan: MK		05/09/2018
CD10.29	Secretary of State's letter re. housing land supply, emerging Plan: MK and NPPF density policies and enclosures		27/09/2018
CD10.30	Waller Planning response to Secretary of State		05/10/2018

CD10.31	SPRU response to Secretary of State		05/10/2018
CD10.32	Correspondence between Waller Planning and MHCLG		15/10/2018
CD10.33	Decision by the Secretary of State (now quashed), incorporating the Inspector's recommendations		05/12/2018
CD10.34	Judgment by the High Court in relation to the Secretary of State's decision		14/06/2019
CD10.35	MHCLG letter re. need for further inquiry		09/07/2019
CD10.36	Clyde & Co response to MHCLG		18/07/2019
CD10.37	Milton Keynes BC response to MHCLG		30/07/2019
CD10.38	Wavendon Parish Council response to MHCLG		24/07/2019
CD10.39	Woburn Sands Town Council response to MHCLG		16/07/2019
CD10.40	Cllr Hopkins response to MHCLG		11/07/2019
CD10.41	Local resident response to MHCLG		19/07/2019
CD10.42	MHCLG letter re. second inquiry		16/08/2019
CD10.43	PINS letter re. second inquiry		22/08/2019
CD10.44	Inspector's Note of the Pre-Inquiry Meeting		
CD10.45	Email correspondence - Council were going to introduce new evidence to seek to justify 33 of the sites within their June 2019 trajectory		12/12/2019

CD11 - External Reports			
CD11.1	"Start to Finish How Quickly do Large-Scale Housing Sites Deliver?" , Nathaniel Lichfield and Partners		November 2016
CD11.2	HBF Survey - Chairman's Update		
CD11.3	Home Builders Federation Planning Policy Conference presentation by John Stewart		2016
CD11.4	Housing Delivery on Strategic Sites, Colin Buchanan		2005
CD11.5	Urban Extensions Assessment of delivery rates, Savills		2013
CD11.6	University of Glasgow - (CLG housing markets and Planning Analysis Expert Panel) Factors affecting build out rates		February 2008
CD11.7	Sutton Coldfield Green Belt Sites Phase 2 Report of Study, PBA		June 2014
CD11.8	Hourigan Connolly - An interim report into the delivery of Urban Extensions 2013		
CD11.9	Ruth Stainer DCLG Planning Update		
CD12 - Niko Grigoropoulos Proof additional documents			
CD12.1	Historic England Designation Report, Wavendon House Landscape		1 November 2019
CD12.2	Final SAP Issues and Options Consultation Document		September 2014

CD12.3	Council's note submitted at the Pre-inquiry meeting re reasons for refusal		01/11/2019
CD12.4	Woburn Sands neighbourhood Plan Map		July 2014
CD12.5	MK Settlement Boundary Study		November 2017
CD12.6	Plan:MK Proposals map Sheet 4 extract		March 2019

PLANS

- Plans A
1. Site Location Plan PL-X-001 rev. B
 2. Proposed site access drawing no.WO1188-101 rev.PO5
 3. Proposed site access drawing no.WO1188-1021 rev.PO3
 4. Site Location Plan PL-X-001 rev.B (A1)
- Plan B Illustrative layout PL-X-004 rev.C
- Plan C Parameters Plan PL-X-003 rev.C

INQUIRY DOCUMENTS (FROM FIRST INQUIRY)

- ID01 Town and Country Planning (Development Management Procedure) (England) Order 2015, extract
- ID02 Statement of Common Ground
- ID03 Opening Statement – Peter Goatley
- ID04 Opening Statement – Tim Straker
- ID05a Housing figures, updated
- ID05b Summary; housing monitoring
- ID06 Updated implications of using Core Strategy trajectory
- ID07 Written objections from Steph Foster
- ID08 Draft conditions 1
- ID09 Draft Section 106 Agreement 1
- ID10 Draft Section 106 Obligation 1
- ID11 Development Brief for Walton Manor, Walton
- ID12 **Interventions by Milton Keynes Council to 'boost the delivery of housing'.**
- ID13 Minister opens the dual carriageways of the A421, helping to develop 2,900 new homes, October 2015
- ID14 Funded road schemes
- ID15 Eastern Expansion Area Delivery Pack
- ID16 Strategic Land Allocation Delivery Pack
- ID17 Programme of development on appeal site
- ID18 Draft Section 106 Agreement 2

ID19	Draft Section 106 Obligation 2
ID20	Draft conditions 2
ID21	Closing submissions – Tim Straker
ID22	Closing submissions – Peter Goatley
ID23	Signed Section 106 Agreement 3
ID24	Signed Section 106 Obligation 3
ID25	Suggested conditions 3
ID26	Letter dated 30 August 2017 refusing to recover the appeal for decision by the Secretary of State
ID27	Letter dated 31 October 2017 recovering the appeal for decision by the Secretary of State

DOCUMENTS (FROM FIRST INQUIRY)

Document 1	List of persons present at the Inquiry
Document 2	Conclusion and proof – Roland Bolton
Document 3	Appendices 1-35, folder 1 - Roland Bolton
Document 4	Appendices 36-62, folder 2 - Roland Bolton
Document 5	Supplementary proof and appendices 1-4 - Roland Bolton
Document 6	Proof and appendix – Katy Jordan
Document 7	Summary proof – Mary Fisher
Document 8	Proof – Mary Fisher
Document 9	Appendices A-D – Mary Fisher
Document 10	Summary proof – Tim Waller
Document 11	Proof and appendices 1-13 - Tim Waller
Document 12	Supplementary proof and appendices 1-6 - Tim Waller
Document 13	Summary and planning proof - Jon Goodall
Document 14	Appendices 1-18 to planning proof - Jon Goodall
Document 15	Summary and housing land availability proof - Jon Goodall
Document 16	Appendices 1-20 to housing land availability proof - Jon Goodall
Document 17	Statement - Cllr David Hopkins
Document 18	Objection letters on behalf of Wavendon Residential Properties Limited and Merton College Oxford - Ian McGrane <ul style="list-style-type: none"> A. Letter of objection from Integrated Transport Limited B. Letter of objection from Heather Pugh, Partner, David Lock Associates
Document 19	Statement - Cllr Jackie Jeffreys
Document 20	Statement - Chris Jenner <ul style="list-style-type: none"> A. Technical Objection Report
Document 21	Statement - Alistair Ewing
Document 22	Statement - Judith Barker
Document 23	Bundle of representations in respect of the appeal
Document 24	Inspector’s index to representations
Document 25	Index to Core Documents



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

EP1E



Ministry of Housing,
Communities &
Local Government

Our ref: APP/A0665/W/14/2212671

Mr Jon Suckley
HOW Planning
40 Peter Street
Manchester M2 5GP

4 November 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DARNHALL ESTATE
LAND OFF DARNHALL SCHOOL LANE, WINSFORD, CHESHIRE
APPLICATION REF: 13/03127/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Melvyn Middleton BA (Econ), DipTP, Dip Mgmt, MRTPI, who held a public local inquiry on 27-30 November 2018 into your client's appeal against the decision of Cheshire West and Chester Council to refuse your client's application for planning permission for a high quality residential development with associated open space, access and infrastructure, in accordance with application ref: 13/03127/OUT, dated 12 July 2013.
2. On 25 February 2014, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 7 July 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 10 August 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 2016 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted.
5. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Philip Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 2853
Email: PCC@communities.gov.uk

Matters arising since the close of the inquiry

6. On 4 July 2019 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the publication of the Cheshire West and Chester Local Plan Part 2 (CW&CLP P2) Inspector's Report and Schedule of Main Modifications. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 19 and 29 July 2019. The Secretary of State's conclusions on these representations are set out in this Decision Letter below.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the adopted development plan for the area comprises the Cheshire West and Chester Local Plan P1 (CW&CLP P1) Strategic Policies to 2030 (adopted 29 January 2015); the Cheshire West and Chester Local Plan P2 (the P2 plan) (adopted 18 July 2019); and the made Winsford Neighbourhood Plan (November 2014). The Secretary of State considers that relevant development plan policies include those set out at IR28-33 and P2 plan Policies W1, GBC 2 and DM19.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as supplementary planning guidance on affordable housing, developer contributions and landscape character. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

Development plan

10. The Secretary of State has had regard to the Inspector's conclusions on the VRBLP at IR378-382. At the time of the inquiry, the Inspector undertook a planning balance based on a finding that saved policy GS5 of the VRBLP in terms of its settlement limits was out of date such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework ("tilted balance").
11. Matters regarding the VRBLP have now moved on as the P2 Plan has been adopted which includes allocations, boundaries and detailed policies replacing those parts of the VRBLP that were saved. The Secretary of State considers that the most important policies for the purposes of this appeal are STRAT 1, STRAT 2, STRAT 6, STRAT 9, Policies H1 and H2 of the WNP, and P2 plan Policies W1 and GBC 2.
12. The appellant does not argue that Policies STRAT 1 or STRAT 2 are out of date (IR48). The Secretary of State considers that STRAT 1's aim of enabling development that improve and meets the economic, social and environmental objectives of the Borough in line with the presumption in favour of sustainable development is consistent with the Framework, and thus concludes that the policy is not out of date. He further considers that Policy STRAT 2's objective of setting minimum housing and employment

development targets and requiring development to be brought forward in line with the settlement hierarchy is consistent with the Framework, and thus concludes that the policy is not out of date. For the reasons given at IR384 he agrees that while STRAT 9 is not fully consistent with the wording of the Framework, it is not out of date and is capable of attracting weight for the reasons set out below.

13. The Secretary of State considers that the P2 Plan policies W1 and GBC 2 have been found compliant with the Framework by the Plan Inspector, and for that reason the Secretary of State concludes they are not out of date. He further notes that there is no contention that the WNP is out-of-date. As such he concludes that these policies when taken as a whole are not out of date, and that thus the development plan is not out-of-date.

Five year housing land supply

14. For the reasons given at IR325-6, the Secretary of State agrees with the Inspector that there is no evidence for disagreeing with the housing land supply details set out in the Housing Statement of Common Ground. He has had regard to the report of the Inspector into LLP Part 2, and the representations of the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019 as to whether the report on the plan confirms that the Council can demonstrate a 5 year housing land supply. However, he considers that the focus of the local plan examination was not to reach a judgment on housing land supply, that the plan Inspector did not have access to the Housing Land Monitor Review and was not considering the definition of deliverable as set out in 2019 Framework. As such has based their conclusions on the recommendation of the appeal Inspector, who heard the evidence, including more recent changes, cross examined at Inquiry at greater length than the plan Inspector, and subsequent representations from the parties.
15. The Secretary of State has gone on to consider the issue of supply. In doing so he has had regard to his guidance on deliverability issued 22 July 2019. For the reasons given at IR341-344 the Secretary of State agrees with the Inspector's conclusions on preliminary points. The Secretary of State has had regard to representations on behalf of the appellant dated 26 July 2019, with regards to evidence of deliverability.
16. For the reasons set out at IR345, the Secretary of State agrees that 167 dwellings should be deducted from the five year supply figure to account for potential future demolitions. He has gone on to deduct a further 430 dwellings, namely student accommodation, for the reasons set out at IR346-350.
17. For the reasons given at IR360-364 he considers that there is clear evidence to conclude that the disputed sites as set out in paragraph 3.9 of the Statement of Common Ground are deliverable.
18. He has gone on to consider the deliverability of six non allocated sites without planning permission that are disputed. The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.
19. The Secretary of State has gone on to consider the Inspector's analysis of build-out rates and lead in time at IR368-70. For the reasons given he agrees that supply should be

reduced by 505 dwellings. For the reasons given at IR371-372, he agrees that 115 dwellings should be removed from the supply figure for windfalls.

20. For the reasons given above, he thus concludes that 1,439 dwellings should be deducted from the supply figures. He thus agrees that supply is 5,838.
21. He has gone on to consider the housing requirement. The Secretary of State has noted the Inspector's analysis at IR327 – 335 and conclusions that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the ongoing annual requirement, based on the facts of this case. He has had further regard to the representations from the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019. While he accepts that the method of dealing with past oversupply is disputed, whether the requirement is 5,150, as stated by the Council, or 5,775, as stated by the appellant, in any case the Secretary of State concludes that the Council can demonstrate a 5 year housing land supply.

Settlement boundaries, impact on countryside & countryside policies

22. At the time of the Inquiry the Inspector considered all the relevant development policies relating to settlement boundaries and countryside protection. However, since then the Council has adopted the P2 plan, which sets out new settlement boundaries in policy W1. The proposal sits outside these development boundaries.
23. For the reasons given at IR383 the Secretary of State agrees that the proposal is in clear breach of policy STRAT9. For the reasons given at IR384 he agrees that while not fully consistent with the wording of the Framework, the policy is not out of date and is capable of attracting weight depending on the circumstances of the case. The Secretary of State recognises that the Council has breached the settlement boundaries in previous grants of planning permission to ensure that there is a sufficient supply of housing land. Nonetheless, those cases would have been decided on their individual merits and in a different planning context. In any case, the settlement boundaries that were breached in those instances were those set out in VRBLP, not those established by SW&CLP P2. However, for the reasons given at IR385 he agrees that it should be given reduced weight given to the site's position adjacent to a new urban area proposed under STRAT 2. The Secretary of State has had regard to the Inspector's conclusion (IR388-389) that as the impact of the proposal on the landscape would not be significant, and thus the conflict with policy Strat 9 is limited. Although the Secretary of State agrees that the proposal would not have a significant impact on the landscape, given the loss of open countryside and the clear conflict with STRAT 9 and its aim of protecting the intrinsic character and beauty of the Cheshire countryside, as underpinned by the boundary policy W1 in the CW&CWLP P2, he concludes that this should attract significant weight.

24. For the reasons given at IR390 the Secretary of State agrees that the proposal would conflict with Policy STRAT 1 by virtue of not minimising the loss of greenfield land. He further agrees however that in respect of the other elements of the policy, except as set out below, the proposal is either neutral or contributes towards their requirements, for the reasons given at IR391. The Secretary of State that there are other sites that have been allocated or granted planning permission prior to the adoption of P2 which also do not encourage the redevelopment of previously developed land (PDL) (IR391), but that does not diminish the harm that arises in this case. The Secretary of State has judged the appeal on its own merits in the context of an up-to-date plan and a five year housing supply. As such while the extent of the conflict with policy STRAT 1 is limited, he gives moderate weight to this conflict.

The Winsford Neighbourhood Plan (WNP)

25. The Secretary of State has had regard to the Inspector's analysis at IR395-398. The Secretary of State agrees for the reasons given that Policy H1 is a policy that guides and regulates whether new development in and around Winsford should be located. He further concludes, in agreement with the Inspector at IR398 that as the appeal proposal is not one of those proposed for residential development in the WNP it is contrary to Policy H1 and contrary to the WNP as a whole. While he agrees that there is support from the proposal from Policy H2 (IR398), that the proposal does not conflict with the seven themes of the plan (IR397), and the fact that housing requirement Policy H1 is expected to meet is a minimum requirement, he does not agree that Policy H1 should be given no more than moderate weight. He considers that as the Council can demonstrate a five year housing land supply H1 is not restricting housing delivery, and he affords this conflict significant weight.

Housing

26. For the reasons set out at IR392 the Secretary of State agrees that it would be premature to suggest that the requirement from the Station Quarter cannot be delivered over the next eleven years. He further agrees (IR393) that Policy STRAT 6 does not give support to the proposal, but there is also no conflict with it.

Economic benefits

27. For the reasons set out at IR403-407, the Secretary of State agrees that the economic impacts from the provision of market housing are a benefit of significant weight. He further agrees (IR406) that the impact on agricultural land does not weigh against the proposal.

Social benefits

28. The Secretary of State agrees that the social benefits of the provision of affordable housing should be given substantial weight, for the reasons set out at IR408-411. He further agrees, for the reasons set out at IR412-414, that the social benefits of the self-build element of the scheme should attract substantial weight. He also agrees with the Inspector (IR415) that the local training, employment and procurement elements should attract significant weight in favour of the proposal.

Environmental

29. The Secretary of State notes the Inspector's findings at IR 417-420 that that the negative environmental impacts of the proposal are counterbalanced by the ecological and

recreational benefits, and as such neutral in the planning balance. However, given his findings on the conflict with STRAT 9 above he concludes that the environmental harms outweigh the benefits.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR317-318 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

31. Having had regard to the Inspector's analysis at IR319-322, the planning obligation dated 6 December 2018, the Unilateral Undertaking dated 17 December 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR322 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies STRAT 1, STRAT 9 or WNP Policy H1 and outside the settlement boundary established by policy W1 of the P2 plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Having regard to his conclusions on the development plan and housing land supply above, he concludes that the presumption in favour of sustainable development is thus not engaged.

33. In favour of the proposal he finds the economic benefits from the provision of housing, to which he attaches significant weight. He accords further substantial weight to the social benefits of the provision of affordable housing, local procurement, training and employment.

34. Against this he attaches moderate weight to the conflict with policy STRAT 1. He attaches significant weight to the impact on the loss of countryside contrary to policy STRAT 9. He finds that the conflict with WNP Policy H1 should attract significant weight.

35. As such the Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

36. The Secretary of State therefore concludes that the appeal should be dismissed, and planning permission refused.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission.

Right to challenge the decision

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

39. A copy of this letter has been sent to Cheshire West and Chester Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

Representations received in response to the Secretary of State's reference back letter of 4 July 2019

Party	Date
Cheshire West and Chester Council	16 and 23 July 2019
Avison Young	18 and 26 July 2019
Robin Wood Associates (The Darnall Fighting Fund)	17 July 2019
Winsford Town Council	25 July 2019



Report to the Secretary of State for Housing, Communities and Local Government

by Melvyn Middleton BA(Econ), DipTP, Dip Mgmt, MRTPI
an Inspector appointed by the Secretary of State

Date: 16 April 2019

Town and Country Planning Act 1990

Cheshire West and Chester Council

Appeal by

Darnhall Estate

Land off Darnhall School Lane, Winsford, Cheshire

File Ref: APP/A0665/W/14/2212671

LIST OF ABBREVIATIONS

Abbreviation	Reference
AH	Affordable Housing
AM	Andy Mojer
AMR	Annual Monitoring Report
Ap.	Appendix
BF	Beth Fletcher
BP	Ben Pycroft
CD	Core Document
CW&C	Cheshire West and Chester
C2s	Extra Care Residential Institutions
DP	Development Plan
ds.	Dwellings
dpa.	Dwellings per annum
Framework	National Planning Policy Framework
GCN	Great Crested Newt
ha	hectares
HELAA	Housing and Economic Land Availability Assessment
HESA	Housing Education Statistics Authority
HLM	Housing Land Monitor
HLS	Housing Land Supply
HSoCG	Housing Statement of Common Ground
ID	Inquiry Document
JiIS	Jill Stephens
JonS	Jon Suckley
JS	James Stacey
k.	Kilometre
LP	Local Plan
m.	Metre
NP	Neighbourhood Plan
NPPG	National Planning Policy Guidance
OR	Original Report
Pg.	Page
Para.	Paragraph
Pdl	Previously developed land
PSoCG	Planning Statement of Common Ground
PoE	Proof of Evidence
P1	Part 1
P2	Part 2
Re	Re-examination
S	Section
SHMA	Strategic Housing Market Area
SMEs	Small and Medium Sized Employers
SoS	Secretary of State
Sqm.	Square metre
SR	Supplementary Report
VRBLP	Vale Royal Borough Local Plan
WNP	Winsford Neighbourhood Plan
Xic	Examination in Chief
Xx	Cross-examination

File Ref: APP/A0665/W/14/2212671

Land off Darnhall School Lane, Winsford, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Darnhall Estate against the decision of Cheshire West & Chester Council.
- The application Ref 13/03127/OUT, dated 12 July 2013, was refused by notice dated 26 November 2013.
- The development proposed is a high-quality residential development with associated open space, access and infrastructure.
- This report supersedes that issued on 7 July 2016. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal is allowed, and outline planning permission be granted.

BACKGROUND

1. The original inquiry into this appeal opened on 10 June 2014 and closed on 11 June 2014. Following the inquiry, **the Inspector's** original report (OR) and recommendation to allow the appeal were submitted to the Secretary of State (SoS).
2. By letter dated 14 April 2015 the SoS decided to reopen the inquiry as he had received representations that material considerations had changed. In essence the Council considered by then that it could demonstrate more than a five-year supply of housing land. Additionally, the Cheshire West and Chester (CW&C) Local Plan (LP) Part One (P1) Strategic Policies had been adopted in January 2015 and the Winsford Neighbourhood Plan (WNP) had been made in November 2014.
3. The matters upon which the SoS wished to be further informed related to
 - a) the extent to which the appeal proposal complied with the Development Plan (DP);and
 - b) whether the proposal amounted to sustainable development, having regard to national policy, including whether there is a demonstrable 5-year supply of deliverable housing sites.
4. The inquiry reopened on 15 September 2015 and closed on 18 September 2015. The Appellant proposed a revision to the housing offer in advance of the reopened inquiry. The new proposal was that 40% of the dwellings would be affordable, that 10% of the housing would be self-build and that the remaining **50% of the housing, the 'unrestricted' open market element, would be developed** by local house builders. The proposal considered at the original inquiry was for 30% affordable housing (OR37 & 149). The Appellant also proposed a revised condition entitled 'Training and Employment' and new conditions entitled 'Self-build Housing', 'Local Builders' and 'Local Procurement'. The Inspector referred to these other 'non-housing' **benefits as 'novel' elements.**

5. A supplementary report (SR) dealing solely with the additional matters raised by the SoS and the Appellant, along with a further recommendation on the appeal, were subsequently submitted to the SoS.
6. The Inspector once again recommended that the appeal be allowed, and outline planning permission granted subject to conditions. For the reasons set out in SR 248-259 the Inspector found that the proposal overall would be contrary to the DP (SR 260). For the reasons set out in SR 211-246, he also found that there was a housing land supply of 5.12 years (SR 246) and therefore that the DP's policies for the supply of housing were up to date (SR 247).
7. He then went on to look at whether the proposal would amount to sustainable development. He found that there would be significant economic benefits and very substantial social benefits from the development and that they clearly outweighed the moderate environmental harm that he had identified. The Inspector went on to point out that the DP should not be set aside lightly and that a failure to comply with the DP could give an indication that the development would not be sustainable overall.
8. In concluding, he said that it was a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of new homes. He found that there were substantial economic and social benefits arising from the proposal, particularly the significant proportion of affordable homes and the other **'novel' elements of the housing offer** (SR 115&119). In his opinion, the conflict with the DP, the starting point for decision making, and the adverse impacts on the countryside were outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the other benefits then being offered. He therefore recommended that the appeal be allowed, and outline planning permission be granted subject to conditions.
9. The SoS disagreed **with the Inspector's recommendation**. That was largely because he considered the conditions **entitled 'Training and Employment', 'Self Build Housing', 'Local Builders' and 'Local Procurement' would not satisfy all the** relevant policy tests in paragraph 203 of the then National Planning Policy Framework (Framework) 2012 and the National Planning Practice Guidance (NPPG), and therefore should not be attached to any planning permission (SoS 16-22).
10. The SoS considered that this reduced the economic and social benefits of the development identified by the Inspector in his SR. In the **SoS's opinion** the situation effectively reverted to the position at the time of the original inquiry as set out in the OR where the Inspector concluded that the proposal would result in a number of economic benefits, including the New Homes Bonus Scheme, construction jobs, additional local spend and employment arising from the additional expenditure (OR 147).
11. In concluding the SoS did not consider that the reduced economic and social benefits outweighed the clear conflict with the up to date DP and the moderate harm to the environmental dimension of sustainable development. He therefore dismissed the appeal and refused planning permission (SoS 31).

12. The Appellant appealed to the High Court on twelve grounds. It succeeded in the case of three, all of which related to the claimant's allegation that the SoS had erred in law in wrongly rejecting some of the proposed conditions. These conditions required training and employment measures, local building firms and local procurement to be provided/used as a part of the development.
13. The Court rejected the SoSs claim that the conditions had insufficient precision and/or there would be difficulty of detection and therefore enforcement. In the Court's opinion these conditions did potentially go to the weight to be attached to the economic and social sustainability of the proposal and accordingly would have been material in forming part of the overall planning balance¹.
14. On 7 November 2017 the SoS wrote to the parties to inform them that he needed to reopen the inquiry. In his view the following matters require further consideration.

a) Having regard to the terms of the Consent Order quashing the SoS's decision

(Richard James Verdin (t/a the Darnhall Estate) v Secretary of State for Communities and Local Government and Cheshire West & Chester Borough Council and Winsford Town Council), the implications of this in relation to the evidence that was before the Inspector and before the SoS;

b) The current state of play with regard to the CW&CLP, part 2 (P2) and any implications for the further consideration of this appeal;

and

c) Any other material changes in circumstances, fact or policy, that may have arisen since his decision of 7 July 2016 was issued and which the parties consider to be material to his further consideration of this appeal.

PROCEDURAL MATTERS

15. The resultant inquiry was held on 27-30 November 2018. I carried out an accompanied site visit on 30 November. Unaccompanied site inspections were also carried out by me, on 26 November, when I observed the site and its surroundings from public viewpoints, as well as the extent and nature of the local facilities and on 27-30 November when I visited Winsford Town Centre and other locations in the area referred to in evidence.
16. This report should be read alongside the relevant parts of the SR dated 7 July 2016. The figures in square brackets [] in the following paragraphs relate to the various cases advanced at this Inquiry and refer to either the relevant Inquiry Document or Core Document, which contain the source of the material being reported upon and which are set out in the lists at the end of this report.
References to paragraphs in the previous Inspector's original report are prefixed "OR", those in his supplementary report are referenced "SR". I shall use the abbreviation "para." for paragraph, "pg." for page, "S." for section "Ap." for appendix, "CD" for core document and "ID" for inquiry document.

¹ High Court Case No: CO/4195/2016, para 81 [CD 16/1].

17. This further report addresses the implications of the Consent Order and provides an update on the DP and its relevant planning policies as well as other material changes in circumstances, fact or policy that have arisen since the SoS made his decision. It also sets out the updated cases of the parties and my conclusions and recommendations in relation to the redetermination of the appeal. Lists of appearances, inquiry documents and recommended conditions for the reopened inquiry are appended.
18. An updated Planning Statement of Common Ground (PSoCG) [ID 1], dated 19 November 2018, was agreed between the Council and the Appellant. This document updates those submitted in advance of the original inquiry (OR7) and the supplementary inquiry (SoCG2). The updated PSOCG again records that the appeal site is situated in a sustainable and accessible location. It also confirms that the development would not result in any adverse technical impacts that cannot be mitigated against through the implementation of conventional mitigation measures. These could all be made the subject of conditions.
19. The relevant DP policies and the current status of the emerging CW&CLP P2 are set out and agreed, together with the economic, social and environmental benefits of the scheme. The document concludes by setting out six areas where the parties disagree. These include the weight to be given to some policies and whether the proposal accords with the DP when read as a whole, the five-year housing land supply position, whether the appeal proposals constitute sustainable development and the weight to be attributable to **the 'novel' elements referred to** by the previous Inspector and the mechanisms by which they could be secured.
20. A Supplementary SofCG on five-year housing land supply (HSoCG) was submitted on 23 November 2018 [ID 2]. Within this document, certain matters in relation to housing land supply are outlined and with an indication as to whether they are individually agreed or in dispute. I will refer to these later.
21. An updated transport assessment [CD 5/11] was submitted to the Council by the Appellant on 31 August 2018. It demonstrates that the conclusions of the original assessments remain valid. The Highways Authority has raised no objections to this or the details of the proposed means of access, which is not a reserved matter.
22. In November 2017 the Council requested an updated ecology report. This was submitted on 12 October 2018 (Appendix 4 to SoCG). Among other matters it identified that Great Crested Newts (GCNs) were foraging on the site and breeding in ponds close to the site. A mitigation strategy is proposed to compensate for the loss of GCN habitat within the site. This includes:
 - a) Provision of 2.4 hectares (ha.) of high-quality terrestrial habitat for GCNs immediately off-site to the west, including long-term management and safety;
 - b) Provision of four new ponds for GCNs immediately off-site to the west (within range of other identified breeding ponds), including long-term management and safety;and
 - c) Enhancements to three ponds off-site which were recorded as containing GCNs but could be improved to enhance their value to GCNs and improve their breeding opportunities.

23. If the appeal is allowed and the development implemented, a traditional Natural England European Protected Species licence would be required before the works are implemented.

THE SITE AND SURROUNDINGS

24. The appeal site, extending to about 6.5ha, comprises three fields divided and bounded by hedgerows. Within the hedges are several mature trees. The site slopes slightly down from north-east to south-west, with an overall fall of about 3 to 4metres (m.) across the site.
25. A bridleway, which also acts as an access track to Beech House Farm, runs along the south-western boundary of the site, beyond which is undulating open countryside. To the north-west are further larger fields, with similar topography to the appeal site, stretching towards schools and other development at Hebden Green, on the western edge of Winsford. To the north-east the site is contiguous with the large housing areas of south-west Winsford, the cul-de-sac of large dwellings in Peacock Avenue being immediately adjacent. Darnhall School Lane bounds the site to the south-east, with further housing estates on the opposite side of the road. Beyond the southern tip of the site, where the bridleway meets Darnhall School Lane, lies Knobs Cottage and two former small farmsteads, one of which is now used as a livery. They are collectively known as School Green. Further south is agricultural land and woodland separating Winsford from the small village of Darnhall which lies about 1.0kilometre (km.) beyond the edge of the built-up area of the town.
26. The appeal site is some 1.5km. to the south-west of Winsford Town Centre. Within about 1km. of the site is a small convenience store in Vauxhall Way, the primary school on Darnhall School Lane and bus routes which pass along Glebe Green Road, Swanlow Way and Darnhall School Lane.
27. One field, which is about 2.0ha. (31% of the site area) in extent, is located within the township of Winsford, which has a made Neighbourhood Plan (NP). The other two fields, which are about 4.42ha. (69% of the site area) in extent, are located within the parish of Darnhall.

PLANNING POLICY

28. The development plan now comprises the CW&CLP P1, the WNP (in as much as its area affects the appeal site) and the saved policies of the Vale Royal Borough Local Plan (VRBLP) [CD 13/2]. The Council approved the CW&CLP P1 Strategic Policies [CD13/1] for adoption in January 2015. This followed its examination in **2013/14 and the publication of the Examining Inspector's Report on 15** December 2014 [CD13/3a]. The Inspector agreed a minimum net housing requirement for the plan period of 22,000 new dwellings (Policy STRAT 2) or 1,100 dwellings per annum (dpa). The parties agree that 9 of its policies are relevant to the determination of the appeal.
29. Policy STRAT 1 (Sustainable Development) seeks to enable development that improves and meets the economic social and environmental objectives of the Borough in line with the presumption in favour of sustainable development. As

- well as setting minimum housing and employment development targets, Policy STRAT 2 (Strategic Development) requires development to be brought forward in line with a settlement hierarchy. Most of the new development is to be located within or on the edge of one of four towns, of which Winsford is one. Several key sites were identified, leaving further sites to be identified through the CW&CLP P2 and/or NPs.
30. Policy STRAT 6 (Winsford) says that the town will be a focus for development in the east of the Borough and that development proposals will help to support the continued regeneration of the town. Additionally, it indicates that at least 3,500 dwellings will be provided in the town.
 31. Policy STRAT 9 (Green Belt and Countryside) seeks to protect the intrinsic character and beauty of the Cheshire countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. It lists the types of development that will be permitted in the countryside. These include replacement and reused buildings and developments which have an operational need for a countryside location that is of an appropriate scale and does not harm the character of the countryside.
 32. Other policies of the adopted plan relevant to the appeal are STRAT 10 (Transport and Accessibility), SOC 1 (Delivering Affordable Housing), SOC 3 (Housing mix and type), SOC 6 (Open space, sport and recreation), ENV 2 (Landscape), ENV 4 (Biodiversity) and ENV 6 (Design and Sustainable Construction).
 33. The WNP [CD15/1] was made on 19 November 2014 following a referendum on 23 October 2014. These events followed its examination in May 2014 and the report of the Examiner dated 30 July 2014 [CD 15/2]. The housing policies of the WNP, amongst other things, indicate that permission will be granted for residential development on 24 sites set out in a table (totalling some 3,362 homes) and on previously developed land (Pdl) (Policies H1 and H2). Only a part of the appeal site is within the WNP area, but it is not allocated for development in the plan.
 34. Some of the policies of the VRBLP remain saved following the adoption of the CW&CLP P1. Of particular relevance to the appeal is Policy GS5 (Open Countryside) [OR 17] which along with the VRBLP Proposals Map defines the extent of open countryside where Policy STRAT 9 of the CW&CLP and Policy GS5 of the VRBLP apply.
 35. Policies BE1 (Safeguarding and improving the quality of the Environment), BE4 (Planning Obligations), BE21 (Renewable Energy), RT3 (Recreation and open space in New Developments), NE7 (Protection and Enhancement of Landscape Features) and NE8 (Provision and Enhancement of Landscape in New Development) are also considered to be relevant [OR 17 & 18. SoCG pg.10].
 36. The Council has prepared the CW&CLP P2. This includes allocations, settlement boundaries and detailed policies. The P2 plan will eventually replace those parts of the VRBLP which are still saved. It was submitted for examination on 12 March 2018 and examined in September. Main Modifications have still to be **published and the plan's adoption is not anticipated before the summer of 2019.**

37. Relevant policies include Draft Policy W1 (Winsford settlement area), against which there are unresolved objections concerning the land allocations and the location of the settlement boundary. Draft Policy DM20 (Mix and Type of New Housing Development) also has outstanding objections.
38. Draft Policy GBC2 (Protection of Landscape) is intended to replace VRBLP Policy GS5. Draft Policy DM19 (Proposals for residential development) includes assessment criteria for housing development in the countryside.
39. Supplementary planning guidance on affordable housing, developer contributions and landscape character are still in place [OR 21].
40. The Framework remains as the main **expression of the Government's policies on** achieving sustainable development. The document was revised in July 2018 and updated in February 2019. The revisions have resulted in a change of emphasis in some parts of the document. The supporting NPPG is continuously reviewed and updated. I will deal with the relevant changes later in this report.

OTHER AGREED FACTS

41. The main parties agree that the Appeal site is in a sustainable and accessible location. The centre of Winsford, where there are a wide range of shops and services is located approximately 1.5km. to the north east of the site.
42. The site has good accessibility for pedestrians and cyclists. There is an uncontrolled crossing point on Darnhall School Lane to the north east of the site that includes dropped crossings and tactile paving. This crossing links the pedestrian routes out of the site into the wider pedestrian network on both sides of Darnhall School Lane and beyond. In terms of cycle provision, regional cycle route 75 is carriageway based within the locality, with cyclists using lightly trafficked routes to the north and south of the appeal site.
43. The site is well connected by local public transport. The closest bus stops to the site are situated on Glebe Green Drive and are about **380 metres from the site's** Darnhall School Lane frontage and around 540 metres from the middle of the site. There is a half hourly bus service in both directions to Crewe and Northwich, the latter via Winsford Town Centre.
44. Winsford railway station is within a 5km. cycle ride of the appeal site. The station is situated on the Birmingham to Liverpool line and provides services that stop at key destinations including Crewe, Stafford and Wolverhampton. The station offers potential opportunities for future residents to undertake employment related trips via rail.
45. In March 2017 the Council revised its open space standards. It is agreed that the required provision can be accommodated on the site. Indicative proposals are shown in Appendix 3 to the PSoCG. These substantially exceed the requirements.
46. The parties agree that the mitigation proposals to compensate for the loss of GCN Habitat meet the three derogation tests.
47. The Appellant and the Council agree that the appeal proposals will deliver the following benefits:

Economic Benefits

- a) The creation of up to 370 temporary jobs in the construction sector, or up to 75 full time equivalent jobs over a 5-year period;
- b) The creation of up to 184 additional households that would generate additional household spending in the local economy;
- c) The support of around 22 additional permanent jobs in the local economy due to additional local expenditure;

Social Benefits

- d) The proposals will deliver a choice and mix of up to 184 high quality dwellings, which comprises 2, 3, 4 and 5-bedroom dwellings in the form of mews, semidetached and detached properties;
- e) The development would be implemented in a timely manner through a reduced time-limit condition for the submission of reserved matters that would also require the development to be started within 2 years from the date of the outline planning permission or 1 year from the date of the approval of the Phase 1 reserved matters, whichever is the later;
- f) Up to 74 affordable housing units (40%) in the tenure mix that the Council has requested (50% intermediate housing and 50% social rented). That provision is 10% higher than the percentage that the Council seeks, and it is agreed that significant weight should be given to this in the re-determination of the appeal;
- g) On site open space provision (including formal and informal public open spaces). The Indicative On-site Open Space Plan demonstrates that 12,281 square metres (sqm.) of on-site open space could be provided. This significantly exceeds the Council's adopted open space standards. These require only 5,080.40sqm. of on-site open space. The open space provision would take the form of high-quality linked open spaces that are easily accessible to both the proposed residents and the local community;
- h) A financial contribution based on the Sports England Playing Pitch New Development Calculator would be provided towards the provision of off-site outdoor sports facilities and playing pitches, as well as a maintenance contribution;
- i) A Parks and Recreation contribution of £828 per dwelling which could result in a maximum contribution of £152,352;
- j) A 'Play Youth' contribution of £117.30 per dwelling which could result in a maximum contribution of £21,583.20 for a Non-equipped Area of Play for children of an older age;**

Environmental Benefits

- k) The site is situated in a sustainable and accessible location and the scheme is accessible in respect of bus, walking and cycling provision;
- l) Accessible new spaces will be created which will be accessible to the local community;

m) New footpath and cycle links and enhanced connections to the wider public footpath network to include pedestrian and cycle movements;

and

n) The appeal proposals would conserve the natural environment and sufficient appropriate mitigation would be provided to ensure that there would be no detrimental impact on protected species. Furthermore, the creation and long-term management of four new ponds and associated terrestrial habitat off-site, to offset the loss of two small ponds of low biodiversity value on site, would result in enhanced habitat available to the local amphibian population.

MATTERS OF DISAGREEMENT

48. The matters of disagreement between the Council and the Appellant are:

- a) The weight to be attributed to Policies GS9 of the VRBLP and STRAT9 of CW&CLP P1;
- b) Whether the appeal proposals accord with the DP, when read as a whole;
- c) The Council's deliverable 5-year housing land supply (HLS) position;
- d) Whether the appeal proposals constitute sustainable development;
- e) The weight to be attributed to the proposals for self-build housing, involvement of a small and medium sized employer (SME) local builder and the benefits to the local employment strategy and the local procurement strategy;

and

- f) The mechanisms to secure the proposals for self-build housing, an SME local builder, the local employment strategy and the local procurement strategy.

THE CASE FOR DARNHALL ESTATE²

Introduction

49. The **Appellant's case is not predicated on identifying a shortfall in the 5-years HLS**. It relies on the fact that it is a proposal for housing on the edge of one of the four main towns in the Borough, where there is a minimum housing requirement of 3,500 and a pressing need for more affordable housing. This proposal is an innovative way to deliver both in a positive way that will assist in diversifying the housing offer at Winsford. All of this is within the context of the Government seeking to boost significantly the supply of housing.

50. Numerous appeal decisions show that there is no need to demonstrate a shortfall in HLS to secure a planning permission. These are set out in CDs/17. However,

² References to the Framework refer to the revised Framework July 2018 as the cases for Darnhall Estate and Cheshire West and Chester Council predates the updated Framework February 2019.

the Appellant believes that there is a shortfall in the 5 years supply. It considers **the Council's supply figure** to be inappropriately inflated for a variety of different reasons. A shortfall is of course both an additional material consideration which weighs heavily in favour of the proposal. And it is a route to triggering the tilted balance.

Five-year housing land supply

51. The parties disagree as to whether the Council can demonstrate a five-year HLS. The reasons relate to both the housing requirement for the 5-year period and the supply.
52. Ben Pycroft (BP)'s proof of evidence (PoE) at paragraphs 4.10 to 4.15 explains that the Council is not able to demonstrate a five-year supply in accordance with paragraph 74 of Framework 2018. **The Council's figure should be "produced through engagement with developers and others who have an impact on delivery and been considered by the Secretary of State."** The Council has not engaged in any such engagement with developers or others.
53. The Council has also failed to follow the guidance in the NPPG. This explains the need for LPAs to engage with stakeholders when preparing their five-year supply position statements at paragraphs 3-030, 3-047, 3-050 and 3-051. This has not happened at CW&C.

Past surplus

54. **The Council's position is that there has been a surplus in delivery of some 2,192 dwellings since 2010.** That figure is arrived at by comparing the requirement for the first 8 years of the plan period (2010-2018), which is a figure of 8,800 (8 x 1,100) with the supply over the same period, which the Council say is 10,992. Hence the Council say there is an oversupply of 2,192. This then leads the Council to claim that the annual requirement for calculating the 5-years supply is only 917 dwellings per annum. This removed 915 dwellings from the requirement over the 5-year period.
55. The Appellant asserts that one takes the annual figure of 1,100 dwellings per annum (agreed with the Council)³ multiplied by 5 to arrive at the base requirement (before adding the agreed 5% buffer). Past surpluses should not be used to discount the future requirement. **The Council's approach (the residual method) forms no part of present national policy or guidance.** Indeed, it would seem a very odd approach to take in the light of the **Framework's** priority to boost significantly the supply of new homes⁴, and especially when **the Council's** housing requirement is set at a minimum. **If any 'carry forward' of historic over-supply was intended, the Government would have said so and used similar wording to that set out in paragraph 3-044 of the NPPG, which confirms that when there is a shortfall, it should be added to the five-year requirement.**
56. **The Council's suggestion that this approach gives rise to a "free-for-all"⁵ is unconvincing.** Each proposal that comes forward is judged on its merits. Whilst

³ BP PoE paragraph 6.1 and BF PoE paragraph 6.4.

⁴ Framework 2018, paragraph 59.

⁵ **Council's closing submission, paragraph 51.**

the residual approach may have been appropriate Government Policy before 2,000, in the context of the current housing crisis and the acceptance that as a nation we are not building enough homes⁶, it is no longer appropriate.

57. **The Council's approach** contrasts with its approach in its Annual Monitoring Report (AMR). The current AMR says that the annual net requirement remains at 1,100. Monitoring indicator STRAT 2(A) also measures annual net completions against a target of 1,100 net dwellings and indicator STRAT 2(B) measures net completions against a target of 5,500 dwellings over a five-year period. Neither measure makes provision for a requirement reduction based on over-supply [CD13.4, pages 37-39].
58. Beth Fletcher (BF) in cross examination (Xx) on Day 2 accepted that a delivery of 24,000, an amount over the minimum 22,000 set out in STRAT 2, would not be unsustainable. Added to which, the affordable housing needs have not been addressed over the past eight years.
59. The Council has referred to the **Cotswold Local Plan Inspector's Report** [CD18/10]. However, as BF explained in re-examination, 80% of the Cotswold District is restricted by being within an Area of Outstanding Natural Beauty (AONB). Providing a surplus there would be potentially problematic. CW&C has Green Belt. However, it amounts to nothing like such a high proportion of the Borough as to constrain the opportunity for exceeding the plan target, which is actually what the CW&CLP allows.

Communal Establishment and student accommodation completions

60. Since the Council engaged in this exercise of seeking to reduce their annual requirement to 917 dpa, the Appellant is bound to point out that what the Council has included in their surplus figure of 2,192 dwellings are 630 student units and 230 units in extra care residential institutions (C2). To be clear this is related to **the Appellant's criticism of the Council's inclusion of such forms of development** in their future 5-year supply calculation. But it is equally relevant to a claimed surplus, because the surplus itself is comprised of units derived from these forms of supply. The difference here being that the student accommodation and C2 uses form part of the completions, not the commitments.
61. **This issue only arises if the Council's residual method is adopted and the surplus** against the annual requirement in past years is deducted from the annual requirement. The need to consider the C2 issue here and the student accommodation point below (in terms of the housing requirement) is **unnecessary on the Appellant's approach. But if the Council's approach is** adopted, then completions were in fact 10,132 (860 lower) and the surplus should be reduced to 1,332. The difference between the parties relates to C2 (230) completions and student accommodation (630) completions.
62. 230 completions in respect of C2 communal care for the period 2010 to 2018 were wrongly included in the **Council's completion figures**. Paragraph 3.4 of the Housing Land Monitor (HLM) [CD13/5] states:

"The proposed revisions to the Framework suggest the inclusion of communal accommodation in the calculation of the housing delivery test. This type of

⁶ Housing White Paper, Foreword by the SoS (Feb 2017)

*accommodation will be monitored through the Housing Land Monitor (HLM) process but will continue to be excluded from the housing completions and forecasting figures in accordance with **the Local Plan (Part One).***"

63. **This was accepted by the Council's witness BF on Day 2 of the inquiry, albeit her view was that it had not been included in the first place. The Appellant does not think that is right. BP shows the sources of these in table 8.3 of his Proof of Evidence (PoE) on page 22. The difference between BF and BP is that some permissions have been included which the Council thought were C3 (dwellings) but in fact are C2. As such the Council's completions figure drops by 30 units to 10,762.**
64. **The Appellant's position is that 630 completions in respect of student accommodation should also be removed from the Council's surplus figure. These are shown on BP's Table 8.2 in his main PoE.**
65. Much of what BP says about student accommodation being inappropriately **included, in the Council's 5 Year Supply calculation, applies equally to the inappropriateness of including student accommodation in the Council's completion data: BP's PoE section 13 (pages 39 - 47).**
66. The NPPG says that this is important to the requirement. Paragraph 3-042 of the Housing Land Availability Assessments **NPPG (updated) in relation to 'How should local planning authorities deal with student housing'** confirms that:
- "all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double counting."*
67. The Council has not undertaken any such assessment to calculate the amount of accommodation that would be released into the housing market following completion of new student accommodation, as required by the NPPG. As such the Council has provided no evidence to the inquiry to demonstrate that any would be. The student accommodation completion figures should not form part of the completion data for the housing requirement in CW&C until such time as the Council can show development is releasing dwellings back into the housing market.
68. The issue of student accommodation was covered in the Tattenhall recovered appeal decisions⁷. **The Inspector's conclusions in relation to student accommodation** are detailed in paragraphs 300-304 of the report to the SofS (pages 73 and 74) [CD 17/3]. In those decisions the Inspector found that as the Council had provided no evidence that the student units would release housing, currently occupied by students, into the market, the student units should be removed from the supply.
69. For the reasons BP explains in his detailed analysis of this issue (PoE chapter 13), students seem to be occupying an ever-increasing amount of homes in Chester, especially in the Garden Quarter where the Council have resorted to banning the

⁷ APP/A0665/A/12/2185667, APP/A0665/A/12/2188464 and APP/A0665/A/12/2180958 [CDs 17/3, 17/4 and 17/5].

conversion of houses to HMO through issuing Development Management Orders. **BP's evidence shows the number of Class N properties in the Council Tax base data has been consistently rising (PoE Table 13.2, page 44).** The evidence shows that a lack of student accommodation in Chester, which the University itself has noted⁸, is being met by more homes being converted into student Houses in Multiple Occupation, not less. The University has in fact noted students securing lodgings as far away as Liverpool, Manchester and Wrexham: (BP PoE, para 13.22). The number of full-time students at the university has increased **significantly in recent years (see Table on page 3 of BP's Rebuttal PoE).** As Inspector Dakeyne observed, many students will come into Chester from elsewhere or will be merely freeing up a bedroom in a family home. BP addresses all of these issues in detail. Full time student numbers at the University are increasing. Consequently, the Council will find it very difficult to find evidence that the new accommodation is releasing housing back into the housing market.

70. Students are part of the wider population. Nevertheless, their housing needs are not to be treated as part of the housing requirement unless they are expressly dealt with at the time of the Local Plan. The extent to which they are included in the resident population can vary between different towns and cities. When assessing overall housing needs it is necessary to look at the extent to which they form part of the census population and also if their numbers are likely to change. CW&C did look at this issue but its consultants (Nevin Leather Associates) advised that student numbers would remain static (see BP PoE, para 13.10, page 41). That being so, the fact that full time student numbers have increased means that one cannot simply take purpose-built student accommodation off the completion figures when it is plainly addressing an unforeseen increase in student numbers.
71. **The 630 student accommodation completions are recorded in the Council's completion data to arrive at their surplus.** The Appellant removes the related 630 completions to arrive at its total completions figure of 10,132.

Supply

72. The parties disagree as to whether the Council can demonstrate a supply of housing to meet the five-year requirement. The main point of contention is whether the Council has the requisite clear evidence that the sites it includes are deliverable within the five-year period, and what exactly is required by clear evidence.
73. In relation to supply, Framework 2018 at paragraph 67 states:

"Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:

- i) Specific, deliverable sites for years one to five of the plan period and*

⁸ Nevin Leather Associates report 2012 [BP Ap.2C].

ii) *Specific, deliverable sites or broad locations for growth, for years 6-10 and*

iii) *Where possible, for years 11-15 of the plan”.*

74. Paragraph 73 of Framework 2018 also states that local planning authorities should identify and update annually a supply of specific **“deliverable”** sites. Paragraphs 67 and 73 of Framework 2018 state that sites should be **‘deliverable’**. **‘Deliverable’** is now defined within the glossary as:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

75. The above definition in the glossary can be split into two parts.

- a) those sites that require the appellant/developer/promoter to adduce clear evidence to remove them from being considered deliverable. These sites, of under 10 units or those benefitting from a detailed permission, benefit from what might be called a presumption of deliverability.
- b) Secondly, for sites with outline permission, permission in principle, allocated in the development plan or identified on the brownfield register, the Council must provide clear evidence that housing completions will begin on site within five years. This list does not benefit from a deliverable presumption and such sites should not be included in the five-year supply until the Council provides the necessary clear evidence.

76. The definition was changed to remove, from active consideration, sites which do not have detailed planning permission. Other sites from the closed list can be included, but there is a need for clear evidence on delivery from such sites. The new definition is much more realistic than the previous one because there is often little prospect or certainty of an outline planning permission delivering completions within five years. That is because the conditions imposed on outline permissions often allow five years or more even for just a material commencement (i.e. no actual completions or delivery). Reserved matters can often take a long time to agree, often out-with the five-year period. Added to this, reserved matters applications can be refused and the yield from sites can often be changed.

77. Regarding allocations, where there is no outline permission, the prospect of delivery within five years is even less likely. One does not know when the application will be submitted, how long the negotiation of the planning permission will take and what the conditions will say about the amount of time, which will be

- allowed for the submission of reserved matters, other conditions etc. Sites which are not even allocated and have no permission should not be in the supply at all.
78. The NPPG was updated on 13th September 2018. Paragraph 3-036" *what constitutes a deliverable site in the context of housing policy?*" provides examples of what form clear evidence may take and whilst not a closed list, it is indicative of the level and strength of evidence required by the Council.
79. **The Appellant's case in relation to "clear evidence" is that the Council cannot demonstrate this for the vast majority of the sites with outline planning permission.** Most fall far short of the required evidential hurdle and in consequence they should be removed from the supply. **The "Council has not come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon such sites"** which was the approach taken by the Inspector in the Woolpit decision at para 68, [CD 17/12].
80. The disputed elements within the **Council's supply cover six categories.** Three relate specifically to individual sites. The quantum and sites in dispute are all set out in the HSoCG. In total there are 1,854 dwellings in dispute in terms of the 5-year supply.
81. **The Appellant's position in relation to the three categories of site is that none should be included within the Council's housing land supply.** That is because none of them can be considered to be deliverable within the relevant 5-year period under the new Framework definition.
82. Sites under categories II (non-allocated sites without permission) and III (small windfall allowances) are not sites where the Council can demonstrate clear evidence that completions can be delivered on-site within five years.
83. For the avoidance of any doubt, the concept of a small site windfall allowance is not covered by the second sentence of the definition of deliverable. Sites that are not major development (i.e. sites of 9 units or less) can be included in the supply, but only if they have planning permission. Windfalls do not fall within that category.
84. A roundtable session was held on day 1 of the inquiry in respect of HLS. At no point in respect of any disputed site in categories I and III did the Council provide any documentary evidence, of the type suggested by the NPPG or at all, to support the deliverability of each site in these three categories. The Council offered oral evidence on some matters, but they produced not a single letter, email or SoCG to support it.
85. The Council offers no SoCG signed by a developer or anything similar. The Council does not have the necessary evidence suggested in the NPPG to support delivery on sites without detailed permission. At the same time, it relies upon evidence obtained after the base date, so its own case is not predicated on that being a hindrance. In reality the Council will not be able to obtain the necessary evidence until the next Annual Monitoring Report (AMR) and Housing Land Monitor (HLM). The new policy and guidance in the Framework and NPPG respectively require certainty in evidence. The Council simply does not have that evidence at the moment.

Allocated sites or sites with outline permission – (300 dwellings).

86. The Appellant now disputes 300 dwellings across six sites. The starting point for **these disputed sites (outlined in chapter 14 of BP's PoE) is that they are not to be considered deliverable unless the Council adduces clear evidence.** They are one of the four categories detailed in the closed list in Annex 2 of Framework 2018.
87. **The Appellant's submissions in respect of all six sites is that the Council** has not adduced sufficient evidence in relation to any of the sites to provide the clear evidence required. Their approach was strikingly similar to that of Welwyn Hatfield Borough Council at the recent Woolmer Green inquiry⁹, with only verbal updates forthcoming, entirely unsupported by any documentary evidence. **The inspector at that inquiry found the Council's evidence fell "well short"**⁸ of what was required. One has to ask why these verbal updates which BF provided were only verbal. One must assume if the relevant developer had been contacted, then they were simply not willing to commit what they were saying to writing.
88. Ledsham Garden Village (28 units) – no documentary evidence was forthcoming **from the Council and reliance was placed by BF on 'intelligence' received from a housebuilder, however this "intelligence" was not put before the inquiry in part or** at all in any form which could be read, examined, scrutinised or tested in any way whatsoever. To a lawyer such evidence is usually dismissed as pure hearsay. These 28 units are in phase 6 of the development, the outline permission for which included a condition (condition 2) that states that all reserved matters do not need to be made until 24th July 2025, extendable by a further 8 years.
89. Rosfield Road Phase 5 (70 units) – There was no evidence before the inquiry regarding when reserved matters would be submitted, what they will include or when commencement would take place. Outline permission was granted just three days before the base date and as such completions should be expected post the 5-year period.
90. Lyndale Farm (24 units) – There has been no application for reserved matters and the submission of the construction management plan is a fairly simple act from the developer and is not clear evidence of the strength suggested in the NPPG.
91. Former Delamere Forest School (16 units) – Despite an application for reserved matters having been made, this was after the base date and is pending determination.
92. Land at Oakmere Road (24 units) – There has been no application for reserved matters and no clear evidence submitted by the Council to show that this site is deliverable.
93. Land at Wrexham Road (138 dwellings) – The site does not have planning permission but is allocated in the LP. The first application was made in June 2017 and a further full application and an outline application were made in December 2017. None have yet been determined. The phasing plan considers a construction period of over 14 years. **The Council's verbal evidence was simply**

⁹ APP/C1950/W/17/3190821 and as set out in the PoE of BP at 4.35-4.38, and [CD 17/12].

that a case officer had been assigned and it would be taken to the committee “next year” but that it had been pushed back to “deal with and sort issues”¹⁰. Again, this is wholly insufficient.

Non-allocated sites without planning permission – 282 units

94. As explained in BP’s PoE (pg19), the base date is a cut-off date. Whilst the previous NPPG indicated that sites without planning permission should automatically be considered deliverable, this is no longer the case. These sites are not contained within the closed list within the definition of ‘deliverable’ and as such have a lower planning status than the previous category.
95. The Council has provided nothing by way of ‘clear evidence’ for these sites, which are for reasons explained above problematic as a category anyway. Without planning permission, it is difficult to know when they will be delivered as one cannot even have sight of the conditions which will determine the timescale by which the permission is to lawfully come forward. None of these sites can be included in the supply.
96. The largest site within this category and touched upon during the round table session is Winnington Business Park (88 Units). It took the Council a year to determine the outline application, approval of which occurred after the base date¹¹.
97. An application for reserved matters is required to be made before a period of three years after the decision date has elapsed. This could be as late as 20th July 2021. That is just for the submission of the reserved matters. Lawfully, material commencement need not take place until after 2023. There is no evidence as to when completions will begin.

Small Windfall Allowances – 230 units

98. Paragraph 70 of the Framework 2018 provides:

“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends”.

99. Section 17 of BP’s PoE deals in detail with the issue of windfall allowance. The Council’s approach to this issue is simply to rely on past trends to support its windfall allowance. Past trends reveal that 122 dwellings could be expected to be delivered each year on small windfall sites (i.e. 610 dwellings over the five-year period). However, 620 dwellings on small sites with planning permission are already included in the supply. Therefore, by including a further 230 dwellings (i.e. 115 dwellings per year in years 4 and 5), this would mean delivery well in excess of past trends.
100. The Council includes all small sites without applying a lapse rate at all. That is not remotely credible because small sites lapse all the time. Additionally, some

¹⁰ BF on day 1 of the inquiry.

¹¹ Decision Notice issued on 20th July 2018

small site permissions, such as a house or a bungalow proposed in the applicants own back garden (often known as retirement houses) can be repeatedly renewed because the applicant is not yet ready to move out of the main house. Such sites may be saved by modest implementation (i.e. they are not part of a non-implementation allowance). They are instead part of a non-delivery allowance. It is wholly unrealistic to assume that all of the 610 dwellings on the small sites will come forward in the 5-year period and then to add on top of that an extra 230 units from additional small sites. The past trend data does not support what the Council are doing and yet that is what the Framework requires.

101. **The Inspector's decision in the appeal at Longden Road, Shrewsbury¹²**, in circumstances such as this was that the windfall allowance should be removed, and the same approach is encouraged to be followed here.

Demolitions and losses – 167 units

102. The Local Plan Part 1 is explicit in recognizing that the 1,100 dwellings to be achieved each year must be a net figure¹³ and that therefore a gross delivery figure, which is higher, needs to be achieved. The Local Plan at para 5.21 actually refers to a gross figure of 1,150. The 1,100 needs to be achieved after having made an allowance for demolitions and losses.
103. BP has not simply stuck to the 1,150-gross figure in the plan. He has looked at the actual level of demolitions and losses which have taken place. This is lower than the evidence of 50 dpa which the Local Plan Inspector had before him. BP has therefore accepted that the trend in demolitions and losses has reduced since then. The 50 dpa figure was trend based at the time of the Local Plan. And the figure of 39 dpa now relied upon is similarly so.
104. The HLM report¹⁴ details the demolitions and losses on an annual basis. This sums to 315 for the previous 8-year period, an average of 39 per annum. The figure included for the 5-year period by BP is 195 (39 p/a x 5 years), carrying forward the actual average of 39 dpa demolitions from the previous 8 years into the future 5-year period. **BP's figure of 39 is therefore** entirely trend based.
105. The table at Appendix 4 of the HLM does not record demolitions or losses as high as this. It simply identifies 28 demolitions which are expected to take place within the next 5-year period, and which are included within the Council's supply figure. **As such, whilst BP's evidence of past trends suggests demolitions of 39 units p/a, giving rise to a total of 195 to be included over the five-year period, he gives credit for the 28 included in the Council's figures: 195 minus 28 = 167. Consequently 167 units should be deducted from the Council's five-year supply figure.**
106. This same argument was advanced by BP at the Tattenhall appeals and was endorsed by the Inspector. There was nothing within the subsequent SoS report that suggested any departure from **that Inspector's** conclusions on the matter of demolitions.

¹² APP/L3245/W/15/3011886 at paragraph 40 (BP PoE paragraph 17.16).

¹³ Local Plan Part 1, paragraph 5.21, last sentence of the paragraph.

¹⁴ HLM report appendix 2, at page 24 and table 4.2 on page 10.

Student accommodation – 430 units

107. **As recorded above, BP's PoE at chapter 13 deals with this issue in detail** (pages 39 to 47). Student accommodation can only be included within the **Council's supply if they are able to demonstrate the amount of housing released** into the market. They are not able to do that, not least because the Council have not undertaken any exercise to show this. They have no evidence that a single dwelling will be released into the market, as a result of the student accommodation to be built.
108. In reality this may be difficult to achieve anyway. The number of full-time students increased by 2,265 between 2010/11 and 2016/17 (26.8%), (see the table on page 3 of BP Rebuttal PoE). In the most recent year for which there is data (2016/2017) there was an increase of 610 units. For full-time student numbers to have grown by over a quarter in that period is a very large increase.
109. There has been a corresponding decrease in the number of part time students. **However, such students' accommodation needs are very often different.** They often live at home and combine their academic studies with a job or other commitments, such as caring. Full time students in contrast are much more likely to need accommodation. The University of Chester itself is aware of this as set out in the Nevin Leather Associates report of January 2012. This states that
- "part-time students tend to remain in their existing homes, and many travel from outside of the City to study. The great majority of part-time students are unlikely to change their living arrangements in order to study"* (BP Rebuttal PoE, page 3, para 2.9).
110. The University of Chester is not the only further educational institution in Chester. Many solicitors train for their Legal Practice Course in Chester. The College of Law is now known as the University of Law in Chester. There are other FE institutions in the Borough as well. All of this adds to the increasing presence of students in the Garden Quarter (Chester) of which the Council is only too aware because some existing permanent residents are unhappy about this, hence the Council has been forced to restrict the conversion of houses to HMOs.
111. The Council tried to downplay the growth in full-time students by seeking to show that the University is located in a variety of different locations. However, **the University's own documents show that around 60% of its students are based in Chester¹⁵.**
112. Much emphasis was placed at the Inquiry on the new campus at Shrewsbury, which being in Shropshire is outside of the Borough. This is however a new and very small part of the University. The in-take last years was around 170 students, which was said to be its biggest intake (BP Examination in Chief (XiC)). On that basis the earlier years must be smaller. It is but a small satellite campus. This position was endorsed by Inspector Dakeyne in the previous decision for this appeal and in the Tattenhall appeals decisions. The evidence presented to them was that student numbers would increase at the University such that the new accommodation, that is being built, would simply absorb the

¹⁵ Background of Assessing demand for purpose-built student accommodation in Chester, University of Chester, August 2014: BP PoE, Ap EP 2D (pg2 first para)

additional numbers of students or those who at the moment are unable to find accommodation in Chester. For those reasons, the Appellant removes all 430 units in relation to student accommodation from the Council's supply.

Build rates and lead times – 505 units

113. **The Appellant's challenge to the Council's suggested build rates and lead-in times results in a deduction of 505 dwellings from the Council's supply** (S16 of the PoE of BP (pg.64 onwards)). To be clear all the Appellant has done is rely on the rates the Council itself has suggested in the HLM, or on empirical evidence.
114. In relation to the Ledsham Garden Village site, BP has applied a build rate based on the empirical evidence as to what was the actual build out rate achieved on an earlier phase on the site i.e. 66dpa. This is important because Ellesmere Port is not a strong housing market and local factors are relevant to what sales rates can be achieved there. The Council officers seek to distance themselves from the tangible, empirical evidence and instead base their projection on supposed intelligence from the housebuilder. There is no proof that the 140dpa. in years 3 and 4, are achievable on the site. BP applied the same consistent approach for the site at Grange Farm. Again, the Council provided no evidence to the Inquiry in any written or tangible form.
115. In relation to the former British Gas and Part of the former Gulf Oil sites, the Council has provided no evidence as to how their delivery rate has been calculated, save that they have departed from the standard method and assumptions for calculating this, as contained within their Housing and Economic Land Availability Assessment (HELAA) 2017 [CD13/6]. BP has applied the standard method and HELAA assumptions in his calculation.
116. In all cases, in relation to the build-out rates, the Council has failed to provide any documentary evidence to support their case or justify why it departs from its own standard method and assumptions. **The 'email' highlighted by BF in relation to the Station Quarter, which suffers from ground conditions problems and fractious land ownership, was not provided to the inquiry.**

Conclusion on Five Year Supply

117. **The Council's approach suggests a five-year requirement figure of 4,815 dwellings, which is an annualized figure of 963 dpa. The Council's final supply figure is 7,277.** This gives rise to a supply of 7.56 years¹⁶.
118. **The Appellant's approach is different. The Council's requirement for the 5-year period from the base date of 1st April 2018 is 5,500 (5 x 1,100 annual requirement).** A 5% buffer is then applied (275 units), which means that a supply of 5,775 dwellings must be demonstrated. That gives rise to an annualized figure of 1,155 dwellings¹⁷.
119. **The Appellant's supply figure is 5,423¹⁸ following removal of 1,854 units from the Council's supply.** On that basis, the Council are unable to demonstrate a

¹⁶ SCG on 5YS, dated 23 November 2018, third table under para. 3.15 on page 7, lines F- I.

¹⁷ SCG on 5YS, dated 23 November 2018, first table under para 3.15 on page 7.

¹⁸ SCG on 5YS, dated 23 November 2018, second table under para 3.15 on page 7, line G.

deliverable 5-year supply of housing land, having just a 4.69 years supply¹⁹. The inspector at Nether Peover, highlighted the fact that because the 5-years supply is a minimum requirement, then even a shortfall of 150 homes in Cheshire West should be seen as significant (BP PoE, Ap EP 1D, para 35). That approach seems particularly apposite when one is talking about a minimum on a minimum (i.e. a minimum 5-years supply requirement, based on a minimum LP requirement of “**at least 22,000**”). In the conjoined Tattenhall inquiry, the Inspector found a very modest shortfall.

120. As such, footnote 7 of the Framework 2018 is brought into play and the tilted balance in paragraph 11d is triggered in favour of the application. This is a second route to the tilted balance in addition to the fact that Policy GS5 is out of date.

The Statutory Development Plan

121. The starting point for the determination of this appeal is the DP. That is now,

a) CW&CLP P1, adopted on 29th January 2015;

b) The WNP, made on 19th November 2014;

and

c) The saved policies of the VRBLP First Review Alteration, adopted in June 2006, (specifically Policy GS5).

122. The primacy of the DP in decision making is reiterated at paragraphs 12 and 47 of the Framework. With regards to the specific weight to be attached to existing DP policies, paragraphs 212 and 213 state that due weight is to be given to relevant policies according to their degree of consistency with the Framework from the day of its publication.

123. The Framework (2018) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework (para 213). The closer a policy in a plan is to the policies in the Framework, the greater the weight that may be given. However, Lord Carnworth in his Supreme Court judgement reminds us that both a policy from a plan which is beyond its end date and a policy based on out of date housing requirements are out-of-date [CD 16/8].

124. As such, it follows and is accepted that should any of these policies be found to be '**out of date**', then the titled balance within paragraph 11d) of the Framework 2018 would be applicable.

Conflict with the DP

125. It is important to note that it is a plan-led system not a plan-dictated system. A DP provides the opportunity to set spatial strategies, set minimum housing targets, remove land from the Green Belt and to allocate sites (which is especially important for large sites where developers need certainty). However,

¹⁹ It is right to record that these figures do vary from the proofs of evidence as both parties have sought to adjust their figures following discussion on the HSoCG. It is the figures in the HSoCG of 23 November 2018 which are to be relied upon.

plans are not the last word on everything that should come forward. That would be a misunderstanding of what is meant by a plan led system. The second sentence of paragraph 12 of the Framework (2018) needs to be read in that context. Critically, the last sentence of that paragraph reverts back to the statutory test.

126. A plan-led system is also not a system where only allocated sites are required or receive permission. The Planning Inspectorate granted planning permission for 30,000 dwellings in 2017. Many will have been on unallocated sites. Without these important sites coming forward, the housing crisis would be even worse than it is already. Planning applications and appeals on non-allocated sites are vitally important to the system.
127. CW&CLP P1 Policies STRAT 9 and H1 and VRBLP Policy GS5 were considered by Inspector Dakeyne to be the dominant policies, as per paragraph 11d) of the Framework 2018, for the purposes of determining this appeal. This is agreed by both parties having been accepted by Jill Stephens (JILLS) on day 3 of the inquiry.

Cheshire West and Chester Local Plan (Part One)

128. The proposal is largely consistent with the CW&CLP P1²⁰. This includes the fact that the proposal is consistent with Policy STRAT 6 which is the policy for Winsford. The conflict with the LP is predominantly focused on Policy STRAT 9²¹. This restricts development to that which requires a countryside location and cannot be accommodated within identified settlements.
129. The opening line of the policy sets out that its aim is to protect the intrinsic character and beauty of the Cheshire countryside. This policy goes beyond and is more restrictive to development than the Framework, as JILLS accepted in Xx. Although the policy was found to be sound at examination, the Framework 2018, which postdates Policy STRAT 9, at paragraph 170 b) does not go as far as stating that the intrinsic character and beauty of the countryside is to be '**protected**' as Policy STRAT 9 does. A less restrictive bar is set, in that it should be '**recognised**'.
130. This is an important distinction and a deliberate drafting difference within the Framework 2018. As such and in accordance with paragraph 213, Policy STRAT 9 is not consistent with the Framework 2018 and is out of date, triggering the titled balance within paragraph 11d).
131. The importance of the distinction between recognised and protected is well explained and was addressed by the Inspector in an appeal decision for a site at Cornerways, High Street, Twyning, Tewkesbury at para. 7-17 [CD17/43]. However, the later Court case of Cawrey Limited²² does suggest that even under the Framework, the countryside does enjoy a degree of protection. Nevertheless, that is not the same as giving it outright protection.
132. The fact that the policy is not consistent with the Framework, diminishes the weight that can be given to it, reducing in parallel the magnitude of any conflict

²⁰ PoE of JonS.

²¹ CD 13.1 pg.41.

²² Cawrey Limited v SSCLG (2016) EWHC 1198 [CD11/3].

with it. The Council says that the conflict should be given full weight, but for a policy that is not consistent with the Framework, this cannot be the case. It must only attract reduced weight. However, to be clear, Jon Suckley (JonS) in his PoE has looked at the planning balance in circumstances where this argument is not accepted.

133. Policy STRAT 1 concerns sustainable development. In para. 3.5 of her PoE, JIIS states that the proposal should support sustainable development principles set out within the policy: one such principle being to minimise the loss of greenfield land²³. However, this is not an embargo against the loss of any greenfield land and as such the loss of greenfield land would not be contrary to this policy. If that was what was intended the drafting would have said so.
134. Policy STRAT 1 does not include a checklist of rules, mandating that all items **be 'ticked off', but instead contains more flexible 'principles'**. The PoE of JonS, at chapter 7, deals entirely with the topic of sustainable development, concluding at para.7.23 on pg.32 that the proposal will deliver benefits in all three objectives of sustainable development in accordance with Framework 2018 para.8. The section below, in relation to sustainable development, outlines the same and why there is no conflict with Policy STRAT 1.

Winsford Neighbourhood Plan ("WNP")

135. The WNP was made over four years ago. Only about 2 ha of the application site, the northern most field, falls within the remit of the WNP, equating to roughly 50 homes. The remainder of the site, approximately 4.5 ha cannot be said to be in conflict with the WNP in any shape or form as it is not within the WNP area.
136. Similarly, any conflict suggested with Policy H1 of the WNP cannot be levelled against the application as a whole, it can only exist against 31% of it, which in turn must reduce the weight of any conflict, if found. However, more importantly Policy H1 of the WNP does not contain a cap on development. This **was accepted by the Council's witnesses repeatedly throughout the Inquiry**. The **examiner's report** [CD 15/2] also confirmed this at paras 3.13 and 3.18.
137. Consequently, the housing requirement and allocation within the WNP is not a preventative ceiling to additional development. JIIS accepted on Day 3 of the Inquiry that the wording within Policy H1 permits additional development over and above that allocated.
138. When the WNP was still in draft, but at the same committee as the **Appellant's proposal, the Council itself granted** planning permission for sites outside of the Policy H1 allocations and settlement boundaries, most notably at Swanlow Lane²⁴.
139. **The Council's case focuses on the need to limit development in Winsford to** the allocations made in the WNP. However, the allocations (3,362) do not add up to the **LP's requirement** (Policy STRAT 6). This requires at least 3,500. More housing is consequently needed at Winsford than just the WNP allocations.

²³ STRAT 1, bullet 6.

²⁴ JonS at para 13.16.

140. Mr Wood and the Council suggest that the WNP examiner rejected the site. However, this was not a LP examination. One needs to read the relevant paragraphs of Dr Mynors report accurately [CD 15/2], with care and in context. The Examiner was careful to say that he was not assessing the suitability of any particular site (para 3.29) and he made clear that he had a limited role as an Examiner (para 3.54). Whilst he had no reason to disagree with the Town **Council's reasons for rejecting the site, he was plainly very mindful (and recorded the fact)** that the Appellant was expecting to receive planning permission and the Borough Council were not opposing the site (para 3.50). He also made the very important point that sites can come forward, which are not in the plan, based on other material considerations (para 3.47).
141. One also needs to look at the context of the WNP itself. It was actually prepared against an intended housing figure for the Borough of just 21,000 new homes (see para 2.1.19 of the WNP). One thousand homes less than the LP actually requires.
142. **Furthermore, a full investigation of the plan's housing allocations (which did not take place at the second inquiry)** has revealed that 1,224 of the dwellings in the plan had permission before the plan was made. Additionally, there are delivery problems at the main location for development at the Station Quarter. That context is important because it suggests that despite the WNP having been made 4 years ago, it is not actually providing much assistance in meeting **Cheshire West's housing needs**. The lack of delivery at Winsford compared to Chester and Northwich suggests that there are real problems with delivery at Winsford.
143. **The Council's case has evolved into suggesting that the proposal conflicts with** the themes of the WNP. However, it is genuinely difficult to see how the proposal offends these when the proposal is similar to other housing proposals at Winsford. For example, the proposal will bring in new households and they will support the town centre, just as the allocations will do (see Theme 1, on pg.17 of the WNP). Added to which, the proposal will in fact assist in promoting some of the objectives of the WNP, such as the objective to create a variety of employment opportunities where initiatives to develop skills are proposed (WNP pg43). The training and employment obligation or condition, proposed by the Appellant will plainly do just that. In line with observations from the Inspector, the Appellant has sought to make that more localised with 20% of those employed needing to come from Winsford or the surrounding parishes.
144. The suggestion that the proposal is not in a gateway location was also easily dismissed by JonS in both Xx with regard to site W5 and in re-examination with regard to site O3. If anything, the appeal site offers more of an opportunity to create a gateway than either of these sites.
145. The Borough Council is careful to suggest that it was the view of the Town Council that the proposal offended the vision of the WNP. In truth, there is no conflict with the vision.

146. The Crane case suggests that the WNP needs to be read as a whole²⁵. However, the Tesco case decided that all policies in the DP need to be read in their proper context²⁶. This was reiterated and made clear by Lord Carnwath at para 63 in the Suffolk Coastal/Richborough Estates case²⁷. The fact the WNP Examiner made clear that the allocations were not to be seen as a cap is a critical part of the context here. It would therefore be wrong to read into this plan, any suggestion that other sites cannot come forward.
147. In any event, the WNP was made on 19th November 2014 and allocated 3,362 homes (WNP page 46). However, following this on 25th January 2015, the CW&CLP P1 was adopted, and its policies take precedent²⁸. This included the aim of 3,500 new homes being delivered at Winsford over the plan period.
148. For the reasons outlined above, the WNP is not delivering new homes in the numbers required. It allocates less than the Local Plan, which post-dated it and windfalls have not taken it above that. All the more serious because the Local Plan figure for the town is expressed as a minimum. Over one third of the dwellings in the plan already had planning permission by the time the WNP was made. A second third, at the main development location in the town (the Station Quarter), are simply not coming forward.

Vale Royal Borough Local Plan saved policies

149. Policy GS5 is the only saved policy of this plan that the proposal is stated as being in conflict with [CD 13/2]. It relates to development within the open countryside (pg 18). The policy is out of date because it is from a plan which only addressed development needs up until March 2016. More importantly it is based upon strategic housing and employment policies which are plainly out of date. This matter was considered in paragraph 63 of the Judgment discussed above²⁶.
150. The Daventry case²⁹, relied upon by the Council, relates to the guidance in the old Framework. It relates to a situation where the Inspector simply accepted that the policy was out of date without considering the extent to which the housing requirement in that plan was based on out of date housing requirements. That is what the Inspector did in the Cheshire East/Richborough appeal. The Supreme Court supported his approach. That case post-dates the Daventry case on which the Council rely.
151. **Policy GS5 is retained simply as a 'stop gap' to prevent a 'policy vacuum' from occurring if it were to be removed.** It will be removed when the CW&CLP P2 comes forward. The settlement boundaries proposed in P2 of the LP do not match those within GS5, further evidencing the out-datedness of GS5. The Council cannot suggest the policy has little relevance in the light of Policy STRAT 9. The fact is the Council need Policy GS5 to show where the settlement boundary is located. In granting permission for lots of sites beyond the Policy

²⁵ Crane v SSCLG (2015) EWHC 425 [CD16/3].

²⁶ Tesco Stores v Dundee (2012) UKSC.

²⁷ Suffolk Coastal DC v Hopkins Homes: Richborough Estates v Cheshire East Council (2017) UKSC 37 [CD16/8].

²⁸ Section 38(5) TCPA and NPPG Neighbourhood Planning, Paragraph: 084 Reference ID: 41- 084-20180222

²⁹ Daventry BC v SSCLG & Gladman Developments (2016) EWCA 1646 [ID 38]

GS5 boundary in Winsford, the Council have plainly not seen that boundary as a hindrance and must have given it reduced weight.

152. **The Council's professional planning officers in their report to committee on 21 November 2013 [CD2/2]** gave Policy GS5 reduced weight, correctly so, and stated it to be more restrictive than the Framework 2012, as was then.

153. The settlement boundaries contained within Policy GS5 have not prevented the Council from themselves granting planning permission for sites that sit outside of them and so it cannot be said to preclude such development. JILLS accepted as much in Xx on day 3.

154. The Council made clear on Day 1 of the inquiry that Policy GS5 is to be viewed as an important policy. It is nevertheless plainly out of date. Consequently, the tilted balance is triggered through this alone, regardless of the 5-year supply issue.

Development plan conclusions

155. In relation to the policies most important for determining the application;

- a) Whilst there is conflict with Policy STRAT 9 of the CW&CLP P1, this policy cannot be afforded full weight as it is more restrictive than the Framework 2018. In particular, it is not consistent with para 213. As such, the impact of any conflict with Policy STRAT 9 is reduced. Even if it is given full weight, it does not stand in the way of granting planning permission as Inspector **Dakeyne's** recommendation made clear.
- b) Policy STRAT 1 of the CW&CLP P1 does not contain a mandated checklist of obligatory requirements. It is a flexible list of principles or desires. Loss of greenfield land is not embargoed within STRAT 1 and the proposal delivers on all three sustainable development objectives (see para. 204 below). The appeal proposal as such does not conflict with this policy.
- c) Policy H1 of the WNP, does not set a maximum figure or a cap on development, this was outlined by Dr Mynors at the examination and is accepted by all parties. There is no conflict with this policy. However, even if there is, this policy does not stand in the way of granting planning permission as Inspector **Dakeyne's** recommendation made clear.
- d) Finally, saved policy GS5 of the VRBLP is out of date. It is based on out of date housing requirements. Being out of date it triggers the tilted balance within paragraph 11d) of the Framework 2018 and permission should as such be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the Framework 2018 taken as a whole.

The benefits of the proposal

156. There are multiple benefits. These include the delivery of new homes to address the shortfall in the 5-year supply, the delivery of much needed affordable housing (AH), the provision of self-build housing, and the economic benefits of the proposal.

157. These are not to be treated as neutral. The point is well explained by the Inspector in the very recent appeal at Land East of Park Lane, Coalpit Heath [CD 17/13], who said at para 61 that:

"There are three different components of the housing that would be delivered: market housing, affordable housing and custom-build housing. They are all important and substantial weight should be attached to each component for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply."

Small and Medium Sized Local House Builders

158. The proposal will deliver up to 92 market homes at a time when the Government has enshrined its objective of **"significantly boosting"** the supply of homes within national policy³⁰.

159. The benefit of these market homes is substantial, simply on the basis of a **national housing crisis, but is increased on the Appellant's case where the Council cannot demonstrate a five-year supply of housing land**. However, the **Appellant's case does not live or die by the presence or not of a five-year supply**, as many appeal decisions have seen permission granted in circumstances where the Council can demonstrate a 5-year supply of housing land³¹.

160. The critical feature in terms of market housing is that the proposal is to be built specifically by small and medium sized builders from Cheshire. The **Government's desire to support local** housebuilders who are Small and Medium Sized Employer(s) (SME) is well documented [CD 12/10]. There is an increasing awareness of the important role that they can play in helping to address the national housing crisis, the government has encapsulated this within national policy at paragraph 68 of the Framework 2018. This accords with the aims and desires of Government, something not lost on the Inspector at the Lydney appeal³².

161. Further, the Lyons Review [CD 9/12] has identified the over reliance placed on large-volume, national house builders as one of the two main contributory causes for the housing crisis.

162. The Appellant has provided four letters from local SME building firms; Apex, Cruden, Garratt and Moorcroft. These explain the difficulties faced by such SME firms when competing against national housebuilders and outline the lack of suitable sites locally. All four express their interest in the appeal site and the proposal. These are real words from local, real builder SMEs, the exact businesses that the local approach of this proposal aims to assist. For these **reasons the local SME builders' provision, to be secured through a legal agreement**, should attract significant weight.

163. The Appellant also plans to implement a local training and employment strategy, to be approved by the Council prior to the commencement of

³⁰ Framework 2018 paragraph 59

³¹ Appendix 18 to the PoE of JonS

³² APP/P1284/13/OUT Land off Driffield Road, Allaston Road, Lydney, Gloucester

- development, delivering localised benefits to the peoples of Winsford in the form of new skills, qualifications and careers. It should attract significant weight.
164. **A very similar 'local approach' to the one offered here was put forward by the** Appellants in the Lydney appeal. The SoS ultimately concluded that the benefits of this were significant enough to outweigh the conflicts with the development plan.
165. Following the concerns that the SoS had about the conditions used previously, the Appellant has sought to promote these local aspects of the proposal by way of a planning obligation. That was the successful approach taken by the appellant in the Lydney case.
166. The Appellant was content with conditions last time, as it would be this time as well. The Council officers prefer them as they believe conditions are easier to enforce in the event of a breach. However, having seen the Lydney decision approved on the basis of ensuring its 'Local Approach' was made legal through a planning obligation, the Appellant is reluctant to not make that the preferred mechanism now in this case.
167. Given the obligation (or condition) for the market housing to be built by a local SME builder(s), there is no real need to have a local procurement obligation (or condition). They will inevitably obtain a high percentage of their employees and material from the local area. That is why the Appellant agreed to its removal from the list of draft conditions.

Affordable Housing (AH)

168. At the heart of the Framework, **is the government's objective to significantly** boost the supply of homes of the right size, type and tenure (para 59 and 61). The Appellant contends that there is incontrovertible evidence of the need for significantly more new housing nationally, particularly affordable housing, given the existence and extent of the national housing crisis.
169. **JonS's evidence** at S8 suggests that many of the affordability indicators are now worse than in 2015. Affordability has worsened and so have housing waiting lists. Consequently, he rightly describes a graver more serious problem meriting an enhanced weight to this crucial benefit. The Council considers this to be part of a wider problem. However, the lack of a 5-year supply is a local manifestation of a more systemic problem. As the Inspector set out in the Ludlow case at para 40 page 9:
- "whilst the LPA is able to demonstrate a deliverable five-year supply of housing sites based upon its requirements set out in Policy CS1, this is not a limit: there is an acute housing shortage in England. It is recognised in National policy that the government anticipates a significant boost to the supply of housing. In this respect, the provision of any extra housing to this national shortfall is a benefit in favour of the proposal, including both market and affordable housing"* [CD17/33].
170. The proposal will make a substantial contribution towards meeting the general housing needs in the area in accordance with the requirement placed upon local planning authorities to provide for the full objectively assessed housing needs of the area. The 2013 SHMA [CD13/8] sets out a requirement for 714 affordable houses per annum.

171. The problems of unmet housing need and delivery problems do not just beset market housing or general housing need. There is a particular problem in this Borough with affordable housing and Custom/Self-Build housing. As Cllr Hooton (Chairman of Planning – Winsford Town Council) explained, social housing has posed problems for Winsford over the years. He advised that the Town Council want to see more social housing from the Council and social landlords. The affordable houses proposed will be transferred to and managed by a Registered Social Landlord exactly how Cllr Hooton wishes.
172. The Council wish to portray the position of affordable housing delivery as **being “admirable”**. However, the LP target is less than half the annual need arising in the District. The LP is failing at the outset to meet the full needs of **household’s requiring assistance with their housing choices**. Whilst obviously now forming part of the DP, this requirement was not what JonS was comparing when assessing net annual affordable housing delivery against annual needs.
173. Comparing net annual AH delivery against the annual requirement in the Strategic Housing Market Area (SHMA), covering exactly the 5-year period, the delivery record is much less rosy. As JonS’s evidence shows with this comparison (JonS Figure 4.7 page 37 of PoE) there is an accumulated shortfall of -1,503 dwellings over the first 5-year period. These households have not had their housing needs met. These households are being failed by this Council.
174. **Given that the backlog is increasing, there can be no net ‘social progress’** in addressing AH needs in the District. Subsequently, it is highly questionable how the Council can be content with this, regardless as to how well it is performing against the pragmatically founded LP target. Any additional AH contribution must be especially beneficial in at least mitigating the continuing harm. In this context JonS considered the delivery of AH to be abysmal³³. JonS agreed in Xx that delivery compared to the LP target was better but that is not the true picture of AH provision and need in CW&C.
175. A major part of the **Appellant’s case is the fact that the proposal involves the** delivery of up to 74 affordable homes, equivalent to 40% affordable housing. The affordable housing offer at 40% is numerically 10% more than required by Policy SOC1. This equates to an extra 18 affordable homes or 32% more than would have been delivered by a policy compliant proposal. Furthermore, in the event that the Custom and Self-Build housing is not provided, that 10% would revert to AHs so that the AH offer would total 50% of the entire dwellings on the site. It was agreed in Xx of JllS that in this scenario the appropriate weight to be given in the planning balance would be very substantial.
176. The appropriate weight to be given to AH in the overall planning balance is of fundamental importance and has been a matter which the SoS and Inspectors have regularly considered. In **JonS’s opinion it should attract nothing less than** very substantial weight. This contrasts with the substantial weight awarded by the Council, which appears to be a deliberate ploy on its part to downplay the vast array of worsening market indicators. These justify JonS’s position of ascribing a greater degree of weight than was given in 2015. To merely accept the same weight would fail to take account of significant changes in local circumstances.

³³ See Section xiv of JonS’s Executive Summary

177. The delivery of new housing contributes to the social and economic roles of sustainable development (SD). It delivers major benefits in line with the Framework's policy. Those merits are brought into stark reality by the evidence of JonS, and especially the 6,204 households falling into need. JonS explained that in spite of stricter registration criteria there remains a high number of households needing assistance with their housing needs. As the Inspector asserted at para 8.122 in the Pulley Lane, Droitwich Spa appeal [CD17/8]

"Needless to say, these socially disadvantaged people were unrepresented at the Inquiry".

178. As is evident from JonS's evidence, the need for accelerated AH provision pervades national and local policy. The estimated AH needs are considerable, with the 2013 SHMA setting out a requirement of some 714 affordable dwellings per annum.

179. As JonS explains, there is an accumulated shortfall of some 1,503 dwellings since 2013/14 (JonS figure 4.7 page 37 of PoE). Not an insignificant figure equating to almost half the growth in the waiting list between April 2015 and April 2018 (Change of 3,414 more households). The growth in the housing register has been staggering. It was previously acknowledged that the housing register had been artificially reduced in 2014 from 19,000 households to 2,790 households in 2015 (JonS figure 4.1 and para 4.7 page 32 of PoE). Despite the stricter qualification criteria introduced by changes allowed in the Localism Act 2011, the housing register has increased by over 3,400 households in the space of just 3 years. This is more than 3 households per day registering or re-registering (JonS XIC). There are now 6,204 households on the register as at 1st April 2018. Yet the Council make no reference to the worsening of the housing register.

180. The hugely important benefits of living in a home such as: secure tenure, ability to set down roots, ability to plan for families and to be close to relatives and support groups is immeasurable and has no doubt manifested itself into the "*grief and hardship*" referred to by Mr Boles back in 2013.

181. The Appellant contends that there is a vast array of indicators which have also not been fully considered by the Council. These indicators are illustrated by JonS in his PoE³⁴.

182. There can be no doubt that there is an acute need for AH in CW&C. The proposals will deliver a substantial number of AH, for which there is a significant demonstrable need and in a sustainable location. This should be considered in the context of significant under-delivery against the SHMA requirement, with JonS ascribing very substantial weight to the delivery of much needed AH. The need for AH at Winsford is also very evident. This point was echoed by Mr. Tony Hooton (see para 315 below).

183. Finally, Table 4.7, as contained within the PoE of JonS³⁵, highlights the underperformance of the Council when it comes to the provision of AH since

³⁴ JonS pgs. 31-34, 36, 37 & 51.

³⁵ Ibid at paragraph 4.22 page 37.

2013/14. In none of the previous five years has the Council achieved its identified AH need of 714 dpa³⁶. The closest it has got was in 2017/18, with 552, still some 162d short. In the previous 5 years, the Council has achieved 2,067 net AH completions, 1,503 less than the required 3,570. It has delivered less than 58% of that which was required. This shortfall affects real people, in real need. Given the above, the AH provision must attract nothing less than very substantial weight.

Self-build

184. The Housing White Paper (CD12/7) is clear that:

"The government wants to support the growth of custom build homes".

185. As recently as 16 October 2018, during a debate on housing and homeownership in the House of Commons (Appendix AM2), the Housing Minister **Kit Malthouse reaffirmed the Government's commitment to self-build** and custom build, stating that:

"We are very keen to encourage self-build".

186. The revised Framework sets out at Paragraph 60 that in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at Paragraph 61 to say that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in policy, including ***"people wishing to commission or build their own homes"*** with footnote 26 of the Framework detailing that:

"Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and Custom-Build properties could provide market or affordable housing".

187. The Council does not dispute that there are 309 households on their self-build register seeking a self-build or custom housebuilding serviced plot, nor do they appear to dispute that the Self-Build and Custom Housebuilding Act 2015 requires them to grant enough suitable development permissions to meet identified demand.

188. What has become apparent however is that the Council has no idea whether it is granting sufficient permissions to meet demand. As Jills conceded in Xx she does not know how many self-build plots the Council has granted planning permission for in the plan period. Furthermore, Jills was unable to point to any other site in Winsford that provides a self-build plot.

189. In the re-examination (re) of Jills, the Council sought to contend that because Winsford urban area is nil-rated for CIL then the chances of learning about self-build from CIL exemptions in Winsford was not possible. However,

³⁶ Taken from the 2013 SHMA.

this merely seeks to distract from the fact that the Council simply do not know how many self-build plots there are in CW&C and have no idea whether they have granted sufficient suitable development permissions to meet demand on their register.

190. It is important to remember that the Self-Build register, whilst being an important tool in helping to gauge local demand, cannot predict longer term demand for plots and is therefore only a part of the picture in robustly assessing demand.

191. The Framework is clear that:

"Local authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance within NPPG)"³⁷.

192. It signposts the reader to the housing and economic development needs guidance, which states that:

"In order to obtain a robust assessment of demand for this type of housing in their area, local planning authorities should assess and review the data held on their register. They should also supplement the data from the registers with secondary data sources such as: building plot search websites, 'Need-a-Plot' information available from the Self Build Portal, and enquiries for building plots from local estate agents."³⁸

193. Appendix AM3 to **Andy Mojer's (AM's)** Self-Build and Custom Build Statement [ID9 Ap.13] **contains secondary data supplied by Build Store who hold the UK's** largest database of self-build building plot opportunities. This data shows that there were 443 registrants on their Custom Build Register wishing to create their own home within a 10-mile radius of the appeal site.

194. In addition to this, the Build Store secondary data shows that there were 1,209 Plot Search subscribers within a 10-mile radius of the appeal site. These are people who are actively looking for a plot to build or commission their own home within this area.

195. This is precisely the type of secondary data source that the NPPG expects to **be used to supplement the Council's own self-build register**, in order to obtain a robust assessment of demand in the area. The Council have failed to do this and in doing so cannot consider the data on their self-build register alone to form a robust assessment of demand within CW&C.

196. The fact that the Council have failed to robustly assess demand in line with the requirements of the NPPG calls into questions their contention that the 18 self-build plots on the appeal site would fail to come forward due to a lack of demand.

197. Emerging CW&CLP P2 Policy DM20 is intended to require residential development proposals to demonstrate how development proposals will address

³⁷ Paragraph: 011 Reference ID: 57011-2016040127.

³⁸ Paragraph: 020 Reference ID: 2a-020-20180913.

demand for self-build and custom build housing. But it sets no targets and allocates no sites.

198. It follows that it must be noted that neither adopted nor emerging policy expressly define a target for self-build and custom house building in CW&C. Additionally, the Council does not appear to have any particular mechanism (such as a percentage requirement to provide self-build plots on qualifying sites for example) for securing delivery.
199. Without sites such as the appeal site, which could deliver 10% of its units as serviced self-build and custom housebuilding plots, it is unclear how the Council intends to address demand for self-build and custom housebuilding within CW&C.
200. **The Council's contention that there is insufficient demand and therefore the benefit of the self-build plots would fail to materialise as a deliverable benefit was mitigated during the inquiry by the introduction of a fall-back position.** Should the self-build units remain undelivered within five years, then they would revert to affordable housing plots, thus increasing the overall affordable housing offer to 50%. The appellant contends that this should be afforded nothing less than very substantial weight. As Jills conceded in Xx, the fall-back position means that in either eventuality a material benefit of substantial weight would be delivered through the appeal proposals.
201. **The appellant's position remains that there is sufficient demand for the 18 self-build plots despite the introduction of a fall-back position.** When considered against the scale of unmet demand and the lack of a suitable strategy from the Council to address demand, the provision of 18 self-build and custom build plots through the appeal proposals should be afforded nothing less than substantial weight in the planning balance.
202. Full details of the self-build evidence is provided in the evidence of AM [ID9 Ap.13] and supplemented by evidence from JonS.

Local Training and Employment

203. The proposed condition is very similar but more specific than the condition the Council itself imposed on the Ledsham Road permission. **The Appellant's** suggested condition is much superior in its clarity and intention. The purpose is to ensure that some of the work carried out in building the site is done by people local to both Winsford and Cheshire West. There is clear evidence of multiple deprivation in Winsford and one might have expected the Council to welcome such a condition. There are no enforcement problems. The Appellant will ask the house builders and their contractors to keep a record of the people they employ, and each contractor will plainly be made aware of the condition. The Appellant's Estate office will itself keep all of the records.

Sustainable development

204. The proposal would deliver sustainable development, offering a wide range of benefits within all three objectives of sustainable development³⁹, on a site that is

³⁹ NPPF 2018 paragraph 8.

accepted as being in a sustainable location. Whilst this is dealt with in detail in chapter 7 of the PoE of JonS, the key benefits would be:

Economic

- a) House building, with specific support for a local SME building firm with exclusive access for them to a major housing site;
- b) Additional employment opportunities within both Cheshire West and Winsford in particular;
- c) A commitment to the training of local people to work on the site;
- d) Additional expenditure by the new households in the local economy;

Social

- e) The delivery of a choice and mix of housing in a sustainable location, including: market housing, affordable housing and self-build on the one site;
- f) An affordable housing provision of 40% against a Council requirement of 'up to 30%';
- g) On site open space provision of at least 8,000sqm. against a Council minimum of 5,000sqm;
- h) Financial contributions towards a new playing pitch, parks and recreation and play for youth;

Environmental

- i) The site is located in a sustainable and accessible location in respect of bus, cycling and walking provision;
and
- j) An enhanced habitat will be made available on site with the creation and long-term management of four ponds for the use of GCNs.

The Planning Balance

The Tilted Balance

205. The titled balance applies because Policies GS5 and STRAT 9 are out of date. It would also apply if there was not a 5-year supply of housing land. The proposal plainly satisfies the test in Framework, para 11(d) (ii). The adverse impacts come nowhere close to outweighing the benefits, which are many and attract much weight. There are no 11(d)(ii) policies which apply here.

Section 38(6) PCPA Balance

206. If the titled balance does not apply, then it is the conventional status test which applies. The Appellant does not consider that this proposal conflicts with the DP, save for Policy STRAT 9 of the CW&CLP P1, which should be afforded reduced weight in any event, owing to its inconsistency with para 213 of the Framework 2018.

207. However, in the alternative and should further conflict with the DP be found, including with regard to Policy H1 of the WNP, then the benefits which are termed other material considerations far outweigh the conflict found with the DP. This is the exact route to approval taken by Inspector Dakeyne and which can properly be taken again if required, based on the considerations and sustainable development outlined above.

Overall Conclusion

208. There is a real need for this type of development in England and Cheshire West, to assist in addressing the housing crisis. It is a proposal entirely aligned with Government policy. It is a proposal comprised solely of plots for self-build, custom build, small and medium sized local builders and affordable housing. The SoS should properly take these into account. His failure to do so last time was unlawful. Giving them little weight, as the Council suggests, would be wholly contrary to the thrust of Government policy, statement and emphasis. It would send precisely the wrong message to the house building and self-build sectors.

209. The WNP does not allocate the level of housing necessary to meet the **Council's minimum requirement for the town** as set out in the LP. It allocated land for 3,362 new homes, whereas the Local Plan requires a minimum of 3,500 new homes. Being later in time it is the LP figure which takes precedence⁴⁰. Being a minimum, the Local Plan figure for Winsford is to be exceeded. That is what the plan intends. But to be clear, at para 3.13 pg 25 the WNP Examiner was plain that the housing allocations in the WNP were not to be seen as a cap [CD 15/2]. There are clearly delivery problems with the main site at the Station Quarter where over 1,000 homes are allocated. Not a single house has been completed in that area and the vast majority of the sites (nearly 800d) do not have planning permission.

210. The Appellant believes the Council is not able to demonstrate a 5-year supply of housing land. But to be clear, a shortfall in the 5-year supply is not a requirement to grant planning permission, as evidence by the SoS's own decisions at Hook Norton in Cherwell [CD17/42], and Watery Lane in Lichfield [CD17/39]. The former was also contrary to a newly made NP. The latter was contrary to a whole host of LP policies. The SoS also took that view in CW&C at Sealand Road, Chester [CD17/1]. There are a host of other appeal decisions in which this has also been the case, such as sites at Upper Chapel, Launceston [CD 17/23], Foldgate Lane, Ludlow [CD17/33], Drakes Broughton, Worcestershire [CD17/35] and Whitworth Way, Wilstead in Bedfordshire [CD17/45]. Additionally, in this Borough at Fountain Lane, Davenham [CD17/41] and Hill Top Farm, Northwich [CD17/40]. However, if there is a shortfall, it is another route to the tilted balance and also a major material consideration weighing in favour of the proposal.

211. In the light of the evidence of BP, AM, JS and JonS, the Appellant once again invites an Inspector to recommend approval of the proposal (as has been the

⁴⁰ Section 38(5) of the Planning and Compulsory Purchase Act 2004: ***"(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan"***.

case twice before) and invites the SoS to grant planning permission in a manner which is consistent with his own decision at Lydney.

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL²

Introduction

212. The Appellant has persistently referred to large numbers of other appeal decisions both of Inspectors and the SoS, pointed to the language used, particularly as regards the weighting of various factors used in that case, and invited others to agree that such language would be appropriate in this case. That is a simplistic and inappropriate approach.
213. It is the most basic principle of decision making that all cases must be addressed on their own merits. **A decision maker's choice of language and of adjective to describe weighting is a classic example of a case-specific and a fact-specific assessment.** For example, the **Inspector's and the Secretary of State's findings about the weighting to be given to the "local approach" and to the completion of the scheme by small or medium builders in the Lydney appeal [CD 17/2]** was no more than a product of the facts at play in that case. To lift the language from the decision letter, deprive it of context and then seek to insert it into the balancing exercise at play in this case is to make a basic and fundamental error.

Five-year housing land supply

214. **The Council's position remains that there is a five-year supply of deliverable housing land.** It is common ground that the five-year supply position is to be tested borough-wide and that the requirement figure for the Winsford area is not to be used to calculate the five-year supply.
215. **It is notable that the Appellant's very best case only reduces the Council's supply to 4.69 years⁴¹.** The Appellant only has to be slightly wrong in order for the Council to have a five-year supply. Indeed, if **BP's approach to the requirement calculation is wrong**, then even if he is right on every single point that he takes in relation to the supply side of the calculation, the Council would still have a 5-year supply⁴².

The Housing Requirement

216. Part 1 of the LP provides that at least 22,000 net new dwellings should be provided over the twenty-year plan period. That is an annual rate of at least 1,100 dwellings. The dispute in calculating the requirement is limited to the question of whether past annual delivery over 1,100 dwellings per annum should be discounted from the minimum requirement calculated for future years. Provision could not sensibly be tested by reference to an unspecified, but higher, figure.

⁴¹ See the summary table on page 72 of BP's proof.

⁴² Council 5-year requirement = 4814, Appellant supply = 5423, giving a supply of 5.63 years.

217. Even if some student accommodation completions were to be deducted from **the Council's figure for completions**, in the eight years of the plan period so far (10,992 units), provision well above the minimum requirement has been made. The minimum requirement to be met over the rest of the plan period can only be the 22,000 figure minus completions so far. **On the Council's completions, that** means that at least $22,000 - 10,992 = 11,008$ units have to be provided over the remaining 12 years of the plan (at least 917.3 net new units per annum).
218. The five-year requirement should be a product of that residual figure. To do otherwise risks imposing a requirement figure upon the Council, which, in relation to which there is not a five-year supply, imposes the tilted planning balance and a finding that important policies are not up to date, even though housing provision is well on track to meet needs over the plan period and is meeting needs in the plan period to date. Such an approach makes no sense.
219. It is no answer to say that the Framework, in all of its versions, implores us to boost significantly the supply of housing. The way in which the Framework sees that objective, as set out in para. 59, is by identifying and meeting needs as para 73 requires. The Council is doing so. Furthermore, as was pointed out in cross-examination of BS, CW&C **is an authority where the plan's annual requirement** figure of 1,100 net new dwellings was not a reduction from the OAN figure but is the full OAN.
220. Further, as BF sets out, to keep providing at a rate of 1,100 dwellings per **annum, regardless of the plan's performance to date, risks having to provide houses in places which conflict with the plan's strategy and which therefore risks** being unsustainable.
221. The Appellant refers to two decision letters which it says support its case. They are both markedly different from the position in this Borough:
- a) In the Doncaster [CD 17/16] case, the Council was using a requirement figure from its SHMA, with a base date of 2015/2016 (para.8), which had been exceeded in the first year of the relevant period (para.37). That was hardly a firm foundation against which to test housing provision and it is not surprising that the Inspector took the approach she did in that case in those circumstances;

and

 - b) In the Wendover appeal [CD 17/15], the Council seems to have been making its case by reference to alleged oversupply which took into account delivery in **years prior to the requirement's base date** (para.118), which is odd to say the least, as BP accepted in cross-examination. Further, in asserting that delivery at higher rates would not be problematic (para.119), the Inspector does not address (and may not have had to address) the point made by BF about the risks of unsustainable development at much higher rates than the plan period minimum rate.
222. Instead, the Council can draw firm support from the report of the Cotswold LP Inspector [CD 18/10]. He concluded in that case at para 187 that:
- "An approach that fails to take account of completions during the plan period would result in additional land being made available for development that is not required to meet identified needs. In a high demand area such as***

Cotswold district such land would no doubt be developed. This would lead to the unnecessary loss of greenfield sites and be likely to lead to increased commuting out of the district."

223. This appeal is a manifestation of the risk that greenfield land could be unnecessarily lost if the housing land requirement is not calculated on a residual basis. There is every sense in using the residual basis to calculate the requirement here and no sense in using a flat annual rate, whatever past performance. With the agreed 5% buffer, the five-year requirement in this case is 4,814 units, net.

Supply issues

224. **The Appellant complains about the way in which the Council's** five-year supply assessment is carried out, particularly as regards consultation. However, there is no merit in its criticism, for the following reasons:

a) The Appellant points to NPPG⁴³ paragraph 3-030-20180913 **"How can an authority demonstrate a 5-year supply of deliverable housing sites?"**. That paragraph refers to consultation in the context of plan preparation and, even then, only refers to consultation as regards the assumptions being used. As is clear from the evidence, the Council has consulted upon the assumptions which are used in the absence of site-specific evidence, both in the SHMA and Housing and HELAA processes;

b) The Appellant also refers to NPPG paragraph 3-047-20180913 **"How can authorities review their five-year supply annually?"**. Again, the reference to consultation is in the context of formulating assumptions;

and

c) Paragraph 3-051-20180913 of the NPPG **"What engagement should the authority undertake to prepare an annual position statement?"** is wholly about the requirements relating to annual position statements. It is irrelevant.

225. **The Council's forecasting has proven to be remarkably cautious.** The graph/bar chart on page 34 in Appendix 3 of the 2018 Housing Land Monitor [CD 13/5] shows that for the numerous forecasting exercises made for a number of future years, only one forecast for one specific year proved too high. Every other forecast made produced a figure which is lower than the figure for completions, which was subsequently achieved for that year. This Council does not make over-optimistic and unrealistic forecasts for delivery.

226. The revised Framework does change the definition **of "deliverable"**, as regards the evidential requirements for demonstrating whether sites are deliverable or not. The Council does not accept that sites without planning permission, a plan allocation or sites which are not included in the brownfield register can never be included in a five-year supply. The basic definition of **"deliverable"** is still set out in the first part of the definition, and refers to sites which are available now, offer a suitable location for housing now, and which are achievable, with a realistic prospect that housing will be delivered on the site within 5 years.

⁴³ All of the NPPG paragraphs referred to in this paragraph can be found in CD12/2.

227. The rest of the definition sets out where the evidential burden lies for various sites. To read the rest of the definition as two "**closed lists**" as the Inspector did in para 30 of the Woolmer Green decision [CD 17/11], reads too much into the paragraph. If the SoS really meant to exclude greenfield sites (or brownfield sites which are not on the brownfield register) with no permission and no allocation from the possible five-year supply (even if, for example, they had a resolution to grant full planning permission), he could be expected to have said so in plain terms.
228. It is notable that the recent consultation on amendments to the Framework states that the SoS is contemplating clarifying the guidance on what weight can be given to sites with different levels of planning certainty⁴⁴. That part of the consultation does not suggest that the SoS intends there to be a "**bright line**" between sites which can be included in the five-year supply and those which can never be included. The purpose of the two lists is to explain when sites need to be shown to be undeliverable and when they need to be shown to be deliverable. They are not exhaustive lists of the only types of site which can be included in the supply calculations.
229. Further, the Appellant is far too demanding as regards the "**clear evidence**" of delivery that the Framework and NPPG expects to see before a site can be included in the five-year supply. The NPPG at 3-036-20180913 [CD 12/2] sets out three bullets listing the types of material which could contribute towards demonstrating clear evidence "**may include**" and then gives two "**examples**". It is self-evident that this paragraph does not provide an exhaustive list of the type of "**clear evidence**" which may be expected. **Yet the Appellant's repeated position**, during the round table discussion on supply, was to use these examples as though they were the only types of evidence which could be used. BP even went so far at one point as to claim that a site should be excluded from the supply simply because it was not the subject of a SoCG between the developer and the Council.
230. The Appellant also takes a point about post-base date information. The Council is not guilty of trying to shift a base date. No category shifting of sites is going on. No site which was not in the supply as of 1st April 2018 is now being included through the partial review of supply or **BF's evidence**. **Where new** information is being referred to, it is for the purpose of testing the judgments formed about a site and its categorisation at the base date and for showing that those judgments are correct. Inspector Dakeyne understood and properly concluded upon this issue in para 220 of his supplementary report on this appeal [CD 2/7], where he stated:
- "So far as post-base date information is concerned, it is appropriate to take into account information received after 1 April 2015 if it affects events prior to, or predictions as to delivery beyond, that date. Moreover, I agree that information that supports a pre-base date judgement should not normally be ignored [SR131]. However, generally sites should not be added or taken out post-base date. **They will be picked up in the next HLM equivalent.**"*
231. That is the precise and sole purpose for which post-base date information is being used by the Council now, as it was in 2015. The irony, of course, is that

⁴⁴ "Technical Consultation on Updates to National Guidance" Page 15, para 38 [CD 12/14].

the Appellant condemns the Council for not immediately responding to the Framework revision in July and the NPPG revisions in September with a whole new set of evidence to prove deliverability of sites at the base date. However, had it done so, the Appellant would have said that such information was an illegitimate attempt to use post-base date information.

232. Finally, the Appellant points to the risk of developers with sites in the five-year supply **"talking up"** forecast delivery in order to promote their sites at the **expense of competitors' sites**. There are two simple answers to that point:

a) The point can be met with the equal and opposite point that the Appellant has a very direct interest in **"talking down"** sites in the supply in order to promote its own position, so the point goes nowhere;

and

b) Rather more constructively, such a risk of sites being talked up has not **manifested itself, given how cautiously robust the Council's forecasting has proven to be**, as set out above.

Specific Categories of Site

Communal Establishments

233. There is no issue in this regard. Only C3 uses are counted towards the five-year supply. C2 uses appear in the monitoring information as DHCLG requires the information, but those units do not figure in completions against the five-year requirement or forward-looking supply calculations.

Demolitions and other losses

234. **Every element of the Council's housing land supply assessment is done on a net basis.** Paragraph 5.21 of the LP points out that an assessment needs to be done on a net basis. It is. Completions are assessed net. Every known site in the housing land supply is looked at net. Even the modest small sites windfall allowance for years 4 and 5 is done on a net basis. It is even the case that the future forecasts take into account future losses from residential use, which are not connected to a scheme creating new dwellings: see, for example, site HOO/0061, 5 Derby Place, Chester, on the sixth page of the tables in Appendix 4 of the HLM [CD 13/5], where net housing losses without any new housing creation are allowed for. The Council again points to Inspector **Dakeyne's** conclusions in paras 225 and 226 of his SR [CD 2/7], where he accepted the **Council's submissions**. There is no reason to take a different view at this Inquiry.

235. The Nether Peover Inspector at para 19 of his decision letter⁴⁵ expressly said he was discounting from a net figure. The purpose of a net figure is to account for demolitions and losses. One discounts from a gross figure of losses and demolitions to get to the net figure in the first place. To discount from a net figure to allow for demolitions is to perform the discounting process twice. Whilst **the Inspector's decision** at Hill Top Farm [CD 17/40] is not explicit, he does not appear to have discounted any figure from the Council's supply to allow for

⁴⁵ BP's App EP1D.

demolition or losses, because he noted that monitoring and forecasting was all done on a net basis.

236. There is no reason to **discount from the Council's supply figure on this issue.**

Student Accommodation

237. This is an issue which has been gone over on a number of previous occasions. The Council recognises that Inspectors have found for Appellants on this point, notably at Tattenhall [CD 17/3] and previously in this case. However, events have moved on since this issue was last considered by Inspectors.

238. CW&CLP P1 took into account the housing need generated by students in self-contained student accommodation. That is made clear by note ED112 which was submitted to the LP [CD 13/10]⁴⁶. A need which is accounted for in requirement ought to be taken into account when provided, as a contribution to supply. BP agreed with that principle. The two sides of the requirement and supply calculation need to be conducted on the same basis.

239. **The nub of the Appellant's point is that self-**contained student accommodation is not freeing up general market housing in Chester because the University is expanding to a degree which was unforeseen when CW&CLP P1's **housing** requirement was devised.

240. Whatever the position in front of previous Inspectors, the evidence at this inquiry does not support that contention. The Higher Education Statistics Authority (HESA) figures, to which the Appellant has had access via the weblink referred to in **BF's evidence (but has not challenged) show that, overall, student** numbers have not increased and the rise in full time students has been much more modest than predicted in the 2013 and 2014 reports appended to **BP's** evidence. The Appellant has totally failed to consider whether the evidence relied upon at previous inquiries is still up to date. It manifestly is not.

241. Further, on the evidence, it is impossible to conclude that any increase in full-time student numbers across the whole university manifests itself in increased need in Chester. The University of Chester has multiple sites – in Chester, Rease Heath (near Nantwich and out of the Borough), Warrington and Shrewsbury. The University cannot or will not release figures broken down by site. **BP's assertion** that the Shrewsbury campus is small turned out to be an erroneous reliance upon the entry into studies by one cohort of students in one year. Without more information about the number of years of study pursued by students and whether there are undergraduate courses, post-graduate courses or both available, makes his reliance on that simple figure meaningless.

242. The HESA data and the points about the existence of the Rease Heath, Warrington and Shrewsbury sites are new ones, to which the Council has not drawn attention before. There is thus a justifiable reason for the Council inviting a different conclusion on this issue now. The facts have changed, with important consequences.

243. Further, the NPPG makes it clear that all types of student accommodation can count: see NPPG ref 3-042-20180913 [CD 12/2]. The Council only includes self-

⁴⁶ See, especially, the table summarising the position.

contained accommodation and so takes a cautious approach. Further still, if it is not accepted that self-contained student accommodation can be counted towards meeting requirements, then BF has provided unchallenged evidence of the average student household size. By reference to table 6.2 on page 19 of BF's evidence, 442 units should be included in supply on the basis that all of those units go to meet identified needs. But, at the very least, 137 units should be included, as she sets out.

244. No deduction should be made to the supply or past completion figures on this issue.

Sites with Outline Planning Permission or subject of a development plan allocation

245. The November 2018 partial HLM review [ID 17] led to a narrowing of issues in relation to this category. The remaining sites that are in issue are listed in para. 3.09 of the HSoCG. Six sites that account for 300 dwellings are disputed.

246. These sites were discussed at the round table session. In very large measure, **the Appellant's position is explained by what it regards as being necessary if the Council is to provide "clear evidence" of deliverability in five years. The Council's position is summarised in the entries in the tables at Appendix 1 of the November partial HLM review for all of these sites, save for Wrexham Road, which is dealt with in Table 2 in Appendix 2. In each case, for the reasons set out in the tables and expanded upon by BF, in the round table session, the Council's contribution to supply from these sites is supported by clear evidence on a site by site basis.**

Non-Allocated Sites without planning permission

247. Again, the partial HLM review of November 2018 has narrowed the issues. The remaining sites that are at issue are listed in para. 3.11 of the HSoCG. Six sites that account for 222 dwellings are disputed.

248. **The Council's position on each site is set out in table 3 of Appendix 3 of the November 2018 partial HLM review. In each case, there are sound reasons amounting to "clear evidence" for their inclusion. The Appellant's point largely rests on its contention that such sites can never be included in a five-year supply calculation, a point which is rejected for the reasons set out earlier.**

Build-Out Rates and Lead-In Times

249. There are 5 disputed sites in this category, which are listed in para. 3.12 of the HSoCG. 505 dwellings are disputed. All of these sites were discussed at the round table session and **the Council's position** on the first, third and fourth of these sites are summarised on page 22 of **BF's evidence at table 7.3.**

250. This issue is not one where the Framework definition of deliverability puts the burden on any particular person. Site specific evidence of build out rates and lead in times are used when available. For Roften Works, standard lead-in times have been used by the Council. Further, **BP's calculation for delivery at Ledsham Garden Village is unreliable because it applies, in part, to a build out rate for a part of a year and he turns that into an annual figure for the purpose of calculating average delivery, thus underplaying the delivery from the site. The Council's position on these sites is robust.**

Small Sites Allowance

251. The Council only uses an allowance for small sites, namely those below 5 units in size, and then only in years 4 and 5. Small site delivery in years 1, 2 and 3 is forecast on a site by site basis, making a further allowance for a lapse rate unnecessary. Small sites have an estimated contribution of 115 units in each year, making a total contribution to supply of 230 units in years 4 and 5.
252. **BF's evidence explains that such small sites have consistently been shown to** be a reliable source of completions. The rate of completions has generally increased as time progresses: see para 6.47 of her evidence. The 115-unit rate of delivery in years 4 and 5 accords well with the rate of completions from this source in recent years: see table 5.1 in the 2017-2018 HLM [CD 13/5]. Comparing forecast delivery to past-completions means that it is, again, unnecessary to make a further allowance for a lapse rate as the completions are the reality of what number of units has been delivered from this source over time. Again, there is no reason to deduct from supply on this issue.

Housing Land Supply – Conclusion

253. The requirement figure for the five-year period is 4,814 units⁴⁷. **The Council's** deliverable supply, taking the Framework revisions into account, stands at 7,277 units⁴⁸. The supply is 7.56 years. As a result, the housing land supply position in CW&C does not engage the tilted planning balance.

Development Plan policies, the weight to be afforded to them and whether the appeal would accord with the Development Plan

Local Plan Policies

254. It is common ground that the proposals breach both Policy GS5 and Policy STRAT 9. Saved VRLP Policy GS5, has to be addressed in the light of Policy STRAT 9 of the CW&CLP P1. Policy GS5 performed two functions: it provided settlement boundary limits for, among other places, Winsford, and then applied a development control test to proposals for development beyond those settlement limits. The policy, along with its boundaries, has been saved.
255. CW&CLP P1 Policy STRAT 9 provides a new development management test, and is applied, at present, to the saved Policy GS5 boundaries. Policy GS5 was saved because, without it, Policy STRAT 9 would have no territorial application in the former Vale Royal part of the Borough⁴⁹. The development management test in Policy STRAT 9 is more up to date than that in Policy GS5, has been found sound, and is to be preferred. The position is that **Policy STRAT 9's test is to be preferred to that in Policy GS5 and Policy STRAT 9's test applies** beyond the Policy GS5 boundaries, at least until CW&CLP P2 is adopted.
256. **The Appellant's contention that** Policy STRAT 9 only deserves modest weight because it is out of date by reason of being inconsistent with the Framework is not correct. Policy STRAT 9 was found sound in accordance with the 2012

⁴⁷ November 2018 partial HLM Review table 5.1, page 10.

⁴⁸ Ibid table 5.2 pages 10-11.

⁴⁹ And the same difficulty would have arisen in the former areas of Chester City Council and Ellesmere Port and Neston Borough Council.

version of the Framework. Nothing has changed in the 2018 Framework to mean that a formerly sound policy became out of date in July 2018. In para 161 of the Examination report, the Local Plan Examiner did take into account a contention that Policy STRAT 9 was inconsistent with the Framework because it referred to protecting the countryside [CD13/3a]. The Inspector still found the policy sound. Furthermore, Inspector Dakeyne found Policy STRAT 9 to be up to date and did not reduce the weight he would otherwise have given it (see SR para252 [CD 2/7]). The decision-making test in Policy STRAT 9 deserves full weight.

257. The Appellant makes the point that the boundaries to which Policy GS5 apply are out of date because they come from a time-expired Local Plan and planning permission has been granted for housing on land beyond those settlement limits. This is an argument which has been put to and comprehensively rejected by the Court of Appeal⁵⁰. In that case, Gladman argued that as a five-year supply had been achieved by granting planning permission beyond settlement limits, those limits were out of date because development in accordance with them could not meet up to date needs, and that, in other words, the plan was **"broken"** in that regard. The Court held that the mere age of a policy does not deprive it of the statutory priority given to it by section 38(6) of the Planning and Compulsory Purchase Act 2004⁵¹.
258. Further, because the Framework attaches importance to plan-led development, significant weight should be given to the general public interest in having plan-led planning decisions, even if particular policies in a DP might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all [para 40(iv)]. The Court expressly rejected the argument that the plan, or its settlement limits were **"broken"**, holding at paras 43 and 44 that such grants of permission were simply an illustration of section 38(6) at work. It characterised the argument as **"unsustainable"**. The argument put to JILLS **on this issue at this inquiry is just a repetition of Gladman's** rejected case. It must fail for the same reasons as it failed in Daventry.
259. Inspector Dakeyne picked up on the point about the reasons for Policy GS5 being saved and its relationship to Policy STRAT 9. He observed that the decision-making test in GS5 had been effectively superseded by that in Policy STRAT 9. That meant that Policy GS5 should not be afforded full weight in terms of its general application [CD 2/7]⁵². However, he also recognised that the position of GS5 as regards Winsford was different. He noted the allocation of sites for some 3,360 units in the NP and that Pdl sites have been and will be found in accordance with its policies H1 and H2. He also noted that, although CW&CLP P2 will have to define new settlement boundaries, the NP allocations will form the main basis for the settlement boundary. As a result, sites which are not allocated by the NP and which lie beyond the GS5 boundaries do not comply with STRAT 9⁵³.

⁵⁰ Daventry BC v SoSCLG and Gladman Developments Limited (2016) EWCA Civ 1646 (ID 38).

⁵¹ Judgment para 40(i).

⁵² SR pg 47 para 251.

⁵³ Ibid pg 48 para 255.

260. That conclusion led to Inspector Dakeyne affording "**considerable weight**" to Policy GS5 "**in the context of Winsford**"⁵⁴. The Council supports those conclusions and the reasoning which led to them. **Indeed, the Council's position** has, if anything strengthened since the 2015 inquiry because the Council is not proposing to amend the settlement boundary in P2 of the LP so as to include the appeal site. It is plain that the NP allocations have, as Inspector Dakeyne foresaw, been the dominant factor in the approach to the proposed settlement boundaries at Winsford.
261. Furthermore, Inspector Dakeyne is not alone as an Inspector in concluding that more weight can be afforded to Policies GS5 and STRAT 9 than the Appellant considers. The same conclusions were reached by the Inspectors in appeals at:
- Shepherds Fold Drive, Winsford [CD 11/1]⁵⁵;
- Hill Top Farm [CD 17/40]⁵⁶;
- Fountain Lane, Davenham [CD 17/41]⁵⁷;
- and
- West Winds, Winsford [CD 11/2]⁵⁸.
262. Policy STRAT 1 embodies the requirement to provide sustainable development. It seeks to minimise the loss of greenfield land. Inspector Dakeyne was right to find that the appeal scheme involves **a "degree of conflict"** with Policy STRAT 1 because of the loss of a greenfield site⁵⁹ :- a conclusion which led him clearly to find that there was a breach of the policy overall [CD 11/1]⁶⁰.
263. The Appellant relies upon the housing requirement figures for the Borough, as set out in Policy STRAT 2 and for the Winsford area, as set out in Policy STRAT 6, being minima as a reason to support the appeal scheme. But the plan has to be read as a whole. The plan does not advocate a free-for-all on housing numbers. Although the simple fact of provision over the minimum figures does not **constitute harm, the plan's requirement figures are applied in relation to** settlement boundaries. **The Appellant's argument logically** leads to the conclusion that a breach of Policies STRAT 9 and GS5 can be overlooked or downplayed. It cannot. Providing development within settlement limits, unless it falls within one of the types of acceptable development listed in Policy STRAT 9, **is as much a component of the plan's strategy as the fact that** the requirements figures are minima. The two issues go together.
264. Policy STRAT 6 sets out the indicative minimum requirement for the Winsford area. In re-examination (Re) of JonS, the point was made that the NP over-relied upon the Station Quarter. A mathematical exercise was undertaken, comparing the WNP allocations with those in CW&CLP P1. The exercise was a false one, because the policy provides approximate figures for the number of dwellings to

⁵⁴ Ibid pg 49 para 260.

⁵⁵ Paras 14 to 17.

⁵⁶ Para 8.

⁵⁷ Paras 18 and 25.

⁵⁸ Paras 15 to 23.

⁵⁹ Ibid page 48 para 253.

⁶⁰ Ibid page 52 para 282.

be provided at the Station Quarter of *"in the region of 1000 new dwellings"* and the reference to the 775 units to be provided in the plan period must be seen in that context. The LP cannot be interpreted in a way which properly admits to such mathematical precision. There is no reason to think that the allocations in Policy H1 of the WNP are inappropriately high.

Winsford Neighbourhood Plan

265. The WNP has been made. It is part of the DP. The appeal site was put forward as an allocation for the WNP by the Appellant in the preparation and examination processes for that plan but was rejected. It was rejected because the Town Council did not **think that the allocation would accord with the plan's vision**⁶¹ – an argument which the Examiner regarded as a sound reason [CD 15/2]⁶².
266. The WNP says that it seeks to actively plan where development should go⁶³. For housing development, the plan contains a clear strategy of locating development close to the town centre, creating a new quarter around the railway **station and creating positive new "gateways" at key arrival points into the town** [CD 15/1]⁶⁴. Developing the appeal site would not accord with any element of that vision.
267. The Appellant points to the key themes set out in the plan [CD 15/1]⁶⁵. As to those themes which are relevant to the appeal scheme⁶⁶:
- a) The Appellant says that the first theme would be served by the development providing new high-quality buildings. That point does not serve to justify a contention that the appeal site is a location for development which accords with the plan. Any development anywhere would be expected to be high quality;
 - b) The Appellant contends that the third theme would be served by residents of the scheme contributing to spend in the town centre. The same could be said of any site within reasonable proximity of the town centre and, again, this point cannot support the appeal site as a location for development within (or adjacent to) Winsford;
 - c) The reference in theme 4 to strengthening the employment base is obviously referring to employment development, not the employment provided by the construction of a housing estate. In any event, and once again, it does not support the appeal site in locational terms;
 - d) The reference to sustainable growth in theme 5 only makes sense if it is read **alongside the plan's vision for locating development, as set out above, which** the appeal site does nothing to support;
 - e) Theme 6 is about improving social, community and leisure facilities. The Appellant refers to the contributions to be made by the planning obligation. As those contributions comply with the requirements of Regulation 122 of the

⁶¹ Para 3.52.

⁶² Para 3.54.

⁶³ Page 4 para 1.1.3 and page 20 para 4.1.1.

⁶⁴ Page 44, shaded box in left hand column.

⁶⁵ Page 17: themes 1 to 7.

⁶⁶ Theme 2 is not really relevant to the appeal scheme.

CIL Regulations, they are necessary to make the development acceptable in planning terms by satisfactorily mitigating impacts which would otherwise occur. In any event, this matter does not point to the appeal site being acceptable as a location for development;

and

- f) Theme 7 seeks the improvement of movement around the town and the region. The only improvements which the appeal scheme would bring would be to a short length of footway and the provision of cycling access into the site. These are very modest matters and do not support the appeal site as a location.

Overall, the appeal site draws no support as a location for development within Winsford from the themes of the plan.

268. Policy H1 (pg. 44) allocates sites to meet the vast majority of the need with which the plan deals [CD 15/1]. The appeal site is not allocated for development by that policy. **The Appellant argues that the site's non-allocation** does not weigh against the appeal proposal, as the housing requirement to which the plan relates is not a maximum or ceiling figure. However, as Inspector Dakeyne concluded [CD 2/7]⁶⁷, "*such an interpretation would mean that policy H1 served no purpose in guiding and regulating development.*" Further, the policy can derive no support from Policy H2 (pg. 46), which adopts a permissive approach to development on PDL land [CD 15/1].

269. Policy H1 of the WNP also requires proposals to accord with other policies of the NP and the LP. Development of the appeal site would not accord with Policies GS5 and STRAT 9, as is agreed. The appeal scheme conflicts with Policy H1 of the WNP, as Inspector Dakeyne accepted [CD 2/7]⁶⁸. The policies of the NP have not changed since Inspector Dakeyne reported and there is no justification for reaching a different conclusion on that matter now.

270. There is no policy of the WNP which provides support for the development of the appeal site in locational or any other terms. JonS could point to none in Xx. The appeal scheme would accord with CW&CLP P1 Policy SOC1 on affordable housing, as is set out in a little more detail below.

Breach of the Development Plan taken as a whole?

271. **The Council's position is that** VRBLP Saved Policy GS5, CW&CLP P1 Policies STRAT 1 and STRAT 9 and Policies H1 and H2 of the WNP are the dominant policies of the DP for the purposes of determining this appeal. Inspector Dakeyne also accepted that Policies GS5, STRAT 9 and H1 were the dominant policies for development outside of the settlement limits [CD 2/7]⁶⁹. The Council contends that the breach of those policies of the DP which are breached in this case amounts to a breach of the DP overall. Again, Inspector Dakeyne agreed⁷⁰. There is no reason to reach a different conclusion now. The appeal scheme is in conflict with the DP when taken as a whole.

⁶⁷ Supp report pg 48 para 256.

⁶⁸ Supp report pg 49 para 260 and pg 52 para 282.

⁶⁹ Supp report pg 49 para 260.

⁷⁰ Ibid pg 49 paras 260 and 282.

272. None of the relevant DP policies, still less those which could be called the most important for determining the appeal, are out of date for reasons relating to a lack of consistency with the Framework. The second possible route into the tilted planning balance does not apply in this case. Given the housing land supply position, there is thus no route into the tilted planning balance available to the Appellant.

273. It follows that a decision in accordance with the DP would be a decision to dismiss the appeal. The issue is therefore whether there are material considerations which indicate that a decision otherwise than in accordance with the DP should be taken in this case.

Scheme Benefits

Market Housing

274. The appeal scheme would contribute more market housing. That is a social benefit deserving of weight, but the weight is tempered by the presence of a five-year supply across the Borough. As set out earlier, the requirement of the Framework to boost significantly the supply of housing is one which is to be met by identifying and meeting the need for housing. As far as market housing is concerned, that is being done.

Affordable Housing

275. The appeal scheme would contribute affordable housing at a rate of 40%, as opposed to a policy requirement of a target of up to 30% on qualifying sites. JILLS agrees that this is a social benefit which can be afforded substantial weight⁷¹. The issue is **therefore limited to whether the word "very" should be added before the word "substantial", as JonS contends.**

276. It should not. The position on affordable housing is not as bad as JonS would have us believe. **Indeed, his written evidence calls the Council's delivery record as regards affordable housing "abysmal",** which is not fair, as he accepted in Xx.

277. The Council points to the following matters on affordable housing. If it were to be (wrongly) assumed that every site was a qualifying site for affordable housing provision and every site provided at the full 30% rate (which would never happen), then the delivery of 22,000 dwellings over the plan period would lead to the delivery of 6,600 affordable units. In fact, the Council has delivered 3,139 affordable units over the eight years of the 20-year plan period to date⁷². That is a useful benchmark for assessing its performance, especially given the unrealistic assumptions in the calculation.

278. JS points out that the Council has not delivered 714 units in any one year since 2013/2014, which is the base date for the affordable housing need figure for five years, assuming the backlog is eradicated in five years. However, the Council has never been required to provide that amount, as can be seen from an analysis of the LP **Inspector's report** [CD 13/3a]:

⁷¹ Her oral evidence in chief.

⁷² JILLS proof, table on pg 21.

- a) The content of para 23 of the report shows that the Inspector was alive to the need for the LP to meet the full OAN for market and affordable housing;
- b) At para 31, he noted that affordable housing need contributed to the reasons for uplifting the objectively assessed need above purely demographically generated need;
- c) At para 36 and footnote 2, he noted that the SHMA gave the annual figure of 714 units per annum for affordable housing need if the backlog were to be cleared over 5 years;
- d) He concluded, at para 39, that an OAN above 1,100 dwellings per annum would require higher job growth, population growth and in-migration than the demography would suggest;
- e) His judgment at para 46 was that an OAN of 1,100 dwellings per annum was **optimistic and aspirational and would have a "significant positive effect upon the provision of affordable housing"**;
- f) The requirement was 22,000 dwellings over the plan period, or 1,100 per annum (para 144);
and
- g) The OAN constituted the full need for housing in the plan period (para 145).

279. Therefore, the Local Plan Inspector never concluded and never said that the LP had to deliver 714 affordable homes in each of the first five years from the SHMA base date. If, using a requirement for 1,100 dwellings per annum, 714 affordable homes per year would have to be provided, then 65% of all dwellings in the first five years of the plan would have to be affordable. That is plainly unrealistic. Alternatively, if 30% of dwellings were to be affordable, then providing 714 affordable homes each year would require 1,900 new homes to be delivered each year. That is plainly not realistic either.

280. In fact, **JonS's own evidence shows that the Council's Borough-wide** affordable housing delivery has been admirable. That is shown by the revised version of figure 4.6 of **BS's** evidence. Policy SOC1 of the CW&CLP applies the up to 30% target as a proportion of new homes permitted on qualifying sites. Using that approach, the new column in the revised figure 4.6 shows that the Council has been delivering at a rate of 26% across all sites, not just those on which affordable homes could be required by Policy SOC1. If student completions need to be removed, as BP insists, then the performance would rise to 27.9%.

281. The picture becomes even more favourable to the Council once the Winsford area is considered. Figure 4.9 of **JS's proof tests delivery in Winsford against the** need for 98 units. That 98 figure is the Winsford component of the Borough-wide 714 need figure. **Even if the Council's performance were tested against that 98** figure, the Council has delivered just 25 units short of the 495 units that would have been required over the first five years of the Local Plan period. Again, that is not evidence of a Council which is seriously failing to deliver affordable homes.

282. Further, table D6 on pg.102 of the 2013 SHMA shows that the Winsford urban area has the lowest mean average house prices in the Borough [CD 13/8]. The

Council has also secured and accepted funding for affordable housing delivery on three Council-owned sites in Winsford at the 30% rate.

283. Ascribing substantial weight to the affordable housing provision on the appeal site is reasonable and **generous to the Appellant's case**.

Self-build and custom build

284. Since Inspector Dakeyne reported, the facts have changed on this issue. We now have available the statutory register which records the level of interest for self and custom-build in the Borough. The register is appended to JonS's supplementary proof. The register is important evidence of the level and type of interest, to which the NPPG refers.

285. As part of the register compilation process, the Council asks people to state any preferences they have for location and for site size. The register provides scant evidence of demand for self and custom build in Winsford and for such building on larger sites such as the appeal site. Indeed, when those two factors are combined, there is not a single person on the register who wants to self or custom build in Winsford on a larger site. The evidence of the register points unequivocally to the conclusion that the 18 plots on the appeal site would not be taken up for self or custom build housing.

286. The Appellant points to other sources of evidence, but:

- a) The SHMA survey simply records aspirations for self-build. It does nothing to check the realism of those aspirations or the degree of commitment to self or custom build;
- b) AM's report refers to alleged survey evidence "**consistently**" showing⁷³ that 1 in 50 of the population want to purchase a self or custom-built home, but the footnote designed to support this point refers only to one survey, with no details of its sample size, methodology, questions or degree of checking whether those aspirations are realistic;
- c) The information garnered from the Custom Build register and Plot Search subscription database⁷⁴ is useless. Without knowing how one gets to become a subscriber, what, if any steps are taken to keep registrations/subscriptions up to date (by, for example, filleting out people who have lost interest or achieved their aim) and what testing, if any, is done to test the realism of their ambitions, one cannot sensibly ascribe any weight to the information set out in the email;

and
- d) The letters and emails at JonS's Appendix 12, supplemented by him with a further clip of letters/responses when he gave evidence in chief, contain scant evidence of realistic support for self-build in Winsford and certainly not to the level of 18 plots on the appeal site.

287. JonS emphasised his client's **commitment to** promote self and custom-build housing. If that is so, it is all the more noteworthy that there is such a paucity of

⁷³ JonS at App 13

⁷⁴ Email from Tom Connor on 8 November 2018, **Appendix 3 to AM's report**

evidence of demand for self and custom build on the appeal site, given that the Appellant has had over 3 years to gather such evidence since the self and custom-build offer was first put before the SoS in August 2015.

288. The Appellant points to the absence of registered CIL exemptions as evidence of the lack of delivery of self-build. As JonS accepted, there is nothing to indicate on the face of a planning application whether it is or is not a self or custom-build proposal. It is no surprise that there is an absence of CIL exemptions in Winsford – there is no CIL in Winsford, as parts only of the Borough are levied for CIL for viability reasons. Self-evidently, self and custom-build can never show up in CIL exemption certificates in Winsford.

289. On the evidence, there is little to no prospect of the self and custom-build offer being taken up on the appeal site and no significant weight can be afforded to it in the decision-making process.

The use of small and medium size builders for the construction of the market housing

290. This is another point that the Appellant raised in 2015 for the first time. The point is inspired by the outcome of the Lydney appeal [CD 17/2]. However, the facts there were very different. The evidence at Lydney was that the action of a large housebuilder was keeping local small and medium size builders out of the market and the Inspector, saw the ability to develop that site by smaller builders as the key to unlocking housing delivery in Lydney⁷⁵.

291. The only evidence, to support that contention here, are the very late letters from three of the building companies who are apparently interested in developing the site. It was obviously not possible to ask about these letters at the inquiry, but the letters contain short, bald assertions about competition from large builders. Only one of them actually says that the competition causes difficulties, but even then, no details of the alleged difficulties are given. None of them, perhaps for understandable reasons, claims that such competition is threatening their business. Indeed, their earlier letters all boast of their success and track record.

292. There is still, despite those letters, no evidence that the position in Winsford is remotely similar to that in Lydney and no real evidence that local SME builders cannot already access the market in the Borough in general or in Winsford in particular (as opposed to facing competition). The second letter from Cruden, submitted during the inquiry, was said to provide evidence on this issue, but does not.

293. Again, no significant weight can be ascribed to this benefit.

Training and Employment

294. There is little evidence to support affording significant weight to this aspect of the Appellant's **package of benefits**. Winsford does not suffer from levels of deprivation or lack of skills which are close to those in Ellesmere Port, as the

⁷⁵ See the Appellant's case, reported at paras 2.2(a), 2.9, 2.62, 2.63, 2.64 and 2.70 of the Inspector's report and his conclusion at para 6.87. This was accepted by the Secretary of State at para 22 of the decision letter.

October 2018 claimant count information provided by the Appellant during the Inquiry shows. The weight to be afforded to training in relation to a 2,000-unit scheme in Ellesmere Port is not equivalent or even close to the weight to be afforded to this benefit in the context of a scheme of up to 184 units in Winsford. The condition is necessarily woolly to avoid offending against European Union freedom of movement. That means that the obligation to aim to encourage local employment can be afforded little weight.

Economic Benefits

295. These have been appropriately weighed by JllS. They are not site specific and do not provide a justification for developing the appeal site. The same benefits would come from developing a site of the same size anywhere in the Borough or in Winsford.

Ecological improvements

296. There would be minor positive ecological impacts through the creation of new GCN habitat [CD 5/12 at pg 24].

Other matters of mitigation (not benefits)

297. A number of matters set out by JonS are either statements of mitigation of harm to acceptable levels (such as matters to be dealt with through the planning obligation) or a statement that harm does not arise (such as the site being in flood zone 1, the absence of contamination, the lack of noise or air quality impacts and the lack of impacts upon the significance of heritage assets). These are not properly classified as benefits, as JonS accepted in cross-examination.

Scheme harm

298. The appeal scheme would cause harm. Chief amongst that is the harm caused by the breach of the DP which, of itself, is harm to be afforded significant weight. That is because of the general principle that weight is to be given to the need to determine proposals in accordance with the DP unless material considerations indicate otherwise. But it also has a case specific dimension because of the terms of Policy STRAT 1. Compliance with Policy STRAT 1 of the CW&CLP is a part of the assessment of overall sustainability.

299. In a plan-led system, the DP is not to be lightly set aside. Inspector Dakeyne in his SR at para 283 accepted that to allow the appeal would be to undermine the credibility of the plan-led system, and he weighed that matter in the balance [CD 2/7].

300. The Council also asks the Inspector and SoS to take full account of that part of the breach of the DP that in this case springs from the breach of the WNP. It would be unfortunate, to say the least, if local people were to be encouraged to prepare neighbourhood plans as a means of shaping the places where they live, only to see them not being upheld in an appeal.

301. There is also the harm caused by the loss of greenfield land to development. There does not need to be a specific landscape and visual case to make good that contention because Policy STRAT 9 operates by regulating development types **and does not require a specific assessment of a proposal's effect upon the countryside**. Additionally, Policy STRAT 1 expressly makes the minimisation of

the loss of greenfield land per se one of the sustainability principles used to determine planning applications.

The Planning Balance.

302. **The Council's evidence shows why the appeal scheme would cause a serious and damaging breach of the DP, which deserves substantial weight.** The benefits of the appeal scheme have been overplayed, especially those relating to local labour and training, self-build and the use of small and medium sized builders.
303. The material considerations in favour of the appeal scheme are insufficient to outweigh the breach of the DP and the identified harm caused by the scheme. It is accepted that the Council is inviting the Inspector and SoS to depart from the ultimate recommendation of Inspector Dakeyne, but the evidence and arguments relating to the scheme benefits are different now to what they were in 2015. There are sound reasons for reaching a different ultimate conclusion.
304. Furthermore, there would be a loss of a greenfield site in a location, beyond the settlement limits and in breach of the DP (both as regards its LP and WNP components). This would be in circumstances where the Council is meeting market housing needs and broadly making the level of contribution to easing affordability. It has also identified a deliverable housing supply which is well in excess of five years. This is a serious matter and weighs heavily against the grant of consent. Development in such circumstances would not be sustainable development overall.
305. If, for some reason, it were thought that the tilted planning balance was engaged in this case, then although the requirements of para 14 of the revised Framework cannot now be met (as the WNP is more than two years old and the transitional arrangement in respect of para 14(a) of the Framework has now ended), that does not mean that the application of the tilted planning balance cannot lead to the dismissal of the appeal. All that para 14 of the Framework does is to indicate that the SoS is likely to conclude that the harm caused by the breach of a NP would significantly and demonstrably outweigh the benefits of providing housing in breach of it. Para 14 does not say that the SoS will only ever find the tilted planning balance determinative against the proposal if the four criteria are met. Further, para 14 only weighs the breach of a NP against a proposal. In this case, the breach is accompanied by a serious breach of the LP.

The Case for Interested Parties

Councillor Stephen Burns

306. Councillor Burns represents a part of Winsford on CW&C Council. The WNP was overwhelmingly endorsed in a referendum after being passed by an examiner. **It is about meeting the town's** employment and leisure needs as well as housing. Local residents decided through consultation where they did and did not want residential and other new development. The site of this appeal was not selected, and it is opposed by Darnhall Parish Council and Winsford Town Council.
307. The WNP has balanced development across the town, including 3,500 residential properties by 2030. This development is therefore not needed. There has already been three major developments in the part of Winsford where the

appeal development is proposed. The local ward (Swanlow and Dene Ward) has already contributed more than its fair share and fulfilled its obligation. However, the application site is outside of the NP area and the development would reduce open countryside around Winsford and unnecessarily reduce biodiversity.

308. In response to questions, he accepted that the WNP had no cap on the amount of residential development, that ground and ownership constraints had meant that development in the Station Quarter had not yet come forward and that Winsford was lagging behind the other three main towns in its rate of housing delivery.

Robin Wood

309. Mr Wood lives next to the site and is Chairman of Darnhall Fighting Fund, a local **resident's** group that opposes the proposal. He pointed out that the proposal would have a disruptive impact on the community of Darnhall which comprises less than 90 dwellings. He considers the application to have been previously rejected on planning grounds and that the three grounds upheld at the Judicial Review were not planning grounds.

310. The application is in conflict with the WNP, which seeks to focus new development close to the centre of the town and within the Station Quarter. The plan is well on track for securing the completion of 3,500 new homes by 2030. Grants from Homes England are enabling at least 30% of the properties on three sites to be provided as affordable homes. The appeal site was considered unsuitable for inclusion in the WNP at various stages during its preparation and also during the preparation of the CW&CLP P1.

311. The Darnhall Neighbourhood Plan is now emerging and approaching draft form. CW&CLP P1 supports the retention of Darnhall as open countryside and the area has exceptional biodiversity. In answering questions, he agreed that WNP set no cap or upper limit for residential development.

Councillor Brian Clarke

312. Councillor Clarke represents a part of Winsford on CW&C Council. He was also chairman of the Winsford Neighbourhood Steering Group until the NP referendum. The development sites that emerged from the WNP were the result of a long period of community consultation. The chosen sites were picked because they were central to the plan and had good accessibility to shops, schools, employment and the railway station.

313. The plan also took into account a desire for Winsford not to grow into the neighbouring parishes and for them to maintain their individual identity. Allowing this appeal would be an affront to democracy and the principles of neighbourhood planning. The need for additional affordable housing is already being addressed.

Councillor Tony Hooton

314. Councillor Hooton is a member of Winsford Town Council. CW&CLP P1 required Winsford to allocate sites for the development of 3,500 houses by 2030. WNP identified sites upon which this could take place. However, whilst work has started on many of these, a number have not yet started. Government grant has recently been awarded to accelerate the construction of social housing at Winsford.

315. The Town Council welcomes the provision of affordable housing and the use of local builders and training opportunities but in this case, it does not consider that they outweigh the requirements of the WNP. He considers the amount of proposed new dwellings (3,500) to be a guide rather than a definitive number and points to the emergence of windfall sites from time to time to boost numbers.

Written Representations

316. In December 2017 the Council notified seventeen statutory consultees and about ninety local residents that the inquiry was to be reopened and advising **them that they could make comments at the Planning Inspectorate's Appeals Casework Portal**. A notice was subsequently posted at the site providing the same information and advising members of the public when the inquiry was to be reopened. Three written responses were received, one from the community Fire Protection Officer asking for access and facilities (including water for fire-fighting) on the site, one from Robin Wood who appeared and presented his case to the Inquiry [IR 309-311] and one from John and Gillian Higgs. They reiterated points that had been made in their previous representations, including concerns about wildlife, support for the adopted DP, which does not support the proposal and the continued opposition from local residents to the proposal.

Conditions and Obligations

317. The Appellant submitted a set of conditions shortly before the inquiry reopened [ID 40]. They are based on the conditions discussed at the original inquiry [OR122-126, 164-166] and at the supplementary inquiry [SR 204-208]. The Council was not in full agreement. These conditions were discussed further during this inquiry and further modified [ID 41]. At the conclusion of the inquiry further discussion led to the Appellant agreeing to the removal of the Local Procurement condition and changes to the other three Local Approach conditions. The finally agreed conditions are contained in ID 42 and appended to this report. However, to all intents and purposes they are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the following changes.

- a) The time limits for the submission of reserved matters and the commencement of development in conditions 2 and 3 have been reduced;
- b) Conditions 4 and 20 have been amended to include a reference to the additional access plan submitted by the Appellant;
- c) The pre-commencement requirement in conditions 8 and 21 was changed to an occupation requirement;
- d) Conditions 11, 17, 22, 23 and 24 have been amended to reflect the introduction of phasing into the proposed scheme;
- e) Condition 12 has been amended to reflect the fact that because of the passage of time, an updated ecological assessment was required. Development should accord with the submitted updated assessment;
- f) Additional conditions (now 13 and 14) have been inserted to deal with the presence of Great Crested Newts on the site. As a result, former condition 13 is now condition 15, 14 is now 16 etc;

- g) Former condition 19 has been deleted because the highway improvement referred to has already been completed by another developer. As a result, former condition 20 is now condition 21, 21 is now 22 etc.
- h) Condition 3 to the SR (Self-build Housing) has been extended to allow for the non-commencement of any of the self-build dwellings within five years of the grant of planning permission. In such circumstances the Appellant would now be required to submit a scheme for the construction of affordable dwellings on these plots.
- i) It is agreed that the use of local builders, in the construction of the market housing, together with self-builders, would be likely to result in the objectives of the former SR condition 5 (Local Procurement) being met without the need for a condition. Former SR condition 5 has therefore been removed.
- j) A new condition (No. 8) has replaced the provision in the S106 Agreement to secure the provision of on-site open space.

318. The Appellant now considers that the matters addressed by SR additional conditions 2, 3, 4 and 5 could be more appropriately covered in a legal agreement. The Council wished them to remain as conditions only.

319. The Appellant has nevertheless submitted a signed planning obligation by way of a Unilateral Undertaking under S106 to this Inquiry. This obligation commits the Appellant, if planning permission is granted, to restricting the construction of all dwellings that are not affordable housing units or self-build units to a builder or company that:

- a) has its main office or registered office within CW&C, Cheshire East or Warrington Borough
- and
- b) has built a total of not more than 500 residential units in any one year within the 5 years prior to development commencing.

320. The owner also undertakes not to commence development until details of a Training Employment Management Plan has been submitted to and approved in writing by the Council. The plan will aim to promote training and employment opportunities during the construction phase for local people. A target of not less than 50% of the workforce being resident within CW&C and 20% in Winsford or adjacent parishes is set.

321. Finally, a scheme for the provision of self-build plots that would be approved under condition 6 is to be submitted to and approved in writing by the Council. The undertaking provides that if any of the 18 self-build plots have not commenced development within five years of the date of the planning permission, those plots that remain will be provided as additional affordable housing units.

322. The S106 obligation referred to in the original report [OR120-121,163] and the supplementary report [SR 203] has been revised. A new agreement covering only financial contributions to off-site leisure facilities has been signed by both parties.

CONCLUSIONS

323. **The numbers in square brackets [IR...] refer back to** earlier paragraphs which are relevant to my conclusions.

Main Considerations

324. The main considerations arising from the reopened inquiry are:

- a) Whether or not the Council can still demonstrate that there is a 5-year supply of deliverable housing sites;
 - b) Whether the proposal is in accordance with the DP;
 - c) Whether all of the **DP's** policies for the supply of housing are still up-to-date, having regard to paragraph 213 of the Framework and legal judgements;
 - d) Whether the emerging CW&CLP P2 has any implications for the determination of the appeal;
 - e) The implications of the consent order for the conditions that related to the revised housing offer;
- and
- f) Whether the proposal would accord with the presumption in favour of sustainable development, having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.

Five Year Housing Land Supply

Agreed Matters

325. The HSoCG agrees the following in relation to housing land supply:

- a) a base date of 1 April 2018;
- b) a 5-year period of 1 April 2018 to 31 March 2023;
- c) an overall housing requirement of a minimum of 22,000 dwellings (net) 2010-30 or 1,100pa;
- d) the buffer to be applied in accordance with paragraph 73 of the Framework is 5%.

326. I see no reason to come to a different view on these matters based on the evidence before me.

Requirement

327. The adopted CW&CLP sets out the minimum housing requirement per annum as 1,100 dwellings (net) in policy STRAT 2. The Council argues that since there was a surplus amounting to some 2,192ds. between 2010 and 2018 (about 25%), these should be subtracted from the total requirement for the remainder of the plan period. Rounding the figures to the nearest decimal place and including a 5% buffer results in a 5-year requirement of 4,816ds or 963pa [IR 54 & 219].

328. The Appellant disagrees and considers the requirement to be 5,775ds. (1,100x5+5%) [IR 55]. **The Appellant also considers that the Council's** completion figures are inflated by some 860 units through the inappropriate inclusion of some student self-contained accommodation and some C2 units [IR 60]. I deal with the student accommodation aspect later when considering supply from these sources [IR 350]. The C2 aspect is discussed in the next section [IR 336-338].
329. The Council argues that not to include such an over-provision risks a finding that there is not a five-years supply, even though the Council has created circumstances through which the annual requirement has been repeatedly exceeded since 2014. If the cumulative experience of the past eight years continues, then an overall supply during the plan period, which is noticeably above the minimum requirement (about 25%), is very likely. If the removal of the over-provision results in a finding that there is not a five-year supply, then the tilted balance would be triggered and relevant policies for the supply of housing found out of date in circumstances where such an outcome is not justified [IR 220].
330. **The Appellant's response is that the Council's approach** has no basis in current Government policy. **If it was the Government's intention for past surpluses to be** deducted from the requirement then it would have said so in the NPPG. It points out that each proposal should be judged on its merits and that in the context of the current housing crisis, government policy is to boost the supply of housing. **It also refers to the Council's different approach in its AMR, which states that the** net requirement in that document is 1,100 and that net completions were measured against that target [IR55-57].
331. **The Framework is silent on the matter and although one of the Government's** priorities is clearly to boost the supply of housing, that is written in the Framework in the context of ensuring that a sufficient amount and variety of land can come forward where it is needed. CW&C has clearly met that objective through its DP and the implementation of its planning management policies, otherwise it would not have significantly exceeded its annual target in all of the years since 2014. This is how the system is intended to work [IR 221 & 222].
332. The Appellant referred me to two appeal decisions at the Inquiry [CDs 17/15 & 17/16] and one subsequently [ID 47], where Inspectors had found that it was not appropriate to discount historic over-provision from the future requirement. The Council referred me to a contrary finding by an Inspector assessing the five-year requirement at a LP Examination [CD 18/10]. In the Doncaster case the surplus only related to the first year of the relevant period, which is hardly an indication of a trend of surpluses and in the Wendover case the over-supply **included delivery in the years prior to the requirement's base date.** The historic over-provision would have been accounted for when establishing the OAN. Neither of these scenarios reflect the position in CW&C, where there has been a surplus in every year since 2014, resulting in a net surplus of 2,192 (25%) over **the first eight years of the plan period, according to the Council's calculation** [CD 13/5 pg.15, IR 210 & 223].
333. The Highnam Inspector was referred to the Doncaster and Wendover **decisions and noted that they** "did not support an approach whereby an over-supply could be used to reduce the annualised target in later years of the plan

*period”, noting that “this would run counter to the requirement to significantly boost the supply of housing”. His assessment was brief, and no reasons are given so it is not possible to judge the extent to which the situation was similar to the two other appeals referred to or to that at CW&C. Although agreeing with **the Inspector’s conclusions on the annual requirement, the SoS is silent on the discounting of past historic over-supply** [ID 47].*

334. I have already pointed out the problems of comparing the Doncaster and Wendover cases with CW&C [IR 332]. The evidence suggests that CW&C has already significantly boosted the supply of homes such that a sufficient amount and variety of land can come forward where it is needed. If it had not, then the large surplus would not have accumulated. I also note that the HMA, of which Tewkesbury District is a part, contains other local planning authorities and that there was past under delivery in that HMA when considered as a whole. The LP Examining Inspector considered that in the case of CW&C “*the HMA corresponds with the Borough boundary*” [ID 47, IR 221 & CD 13/3a para24].
335. In the Cotswold case the Inspector pointed out that “*an approach that fails to take account of completions during the plan period would result in additional land being made available for development to meet identified needs. This would lead to the unnecessary loss of greenfield sites*”. I agree with this conclusion and **reject the Appellant’s assertion that the Area of Outstanding Natural Beauty** within Cotswold District was a factor. 20% of Cotswold District is a large area of land within which additional dwellings could have been located if the Inspector felt that there was a justifiable case to provide for them. I therefore conclude that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the on-going annual requirement for the five-year land supply [IR 59 & 224].

Communal Establishments

336. The Appellant alleges that 230 completions in respect of C2 communal care **facilities were wrongly included in the Council’s completion figures**. As the Appellant points out, in its HLM report 2017-18 at para 3.4, the Council refers to the suggestion in the Framework revisions that communal accommodation be included in the calculation of the housing delivery test. However, it goes on to explain that whilst this type of accommodation will continue to be monitored through the HLM process, it will continue to be excluded from the housing completions figures. At paragraph 4.4 the document lists the sources of completions that the Council uses for the purpose of the five-year land supply. C2 accommodation is not listed [IR 60-64 & 234].
337. Of the two sites completed in 2018 and referred to in BP’s evidence in his table 8.3, only 87 Heath Lane is listed as wholly C2. Without a forensic analysis of the entire completions table it is not possible to conclusively determine whether or not this site and the others listed as completed in previous years, have been inappropriately counted in the completions data, despite what is said in paragraph 4.3. The potential need for such an exercise should have been discussed during the round-table session and if necessary, the parties should have got together to check the arithmetic. That did not happen.
338. In cross examination BF explained that the C2 accommodation was included in the appendix to the HLM for information purposes but was not counted in the overall completions total. I have no reason to disbelieve her. In consequence I

have not discounted any non-student accommodation from the requirement [IR 63 & 234].

339. I have nevertheless found that 630 student units should be removed from the surplus [see IR 350]. Recalculating the figures, this would give a five-year requirement of about 5,150ds or 1018pa.

Supply

340. At 1 April 2018, the Council considered that it could demonstrate a 5-year supply of 7,277ds, a surplus of 2,462ds, whereas the Appellant claims that the 5-year supply should be no more than 5,423ds, a shortfall of 362ds. on its calculation of the net requirement [HSoCG pg. 7]. These numbers translate into supplies of 7.56 years and 4.69 years respectively. The differences in supply stem from the contributions from the following sources – demolitions; communal establishments; student accommodation; sites with outline planning permission; sites allocated in the DP; non-allocated sites without planning permission; lead-in times and build-out rates and the windfall sites allowance. I will deal with each in turn.

Preliminary Points

341. The Appellant is critical of the consultation process that the Council undertook when assessing the five-year land supply, referring to a number of paragraphs in the Framework and NPPG that discuss consultation. However, the NPPG is only general advice and for the most part the paragraphs referenced are referring to annual position statements (3-051), the formulation of assumptions (3-047) and the demonstration of a five-year supply through the plan examination process (3-030), rather than the annual up-dating of the five-year supply calculation [IR 53, & 225].
342. Nevertheless, para 3-030 does discuss the transparency of judgements about the deliverability of sites and refers to the provision of robust up-to-date evidence and the consideration of the involvement of people with an interest in delivery in the process. Whilst para 3-030 discusses the work undertaken to establish a five-year supply at the plan making stage, it is clearly relevant at the annual review stage and particularly in the context of individual site delivery. Whilst benchmarks concerning delivery at different types of site can be established through consultation at the plan making stage, the assumptions nevertheless require periodic review and not all sites perform to the norm. In this context it is not unreasonable to expect some research, with or without consultation, on the progress of sites where large numbers of dwellings are involved. The recent changes to the definition of "**deliverable**" in the Framework makes such research more important. I refer to this later [IR 53 & 226].
343. In dealing with the various sources of supply I have considered the information and evidence put before me at face value. I note the numerous references by **the Appellant to Inspector's assessments of five-year land supplies**, when determining appeals in CW&C and elsewhere (CDs 17). However, for the most part the time period is not the same, the Framework and NPPG have both been reviewed and changed, the locational circumstances are mostly different and the evidence before other Inspectors may not have been the same as that before me. The **Appellant refers to the Framework's assertion** that every case should be determined on its own individual merits and that is what I have done when

assessing the five-year land supply put before this Inquiry. I have considered the 5-year supply evidence on its own merits whilst having due regard to what previous Inspectors have said [IR 56, 120, 212 & 213].

344. There is a dispute about the introduction of post-base date information by the Council in its review of the April 2018 assessment for the purpose of this Inquiry [ID 17]. Whilst I agree that it is not appropriate to introduce new sites at this stage, their insertion should await the next full review, it is nevertheless appropriate to take into account information received after 1 April 2018 if it affects sites that were in the last full assessment. Subsequent information that supports a pre-base date judgement should not normally be ignored [IR 85, 130 & 131].

Demolitions and other losses

345. The 1,100dpa. requirement in Policy STRAT 2 is a net figure. At the time of the Examination, losses of around 50dpa. were estimated and a gross figure of 1150dpa. established. The estimate was based on trends at the time the LP was prepared. More recent analysis undertaken by the Appellant and using the **demolitions in the Council's HLM reports 2011-18** suggests that a figure of 39dpa. is more appropriate. The Council says that the calculations in its supply figures are based on a net assessment, with the actual number of housing losses, be they from housing development sites or other known sources, subtracted from the completions data. However, other than the 28ds. referred to by the Appellant and as identified in Ap.4, there is no evidence in the HLM that the Council actually knows how many losses there are likely to be during the next five years. Unlike Ap.2 Completions, which clearly identifies housing losses on a site by site basis, Ap.4 Housing delivery and forecasting, appears to do no such thing. Indeed, it is far from clear how the Council would know which properties are likely to be lost from residential use going forward unless their demolition was a part of an approved scheme. The Appellant has discounted the 28ds. that it identified in Ap.4 **and suggested that the Council's five-year supply figure should be reduced by 167ds. to account for potential future demolitions.** For the reasons discussed above I agree. [IR 102-106 & 235-236].

Student Accommodation

346. CW&CLP P1 assessed the anticipated student population expected to be residing in the District when the FOAHN was established. The accommodation needs of students was included within the overall housing target with the exception of those living in halls of residence (CD13.10). If the number of resident students overall, including those living in halls of residence, has remained approximately the same since 2011, then this is a reasonable approach to take [IR 238].
347. However, this does not appear to have happened. Whilst overall student numbers seem to have changed little (+75), the number of full-time students at the University of Chester appears to have grown (by about 25%), whilst there has been a similar numerical decline in part-time student numbers. It is a well-recognised fact, supported by research on behalf of the University of Chester⁸ (pg.8) in this instance, that part-time students are more likely to be from the local area and to live at home than are full-time students, many of which will have moved from other parts of the country and require accommodation. If this has happened on a significant scale (the Appellant suggests an increase of 2,265

full-time students since 2010), then account of it should be taken in the calculations [IR 69, 108-109 & 238-40].

348. To count purpose built self-contained student accommodation, as a part of the supply, when such accommodation is likely to be meeting the needs of a growing number of full-time students, rather than the more constant numbers that were planned for, is not appropriate. In these circumstances, the dedicated student schemes [SR 144], whilst increasing the overall housing stock with self-contained units, would be unlikely to release accommodation into the wider housing market, such as freeing up some of that currently occupied by students in the Garden Quarter of Chester. Most of the units would be soaked up by some of the increasing numbers of students. Other students may also need to occupy open market homes such as HMOs [IR 107-111 & 243].
349. The Council refers to the multiplicity of University sites, some of which are outside of the district and to the opening of a new campus at Shrewsbury but there is no comprehensive assessment of the changes in student numbers and their locations since 2010. Given the attention paid to this at the previous Inquiries into this appeal and also at the Inquiries into the Nether Peover and Tattenhall Appeals and the findings of previous Inspectors against the Council, in this regard, I find this surprising. In the circumstances I agree with the **Appellant that all of the 430 student units in the Council's supply should be removed** [IR 107-112,238, 241 & 242].
350. 630 student units are included in the pre-2018 completion figures and have contributed to the surplus. Without a demonstration on the part of the Council that these were adding to overall housing supply, as envisaged in the LP and not simply meeting the needs of a growing student population, then they should also be discounted [IR 60-61 & 244].

Individual sites

351. In July 2018 the definition of "**deliverable**" contained in Annex 2 Glossary to the Framework was amended⁷⁶. This had the effect of categorising sites from the perspective of demonstrating deliverability. Sites that are not major development and sites with detailed planning permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years. Other sites, including sites with outline planning permission, should only be considered deliverable where there is clear evidence that housing completions will begin within five years [IR 74, 75, 227, 229 & Framework Pg.66].
352. The implication of this change is to shift the requirement to demonstrate deliverability or not from the Appellant to the Council in the case of the other sites, whilst the onus is now firmly on the Appellant to demonstrate that sites with detailed planning permission will not be delivering houses to the extent advanced by the Council. **The Appellant has not challenged the Council's** assessment of sites with planning permission, although it does challenge the validity of the windfall allowance, which largely relates to small sites without planning permission. It has however extensively challenged the second category

⁷⁶ A further updating to assist with clarity was published in February 2019

of sites on the basis that the Council has not submitted sufficient evidence [IR 76-83].

353. The Council considers the Appellant to be too demanding in its search for "**clear evidence**" and points out that the three bullets in the NPPG that set out the types of material, which could contribute towards demonstrating clear evidence, are only examples and that the list is not exhaustive. I tend to agree. Additionally, as the Council pointed out in pre-Inquiry correspondence, there was only a limited amount of time between the publication of the changes in the Framework and the need to submit proofs of evidence. Again, I agree [IR 227 & 228].
354. In an ideal scenario the Appellant may be correct but the circumstances of the **Council's review of the 2018 HLM were far from ideal**. Whilst the Framework definition of deliverability undoubtedly changed in July, the advice in the PPG as to the sort of information that could be used to demonstrate deliverability was not published until September, a matter of weeks before proofs of evidence had to be submitted at the end of October. Discussions on the SOCG, prior to its submission, should also have been held before then. To expect the Council to have undertaken a comprehensive update of its information base for this appeal is not realistic. There was not sufficient time to undertake a forensic analysis of every site in the supply that does not have a detailed planning permission to the extent of consulting every builder and developer involved. Such an exercise is in any event a matter for the annual review, not a planning appeal. That will have to await the full review in 2019. Despite its case alleging insufficient evidence, the Appellant seems to acknowledge this. I have therefore taken a pragmatic approach to the analysis of the evidence that the Council has been able to assemble in the limited time available [IR 85].
355. The appellant makes the point that developers and builders can inflate the forecast contributions from their existing sites to stymie new development and refers to appeal decisions where this has been given some weight by Inspectors [BP 11.22-11.29]. However, as a corollary the Council argues that the appellant has, more than likely, downplayed the delivery from the sites that it has assessed. Both lines of argument are based on speculation rather than evidence. I therefore give the propositions little weight and deal with the disputed sites on the basis of all of the available factual evidence that is before me [IR232].
356. In considering individual sites, although the evidence about some of the principles at play was tested at the Inquiry, forensic examination of each and every site was not conducted. I have therefore based my findings on the documentary evidence provided to me by the 5-year land supply witnesses, BF and BP, including the tables within the HSoCG, together with some supplementary information contained in the Closing Submissions. However, **whilst the Appellant's Closing Submissions do refer specifically to some sites**, those from the Council do not [IR 88-93].

Sites with outline planning permission or allocated in the DP

357. A discussion between the parties, following the publication of the November 2018 partial HLMR [ID 17], led to a narrowing of the sites in dispute in this category. It was agreed that over 400ds. on ten sites would not be completed during the five-year period. The remaining six disputed sites, amounting to 300ds, are set out in para 3.9 of the HSoCG [IR 86 & 245].

358. **The Appellant's complaint about the inclusion of these sites stems from its** interpretation of the meaning of "**clear evidence**" of deliverability. In its opinion the Council has not provided sufficient information in relation to any of these sites to demonstrate the "**clear evidence**" that is now required. In effect the **Council's case is based on a site-by-site** update of the 2017-18 HLM contained in CD 13/5, with additional verbal updates presented to the Inquiry. The Appellant considers that they should all be supported by comprehensive documentary evidence laid before the Inquiry. I discussed the feasibility of the Council providing such evidence in the timescale in para 354 [87, 246].
359. The revisions to the Framework (13/09/2018) suggest that for these sites, evidence to demonstrate that housing completions will begin on site within five-years could include any progress being made towards the submission of an application, site assessment work or relevant information about site viability, ownership constraints or infrastructure provision.
360. In this context, Table 1 in the November 2018 HLM review indicates that all the sites have developers. There is also other information commensurate with that suggested in the NPPG in Appendix one to HLM review. Ledsham Garden Village is an ongoing site with five phases now having full planning permission and where 90 dwellings were completed in an earlier phase in 2017-18⁷⁷. Buildings have been demolished and the sites are being cleared at Rossfield Road and Delamere Forest School; some conditions have been discharged at Lyndale Farm and a full application has been submitted at Wrexham Road [IR 88-93 & 246].
361. Four of the six sites involve the completion of fewer than 30 dwellings. In the circumstances of, a combination of a developer, clearance/site works and/or movement towards detailed planning permissions/discharge of conditions, my experience suggests that it is more than likely that such modest estimations of completions are likely to be achieved in the five-year period. The two larger sites at Rossfield Road and Wrexham Road again seem very likely to be delivered, given the face value of the information submitted. I therefore consider that further changes to this category are not justified.
362. In coming to this conclusion, I am also aware that following the discussion with the Appellant, more than half of the numbers in this category were removed by the Council. I am also aware of the excellent track record achieved by the Council in predicting future housing delivery. Since the CW&CLP base date (2010), with the exception of only one year (2012/13), when there was a small shortfall of completions when compared to the housing delivery forecasts, the **Council's forecasts** have under-estimated the subsequent completions. This does not suggest that the Council has been traditionally over-optimistic when making its housing completion forecasts [IR 225 & 246].
363. **I note the Appellant's point about the timeliness of some conditions** and that if reserved matters applications are submitted at the last possible moment and then development does not commence until that time period is about to expire, then there will be few if any completions on such sites where the combined time periods are in the region of four years or more. However, the purpose of time limits in conditions is not to establish a mechanism through which to forecast

⁷⁷ HLM 2017-18 Appendix Two, Completions Report.

housing delivery. They are a vehicle to enable a review of (the) permission(s) already granted if circumstances have changed. My experience suggests that in situations where land with planning permission has been acquired by a builder/developer, as is the case here, rather than being owned by a land-owner or site promoter then conditions are discharged and works commenced on site at a date that is far sooner than the time limits in conditions [IR 86-93].

364. The Appellant refers to a case at Woolmer Green where an Inspector **considered the Council's evidence to be "well short"** of what was required. However, I do not have the evidence that led to that conclusion before me [IR 87 & 227].

Non-allocated sites without planning permission

365. There are six sites remaining that account for 222ds. remaining in dispute in this category. **The Appellant's case rests on the contention that such sites can never be included in a five-year land supply calculation.** However, nowhere in the definition of "**deliverable**" in the Glossary to the Framework or in the NPPG does it say that the sites referred to are an exclusive list. Nevertheless, I agree with the Appellant, that given the status of such sites in the planning system, there needs to be a credible justification for any such sites to be included. [IR 94, 95, 247 & 250].
366. The sites are contained in table 3 to Appendix 3 of the 2018 HLM review [ID 17]. Although not allocated or having outline planning permission at the time of the 2018 HLM there were applications, which have since been granted or approved subject to a legal agreement, submitted by builders at Trafford Street, Hartford Manor, Knutsford Road and Chester Road. None of these sites will provide more than the 42ds. at Hartford Manor. Given the progress that appears to have been made on all of these sites during the past year it seems to me very likely that they will all deliver dwellings in the five-year period.
367. Winnington Business Park is larger than the others (88d). The site appears to have made good progress since the outline application was received in April 2017, that application being approved, subject to a legal agreement in March 2018 and a decision issued in July 2018. A demolition application has been subsequently submitted and approved, along with an outline application for other parts of the site. Although there is now little more than four years to go, there appears to be no significant obstacles to overcome before housing delivery can commence. In the circumstance a forecast of 88 ds by March 2023 does not appear unattainable. The remaining site at Newhall Road is only expected to deliver 12ds. There is already a resolution to grant planning permission, a builder is driving the scheme and the building on the site is no longer in use. The construction of 12ds on this site in over four years does not seem an unreasonable expectation in my view. The Appellant once again refers to the time periods in conditions for the submission of reserved matters and commencement on site, the latter being potentially after 2023. However, there is no evidence to suggest that after the good progress to date, work to secure the implementation of 88 ds on this site by 2023 is about to stop. I therefore prefer **the Council's assessment and** consider the inclusion of the six non-allocated sites as of April 2018 to have been justified by the subsequent events [IR 96 & 97].

Build out rates and lead in time

368. The Appellant challenges the delivery rates applied to five sites (505ds.), based on the **interpretation of the Council's standard build-out rates and lead in times** [IR 113, 298]. It alleges that the Council has inflated its delivery rate assumptions. A comparison of the assumptions in table 2.9 of the HELAA (2017)⁷⁸ **with the Council's forecasts** (pg.6 of HDoCG) suggests in broad terms that this is correct [114 & 250].
369. Table 7.3 of BF PoE suggests that at Ledsham Garden Village, Station Quarter and Grange Farm the inflated figures are a response to delivery forecasts from developers. However, there are no copies of the correspondence with developers to confirm what they are saying and why. More fundamentally there is no independent assessment by the Council analysing why it should take on board the opinions of developers in preference to its own standard assessment. The delivery rate assumptions are presumably based on historic analysis of the performance at many sites, from which average rates will have been arrived at. Some of the sites that were assessed, will have performed better than the average whilst others will have performed worse than it. Even if the opinions of individual builders are correct and their sites perform better than the average, there will no doubt be other sites that do not. Unless the Council undertakes a forensic analysis of every site, which it has not done, then there is no justification for departing from its overall assumptions unless very special circumstances can be demonstrated.
370. The Appellant claims that the proposed delivery at Ledsham Garden Village is greater than what was actually achieved on an earlier phase. The evidence indicates that 41 dwellings were completed in 2016-2017 and 90 in 2017-18. To add these together and then divide by two to achieve an annual delivery rate of 66dpa as BP has done is far too simplistic. Building work only began in 2016 and **there was not a full year's output during 2016-17**. 2017-18 is only one year so a judgement as to whether or not the 90 dwellings constructed in that year was typical and likely to be repeated is not easy to make. Output from sites often peak in the first full year, if market conditions remain the same, so that the **Council's estimate of that number being sustained for a further five years seems high**, especially when it is wishing to count an additional 28d on a later phase into the supply. With two developers, the delivery rate assumptions would suggest an annual output from this site of not much above 70. The evidence does not suggest a different position with regard to Rossfield Road and Roften Works. **I therefore accept the Appellant's analysis and reduce the supply by 505ds.**

Small sites windfall allowance

371. The Framework says that an allowance can be made for windfall sites if there is compelling evidence. **The Council's historic analysis of completions** shows that there has been numerous completions delivered on sites with a capacity below five units on a consistent basis. On the basis of this evidence, the Council therefore makes an allowance for windfall dwellings in years four and five. It recognises that some windfall sites will have been granted planning permission

⁷⁸ CD 13.6.

before the base date and uses this information to assess the number of windfalls likely to be delivered in the first three years [IR 98, 251 & 252].

372. Whilst the Appellant notes that completions from this source have been steadily increasing since 2010 (as they have from the other sources), it points out that the 122dpa average from past trends would lead to the delivery of 610ds. over a five-year period. It then goes on to point out that the Council has assumed that 620d with planning permission would contribute to this source of supply in years one to three. It claims that the Council has not applied any lapse rate to these permissions. Whilst the Council acknowledges that some planning permissions will not be implemented, it is not clear how this has been discounted in years one to three. The number of dwellings completed on small sites increased from 70 in 2010-11 to 174 in 2017-18. If the 2017-18 output were to be delivered over the five-year period, then 870ds could be delivered from this source. The Council has assumed 830. To achieve this, dwellings on small sites would have to be delivered at a rate so far not experienced other than in 2017-18. I consider this to be too optimistic. There is not the evidence to enable me to make a different assessment and nor should I in any event. I have therefore taken the mid-point **(115d) between the two parties' cases and subtracted that from the Council's figure** [IR 99-101 & 252].

Housing land supply conclusions

373. Housing land supply assessment is not an exact science. It relies on objective judgement and some assumptions based on the available evidence. What is certain is that the assessed delivery from individual sites is unlikely to be correct. All one can hope for is that the over-estimations are corrected by under-estimations to a similar amount.

374. The Framework and the NPPGs guidance on this matter were changed some months after the Council undertook its 2018 HLM. The new guidance requires a better demonstration on the part of Councils of the deliverability of certain types of site. Whilst the Council has submitted additional evidence to address the changes, that evidence falls short of what might be expected in a full HLS assessment. However, that is not due to be undertaken before April 2019. **Whilst not to the Appellant's satisfaction**, I nevertheless consider the evidence that the Council submitted both in written form and verbally at the Inquiry does not lead to a conclusion that its assessment of dwellings to be delivered from sites with outline planning permission or allocated and non-allocated sites is fundamentally wrong. I have therefore not changed these assessments.

375. I have however, accepted the Appellants arguments with regard to demolitions, student accommodation, build-out rates and lead in times and in part the small site allowance. I have deducted **1,217d from the Council's supply**. This gives a supply of 6,060 to meet a requirement of 5,150 or a supply of 5.41 years.

Development Plan

376. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the DP unless material considerations indicate otherwise. The statutory DP for the area still consists of the CW&CLP P1, adopted on 29 January 2015, the WNP, made on 19 November 2014 and the saved policies of the VRBLP First Review

Alteration, adopted in June 2006 (in the context of this appeal, specifically Policy GS5) [IR 122-124].

377. Para. 5.3 of the SoCG sets out the agreed relevant policies. The parties agree that the proposal breaches both Policies STRAT 9 and GS5, the latter being addressed in the context of STRAT 9. The Council also considers the proposal to be contrary to STRAT 1 of CW&CLP and to Policies H1 and H2 of the WNP. It also considers all of the above policies to be the dominant ones for determining the appeal. Inspector Dakeyne in his SR only considered STRAT 9, GS5 and H1 to be the dominant policies but also agreed with the Council that the proposal was contrary to STRAT 1 [IR 127, 155, 255 & 259, (SR 218)].

VRBLP

378. Of the VRBLP policies that have been saved, only GS5 has been referred to in substance. That policy seeks to protect the character and appearance of the countryside and to prevent new building therein, unless provided for through other policies. It also defines open countryside as all parts of the Borough which lie outside of defined settlement boundaries [ID 24]. In the context of this appeal, the countryside protection policies have been superseded by those in CW&CLP P1 Policy STRAT 9. Only the settlement limits are relevant because they define the area within which Policy STRAT 9 applies [IR 34, 149, 255 & 259].

379. However, these settlement limits are out of date but have not been replaced. They were defined in the context of the housing requirements established for the VRBLP before 2006. This plan had an end date in 2016. Not only is the boundary seeking to accommodate development needs from a previous plan period, those development needs have been superseded by new ones and the actual period for which the boundaries were meant to represent the land release requirement has now been over for nearly three years. During this period planning permission has been granted for residential development, outside of the settlement boundaries on a number of occasions. Even as early as 2013 and whilst the VRBLP as a whole was still a part of the DP for the area, the Council's officers gave GS5 reduced weight in the decision-making process. [149, 151, 152, 155 & 257].

380. Nevertheless, the Council still considers Policy GS5 to be one of the dominant policies for determining the appeal. Para. 11d of the Framework says that where policies which are most important for determining the application are out of date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I therefore conclude that what has become known as the tilted balance applies [IR 155d & 260].

381. Whilst Inspector Dakeyne did not come to this conclusion, indeed he afforded **Policy GS5 "Considerable weight in the context of Winsford" that decision was** arrived at in November 2015 when the VRBLP was still extant and the WNP had recently been made [IR 261, 260 & 261].

382. The Council refers to the findings of the *Daventry BC v Gladman* (2016) Court of Appeal decision to support its contention that GS5, in the context of its settlement boundaries, is up-to-date. However, that decision has been superseded by the *Richborough Estates v Cheshire East DC* (2017) case, where at para. 63 Lord Carnwath said in similar circumstances of an extant LP that "**on**

any view, quite apart from para. 49, the statutory development plan was out of date". He went on to confirm that **"the weight to be given to the restrictive policies was reduced to the extent that they derived from settlement boundaries that in turn reflect out-of-date housing requirements"** [IR 123, 150, 257 & 258].

CW&CLP

383. The appeal site is beyond the settlement limits of Winsford as defined by VRBLP Policy GS5. Until the CW&CLP P2 is adopted, these limits define the area to which Policy STRAT 9 applies. The proposal does not comprise one of the types of development that is acceptable in principle in the countryside under Policy STRAT 9 so there is a clear breach of the policy [IR 31, 126 & 255].
384. However, as the Appellant points out, the policy **"aims to protect the intrinsic character and beauty of the Cheshire countryside"** whereas the revised Framework at para. 170. **which gives more clarification as to the government's** position on this issue, seeks to only protect valued landscapes and only to recognise the intrinsic character and beauty of the countryside, not to protect it. Despite the interpretation of previous Inspectors, in the context of a now revised Framework, Policy STRAT 9 is not fully consistent with the wording of the Framework. Nevertheless, the Framework does recognise the overall intrinsic character and beauty of the countryside and the Cawrey judgement⁷⁹ confirms that the loss of undesignated countryside is capable of being harmful and attracting weight in the planning balance. In my judgement Policy STRAT 9 is consequently not out of date and is capable of attracting weight, depending upon the circumstances of the case. However, such weight cannot now be the full weight that Inspector Dakeyne gave to the Policy [IR 128-131, 255, & 256].
385. Whilst arguing that full weight should be given to the breach of STRAT 9, because the proposal is outside of the settlement limits, the Council has breached these same settlement limits on numerous occasions itself, granting planning permissions in order to maintain a five-year supply of housing land. In the context of the current settlement limits, Policy STRAT 9 is a policy for the supply of housing and in the context of a site immediately adjacent to one of the four urban areas where Policy STRAT 2 proposes to locate the majority of new development, it should also be given reduced weight in that context [IR 130].
386. I note that the Council, whilst **referring to Inspector Dakeyne's SR**, says that CW&CLP P2 will be defining new settlement boundaries and that the WNP allocations will form the main basis for the new boundary around Winsford. It also points out that the proposed boundary does not include the appeal site. However, this aspect of that plan is subject to outstanding objections so, at this point in time, it cannot be used in support of additional weight for the breach of Policy STRAT 9 [IR 36, 255, & 259-261].
387. Furthermore, a comparison of the boundaries shown in the VRBLP [ID 24] and that proposed in CW&CLP P2 [ID 25], with the WNP allocations (CD 5/1 pgs30-31) suggests that other land not allocated through that plan has been included in the proposed amendment to the Winsford settlement area on the Policies Map. There are also examples of development and the settlement boundary extending into adjacent parishes, such as further along School Green Lane from the appeal

⁷⁹ Cawrey Limited v SoS and Hinckley and Bosworth BC [2016] EWHC 1198

site. Repeating those at the appeal site would not be a new departure [IR 151 & 260].

388. By virtue of being outside of the settlement envelope the proposal is contrary to STRAT 9. However, the Council has not advanced an argument that the proposal would be harmful to the character and appearance of the countryside itself, only that by being within the Policy STRAT 9 considerations, it must in principle be contrary to that policy. **Indeed, the Council's officers, when** recommending members to approve the application that is now the subject of this appeal, back in 2013, said that

"the site is contained on two sides with residential development to the north and a main road along the eastern boundary, with the impact on landscape character not considered to be significant. The site is relatively well contained visually within the local landscape, with the topography and woodland vegetation to the south and west restricting long-distance views" (CD 2/2 para. 7.32).

389. These observations are as relevant today as they were six years ago. There is also extensive residential development across the main road referred to and some further residential development in the form of individual dwellings and out-buildings on either side of the eastern end of the lane that abuts the southern boundary (SV). The proposed development would undoubtedly result in the loss of open countryside but its impact on the wider countryside and its landscape would be minimal. I therefore give the infringements against Policy SRAT 9 only minor weight [CD 2.2].

390. Policy STRAT 1 requires development to support eight sustainable development principles, following which it will be approved without delay, unless material considerations indicate otherwise. The sixth criterion requires proposals to minimise the loss of greenfield land. The Council quite rightly refers to the **proposal's conflict with this but not to any of the others**. Inspector Dakeyne found that **"a degree of conflict was involved"**. There is clearly conflict but with regard to the other seven criteria, the proposal is either neutral or contributes towards their requirements [IR 29, 133, 134, 155b, 262].

391. In **particular the "Local Approach", which could be secured by conditions or a legal agreement**, would help to support regeneration in one of the most deprived areas of the Borough and the parties agree that the new housing would have good accessibility to local shops, community facilities and a primary school. In the context of Winsford it has good connections to public transport. It is agreed that there would be improvements to biodiversity, particularly as a result of the measures proposed to improve the habitat and breeding ponds used by GCNs, a protected species. The proposal would not encourage the use and redevelopment of Pdl but then many of the sites proposed for housing development in the LP or granted planning permission by the Council would not. In the overall circumstances I can only give limited weight to the harm to Policy STRAT 1 [IR 158-170, 184-207 & 284-297].

392. Policy STRAT 2 sets a minimum target of 22,000d for the borough. Policy STRAT 6 Winsford requires provision to be made for at least 3,500 of these new dwellings at Winsford by 2030. The WNP makes provision for 3,362 and I was told that no further sites around Winsford have been identified in the CW&CLP P2. However, I agree with Inspector Dakeyne that the development of Pdl and other

windfalls over the next 11 years would be likely to more than make up for this shortfall of identified numbers. The Appellant refers to issues that are alleged to be undermining the delivery of land within the Station Quarter and suggests that this could lead to an overall under-provision at Winsford. However, the Station Quarter is only meant to deliver 775d during the plan period (about 22%). I have not been referred to any development phasing plan at Winsford and given that more than half the plan period has yet to come, I consider it premature to be suggesting that the requirement from the Station Quarter cannot be delivered over the next eleven years [IR 29, 30, 128, 139, 142, 147, 148, 263, 264 & 308].

393. In my judgement the Policy STRAT 6 requirement is likely to be achieved without the development of the appeal site. Whilst the policy does not offer any support for the appeal proposal, given that it sets a minimum requirement and there is no evidence to suggest that that number is already likely to be unsustainably exceeded, the proposal does not conflict with it either [IR 238 & 264].

394. Policy SOC 1 Delivering affordable housing seeks to maximise the provision of such accommodation on all larger schemes. A target of 30% is set. The proposal would achieve at least 40%, with a further 10% being set aside for self or custom-build housing in the first instance. The scheme clearly accords with this policy, even the Council considering that the benefit deserves substantial weight [IR 32, 175 & 280].

WNP

395. The Appellant points out that only about 2h of the appeal site (30%) falls within the remit of the WNP and that in any event 70% of the proposal cannot be considered to be in conflict with that plan. However, the development as a whole would be a clear extension to the town of Winsford, even though a part would be within another parish. Indeed, the Appellant put the site forward as a potential allocation for the WNP. The proposal would clearly be meeting the needs of Winsford, rather than the small village of Darnhall, in whose parish some of the site is located. Darnhall village is some distance from the appeal site. In **addition, the high proportion of affordable housing and the "Local Approach"** benefits are clearly there in a Winsford context and do not relate to Darnhall. I therefore consider the proposal as a whole would respect the objectives and policies of the WNP. [IR 135, 136 & 265].

396. The Council and some of the third parties suggests that the plan has a clear strategy for locating housing development, close to the town centre and the railway station as well as creating positive new **"gateways" at key arrival points**. However, whilst some of these may be contributing to the underlying themes of the plan, there are a number of sites proposed for development that clearly do not meet these descriptions. The appeal site could be considered to be a gateway, albeit only to a minor extent but nevertheless to a greater extent than **some of the sites that are expected to deliver Winsford's contribution to the** overall housing requirement [IR 147, 266 & 268].

397. The Council suggests that the proposal conflicts with the themes of the plan. There are seven of these. I agree with the Appellant (Para.s 143 & 144) that it is difficult to see how the proposal actually offends any of them. However, at the same time many other sites proposed for development in Winsford would

contribute towards the delivery of the vision. Consequently, for the most part **the Appellant's contribution to the vision through the seven themes is little** different to many of the sites that are proposed for development or indeed others that are coming or could come forward. The training and employment proposals would nevertheless create a variety of employment opportunities, including skills training, which is an employment objective [IR 145, 203 & 267].

398. Policy H1 supports residential development on a range of sites at Winsford that in total would achieve the construction of around 3,362d. As discussed above I consider that to comply with the requirements of CW&CLP Policy STRAT 6. The appeal site is not one of the listed sites. Whilst there is no ceiling on development, **I agree with Inspector Dakeyne's conclusion that to see Policy H1** other than as a policy that guides and regulates where new development in and around Winsford should be located would be to suggest that it serves no real purpose. The policy makes proposals as to where residential development in Winsford should be located up until 2030. The appeal proposal is not one of these and so it is contrary to the policy and contrary to the WNP. The policy also requires proposals to accord with other policies of the NP and LP. In this context there is clear support from Policy H3, which seeks to secure a sustainable and mixed community with different dwelling types, a range of tenures and including affordable housing. Consequently, in the overall circumstances of the minimal requirement that Policy H1 is expected to meet and the absence of significant conflict with the vision themes and objectives of the plan, I give Policy H1 no more than moderate weight [IR 33, 136, 268 & 269].

Development Plan Conclusions

399. The proposal would be in compliance with a number of relevant DP policies. These are set out in full in the PSoCG and include those used to assess the proposal against specific matters such as transport (STRAT 10), affordable housing (SOC 1), housing mix (SOC 3) and the environment (ENV 2, ENV 4 and ENV 6). I have found GS5 to be out of date and no real conflict with STRAT 2 because in the context of its minimum 21,000d target, an additional 184d would not be significant [PSoCG & IR 32 & 318].

400. Nevertheless, there would be minor conflict with CW&CLP P1 Policy STRAT 9 and to a limited extent with Policy STRAT 1. There would also be limited conflict with Policy H1 of the WNP, an additional 184d representing about a 6% increase in the context of its target of 3,400d. The housing supply policies STRAT 9 and H1 are the dominant policies for assessing proposals for development inside and immediately outside of the Winsford settlement boundary. The proposal does **support Policy SOC1's objective of maximising the provision of affordable housing** and given the circumstances, [see IR 408-411] **this weighs in the proposal's** favour. However, approving proposals that are contrary to dominant policies in the DP, particularly one that is within a NP, should not be undertaken lightly. **To do so would undermine the public's trust and confidence in the DP system.** I conclude that on balance the proposal would be contrary to the DP overall but only to a minor extent [IR 155 & 271].

CW&CLP P2

401. Apart from establishing new settlement boundaries, this plan when adopted should have no real bearing on the outcome of this appeal as it does not propose any land allocations at or adjacent to Winsford. The plan was submitted for

examination on 12 March 2018 and hearings closed on 27 September 2018. Agreement to Main Modifications are expected soon, with adoption anticipated later in 2019. There are outstanding objections to Policy W1, which establishes the new Winsford settlement boundary. **Other objections relate to the plan's** alleged failure to provide sufficient land allocations at Winsford through this policy. There are also outstanding objections to Policy DM 20, which relates to the mix and type of housing [PSoCG paras. 5.6-5.9 & IR 36-38].

402. The Appellant accepts that once this plan has been adopted, its route to the tilted balance will fall away and that in that context CW&CLP Policy STRAT 9 will be up-to-date [IR 151]

Sustainable development

Economic

403. The economic benefits set out in OR147 and SR 261-263 still apply. In addition, the housing offer whereby up to 92 new homes would be built by local SMEs, **supports the Government's objective of boosting that sector**. It would also add value to the local economy as would the self-build plots and elements of the proposed local training, employment and procurement proposals [SR80 & IR 205 & 295].

404. The weight to be given, to the benefit of the additional market housing, needs **to be seen in the context of the Council's response to the need to boost** significantly the supply of housing. That is what has been achieved by continuing to provide a 5-year supply of housing land [IR 174] and enabling a significant surplus in housing supply over requirement since 2014 [IR 380, 419]. Such a situation cannot justify giving the provision of more market housing significant weight, especially when the LP Inspector clearly said that an OAN of more than 1,100dpa. would require higher job growth than the forecasts suggest are likely to be achieved and necessitating more population growth from in-migration⁸⁰. If **job-growth doesn't match the growth in the economically active population then** there would likely be an increase in out-commuting, which is not a sustainable outcome [IR 158, 159, 274 & 290-293].

405. However, the market housing would be delivered by SMEs so that in that context it should attract some weight. As Inspector Dakeyne said:

*"this, along with the other elements of the housing offer, means that the economic benefits of the appeal proposal are likely to be able to be distinguished from many other housing proposals in the Borough or indeed other proposals on non-allocated sites on **the edge of Winsford**"*

[SR 174, 175, 282 & IR 158-167, 278d & 290-293].

406. The agricultural land position has not changed since the original inquiry and should not weigh against the proposal [OR148].

407. Overall there are significant economic benefits from the proposal [SR 264 & IR 278d].

⁸⁰ CD 13/3 pgs. 9&10

Social

408. The proposal would deliver 40% of the dwellings as affordable housing, 10% more than the requirement. The facts surrounding the extent of the need for affordable housing are again in dispute. Notwithstanding that the Council accepts that the need for affordable housing in CW&C is such that the provision of 40%, which is 10% above the LP target of 30%, should be afforded substantial weight. **The dispute is over the attachment of the pronoun “very”** [IR 175, 182, 275 & 283].
409. Affordability appears to have got worse in CW&C and the numbers on its housing register have more than doubled since it was reviewed in 2014. At the same time, affordable homes have continually been lost from the stock as a **result of the “right to buy”**. Nevertheless, in the context of the LP target of 30%, on past performance the Council appears to be capable of meeting this and achieving the delivery of 6,600 affordable units over the plan period [169, 172, 173, 188, 276 & 277].
410. The unachieved provision of 714dpa. and the corresponding shortfall of 1,503d, referred to by the Appellant, are in the context of the backlog being resolved within five-years. That was never going to be achieved, without a substantial increase in public funds, because it would involve 65% of all dwellings constructed over the five-year period being affordable. As the LP Inspector observed, the figure would still be reduced if the backlog was cleared over a longer period, such as the plan period. However, meeting all of the existing and future affordable housing needs by 2030 from the private sector contribution even if it were always 30%, is likely to be an impossible task [IR173, 174, 176, 178, 179 & 278-280].
411. Nevertheless, because of public investment, the evidence suggests that provision has fared better in Winsford, over the plan period to date, than in the Borough as a whole. Additionally, and despite this and its overall opposition to the proposal, the Town Council in its evidence considers that there is a need for more affordable homes and would welcome the provision on this site. Furthermore, the backlog represents people in housing need now, some of them acutely and so it should not be easily glossed over. I agree that at least substantial weight should be given to the provision of affordable housing on the site [IR 171, 177, 180, 182, 183, 281-283 & 315].
412. The self-build plots **would help meet the government’s objective expressed in the Housing White Paper and now included in the revised Framework**, to support the growth of self and custom build homes. Whilst maintaining a register of those seeking to acquire serviced plots under Section 1 of the Self-Build and Custom Housebuilding Act 2015, to date there are no specific development permissions in CW&C to meet the identified demand. As identified through the **Council’s self-build register** that amounts to 309 households. In Xx the Council confirmed that it did not know how many self-build plots it had granted planning permission for during the plan period. The extent to which the Council has supplemented this data with secondary information, as recommended by the **Framework, was also not clear but despite Build Store’s database identifying 443 registrants** within ten miles of the appeal site, the Council maintained that there is no demand at all in Winsford for such housing on a large site [IR 184-196 & 284-288].

413. **I do not share the Council's pessimism about the need for self and custom-build housing at Winsford.** Its stance is largely based on conjecture rather than hard evidence and I also note that despite government advice, emerging Policy DM20 of the CW&CLP P2 sets no targets for self and custom-build housing nor allocates any specific sites. The twenty-six plots on adjacent Peacock Avenue, which were developed in such a way some years ago, suggests that such a development can be achieved at Winsford in the right circumstances. **Furthermore, to counter the Council's pessimism during the Inquiry, the** Appellant agreed to a fall-back position, whereby, if any of the eighteen self-build plots do not commence development within five years of the date of the planning permission, additional affordable housing plots will be built on those sites. [SR80, IR 197-202 & 289].
414. The self-build element would carry some social benefits in helping to respond to the needs of a particular group, identified by the SHMA [SR80] and the Government, who wish to build their own homes. The proposals do not follow the approach advocated by Policy SOC3 of the CW&CLP as a Community Land Trust is not involved⁸¹. Therefore, there are questions over the affordability of the plots [SR183]. That said the proposed condition that requires the submission of a scheme for the delivery of the self-build plots, would allow an input by the Council into the open market value of the plots. There would thus be social benefits from this element of the scheme. I consider that the self-build element of the scheme should attract substantial weight [IR 184-186].
415. The local training, employment and procurement elements would bring some social benefits to the Borough as a whole and Winsford in particular. There are relatively high levels of deprivation and joblessness, including in the ward adjacent to the appeal site, at Winsford. These considerations deserve significant weight [OR77 & IR203].
416. Overall there are substantial social benefits from the proposal [SR 273].

Environmental

417. There would be less than moderate harm from the loss of open fields but at some point in time there will be a requirement for some greenfield land to be developed around Winsford. The Council does not refer to any specific landscape, visual or ecological harm. The discovery of Great Crested Newts, which are a protected species, foraging on the site has resulted in proposals for off-site mitigation. It is agreed that the proposed improvements go beyond what is necessary to mitigate against the potential harm to the protected species on the site and that there would be minor overall benefits to its habitat and breeding opportunities. There is an acceptance that there would be other minor ecological improvements as a result of the scheme [IR 22, 23, 46, 47n, 204j, 296 & 301].
418. About 8,000 sqm of public open space would be landscaped. This is 3,000 sqm more than the revised standard now requires and would be of minor benefit to the wider community [IR22, 45, 47g & 204g].
419. It is agreed that the site is in an accessible location with sustainable access to bus, cycling and walking facilities. However, such advantages could be a part of

⁸¹ CD 13/1 pg. 71

the credentials of many sites and attract no weight to support the proposal [IR 47k & 204j].

420. Overall I consider the impact on the environmental dimension of sustainable development, from the loss of three open fields, would be counter balanced by the ecological and recreational benefits that would occur so that the harm would be neutralised.

Sustainability Conclusions

421. The Framework considers the three overarching objectives of sustainability to be interdependent and says that they should be pursued in mutually supportive ways. In this case the proposal would achieve significant economic benefit and substantial social benefits along with having a better than neutral impact upon the environment⁸². However, that is not the end of the matter. The conflict with the up to date development plan is a key component of the final balancing exercise. I deal with this in my overall conclusions. In this respect Policy STRAT 1 of the CW&CLP indicates that sustainable development would not be achieved if a proposal would fundamentally conflict with the LP [IR 298-301].

Conditions and obligations

422. As referred to above, following discussions with the Council, the Appellant submitted a set of agreed conditions shortly before the inquiry reopened. I discussed some of these further during the inquiry when further minor modifications were agreed. Before the inquiry concluded it was further agreed that if a local builder was employed to build the market housing and 10% of the dwellings were constructed through self-build, then it was more than likely that the levels of local procurement sought in the draft condition would be achieved without the need for the condition. The procurement condition was therefore removed. With this exception, to all intents and purposes the conditions are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the changes outlined in IR 317. The finally agreed conditions and the ones that I recommend to the SoS are listed at the end of this report.
423. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG. The conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable, minimises the impact on the environment and complies with the other relevant DP Policies.
424. The SoS previously considered that the Training and Employment, Self-Build Housing and Local Builders conditions did not enable these considerations to outweigh his reasons for dismissing the appeal. The High Court found that the SoS had given inadequate reasoning for the rejection of the Training and Employment Measures and the Local **Builders condition. It found that the SoS's** reasoning that the Self Build Housing condition should not be attached to any permission was sufficient to support that conclusion.

⁸² CD 12/1 Pg. 5

425. The Appellant now considers that the matters addressed by the conditions in ID 42 could be more appropriately covered in a legal agreement. It cites an example from Gloucestershire⁸³ where the SoS has granted planning permission for a residential development with a similar Agreement to secure similar benefits. The Council wished them all to remain as conditions only.
426. I am of the opinion that all of the conditions as now proposed meet the tests in the NPPG and its guidance suggests that that conditions are to be preferred to planning obligations if they meet the tests. Nevertheless, if the SoS agrees with my overall conclusion, it is a matter for him whether or not he imposes conditions to secure the implementation of the "local approach" matters or accepts the Unilateral Undertaking as a substitute means of securing the implementation of the benefits. If the former, then it may be necessary to ask the Appellant to withdraw its Unilateral Undertaking.

The Planning Balance

427. I have found VRBLP Policy GS5, considered to be one of the dominant policies for determining the application, to be out of date. At paragraph 11d the Framework says that where policies, which are the most important for determining the application, are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
428. I have found that the development is sustainable development in the overall context of the Framework, with substantial weight being given to the benefits from the social dimension and significant weight given to the economic dimension. The adverse impacts from the loss of the green fields and on the confidence in the DP are not so great as to demonstrably outweigh the benefits. I consequently find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole and that planning permission should be granted.
429. If the SoS disagrees with my finding and considers that VRBLP Policy GS5 is not out of date and the tilted balance is not applied I would nevertheless, like Inspector Dakeyne, recommend in favour of allowing the appeal. In this instance it is a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of the new homes.
430. To a limited extent, the proposal is contrary to CW&CLP Policy STRAT 1. There is also a degree of conflict with CW&CLP Policy STRAT 9 and Policy H1 of the WNP. Although a number of development plan policies support the proposal, particularly CW&CLP Policy SOC1, overall, I consider the proposal to be contrary to the DP when read as a whole but only to a minor extent. That conflict is by and large a technical one and a number of the relevant policies, particularly those of the WNP are not explicit in forming a basis to resist the development. Other than the loss of three green fields that do not easily relate to the wider

⁸³ Appeal ref: APP/P1615/A/3013622 Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire (CD 17/2).

landscape, I have only identified minor harm from the development in the context of the principles of sustainability. Nevertheless, the DP is not to be set aside lightly. A failure to comply with the DP, particularly in the context of Policy STRAT 1, could also give an indication that the development would not be sustainable overall.

431. Unless fully justified, permission would undermine the credibility of the planned system and the status of NPs promoted by the Framework, even though paragraph 198 of the Framework should not be interpreted as giving NPs enhanced status over other components of the DP. There are adverse impacts through the loss of open countryside and conflict with the DP overall. Together I conclude that these represent moderate harm. The Council has not alleged any other harm and agrees that the other material impacts could be made acceptable by the use of conditions. In this case there are substantial economic and social benefits arising, particularly the significant proportion of affordable homes and the other "Local Approach" benefits of the housing offer. Whilst this type of offer could be repeated, the circumstances are unlikely to be commonplace because of the position of the **Appellant as landowner as set out in detail in the 'Local Approach'**.
432. Development that conflicts with the DP should be refused unless other material considerations indicate otherwise. But it does not necessarily follow that a proposal which conflicts with the DP cannot comprise sustainable development as illustrated by many appeal decisions⁸⁴. I conclude that the conflict with the DP, the starting point for decision making, including the relatively minor adverse impacts on the countryside are outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the self-build housing.
433. In arriving at this conclusion, I have taken into account that the Council, putting to one side the conflict with the DP and including the in-principle objection to the loss of countryside, have not suggested that the grant of planning permission will result in any site specific adverse impacts or that the site is not in a sustainable and accessible location. For these reasons, the proposal would accord with the presumption in favour of sustainable development, having regard to the DP and the economic, social and environmental dimensions of sustainable development considered in the round.

Recommendation

434. I recommend that the appeal be allowed, and outline planning permission be granted subject to the conditions set out in the next section. This recommendation is consistent with that contained in Inspector Dakeyne's two reports [OR168].

⁸⁴ For example those referred to in IR65 & IR159

Recommended conditions in the event that permission is granted

Reserved Matters

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of the development shall be submitted to, and approved in writing by, the local planning authority before any development of that relevant phase begins and the development of each phase shall be carried out in accordance with the details approved under that phase.
2. Application for approval of the reserved matters for Phase 1 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of one year from the date of this permission. Application for approval of the reserved matters for the Phase 2 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of two years from the date of this permission. Application(s) for the approval of reserved matters for each subsequent phase of development must be submitted to the local planning authority not later than the expiration of three years beginning with the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of two years from the date of this permission or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. All reserved matters applications shall accord with principles set out in the following:
 - a) Parameters Plan HP/WIN/PP01 Rev B dated 4 July 2014;
 - b) Boundary Treatment Proposals Plan 1789/P07a dated September 2013;
 - c) Design and Access Statement dated July 2013;
 - d) Access Plan (Drawing No. CBO-0149-006).
5. No more than 184 dwellings shall be erected on the site.

Phasing

6. A Phasing Plan for the whole development shall be submitted to, and approved in writing by, the local planning authority as part of the first application for reserved matters within the application site. Full details of the phasing of the construction of the development hereby approved, including highway and pedestrian routings, shall be submitted as part of the Phasing Plan. The development shall be carried out in accordance with the Phasing Plan approved under this condition.
7. The details for each phase of the development required under condition no 1 of this permission shall include:
 - a) **samples or the manufacturer's specification of the external materials to be used in the construction of the dwellings;**

- b) soft and hard landscaping works, including details of retained trees and hedges, areas to be landscaped including the numbers, size, locations and species of trees and shrubs to be planted, boundary treatments, hard surfaces, and an implementation programme;
- c) existing levels and proposed finished floor (slab) and site (garden) levels;
- d) street furniture/structures including proposed substations or other utility structures;
- e) external lighting;
- f) on-site open space/play space provision. The total amount of on-site open space shall amount to no less than 5,000 square metres;
- g) parking for cars and cycles;
- h) roads, footways and cycleways;
and,
- i) provision for waste and recycling in connection with the dwellings.

The details for each phase shall include a implementation programme for the works.

Open Space

8. No dwelling in any phase of development shall be occupied until details of the management and maintenance regime for the open space within that phase, including any landscaping and planting buffers, shall be submitted to, and approved in writing by, the local planning authority. Following implementation in accordance with condition 7, the open space shall be managed and maintained in accordance with the approved details.

Trees, Hedges and Landscaping

9. Any trees or shrubs, forming part of the soft landscaping works, which die, become diseased or are damaged within the first five years after planting shall be replaced with a tree or shrub of the same species and size in the following planting season.

10. No trees or hedges shall be cut down, uprooted or destroyed nor shall any retained tree be topped or lopped unless the works are in accordance with the Management Recommendations within the Tree Quality Survey Report dated 9 July 2013 (Report No 1789_R05b_JB_JTF) or have been approved in writing by the local planning authority under condition 7 of this permission. Any lopping or topping shall **be carried out in accordance with "British Standard BS3998:2010 recommendations for Tree Work"**. If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and the specification of the replacement tree or hedge shall be approved in writing by the local planning authority.

11. No works in any phase, including ground preparation, shall commence on the site until all existing trees and hedges to be retained in that phase, in accordance with condition 6, are fully safeguarded by protective fencing and ground protection in accordance with specifications to be submitted to, and approved in writing by, the **local planning authority, following the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction"**. Such measures shall be retained for the duration of the construction works.

Biodiversity

12. The development shall be implemented in accordance with the mitigation measures detailed in the Tyler Grange Updated Ecological Assessment Report of 12 October 2018 and Drawing 11391/P09d.

13. Prior to the commencement of development, a detailed method statement of works with regards to Great Crested Newts shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved method statement.

14. The development shall be delivered in accordance with the Great Crested Newt mitigation and compensation proposals as detailed in Section 5 of the Tyler Grange Updated Ecological Assessment Report of 12h October 2018 and Drawing 11391/P09d hereby approved.

15. Prior to the commencement of development, details of the off-site pond creation, including a methodology and timetable, shall be submitted to, and approved in writing by, the local planning authority. The works shall be carried out in accordance with approved details, methodology and timetable.

16. A habitat creation and management plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The plan shall include:

- a) Description and evaluation of the features to be created and managed;
- b) Ecological trends and constraints on site that may influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually);
and
- g) Personnel responsible for implementation of the plan.

17. No on-site hedgerow/scrub/tree shall be removed between the 1 March and 31 August inclusive, unless the site is surveyed for breeding birds, and a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.

18. Prior to the commencement of each phase of the development a scheme and timetable for the provision of bat and bird boxes, including the numbers and locations for that phase of development, shall be submitted to and approved in writing by the local planning authority. The bat and bird boxes shall be installed in accordance with the approved scheme and timetable. Thereafter the bat and bird boxes shall be retained.

Construction Management

19. No development shall take place in any phase until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the

local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase. The Statement shall provide for:

- a) details of access, including routing of construction traffic, and temporary pedestrian routes;
- b) hours of construction and construction deliveries;
- c) the parking of vehicles of site operatives and visitors;
- d) loading and unloading of plant and materials;
- e) storage of plant and materials used in constructing the development;
- f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- g) wheel washing facilities;
- h) measures to control the emission of dust and dirt during construction; and
- i) a scheme for recycling/disposing of waste resulting from construction works.

Access and Highways

20. The proposed vehicular access, footways and dropped crossing on Darnhall School Lane as detailed on the Proposed Access Plan (Drawing Ref CBO-0149-006 dated 26 April 2013) shall be completed to binder-course level prior to the commencement of the construction of any dwellings on the site.

21. No dwelling shall be occupied until the part of the highway or footway which provides access to it has been constructed in accordance with the approved details up to binder-course level. The surface course shall then be completed within the approved timetable for the relevant phase as approved under condition 7.

Travel Plan

22. Prior to the occupation of each phase of the development, a travel plan for that phase shall be submitted to, and approved in writing by, the local planning authority. The submitted travel plan shall include the objectives, measures and targets set out in the Travel Plan Framework dated 8 July 2013. The approved travel plan shall be operated from first occupation.

Archaeological Work

23. Prior to the commencement of the development of each phase, a programme of archaeological work in accordance with a written methodology of investigation for that phase shall be submitted to, and approved in writing by, the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Drainage

24. No development shall take place in any phase until a scheme for the disposal of surface water and foul drainage for that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall be carried out in accordance with the approved details.

Affordable Housing

25. Prior to the commencement of each phase of development a scheme for the provision of affordable housing in that phase shall be submitted to, and approved in writing by, the local planning authority. The affordable housing shall be 40% of the total number of dwellings to be provided on site, be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- a) The numbers, tenure and location on the site of the affordable housing provision to be made;
- b) The type and mix of affordable dwellings;
- c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- d) The arrangements for the transfer or management of the affordable housing;
- e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
and
- f) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

All parts of the approved scheme for the provision of affordable housing shall be implemented in full.

Local Approach Conditions

Training and Employment

26. The development hereby permitted shall not commence until details of a Training and Employment Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall aim to promote training and employment opportunities during the construction phase for local people by undertaking to meet a target of not less than 50% of the total workforce on the site being resident within the Cheshire West and Chester Council area, of which not less than 20% is within the town of Winsford and the adjacent parishes:

Self-Build Housing

27. Prior to the commencement of the self-build phase of the development, as approved under condition 6, a scheme for the provision of self-build plots shall be submitted to, and approved in writing by the local planning authority. The self-build plots shall be 10% of the total number of the dwellings to be provided on the site and will not be an affordable unit. The self-build plots shall be provided in accordance with the approved scheme. The scheme shall specify:

- (i) The number, location and size of the plots that would be reserved for self-build;
- (ii) That the dwelling that is built is first occupied by the person or family that purchases the plot;

- (iii) The period that the person or family that purchases the plot shall remain in occupation;
- (iv) The roads and services to be provided to service each self-build plot and the phasing thereof;
- and,
- (v) A programme for the marketing of the self-build plots specifying the open market values at which they will be offered.

All parts of the approved scheme for the provision of the self-build plots shall be implemented in full.

28. Details of the self-build units shall be provided to the Council for approval in line with the reserved matters timeframes. In the event that none or any number of the 18 self-build plots are not commencement within 5 years of the date of this planning permission, those plots that remain will be provided as additional affordable housing dwellings over and above the 40% specified in condition 25 above. Within 6 years of the date of this planning permission, a scheme for the provision of these additional affordable housing dwellings shall be submitted to, and approved in writing by, the local planning authority. This affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- a) The numbers, tenure and location on the site of the affordable housing provision to be made;
- b) The type and mix of affordable dwellings;
- c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- d) The arrangements for the transfer or management of the affordable housing;
- e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
- and,
- f) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Local Builders

29. No dwelling which is not an affordable or a self-build unit shall be constructed other than by a builder or company that:

- a) Has its main office or registered office within the Cheshire West and Chester, Chester East or Warrington Borough Council's areas at the date of this permission;
- and
- b) Builds a total of not more than 500 residential units in any one year in the last 5 years prior to development commencing.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel	instructed by Pamela Chesterman, Solicitor Legal Manager, CW&CC
He called	
Beth Fletcher BSc, MSc	Senior Planning Officer, CW&CC
Jill Stephens BA, Dip TP MRTPI	Senior Planning Officer, CW&CC

FOR THE APPELLANT:

Christopher Young, Queens Counsel	Instructed by Gary Halman of GVA HOW Planning
He called	
Ben Pycroft BA, Dip TP MRTPI	Emery Planning
James Stacey, BA, Dip TP, MRTPI	Tetlow King Planning
Jon Suckley, MTCP, MRTPI	GVA How Planning

INTERESTED PERSONS:

Councillor Stephen Burns	Councillor CW&CC
Robin Wood	Chairman Darnhall Fighting Fund and local resident
Brian Clark	Councillor CW&CC, Chair of Winsford Neighbourhood Steering Group
Tony Hooton	Councillor, Winsford Town Council

DOCUMENTS

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

- 1 2018 Planning Statement of Common Ground
- 2 Statement of Common Ground on Five Year Housing Land Supply
- 3 Proof of Evidence of Beth Fletcher with Appendices
- 4 Proof of Evidence of Jill Stephens with Appendices
- 5 Proof of Evidence of Ben Pycroft with Appendices
- 6 Supplemental Affordable Housing Evidence of James Stacey with Appendices
- 7 Rebuttal Affordable Housing Evidence of James Stacey
- 8 Proof of Evidence of Jon Suckley
- 9 Appendices to the Proof of Evidence of Jon Suckley
- 10 Rebuttal Proofs of Evidence of Ben Pycroft and Jon Suckley

DOCUMENTS SUBMITTED AT THE INQUIRY

- 11 Opening Statement of the Appellant
- 12 Opening Statement of the Local Planning Authority
- 13 Statement from Councillor Stephen Burns
- 14 Statement from Robin Wood
- 15 Statement from Councillor Brian Clarke
- 16 Statement from Councillor Tony Hooton
- 17 Housing Land Monitor Report 2017-18
- 18 Extracts from CE&C Economic Dashboard, submitted by the Appellant
- 19 CW&C Inequalities Report, submitted by the Appellant
- 20 WNP Sustainability Appraisal Scoping Report, submitted by the Appellant
- 21 Winsford, Index of Multiple Deprivation 2015, submitted by the Appellant
- 22 Plan of Electoral Wards in Winsford, submitted by the Appellant
- 23 Schedule of WNP Allocations and relevant planning history, submitted by the Appellant
- 24 Plan showing WNP boundary and VRBLP Town Policy Boundary for Winsford, submitted by the Council
- 25 Plan showing CW&CLP P2 proposals for a revised Winsford Settlement Area Boundary, submitted by the Council
- 26 Comparison of housing completions and annual delivery forecasts 2010/11-2017/18, submitted by the Council
- 27 Housing Completions in CW&C 2013/14-2017/18, submitted by the Appellant
- 28 CW&C Affordable Housing Completions 2010/11-2017/18, submitted by the Appellant
- 29 CW&C Report to Cabinet on the Accelerated Construction Fund (grant for Affordable Housing), submitted by the Council
- 30 Letter from "**Cruden**" to the Appellant expressing support for the use of local **SME builders in the proposal's construction**
- 31 Letter from "**J Garratt**" to the Appellant expressing support for the use of **local SME builders in the proposal's construction**
- 32 Letter from "**Moorcroft**" to the Appellant expressing support for the use of **local SME builders in the proposal's construction**
- 33 CW&C Self-build Register, submitted by the Council
- 34 Schedule of Planning Applications for the development of dwellings at Peacock Avenue, submitted by the Appellant

- 35 Schedule of Planning Applications for the development of dwellings at Harewood Close, submitted by the Appellant
- 36 Appeal decision ref: App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, Cheshire, submitted by the Appellant
- 37 SoCG between CW&CC and Redrow Homes, App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, submitted by the Appellant
- 38 Gladman Developments and Daventry District Council and SoS, Court of Appeal ref: C1/2015/4315, submitted by the Council
- 39 Amstel Group Corporation and SoS and North Norfolk District Council, Royal courts of Justice ref: CO/3750/2017, submitted by the Council
- 40 Draft conditions as agreed in principle by the parties prior to the commencement of the Inquiry
- 41 Draft conditions as agreed and amended during the Inquiry with tracked changes
- 42 Conditions as amended and agreed at the close of the Inquiry with tracked changes
- 43 Closing submissions of the Local Planning Authority
- 44 Closing submissions of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 45 Revised Planning Obligation by way of Agreement under S106 of the T&CPA 1990, (Financial contributions towards off-site leisure provision), submitted by the Appellant
- 46 Planning Obligation by way of Unilateral Obligation under S106 of the T&CPA 1990, (Local Approach), submitted by the Appellant
- 47 Appeal decision: App/A0665/W/14/2212671, Land south of Oakridge, Highnam, Gloucestershire, with supporting letter from the Appellant
- 48 Letters of 07 January 2019, to the main parties, informing them that the Inquiry is closed
- 49 Correspondence with the main parties about conditions and obligations
- 50 Correspondence with the main parties about pooled contributions, as set out in Regulation 123 of the CIL Regulations, in the context of the S106 Agreement
- 51 CW&C, Land at Darnhall School Lane, Winsford, Statement of compliance with CIL, submitted by the Council
- 52 Correspondence with the main parties about revisions to the NPPF

CORE DOCUMENTS

Core Document Reference	File Reference	Title	Document Reference	
		Planning Application Form		
CD1/1	CD1 – CD3	Planning Application Form	-	
		Decision Notice and Reporting		
CD2/1	CD1 – CD3	CWaC Decision Notice	13/03127/OUT	
CD2/2		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (November 2013)	-	
CD2/3		Planning Committee Transcript (January 2014)	-	
CD2/4		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (18 June 2015)	-	
CD2/5		CWaC Strategic Planning Board Minutes (18 June 2015)	-	
CD2/6		Officers Report for 13/03127/OUT to Planning Committee (4 September 2018)	-	
CD2/7		Planning Inspectorate reference APP/A0665/A/2212671: SoS Decision Letter and Inspector's Reports (7 July 2016)	-	
		Site Location Plan		
CD3/1	CD1 – CD3	Site Location Plan	HP/WIN/LP/01	
		Original Submission Plans		
CD4/1	CD4 File 1	Access Plan [replicated by CBO-0149-010]	CBO-0149-006	
CD4/2		Illustrative Sketch Masterplan	HP/WIN/SKMP01	
CD4/3		Parameters Plan [Superseded by HP/WIN/PP01 Rev B]	HP/WIN/PP01	
CD4/4		Topographical Land Survey	S13-199	
		Original Submission Documents		
CD4/5	CD4 File 1	Application Covering Letter	-	
CD4/6		Supporting Planning Statement (including Affordable Housing Statement and Section 106 Heads of Terms)	-	
CD4/7		Statement of Community Involvement	-	
CD4/8		Transport Assessment	-	
CD4/9		Travel Plan Framework	-	
CD4/10		Ecological Assessment [Superseded by August Version]	-	
CD4/11		Landscape and Visual Impact Assessment	-	
CD4/12		Tree Quality Survey, Root Protection Areas and Development Implications	-	
CD4/13		CD4 File 2	Air Quality Assessment	-
CD4/14			Noise Impact Assessment	-
CD4/15	CD4 File 2	Flood Risk and Surface Water Drainage Assessment	-	
CD4/16		Archaeological Desk-Based Assessment	-	
CD4/17		Phase 1 Geo-Environmental Ground Investigation	-	
CD4/18	CD4 File 3	Agricultural Land Classification Assessment	-	
CD4/19		Proposed Waste Management Strategy	-	
CD4/20		Outline Utilities Strategy	-	
CD4/21		Socio-Economic Impact Assessment	-	

Core Document Reference	File Reference	Title	Document Reference
Additional Plans and Documents			
CD5/1	CD5	Proposed Highway Improvements: Swanlow Lane/ Townfields Road Signals Plan	CBO-0149-009
CD5/2		Walking & Cycling Catchment and Site Accessibility	Figure A
CD5/3		Boundary Treatment Proposals Plan	1789/P07a
CD5/4		Parameters Plan	HP/WIN/PP01 Rev B
CD5/5		EIA Screening Report, Covering Letter and Email	-
CD5/6		Ecological Assessment – 13 August 2013	-
CD5/7		CWaC EIA Screening Opinion Letter	-
CD5/8		National Planning Casework Unit EIA Letter	-
CD5/9		Addendum to Ecological Assessment	-
CD5/10		Technical Note: Review of Swanlow Lane / Townfields Road Signal Junction Improvement	-
2018 Additional Plans and Documents			
CD5/11	CD5	Updated Transport Assessment	-
CD5/12		Updated Ecology Note	-
CD5/13		Indicative On-site Open Space Plan	HP/WIN/IOSP/01
CD5/14		Phasing Plan	HP/WIN/IPP/0
Design and Access Statement			
CD6/1	CD6 – CD10	Design and Access Statement	-
Correspondence (with DCLG/ PINS/ CwaC)			
CD7/1	CD6 – CD10	Communities and Local Government Letter to Reopen Inquiry 14 April 2015	-
CD7/2		Letter J Stephens 21 March 2014	-
Statement of Common Ground			
CD8/1	CD6 – CD10	Copy Statement of Common Ground 2015	-
Grounds of Appeal			
CD9/1	CD6 – CD10	Grounds of Appeal	-
Statement of Case			
CD10/1a	CD6 – CD10	Statement of Case (January 2014)	-
CD10/1b		Statement of Case (July 2015)	-
CD10/2		Statement of Case (December 2017)	-
CD10/3		CwaC Statement of Case (December 2017)	-
Additional Council Core Documents			
CD11/1	CD11	Appeal decisions: APP/A0665/A/15/3129628. Land adjacent to Shepherds Fold Drive, Winsford	-
CD11/2	CD11	Appeal decisions: APP/A0665/W/16/3151068. West Winds, Chester Lane, Winsford.	-
CD11/3		High Court Decision: Cawrey Limited v SoSCLG (2016) EWHC 1198	-
CD11/4		High Court Decision: De Souza v SoSCLG EWHC 2245	-
CD11/5		Land Allocations Background Paper (2017)	-
CD11/6		Brownfield Register	-

Core Document Reference	File Reference	Title	Document Reference
CD11/7		Appeal decision Land South of Watlington Road, Benson	-
CD11/8		CWaC Self-build Register	-
		National Planning Policy and Ministerial Statements	
CD12/1	CD12 File 1	National Planning Policy Framework (July 2018)	-
CD12/2		National Planning Practice Guidance: Housing and economic land availability assessment (September 2018)	-
CD12/3		(Superseded) National Planning Practice Guidance: Delivering a wide choice of quality homes (March 2012)	-
CD12/4		Sajid Javid's speech to the Federation of Master Builders 12 December 2017	-
CD12/5		Autumn Budget (November 2017 by Philip Hammond MP)	-
CD12/6	CD12 File 2	House of Commons Briefing Paper: Self-Build and Custom Build Housing (March 2017)	-
CD12/7		Housing White Paper – Fixing our Broken Housing Market (February 2017)	-
CD12/8		Support for small scale developers, custom and self-builders – Housing and Growth Ministerial Statement by The Minister of State for Housing and Planning (Brandon Lewis on 28 November 2014)	-
CD12/9		Lyons Housing Review: Mobilising across the nation to build the homes our children need (October 2014)	-
CD12/10		Announcement – Government investment to build thousands of new homes (Eric Pickles on 26 June 2014)	-
CD12/11		Laying the Foundations: A Housing Strategy for England (November 2011)	-
CD12/12		Homes England Strategic Plan 2018/19 – 2022/23	-
CD12/13		Housing delivery test measurement rule book (July 2018)	-
CD12/14		Technical consultation on updates to national planning policy guidance (26 October 2018)	-
		Local Plan Policy and Guidance	
CD13/1	CD13 File 1	Cheshire West and Chester Local Plan (Part One) (adopted January 2015)	-
CD13/2	CD13 File 1	Vale Royal Borough Local Plan – Policies saved after 29 Jan 2015	-
CD13/3a		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014)	-
CD13/3b		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014) - Appendices Main Modifications	
CD13/4		Council's Annual Monitoring Report 2018	-
CD13/5	CD13 File 2	Housing Land Monitor 2017-18	-

Core Document Reference	File Reference	Title	Document Reference
CD13/6		Housing and Economic Land Availability Assessment (2017)	-
CD13/7		Council Plan (2016-2020)	-
CD13/8		Strategic Housing Market Assessment (2013)	-
CD13/9		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 8: the supply and delivery of housing land	-
CD13/10		ED112: Council note to the Inspector on communal establishments and housing requirement	-
		Emerging Development Plan Background Documents	
CD14/1	CD14 – CD16	Local Plan (Part Two) Land Allocations and Detailed Policies – Submission Plan	-
CD14/2		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 3: the supply and delivery of housing	-
		Neighbourhood Guidance	
CD15/1	CD14 – CD16	Winsford Neighbourhood Plan (Made 19 November 2014)	-
CD15/2		Winsford Neighbourhood Plan Examiner's Report (30 July 2014)	-
		Court Cases	
CD16/1	CD14 – CD16	Verdin (T/A The Darnhall Estate) v The Secretary of State for Communities and Local Government and Others (Neutral Citation Number: [2017] EWHC 2079 (admin))	-
CD16/2		Woodcock Holdings Ltd v The Secretary of State for Communities and Local Government (Neutral Citation Number: [2015] EWHC 1173 (Admin))	-
CD16/3		Ivan Crane vs Secretary of State and Harborough District Council (Neutral Citation Number: [2015] EWHC 425 (Admin))	-
CD16/4	CD14 – CD16	R (Cherkley Campaign Limited) v Mole Valley District Council (Neutral Citation Number: [2014] EWCA Civ 567)	-
CD16/5	CD14 – CD16	Coleman v Secretary of State (Neutral Citation Number: [2013] EWHC 1138 (Admin))	-
CD16/6		R v Rochdale MBC ex parte Milne (Neutral Citation Number: [2000] EWHC 650 (Admin))	-
CD16/7		Allaston Developments Limited v Secretary of State and Others (Claim No. CO/476/2016)	-
CD16/8		Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) (Neutral Citation Number: [2017] UKSC 37)	-

Core Document Reference	File Reference	Title	Document Reference
		Appeal Decisions	
CD17/1	CD17 File 1	Planning Inspectorate appeal reference APP/A0665/V/15/3013622: Land At Clifton Drive, Sealand Road, Chester; <u>Secretary of State Decision</u> (27 February 2018)	-
CD17/2		Planning Inspectorate appeal reference APP/P1615/A/14/2218921RD: Land Off Driffield Road, Allaston Road, and Court Road, Lydney, Gloucestershire; <u>Secretary of State Decision</u> (7 November 2017)	-
CD17/3		Planning Inspectorate appeal reference APP/A0665/A/12/2188464: Land Opposite Brook Hall Cottages, Chester Road, Tattenhall; <u>Secretary of State Decision</u> (21 April 2017)	-
CD17/4	CD17 File 2	Planning Inspectorate appeal reference APP/A0665/A/12/2185667: Land To The Rear Of 15-38 Greenlands, Tattenhall, Cheshire; <u>Secretary of State Decision</u> (21 April 2017)	-
CD17/5		Planning Inspectorate appeal reference APP/A0665/A/12/2180958: Land Adjacent To Adari, Chester Road, Tattenhall, Cheshire; <u>Secretary of State Decision</u> (21 April 2017)	-
CD17/6	CD17 File 3	Planning Inspectorate appeal reference APP/F2415/A/14/2213765: Land Off Dunton Road, Broughton Astley, Leicestershire; <u>Secretary of State Decision</u> (20 March 2015)	-
CD17/7		Planning Inspectorate appeal reference APP/K2420/A/13/2208318: At Land Surrounding Sketchley House, Watling Street, Burbage, Leicestershire; <u>Secretary of State Decision</u> (18 November 2014)	-
CD17/8	CD17 File 3	Planning Inspectorate appeal reference APP/H1840/A/13/2199426: Pulley Lane, Droitwich Spa; <u>Secretary of State Decision</u> (2 July 2014)	-
CD17/9		Planning Inspectorate appeal reference APP/F2415/A/12/2183653: Site At Land South Of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire; <u>Secretary of State Decision</u> (17 April 2014)	-
CD17/10		Planning Inspectorate appeal reference APP/P3040/A/07/2050213: Land at Gotham Road, East Leake, Nottinghamshire, LE12 6JG; <u>Secretary of State Decision</u> (3 March 2008)	-
CD17/11		Planning Inspectorate appeal reference APP/C1950/W/17/3190821: Entech House, London Road, Woolmer Green SG3 6JE; <u>Inspector Appeal Decision</u> (26 October 2018)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/12		Planning Inspectorate appeal reference APP/W3520/W/18/3194926: Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF; <u>Inspector Appeal Decision</u> (28 September 2018)	-
CD17/13		Planning Inspectorate appeal reference APP/P0119/W/17/3191477: Land east of Park Lane, Coalpit Heath, South Gloucestershire; <u>Inspector Appeal Decision</u> (6 September 2018)	-
CD17/14		Planning Inspectorate appeal reference APP/N1730/W/17/3185513: Broden Stables, Redlands Lane, Crondall, Farnham GU10 5RF; <u>Inspector Appeal Decision</u> (23 August 2018)	-
CD17/15		Planning Inspectorate appeal reference APP/J0405/W/16/3158833: Land north of Aylesbury Road, Wendover, Buckinghamshire; <u>Inspector Appeal Decision</u> (9 October 2017)	-
CD17/16		Planning Inspectorate appeal reference APP/F4410/W/16/3158500: Land off Westminster Drive, Dunsville, Doncaster, South Yorkshire DN7 4QF; <u>Inspector Appeal Decision</u> (12 July 2017)	-
CD17/17		Planning Inspectorate appeal reference APP/V4250/A/14/2226998: Land South West of Bee Lane, Atherton, Wigan; <u>Inspector Appeal Decision</u> (17 July 2015)	-
CD17/18	CD17 File 3	Planning Inspectorate appeal reference APP/A0665/W/14/3001859: Land off Boundary Park, Parkgate, Neston, Cheshire CH64 6TN; <u>Inspector Appeal Decision</u> (7 July 2015)	-
CD17/19		Planning Inspectorate appeal reference APP/Y2810/A/14/2225722: Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton; <u>Inspector Appeal Decision</u> (18 June 2015)	-
CD17/20		Planning Inspectorate appeal reference APP/A2470/A/14/2222210: Greetham Garden Centre, Oakham Road, Greetham, Oakham; <u>Inspector Appeal Decision</u> (26 May 2015)	-
CD17/21		Planning Inspectorate appeal reference APP/N1350/A/14/2217552: Land off Sadberge Road, Middleton St George, Darlington; <u>Inspector Appeal Decision</u> (12 January 2015)	-
CD17/22		Planning Inspectorate appeal reference APP/Z2830/A/14/2216712: Land off Grays Lane, Paulerspury, Towcester NN12 7NW; <u>Inspector Appeal Decision</u> (9 January 2015)	-
CD17/23		Planning Inspectorate appeal reference APP/D0840/A/13/2209757: Land north of Upper Chapel, Launceston; <u>Inspector Appeal Decision</u> (11 April 2014)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/24		Planning Inspectorate appeal reference APP/F2360/W/18/3198822: Land off Brindle Road, Bamber Bridge, Preston, PR5 6YP; <u>Inspector Appeal Decision</u> (31 August 2018)	-
CD17/25		Planning Inspectorate appeal reference APP/X0415/W/18/3202026: Land to the rear of the Old Red Lion, High Street, Great Missenden, HP16 0AU; <u>Inspector Appeal Decision</u> (4 September 2018)	-
CD17/26	CD17 File 4	Planning Inspectorate appeal reference APP/U3935/W/17/3192234: Land at Hill Cottage, Ermin Street/Blunsdon Hill, Broad Blunsdon, Swindon; <u>Inspector Appeal Decision</u> (18 October 2018)	-
CD17/27		Planning Inspectorate appeal reference APP/C1760/W/17/3170081: Abbotsford, Braishfield Road, Romsey, Hampshire SO51 0PB; <u>Inspector Appeal Decision</u> (24 November 2017)	-
CD17/28		Planning Inspectorate appeal reference APP/F1610/W/16/3165805: Land at The Leasows, Chipping Campden GL55 6EB; <u>Inspector Appeal Decision</u> (2 November 2017)	-
CD17/29	CD17 File 4	Planning Inspectorate appeal reference APP/D0840/W/16/3142806: Land off Tregenna Lane, Camborne TR14 7QU; <u>Inspector Appeal Decision</u> (09 February 2017)	-
CD17/30		Planning Inspectorate appeal reference APP/R3705/W/16/3155070: Land North of Manor Barns, Newton Lane, Austrey, Warwickshire CV9 3EP; <u>Inspector Appeal Decision</u> (14 November 2016)	-
CD17/31		Planning Inspectorate appeal reference APP/W3005/W/16/3150467: Land between Pleasley Road and North of Mansfield Road, Skegby, Sutton in Ashfield, NG17 3BS; <u>Inspector Appeal Decision</u> (5 October 2016)	-
CD17/32		Planning Inspectorate appeal reference APP/C1625/W/15/3133335: Land rear of Canonbury Street, Berkeley, Gloucestershire; <u>Inspector Appeal Decision</u> (21 November 2016)	-
CD17/33		Planning Inspectorate appeal reference APP/L3245/W/15/3137161: Land at Foldgate Lane, Ludlow, Shropshire; <u>Inspector Appeal Decision</u> (10 November 2016)	-
CD17/34		Planning Inspectorate appeal reference APP/A0665/W/15/3140241: Land at Park Farm, Rudheath, Northwich, Cheshire CW9 7HF; <u>Inspector Appeal Decision</u> (12 May 2016)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/35		Planning Inspectorate appeal reference APP/H1840/W/15/3008340: Land off Worcester Road, Drakes Broughton, Worcestershire; <u>Inspector Appeal Decision</u> (14 January 2016)	-
CD17/36		Planning Inspectorate appeal reference APP/H1840/W/15/3005494: Walcot Meadow, Walcot Lane, Drakes Broughton, Pershore, Worcestershire; <u>Inspector Appeal Decision</u> (4 August 2015)	-
CD17/37		Planning Inspectorate appeal reference APP/A0665/A/14/2227851: Land to the rear of 32 and 32A High Street, Tarporley, Cheshire; <u>Inspector Appeal Decision</u> (25 February 2016)	-
CD17/38		Planning Inspectorate appeal reference APP/K3415/A/14/2225799: At Land To The North Of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire; <u>Secretary of State Decision</u> (13 February 2017)	-
CD17/39	CD17 File 4	Planning Inspectorate appeal reference APP/K3415/A/14/2224354: Land And Buildings Off Watery Lane, Curborough, Lichfield WS13 8ES; <u>Secretary of State Decision</u> (13 February 2017)	-
CD17/40		Planning Inspectorate appeal reference APP/A0665/W/14/3000528: Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire CW9 8JU; <u>Inspector Appeal Decision</u> (3 September 2015)	-
CD17/41		Planning Inspectorate appeal reference APP/A0665/A/14/2226994: Land at Fountain Lane, Davenham, Cheshire; <u>Inspector Appeal Decision</u> (3 September 2015)	-
CD17/42		Planning Inspectorate appeal reference APP/C3105/A/14/2226552: Land At Sibford Road, Hook Norton, Banbury, Oxfordshire; <u>Secretary of State Decision</u> (7 September 2015)	-
CD17/43		Planning Inspectorate appeal reference APP/G1630/W/14/3001706: Land adjacent to Cornerways, High Street, Twynning, Tewkesbury GL20 6DE; <u>Inspector Appeal Decision</u> (13 July 2015)	-
CD17/44		Planning Inspectorate appeal reference APP/A0665/A/14/2214400: Land at Well Meadow, Well Street, Malpas, Cheshire, STY14 8DE; <u>Secretary of State decision</u> (7 January 2015)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/45		Planning Inspectorate appeal reference APP/K0235/W/16/3147287: Land to the south and west of Whitworth Way, Wilstead, Bedfordshire; ; <u>Inspector Appeal Decision</u> (29 March 2017)	-
CD17/46		Planning Inspectorate appeal reference APP/X1545/W/15/3009772: Southminster Road, Burnham-On-Crouch, Essex; <u>Secretary of State Decision</u> (20 April 2017)	-
Other Documents			
CD18/1	CD18	Federation of Master Builders, House Builders Survey (September 2018)	-
CD18/2		House Builder Federation, Reversing the Decline and Small House Builders Report (March 2017)	-
CD18/3		Torbay Local Plan 2012 to 2030	-
CD18/4		Federation of Master Builders, Improving public procurement for construction SME(June 2013)	-
CD18/5		Planning for Custom Build Housing – A Practice Guide, National Self Build Association (November 2012)	-
CD18/6	CD18	The City of London Corporation, Local Procurement Charter For City Developers (February 2011)	-
CD18/7		HOW Planning Representations to CwaC Local Plan (Part Two) 29 January 2018	-
CD18/8		An introduction to the Home Building Fund	-
CD18/9		HBF Chairman's Update – November 2017	-
CD18/10		Report to Cotswold District Council	-



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

EP1F



Ministry of Housing,
Communities &
Local Government

Our ref: APP/Z1510/V/17/3180729

Mr Jonathan Dixon
Savills (UK) Ltd
Unex House
132-134 Hills Road
Cambridge
CB2 8PA

8 July 2019

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY DAVID WILSON HOMES EASTERN
LAND EAST OF GLENEAGLES WAY, HATFIELD PEVEREL, CM3 2JT
APPLICATION REF: 16/02156/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry from 12 December 2017 to 30 January 2018 into your client's application for outline planning permission for residential development of up to 120 dwellings, together with associated open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel in accordance with application ref: 16/02156/OUT, dated 16 December 2016.
2. On 12 July 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that that planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated and agrees with his recommendation. He has decided to grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. On 21 June 2018 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the judgement of the Court of

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Justice of the European Union (CJEU) in Case C-323/17 People Over Wind and Sweetman v Coillte Teoranta on the correct application of the Habitats Directive 92/43/EEC, which was handed down on 12 April 2018.

6. On 1 August 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the new National Planning Policy Framework, which was published on 24 July 2018.
7. On 2 October 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the revised guidance on how councils should assess their housing need, which was published on 13 September 2018, and on new household projections for England published by the Office of National Statistics on 20 September 2018.
8. On 5 March 2019, the Secretary of State wrote to the main parties, to afford them an opportunity to make representations on the implications, if any, on the following documentation:
 - Written Ministerial Statement (WMS) on housing and planning issued on 19 February 2019
 - 2018 Housing Delivery Test measurement data published on 19 February 2019
 - The Government's response to the technical consultation on updates to national planning policy and guidance, dealing with the calculation of Local Housing Need and other matters, including the People Over Wind and Sweetman v Coillte Teoranta issue, published 19 February 2019.
 - Revised National Planning Policy Framework, published on 19 February 2019.
 - Updated guidance for council's on how to assess their housing needs (document).
 - Braintree District Council's latest published 5 year supply statement, January 2019 (see also paragraphs 36 to 43 of this letter).
 - Latest position statement with regard to the emerging Hatfield Peverel Neighbourhood Plan, and weight to be attached to that.
 - Three recent planning casework decisions (brought to the Secretary of State's attention by the Stone Path Meadow Residents Group - SPMRG).
9. A list of representations received in response to these letters, is set out at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. In addition, a number of representations were received following the close of the inquiry. These raised a variety of issues, and are dealt with under the considerations of main issues below. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is also at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
12. In this case the development plan consists of the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR25-32.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

14. The emerging plan comprises the Braintree New Local Plan (BNLP) and the Hatfield Peverel Neighbourhood Development Plan (NDP). The Secretary of State considers that the emerging BNLP policies of most relevance to this case include those set out in IR34-38 and the emerging NDP policies of most relevance are HPE1, HPE2 and HPE6 as described at IR41-42.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
16. At the time of the Inquiry the examination hearings into part 1 of the BNLP were due to commence in January 2018, with Part 2 to follow at a later date. The Secretary of State notes that on 8 June 2018, the Inspector for the emerging Local Plan wrote to the three local planning authority areas covered by the Part 1 Examination, setting out his views as to the further steps he considered necessary in order for the Section 1 Plan to be made sound and legally-compliant, and seeking views on options to pursue these matters. A joint response from the three authorities dated 19 October proposed suspending the Examination until February 2019, with a view to sitting again in June. In the light of these letters, and for the reasons given in IR425-428, the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLP.
17. The Secretary of State notes that while some progress has been made with regard to the NDP since the close of the Inquiry, the further examination of the NDP has not yet concluded. For the above reasons, and for the reasons given in IR429-431, the

Secretary of State agrees with the Inspector that very limited weight can be given to the NDP at this stage.

Main issues

Policies in the Framework on delivering a wide choice of high quality homes

18. For the reasons given in IR420-422, the Secretary of State agrees with the Inspector that the Green Infrastructure Plan and Design and Access Statement set important context and establish important principles at this outline application stage, and that there is no evidence to suggest that the application site will not provide a range of high quality homes.

The extent to which the proposed development is consistent with the development plan for the area

19. For the reasons given in IR435-437, the Secretary of State agrees with the Inspector that although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight, and he considers that a moderate weighting is appropriate. The Secretary of State further agrees with the Inspector for the reasons in IR435-437 that the appeal proposals would be in accordance with the spatial strategy. For the reasons given in IR438-446, the Secretary of State further agrees with the Inspector that there is a conflict with adopted development plan policies RLP2 and CS5, concerning development outside of defined boundaries of settlements, where countryside policies apply. The Secretary of State further agrees with the Inspector that the conflict with policies RLP2 and CS5 should attract moderate weight when it comes to the overall planning balance, given that they would act to restrict the supply of housing and frustrate the aim of the Framework paragraph 59. He notes that the local planning authority in their representation of 22 October 2018 share his view as to the weight to be attached to policies RLP2 and CS5 at this time.

The effect of the development on the landscape character of the area and the visual impact that the development would have

20. The Secretary of State agrees with the Inspector's view in IR448 that it is necessary to take into account the context of the appeal site, and notes the historic pattern of growth described in IR 448-449. For the reasons given in IR450-458 the Secretary of State agrees with the Inspector at IR459 that the studies presented set an important context for an assessment of the effect of the development proposed on the character of the landscape, and that none of the studies suggest that suitably designed development could not be accommodated. However, the Secretary of State also acknowledges that the development would have some adverse effect on landscape character by the replacement of a small arable field with a housing development. The impact however would be very localised and limited.
21. In terms of visual impact, for the reasons given in IR461-472, the Secretary of State agrees with the Inspector's assessments of the impact of the development on views

across the site to the landscape beyond and views back towards the settlement edge from distance.

22. For the reasons given in IR473-478 the Secretary of State agrees with the Inspector that the development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape, and enhance the settlement edge as it appears as a feature in the landscape. He finds no conflict with the landscape elements of policy RLP 80, or of the third paragraph of policy CS8.
23. For the reasons given in IR479, the Secretary of State agrees with the Inspector that while harm in relation to visual impact has been identified, this can only attract limited weight. In particular, he agrees with the Inspector's view on the very limited weight to be attached to policy HPE6 of the emerging NDP concerning protected views, given concerns around the evidence base supporting that policy as well as the more general point around progress on that plan.

The effect of the development on community infrastructure

Education

24. The Secretary of State notes that by virtue of his decision on this case and on the proposals at land off Stone Path Drive, Hatfield Peverel, that the four residential developments listed in the letter attached to the Education Statement of Common Ground (Inquiry Document ID1.8) are now being taken forward. There is therefore a need for additional primary school capacity. While the issue will resolve itself over time through the operation of the admissions policy, there would be a short term impact which is most likely to manifest itself through additional journeys to school, either by bus or private car.

Health

25. The Secretary of State notes the Inspector's summary of evidence submitted on health matters at IR487-489, and has considered the subsequent closure of the Sydney House and Laurels surgeries to new registrations.
26. The Secretary of State remains of the view, for the reasons set out by the Inspector in IR490-492, that in terms of both health and education, the Appellant has entered into planning obligations to make all the contributions that have been requested to mitigate any effect from the appeal scheme, and that a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Erosion of gap between Hatfield and Witham

27. For the reasons given in IR493-494, the Secretary of State agrees with the Inspector that this matter has "material planning consideration" status, and that there would be a conflict with emerging NDP policy HPE1. He notes the current position with the emerging BNLP described in IR495, and the matters at IR497-498 which could fall to be addressed by the appointed examiner for the emerging NDP.
28. For the reasons given in IR500-504, the Secretary of State agrees with the Inspector that the loss of the field to residential development would have no perceptible effect on the effective gap between Hatfield Peverel and Witham, and that only very limited weight can be given to the conflict with policy HPE1.

Loss of best and most versatile agricultural land

29. All parties were content to proceed on the basis that the application site should be considered to be best and most versatile agricultural land. For the reasons given in IR505-509, the Secretary of State agrees that the application proposal would not protect best and most versatile agricultural land as required by policy CS8, and also that policy CS8 is inconsistent with paragraphs 170, 171 and footnote 53 of the Framework. In accordance with Framework paragraph 213, the Secretary of State finds that limited weight should be given to the conflict with policy CS8.

Other matters

30. A post-inquiry representation referred to the cancellation of one bus route that served Hatfield Peverel. The Secretary of State has taken this into account, but remains of the view that Hatfield Peverel still demonstrates good public transport links.

Appropriate Assessment

31. Following the reference back to parties exercise described in paragraph 5 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this application and presented to the inquiry is no longer legally sound.

32. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an Appropriate Assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Annex C. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

33. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where a plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the that the plan or project will not adversely affect the integrity of the habitats site.

Five year housing land supply

34. The Secretary of State has considered the Inspector's findings as regards housing land supply at IR512-516. However, following the publication of the revised Framework, guidance on the calculation of local housing need, and revised household forecasts, he has set out his own conclusions below.

35. Paragraph 73 of the Framework indicates that in the circumstances of this case, local housing need should be applied. The Secretary of State has therefore calculated the local housing need figure based on the methodology published alongside the revised Framework 19 February 2019.

36. On 11 April 2019, the local authority published an Addendum to their Monitoring Report, and a 5 Year Supply Site Trajectory. This reflected the Housing Delivery Test 2018 data

published in February 2019; new affordability ratios published by the Office for National Statistics on 28 March 2019, and additional information relating to supply of sites.

37. In summary, the Addendum set out a 5 year land supply position for the authority of 5.29 years. While the version of the monitoring statement on which the Secretary of State referred back to parties was published on 15 January 2019, given the minor change in the authority's assessment from 5.42 years supply to 5.29 years, and given his conclusions below, the Secretary of State did not consider it necessary to further refer back to parties on this issue.
38. The Secretary of State has reviewed the material published on 11 April 2019, and has also considered the representations of parties made on this issue in response to his letter of 5 March 2019 and, subsequent emails recirculating representations that had been received.
39. Planning Practice Guidance states that in principle an authority will need to be able to demonstrate a 5 year land supply at any point to deal with applications and appeals, unless it is choosing to confirm its 5 year land supply, in which case it need demonstrate it only once per year. *Paragraph: 038 Reference ID: 3-038-20180913*
40. In this case, the authority has not chosen to confirm its 5 year land supply. Paragraph 74 of the National Planning Policy Framework sets out that this can only be carried out through a recently adopted plan (defined in footnote 38 of the Framework) or subsequent annual position statement. In the circumstances, the Secretary of State has therefore considered the latest evidence before him.
41. Having reviewed the housing trajectory published on 11 April 2019, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission does not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site within five years. He has therefore removed 10 sites from the housing trajectory, these are listed at Annex D to this letter.
42. The Secretary of State considers that, bearing this definition in mind, the authority are able to demonstrate around 4.15 years supply.
43. The Secretary of State has therefore concluded that the authority is unable to demonstrate a 5 year housing land supply. Given this finding, and the objective of significantly boosting the supply of new homes, he attaches great weight to the provision of housing.

Planning conditions

44. The Secretary of State has given consideration to the Inspector's analysis at IR394-413, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy tests set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

45. Having had regard to the Inspector's analysis at IR414-417, the planning obligation dated 8 January 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR418 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.
46. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application. Having had regard to the Inspector's analysis at IR414-417, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

47. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies RLP 2 and CS5 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
48. The Secretary of State has concluded that the authority is not able to demonstrate a 5-year supply of housing land, therefore the presumption in favour of sustainable development applies because of the effect of paragraph 177 of the revised Framework (as set out in paragraph 33 of this letter above).
49. The Secretary of State considers that the housing benefits of the proposal carry great weight, and the economic benefits in terms of jobs and increased expenditure carry moderate weight. He attaches limited weight to the enhanced biodiversity arising from the new boundary planting.
50. The Secretary of State considers that the conflict with the adopted development plan policies attract moderate weight, and that harm caused in relation to visual impact is limited. He further concludes that only very limited weight can be attached to conflict with policy HPE6 of the emerging NDP. He attaches very limited weight to the conflict with emerging policy HPE1 which seeks to address the coalescence of settlements and limited weight to the conflict with policy CS8 (BMVL).
51. Overall, the Secretary of State concludes that there are material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that planning permission should be granted.

Formal decision

52. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to the conditions set out in Annex B of this decision letter for residential development of up to 120 dwellings, together with associated open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel in accordance with application ref: 16/02156/OUT, dated 16 December 2016.

53. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
56. A copy of this letter has been sent to Braintree District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

General representations

Party	Date
Mr East	14 and 26 March, 23 May and 7 September 2018
Rt Hon Priti Patel MP, encl correspondence from Mr East and Mr Ellison	15 March 2018
Mr Kearns	22 March, 18 April and 5 June 2018
Cllr Derrick	6 April 2018
Mr Simmonds	6 June 2018
Rt Hon Priti Patel MP	2 October 2018
Hatfield Peverel Parish Council	12 November 2018 and 18 February 2019

Representations received in response to the Secretary of State's reference back letter of 21 June 2018

Party	Date
Hatfield Peverel Parish Council	6 August (x3) 2018

Representations received in response to the Secretary of State's reference back letter of 1 August 2018

Party	Date
Hatfield Peverel Parish Council	14 and 29 August (x2) and 5 September 2018
Savills	15 August 2018

Representations received in response to the Secretary of State's reference back letter of 2 October 2018

Party	Date
Hatfield Peverel Parish Council	10 and 22 October 2018
Savills	11 and 19 October 2018
Braintree District Council	22 October 2018

Representations received in response to the Secretary of State's reference back letter of 5 March 2019

Party	Date
Hatfield Peverel Parish Council	25 March, 2 and 18 April 2019
Savills	25 March (x3) and 2 April (x2) 2019
Braintree District Council	26 March 2019

Annex B List of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 120 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the approved plans listed below:
Approved Plans:

Location Plan:	1296/01 FINAL
Access Details:	45604-P-SK205
- 5) Prior to first occupation of the development hereby permitted the provision of the following works shall have been completed, details of which shall have been submitted to and approved in writing by the local planning authority prior to implementation:
 - The access to the application site shown in principle on drawing 45604-P-SK205
 - The cycle/pedestrian access between Gleneagles Way and Glebefield Road as shown in principle on Drawing 45604-P-SK200
 - Improved no entry signage at the end of the A12 southbound off-slip for drivers on The Street, plus improved speed limit signs and road markings for drivers leaving the A12 as show in principle on Drawing 45604-P-SK202
 - Improvements to the visibility splay from Gleneagles Way towards the A12 southbound off-slip shown on Drawing 45604-P-SK20 to include trimming/removal of vegetation/trees, relocation/replacement of signs/street furniture/lamp column(s), regrading/hardening of highway land.
 - A footway and (A12) road signage improvements at The Street/A12 north bound on-slip junction as shown in principle on Drawing 45604-P-SK201.
 - Improvements to the (A12) road signage, kerb alignment and road markings at The Street/Maldon Road as shown in principle on Drawing 45604-P-SK201.
 - The provision of dropped kerbs and associated works where the footway from Hatfield Peverel to Witham crosses the A12 northbound on-slip to the south of the Petrol Filling Station (former Lynfield Motors site), Hatfield Road, Witham.
 - The provision of a zebra crossing on B1019 Maldon Road in the approximate position shown on Drawing 45604-P-SK207
- 6) **No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.**
- 7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

- 8) Together with any submission of reserved matters, details of sound insulation measures must be submitted to and approved in writing by the local planning authority. The details must demonstrate that internal noise levels do not exceed 35 dB LAeq 16 hour in living rooms during the daytime (07:00 - 23:00) and also do not exceed 30 dB LAeq 8 hour in bedrooms during the night-time period (23:00 - 07:00) as set out in BS 8233: 2014. In addition, the details must demonstrate that maximum night-time noise levels in bedrooms should not exceed 42 dB L_{Amax} more than 10 to 15 times per night. The development must be carried out in accordance with the approved details.
- 9) Together with any submission of reserved matters, details of the proposed boundary mitigation (noise barrier) must be submitted to and approved in writing by the local planning authority. The details must demonstrate that external noise levels will not exceed 55 dB LAeq 16 hour in any of the private residential gardens. The development must be carried out in accordance with the approved details.
- 10) Prior to the commencement of development hereby permitted, a wildlife protection plan shall be submitted and approved by the local planning authority identifying appropriate measures for the safeguarding of protected species and their habitats within that Phase. The plan shall include:

an appropriate scale plan showing protection zones where any construction activities are restricted and where protective measures will be installed or implemented;

details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;

details of how development work will be planned to mitigate potential impacts on protected species, as informed by the project ecologist;

a person responsible for:

- a) compliance with legal consents relating to nature conservation;
- b) compliance with planning conditions relating to nature conservation;
- c) installation of physical protection measures during construction;
- d) implementation of sensitive working practices during construction;
- e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
- f) provision of training and information about the importance of "Wildlife Protection Zones" to all construction personnel on site.

All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

- 11) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and

lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

12) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;
- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials;
- The storage of plant and materials used in constructing the development;
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel washing facilities;
- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling/disposing of waste resulting from demolition and construction works.
- A scheme to control noise and vibration during the construction phase
- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

- 13) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 14) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:
- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

- 15) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.
- 16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

- 17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted

to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Limiting discharge rate to 1.25l/s/ha;
- Providing sufficient storage to manage the 1 in 100 year + 40% climate change storm event on site with no flooding of the formal drainage system during the 1 in 30 year event. Provide sufficient storage so that no flooding will occur during the 1 in 30 year event in the case of pump failure;
- Provide adequate treatment across all elements of the development.

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.

21) As part of the submission of the first reserved matters application as detailed within Condition 1, an Arboricultural Method Statement (AMS) shall be submitted and approved in writing by the local planning authority. The AMS will include a Detailed Tree Protection Plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (to include frequency of visits; and key works which will need to be monitored) and how they will record their monitoring and supervision of the site.

The development shall be carried out in accordance with the approved details.

Following each site inspection during the construction period the Project Arboricultural Consultant shall submit a short report to the local planning authority.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities within that Phase of the development and shall remain in place until after the completion of the development.

The local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

- 22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.
- 23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.
- 24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.
- 25) Prior to submission of the first application for Reserved Matters pursuant to this planning permission an updated survey of the application site will have been carried out by a suitably qualified and experienced ecologist to investigate the potential presence on the application site of badgers, bats, reptiles and Great Crested Newts.

Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority for approval as part of the first application for Reserved Matters pursuant to this planning permission.

- 26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.
- 27) Prior to the submission of the first reserved matters application, details must be submitted to demonstrate that ambient concentrations of nitrogen dioxide will not exceed the UK annual mean objective concentration of 40µg/m³ at any residential property location within the development.
- 28) Prior to first occupation of the development hereby approved, the Developer shall **be responsible for the provision and implementation of a Residents' Travel**

Information Pack for sustainable transport, approved by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

- 29) Prior to the first occupation of the development hereby permitted the overhead electricity cables crossing the site east /west shall be diverted underground.

Annex C – Screening & Appropriate Assessment

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AS AMENDED FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Project Title and Location: Called-In planning application No. APP/Z1510/V/17/3180729 Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

Project description:- erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works. (Planning Application Ref: 16/02156/OUT, dated 16 December 2016.)

Completion Date: November 2018

Project description – further information

1. The project site and surroundings are described at paragraphs 19 – 24 of the Inspector’s report arising from a public inquiry held into this application between 12 December 2017 and 30 January 2018. The project proposal is described at paragraphs 44 – 45 of that report, in the planning application documentation and in the Environmental Statement. A copy of the inspector’s report is attached to this assessment.

Competent authority

2. The above project, having been called-in by the Secretary of State for Housing, Communities and Local Government, is to be determined by him using his powers under section 77 of the Town and Country Planning Act 1990. The Secretary of State is therefore the ‘competent authority’ for the purposes of the Conservation of Habitats and Species Regulations 2017.

Part 1 - Screening

3. A Screening Opinion provided to the Inquiry (produced by Braintree District Council took account of mitigation measures at the screening stage and concluded that no Appropriate Assessment was required. A judgment in the Court of Justice of the European Union (CJEU) in People Over Wind and Sweetman and Coillte Teoranta (12 April 2018) means this assessment is no longer legally sound.
4. It will now fall to the Secretary of State to take a screening decision for this application, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

Screening Assessment

Relevant documentation

5. The Secretary of State has taken into account the document “Habitats Regulations Assessment Report Land North East of Gleneagles Way, Hatfield Peverel, Essex” (“HRA Report”) dated June 2018. In this Screening, all references to sections, unless otherwise stated, are to that document. He has also taken into account comments made by parties to whom this document was circulated on 12 July 2018, namely the local planning authority, Rule 6 parties to the Inquiry, and the developer in the cases heard at the same Inquiry, Refs: APP/Z1510/W/16/3162004 and APP/Z1510/V/17/3180725: both on Land off Stone Path Drive, Hatfield Peverel, CM3 2LG.
6. The Secretary of State notes and agrees with sections 1 and 2 of the HRA Report, which set out relevant background and context, the legislative and policy background, factual information about the SAC, SPA and RAMSAR site and its relation to the application site, and the conservation status of the SAC, SPA and RAMSAR site.
7. With regard to the issue raised by Hatfield Peverel Parish Council at paragraph 11.c of their response, he has considered the new Zones of Influence set out in the RAMS update provided by SPMRG in their response to the Stone Path Drive cases, and has had particular regard to the methodology used for arriving at these zones. He is content that it is appropriate to consider only the Blackwater Estuary SPA and the relevant part of the Essex Estuaries SAC for the purposes of this Assessment.

Consideration and Conclusions

8. In screening the proposals before him, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.
9. The conservation objectives for the Essex Estuaries Special Area of Conservation are:
Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
 - **The extent and distribution of qualifying natural habitats**
 - **The structure and function (including typical species) of qualifying natural habitats, and**
 - **The supporting processes on which qualifying natural habitats rely**
10. The conservation objectives for the Blackwater Estuary (Mid-Essex Coast Phase 4) Special Protection Area are:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- **The extent and distribution of the habitats of the qualifying features**
- **The structure and function of the habitats of the qualifying features**
- **The supporting processes on which the habitats of the qualifying features rely**
- **The population of each of the qualifying features, and,**
- **The distribution of the qualifying features within the site.**

11. The Secretary of State has carefully considered section 3 of the HRA Report on Potential Adverse Impacts, in particular 3.4 and 3.5. He concludes that the development proposals, with proposed conditions 4, 17, 18 and 19, should have no significant impact on designated sites in respect of urbanisation, atmospheric pollution, water abstraction and water quality.
12. The Secretary of State considers that, in the absence of mitigation or avoidance measures, there would be the potential for the application proposal to give rise to a likely significant effect due to increased disturbance from recreational activities, namely walking and dog-walking. He considers that the distance from the designated sites means that regular visits from new residents would be unlikely, and that the public open space provided as an integral element of the proposals, together with links to the existing public right of way would provide opportunities for informal recreation for both new and existing residents. He therefore concludes that the proposals are not likely to have a significant effect on the interest features of the SAC, SPA, or RAMSAR site, when considered in isolation.
13. The Secretary of State does however find that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.
14. He has considered the issues raised by Hatfield Peverel Parish Council at paragraph 11.e of their response, concerning whether a median or worst-case estimate should form the basis of estimates of impact.
15. While he has found potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, through walking, dog walking and informal recreation, when considered in combination with other plans and projects, the Secretary of State disagrees that a worst-case scenario should be used for the purposes of this assessment. The test at this screening stage is one of a likely significant effect. In the Secretary of State's opinion, this test requires estimating the most likely impact based on available evidence, rather than the worst potential impact.

Overall conclusions

16. The Secretary of State has concluded that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.
17. In light of that conclusion the Secretary of State considers that, in light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment.
18. As the competent authority in this case, he has gone on to carry out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

19. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects, and has determined that an Appropriate Assessment is required.
20. In accordance with the People Over Wind and Sweetman and Coillte Teoranta ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the site. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of overriding public interest as to why it must proceed.

Relevant documentation

21. The Secretary of State has had regard to the previously mentioned document “Habitats Regulations Assessment Report Land North East of Gleneagles Way, Hatfield Peverel, Essex” dated June 2018, (“the HRA Report”) and the responses received thereto following reference back to parties. In addition, he has also had regard to documents considered at the Public Inquiry, as set out in Annex A of the Inspector’s report, in particular Core Documents Set C, “Documents submitted by David Wilson Homes Eastern” and “Documents submitted during the Inquiry by the parties”.
22. The Secretary of State’s appropriate assessment has not simply relied on and adopted the above information and responses to it. Rather, the Secretary of State has considered the relevant information independently, and reached his own conclusions. He has also sought the views of Natural England as the appropriate nature conservation body on a draft of this assessment, which are summarised at paragraph(s) 31-32 of this Appropriate Assessment.

Consideration

23. At the prior screening stage, the Secretary of State has already concluded that the application proposals would not be likely to have a significant effect on the SAC, SPA and RAMSAR site other than in respect of disturbance effects. In respect of disturbance effects, the Secretary of State has considered the proposed measures to avoid / mitigate the potential for significant impact on the SAC, SPA and RAMSAR site, set out in sections 4.1 and 4.2 of the HRA report.
24. The Secretary of State agrees that the provision of public open space and access to the Public Right of Way (PROW) network will provide opportunities for informal recreation and alleviate both existing and potential increased recreation at the SPA / RAMSAR site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure.
25. The Secretary of State also considers that the provision of information to support the use of the local footpath network, together with a proportionate financial contribution towards improvements to the PROW network will also serve to encourage new residents to utilise existing public rights of way in the vicinity, and support the diversion of visitors away from the designated sites.

26. The Secretary of State further agrees that the financial contribution towards the Essex Recreation Disturbance Avoidance Monitoring Strategy (RAMS) visitor monitoring surveys at the Blackwater Estuary will help to identify any management measures which may be necessary to mitigate and manage for potential impacts at the designated site.
27. He has paid close attention to the case made by Hatfield Peverel Parish Council in their response, in which they cite Case C-142/16 Commission v Germany contending that monitoring is not mitigation. The Secretary of State notes that in paragraph 37 of the report of Case C-142/16, that the impact assessment proposing the mitigation measure in question did not contain definitive data regarding its effectiveness, and merely stated that its effectiveness could only be confirmed following several years of monitoring.
28. The Secretary of State has considered the precise wording of the signed and dated S106 Agreement provided to the Inquiry, which was the subject of discussion at a round table session on the final sitting day of the Inquiry. The Blackwater Estuary Mitigation Contribution Purposes are defined as being used towards:
- “...the provision of visitor management measures (which may include surveys) to raise awareness of the effects of visitor disturbance at the Blackwater Estuary SPA/RAMSAR site”
29. The Secretary of State considers that this envisages that the contribution could be used towards other measures, and has taken into account the note on the RAMS update provided by SPMRG in their response which states at paragraph 4.4.3 that the three most common forms of generic mitigation are: habitat creation, education and communication, all of which would seem to be allowable under the wording of the S106 Agreement. He therefore concludes that in this case, there is sufficient certainty that a robust mitigation will be provided if required.
30. For the above reasons, the Secretary of State considers that the proposed package of on and off-site measures would be sufficient to ensure no likely significant adverse effect on the SAC / SPA / RAMSAR site, either in isolation or in combination with other plans or proposals.

Natural England's advice

31. Natural England have advised, consistent with their previous comments that a financial contribution towards 'offsite' mitigation measures at the Blackwater Estuary would be required. The mitigation measures that will be funded are consistent with the aims and aspirations of the emerging Essex Coast disturbance Avoidance and Mitigation Strategy (RAMS).
32. Provided the contribution is fully secured, Natural England agree that the proposal would not have an adverse effect on the integrity (AEoI) of the Essex Estuaries SAC and Blackwater SPA and Ramsar site, either when considered alone or in combination with other plans or projects.

Consideration and Conclusions

33. Having concluded that the proposal will not adversely affect the integrity of the SAC / SPA / RAMSAR site, and having given careful consideration to the advice of Natural England the Secretary of State has considered how the proposed mitigation / avoidance measures

needed to ensure the acceptability of the proposal are to be secured should the application be granted.

34. Promoting the local footpath network by supplying all new residents with a map and guide to local (circular) walking routes is secured by Condition 28.
35. The “green infrastructure” package for this development, including public access to the adjacent PROW which will provide a link to a circular walk to the PROW network to be available all year round is an integral part of the proposals. Taken together with a financial contribution towards improvements to the Public Rights of Way (PRoW) network within the vicinity of Hatfield Peverel, secured by Schedule 10 of the s106 agreement dated 8 January 2018, the Secretary of State is satisfied that these will provide an opportunity for dog walkers in close proximity to the development site, thus diverting them away from visiting the Blackwater Estuary (Mid-Essex Coast Phase 4) SPA & Ramsar site.
36. The financial contribution towards the Essex Recreation Disturbance Avoidance Monitoring Strategy (RAMS) is secured by Schedule 9 of the s106 agreement dated 8 January 2018.
37. Accordingly, the Secretary of State is satisfied that if the application were granted outline planning permission, the mitigation and avoidance measures he has deemed necessary to make the application proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.
38. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Annex D - Sites removed from housing trajectory published on 11 April 2019

Local Plan Site reference	Planning Application reference	Name and address of site
GOSF 251	BTE/17/0610/OUT BTE/18/2007/FUL	Land South of The Limes Gosfield
GGHR 283 HASA 293	BTE/17/0575/OUT BTE/18/1749/FUL	Land east of Sudbury Road Halstead
	BTE/16/0569/OUT	Land NE of Inworth Rd Feering
KELV 335	BTE/17/0418/OUT	Station Field, Land west of Kelvedon Station Station Road (Monks Farm) Kelvedon
RIDG 359	BTE/17/1325/OUT BTE/19/0635/FUL	SE side Ashen Rd, at junction with Tilbury Rd Ridgewell
EARC 225	BTE/15/1580/OUT	Land rear of Halstead Road Earls Colne
WIS 10X	BTE/14/1528/OUT	Former Bowls Club And Land At Old Ivy Chimneys Hatfield Road Witham
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Land north of Conrad Road Witham
WIS 09	BTE/12/1071	Land south of Maltings Lane Witham
BOS6H	BTE/15/1319	Land West of Panfield Lane



Report to the Secretary of State for Housing, Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 20 March 2018

THE TOWN AND COUNTRY PLANNING ACT 1990

BRAINTREE DISTRICT COUNCIL

APPLICATION BY

DAVID WILSON HOMES EASTERN

Inquiry Held on 12 December 2017

Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

File Ref(s): APP/Z1510/V/17/3180729

<https://www.gov.uk/planning-inspectorate>

File Ref: APP/Z1510/V/17/3180729

Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 12 July 2017.
- The application is made by David Wilson Homes Eastern to Braintree District Council.
- The application Ref 16/02156/OUT is dated 16 December 2016.
- The development proposed is erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works.

Summary of Recommendation: The application be approved.

Procedural Matters

Matters common to all three schemes considered at the Inquiry

1. The Inquiry opened on 12 December 2017 and sat for eight days. I carried out an unaccompanied visit to the site and a tour of the surrounding area on 3 January which included viewpoints to which I was directed by the parties. Closing submissions were made in writing in sequence during January. The Inquiry was closed in writing on 30 January 2018 following receipt of all outstanding documents including obligations entered into under s106 of the principal Act.
2. Three schemes were considered at the Inquiry; the application listed in the summary details above; an appeal against the refusal of an application by Gladman Developments Ltd (GDL) for outline planning permission for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works on Land off Stone Path Drive, Hatfield Peverel, Essex (ref: APP/Z1510/W/16/3162004); and an outline application in the same terms but for up to 140 dwellings at the same address and submitted by the same applicant (ref: APP/Z1510/V/17/3180725).
3. In each case all matters except access are reserved for future determination.
4. The two applications were called in for determination by the Secretary of State on 12 July 2017. In each case the reason given was that he wished to be informed about:
 - i) Policies in the National Planning Policy Framework (Framework) on delivering a wide choice of high quality homes;
 - ii) The extent to which the proposed development is consistent with the development plan for the area; and
 - iii) Any other matters the Inspector considers relevant.
5. The appeal was recovered for determination by the Secretary of State on 12 October 2017. In this case the reason given for the direction under s79 of the principal Act was that, having called in application 16/01813/OUT (file ref: APP/Z1510/V/17/3180725) which affects the same site, the Secretary of State wishes to re-determine the appeal himself so that he can consider both proposals at the same time. The appeal was therefore recovered because of the particular circumstances.

6. No pre-Inquiry meeting was held. Instead, I issued two pre-Inquiry notes on 8 November 2017 (INSP1) and 5 December 2017 (INSP2) and a further email dated 7 December 2017 relating specifically to housing land supply issues (INSP3).
7. In response to these notes three documents were produced on behalf of both GDL and David Wilson Homes Eastern (DWH). These are Cumulative Air Quality Impact Assessment (ID1.4), a Transport/Highways Note (ID1.5) and a Statement of Common Ground (SOCG) with Essex County Council (ECC) on education issues (ID1.8). A further Briefing Note: Clarification of Presentation Provided by Mr John Webb (ID20) was produced following the submissions from interested persons on the first day of the Inquiry.
8. Some evidence was common to all three schemes. This included that on housing land supply which was heard, at the parties' request, by way of a round table discussion. Much of the policy evidence was also common to all three schemes.
9. I issued a further note following the close of the Inquiry sessions (INSP4). This concerned a heritage matter that is not relevant to this application and also sought clarification of the submissions made in respect of Core Strategy policy CS1. In short, I asked whether it was the whole policy that should be considered to be out of date or just that part of it relating to housing numbers and, depending on the answer to that, whether the spatial strategy embedded in the policy could still be considered current if the settlement boundaries predicated upon out of date housing supply numbers could not. The clarifications provided have been taken into account.
10. In a further response before the close of the Inquiry the Parish Council advised that a Habitats Regulation Assessment Screening Report was submitted to Natural England on 18 December 2017 and, further, that Natural England's comments were received by the Council on 25 January 2018. Although the comments have not been made available to the Inquiry, the Parish Council states '...at face value the comments appear positive enabling the Neighbourhood Development Plan to progress.' It further advises that a meeting has been arranged for 5 February with the Council to discuss the way forward and '...to agree how to expedite the Plan.'
11. GDL co-ordinated the core documents listed in Annex A. Although there are three sets, one for each GDL scheme and another for the conjoined Inquiry, all three sets are listed in each report since reference was made throughout to all three sets. DWH prepared its own core documents specific to the scheme that is the subject of this report. The documents listed as being submitted during the Inquiry relate to all three schemes. It is perhaps worth noting that only a limited number of the documents listed was referred to in the written and oral evidence.

Matters specific to this application

12. Before the Inquiry the Planning Inspectorate agreed to the request made by Hatfield Peverel Parish Council (HPPC) to be a made Rule 6 (6) party.
13. The application was supported by a number of documents which are listed as SAV1 to SAV28 inclusive in Annex A.
14. DWH has prepared and submitted a SOCG with each of the Council and HPPC (SOCG4 and SOCG 5 respectively). Each follows the same format. Among the

- matters that are agreed are the relevant policies of the adopted and emerging development plan, the application site and its surroundings, the application proposal and the position on a wide range of detailed considerations that are listed. Although the precise terms of each agreement is different (for example SOCG5 with HPPC does not acknowledge that the scheme would make a substantial contribution to the shortfall in five year housing land supply), each agrees that the Council cannot currently demonstrate a five year supply of housing land.
15. The SOCG between DWH and the Council records DWH's view that the objectively assessed housing need (OAHN) for market and affordable housing is higher than that proposed by the Council in the emerging development plan. In the event, this dispute was not pursued. DWH also records that it expects to contest the conclusions of the Council's updated five year housing land supply assessment when it is published.
16. There are five matters in dispute between DWH and HPPC. These are:
- a. The weight to be given to relevant policies in the adopted and emerging development plans;
 - b. The weight to be given to the conflict with the spatial strategy of the development plan;
 - c. The degree of harm to the rural character of the area and the landscape setting of the village and the weight to be given to that harm;
 - d. Whether the proposal would result in a loss of part of the significant gap of open countryside between the settlements of Hatfield Peverel and Witham such as to harm the identities of these separate settlements; and
 - e. Whether the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
17. An Obligation pursuant to s106 of the Act was entered into by DWH and the Council and a completed document (ID59) was submitted before the close of the Inquiry.
18. The Council issued a Screening Opinion on 28 August 2015 to the effect that a development of approximately 140 dwellings was not EIA development (paragraph 4.1 SOCG4). The Secretary of State came to the same view having considered the scheme both on its own and in combination with others.

The Site and Surroundings

19. The application site is about 5.2ha in extent and is situated on the north eastern side of Hatfield Peverel. To the north east again is the town of Witham.
20. The topography of the site, which is currently in use as arable farmland together with associated field margins, is generally flat. To the north east of the site is agricultural land and, beyond that, a fishing lake introduced following mineral extraction.
21. It is thus a greenfield site located outside but adjoining the built-up area of the village. In that respect it is bounded to the west by existing residential

development at Gleneagles Way, Wentworth Close, Birkdale Rise, Ferndown Way, Woodham Drive and Vicarage Crescent with the village beyond. A single private dwelling (Small Acres) lies immediately to the south. To the north is The Street (B1137) and the A12 slip road. The A12 links Ipswich, Colchester and Chelmsford to the M25 and east and central London beyond.

22. Agricultural vehicles use a break in the hedge in the south east corner to access the land. Other vehicular accesses are available from Birkdale Rise and Ferndown Way. A public right of way links Maldon Road to the south west of the application site with agricultural land to the north west. At present this path does not connect to the application site.
23. The site does not contain nor does it form part of any heritage asset or setting of any heritage asset. It lies within Flood Zone 1, the lowest probability of flooding.
24. The site is within the designated Hatfield Peverel Neighbourhood Plan (NDP) Area. The village is a Key Service Village (KSV) identified in the adopted development plan. Although slightly renamed, that status is maintained in the emerging plan. There is a good range of services and facilities in the village centre which is close to the application site. There are four bus stops within 0.5km of the application site used by various bus services. There are frequent services to Witham, Colchester, Chelmsford and other nearby settlements with less frequent services on Sundays. Trains run from the village to London Liverpool Street, Colchester, Braintree and other destinations.

Planning Policy

Adopted development plan

25. The adopted development plan for the area includes the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. Included in the SOCGs is a lengthy list of what are termed policies relevant to the application. Included in CD11.1, set B and CD10.1, set B are those policies and the supporting text that are of particular relevance to the determination of this application.

The LPR

26. Policy RLP 2 states that new development will be confined to the areas within town development boundaries and village envelopes. Outside these areas countryside policies will apply although exceptions may be made for affordable housing schemes which comply with LPR policy RLP 6. Such considerations do not apply in this case. Policy RLP 3 sets out a number of criteria that all residential development within development boundaries and village envelopes must meet.
27. RLP 80 addresses landscape features and habitats. In essence it requires applicants to assess the impact of a proposed development on wildlife and distinctive landscape features and for proposals in mitigation of any impacts to be put forward. Development that would not integrate successfully into the local landscape will not be permitted.
28. Other LPR policies listed in the SOCG are in a form designed to ensure that the technical requirements of statutory and other consultees are given policy force.

The wording is generally in the form of not allowing development unless required measures are secured.

The CS

29. Policy CS1 sets out the housing provision that will be made over the period 2009 to 2026. It also sets out where those new dwellings will be located. These include KSVs; Hatfield Peverel is such a village. Policy CS2 sets out the requirement for developments to provide affordable housing with the target percentage being determined by the location of the proposed development. A target of 40% applies on sites in rural areas.
30. The precise wording of policy CS5 is as follows:

Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.

31. The natural environment and biodiversity is addressed by policy CS8. This is a policy that covers almost two sides of A4. The gist however is that developers are required to have regard to, or to take account of, the impact of the proposed development on a wide range of factors. Of relevance to this proposal are the protection and enhancement of the natural environment in the widest sense, the protection of the best and most versatile agricultural land, the character of the landscape and its sensitivity to change and the minimisation of exposure to flood risk.
32. Policy CS9 is in many respects a general design principles policy. A good provision of high quality and accessible green space including accessible natural green space to meet, among other things, amenity needs is secured by policy CS10. Policy CS11 sets out, in essence, that development contributions towards necessary infrastructure services and facilities will be secured through, among other things, planning obligations.

Emerging development plan

Braintree New Local Plan (BNLP)

33. The BNLP was submitted to the Secretary of State in October 2017. The examination has therefore commenced. It is in two parts. Part 1 (CD12.3 set B) plans strategically across three local planning authority areas. At the time of the Inquiry the examination hearings were due to commence in January 2018. Part 2 (CD12.4 set B) relates to the Council area only. Hearing dates have yet to be arranged. There are a substantial number of representations raising fundamental issues with both parts of the BNLP. Those made by GDL are at CD33.1, set C.
34. Although in Part 1 policy SP 2 continues a spatial strategy for North Essex that seeks to accommodate development within or adjoining settlements according to their scale, sustainability and role, it also proposes three new garden communities one of which would be to the west of Braintree. Policy SP 3 sets out housing needs which for Braintree are 14,320 dwellings over the period 2013 to 2033 on the basis of an OAHN of 716 dwellings per annum.

35. Turning to part 2, the broad spatial strategy for the Council area is to concentrate development on the town of Braintree, planned new garden communities, Witham and the A12/Great Eastern Mainline corridor and Halstead. Hatfield Peverel lies within the A12/Great Eastern Mainline corridor and is identified as a KSV. Policy LPP 1 states:

Within development boundaries, development will be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material adverse detriment to the existing character and historic interest of the settlement.

Development outside development boundaries will be strictly controlled to uses appropriate to the countryside to protect the intrinsic character and beauty of the countryside.

36. Policy LPP 31 proposes a comprehensive redevelopment area on land between the A12 and the Great Eastern Main Line. This comprises four areas; the former Arla Dairy site; Sorrell's Field; Bury Farm; and a smaller site to the rear of Station Road. Among the list of things that the development will be expected to provide are financial contributions to early years and childcare provision, contributions towards primary and secondary education facilities and contributions to other community facilities including health provision as required by the NHS.
37. Landscape character and features are subject to policy LPP 71. This requires, in broad summary, applications for development to demonstrate an understanding of the landscape character of the area and show how the development proposed would fit in. Development that would not successfully integrate into the local landscape will not be permitted.
38. Green buffers are proposed through policy LPP 72 where it is considered desirable to prevent coalescence of two settlements. No green buffer is proposed between Hatfield Peverel and any other settlement such as Witham.

Hatfield Peverel Neighbourhood Development Plan (NDP)

39. The NDP (CD15.2, set B) has been submitted for examination and the examiner appointed. At Appendices MR23 to MR 25 of Mr Renow's proof (HPPC1) is the exchange of letters between the examiner and HPPC. On 5 September 2017 the examiner set out the two 'important' matters about which she had 'serious concerns in respect of the progress of the examination and the (HP)NDP meeting the statutory Basic Conditions' (MR23). Having considered the reply dated 13 September 2017 from HPPC (MR24), she wrote again on 20 September declining to continue the examination while the necessary additional work was undertaken (MR25). The reason given was '...the issues raised are sufficiently substantive that I feel to do so runs the risk of undertaking work that could later be found to be abortive and incur unnecessary costs to the local authority.'
40. The NDP is subject to unresolved objections including those from GDL (CD33.2, set C) and DWH (SAV50 and SAV52).
41. Policy HPE1 creates a green wedge along the eastern development boundary of Hatfield Peverel to avoid coalescence with Witham. The policy sets out those types of development that would be permitted within the green wedge provided that the open nature of the area is maintained. The list is very similar to those

listed in Framework paragraph 89. However, the 'very special circumstances' caveat set out in Framework paragraph 87 is not included.

42. The retention of existing trees, hedgerows and habitats, the mitigation of their loss and the retention of natural boundary treatments and the provision of new areas through new development is the subject of policy HPE2. The protection of the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment is achieved through policy HPE6.

Relevant Planning History

43. An outline application for the erection of up to 145 dwellings and associated infrastructure was refused planning permission in April 2016.

The Proposals

44. The application has been submitted in outline with all matters except access reserved for future approval. Access would be via Birkdale Rise. Up to 120 dwellings would be provided with 40% being affordable housing.
45. The application was accompanied by a Design and Access statement (SAV7) and a Parameters Plan (SAV4). Both are illustrative only and not therefore for approval. They do however indicate how the development might be implemented.

The cases put by the parties

46. Although three separate developments were being considered at the Inquiry, that was not, in the main, how the evidence was presented and tested. This was inevitable and the most efficient use of Inquiry time as there was a significant degree of commonality in, for example, the evidence given on policy and housing land supply topics. Counsel for GDL adopted the submissions of Mr Tucker in respect of both these matters. Similarly, Mr Tucker adopted the submissions of Ms Osmund-Smith in a limited number of matters and the case made by GDL in that respect is therefore set out below.
47. Although Stone Path Meadow Residents Group (SPMRG) has no interest in this application, Ms Scott did call evidence and make submissions about both policy and housing land supply. Those are included below for completeness since Mr Tucker refers to them in his submissions on these matters. Relevant SPMRG documents are also listed in Annex A.
48. Closing submissions were submitted in the same sequence as they would have been presented at the Inquiry. The usual convention whereby the scheme promoter hears the cases against the proposal before making its case was thus observed. As will be clear, Mr Tucker has responded to points made by other advocates.
49. It is fair to say that he is quite critical of the way in which some arguments have been put by Mr Graham for HPPC and, to a much lesser extent, Ms Scott for SPMRG. In short, the criticisms are that the case has been developed, if not actually changed, from that trailed in the statement of case; evidence from witnesses has been misrepresented and concessions in cross examination ignored.

50. I believe there is some substance to all of those criticisms and I have had regard to that in coming to my conclusions. While I have recorded the flavour of the criticisms in presenting the case set out, the exact, sometimes robust, phrasing used has not been included. Each closing submission is nevertheless listed and available to read in full.

The case for David Wilson Homes Eastern

Introduction

51. The land use issues raised against the DWH scheme are comparatively modest and are accepted by the Council not to be sufficient to outweigh the benefits of the scheme. This, in the context of a District where there is agreed to be an immediate need for additional housing land. Moreover, whilst HPPC and a handful of residents from the Gleneagles Estate have challenged the DWH case, it is perhaps of note that most of the time at this inquiry has been spent on the merits of the GDL schemes; the site specific merits of the DWH site were discussed and challenged in less than a day.

52. It was stated in opening that this is a comparatively straightforward proposal. In reality nothing which has been presented over the course of the Inquiry to change that position.

53. It is agreed with the Council that there is a significant deficit against the required 5 Year Land Supply (5YHLS) and there therefore is an immediate need for additional housing, which will necessarily have to include land that is presently undeveloped.

54. It is agreed that there is an immediate need for additional affordable housing.

55. There is no statutory consultee who has objected to the application scheme.

56. The only policy objections (albeit not raised by the Council) relating to the DWH proposals relate to:

- i) breach of 'in principle' countryside policies which are based upon settlement boundaries which are agreed by the HPPC's planning witness to be out of date; and
- ii) breach of policies in respect of a draft and flawed NDP which can only be afforded the most limited weight;

57. Requested contributions to infrastructure etc. are provided for in full in the s106 obligation.

58. The application site is located in a sustainable location (in this respect DWH acknowledges and adopts the case made by GDL) and relates well to the settlement of Hatfield Peverel which it is agreed will need to accommodate additional growth.

5 year housing land supply

59. Framework paragraph 47 directs that local planning authorities must identify and update a "supply of specific deliverable sites" to provide 5 years' worth of housing against their housing requirements. Deliverable is defined in footnote 11:

To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular, that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

60. In *St Modwen Developments Ltd v SOSCLG* [2017] EWCA Civ 1643 (paragraph 38, CD32.18 set C) the approach that should be taken to assessing whether a site is "deliverable" in the context of the footnote 11 definition is confirmed. Properly understood the judgment does no more than reiterate the ordinary and natural meaning of the words of the footnote. It does not, as Mr Graham sought to argue for HPPC, reduce the threshold for assessing yield from deliverable sites. In that case the Appellant was contending that only those sites with planning permission should be considered to be deliverable. Self-evidently, whether or not a site is counted into the exercise as "deliverable" is only the first step of the exercise - the crucial issue in this case is what comprises the likely yield of the deliverable sites. Doubtless this important distinction will be clear to the Secretary of State.
61. It appears from his closing submissions that Mr Graham has misinterpreted this important judgment. In response to HPPC's closing submissions, (paragraph 5, ID48) there is no judicial authority that "deliverable" means, as Mr Graham submits, 'non-fanciful'. The judgment of Lindblom LJ is clear that "deliverable" in the context of Framework paragraph 47 is defined solely by footnote 11. Mr Graham's submission in this regard is simply wrong.
62. To the minimum requirement to demonstrate a 5YHLS must be added a buffer of 5% or 20% depending upon whether there has "been a record of persistent under delivery". The courts have clarified what is meant by "persistent under delivery" in *Cotswold DC v SOSCLG* [2013] EWHC 3719 (paragraph 47, ID1.15). Essentially, whether under delivery has been persistent is a matter of planning judgment, considering a reasonable period of time for analysis and against a justifiable housing requirement which can include consideration of what is proposed in an adopted plan and evidence of need. Addressed below is why it is considered that a 20% buffer is appropriate.
63. The starting point for the numerical calculation of the 5YHLS is to identify an appropriate requirement against which to judge the available supply of deliverable sites. In this case the requirement of the adopted CS is based upon a hopelessly out of date figure derived from the "policy on" content of the long defunct Regional Spatial Strategy. In those circumstances it is agreed with all parties that it is appropriate to identify the OAHN based upon the most up to date evidence, without any policy adjustment.
64. What figure comprises the OAHN will be a matter of intense debate at the forthcoming examination in public of the emerging BNLP, to which there is intense dispute. That debate will take place in January 2018. However, given that the decisions of the Secretary of State will be made after this debate has taken place GDL/DWH in this Inquiry have taken the pragmatic decision not to use the Inquiry as a dry run for those arguments, but rather to accept for the

purposes of the Inquiry that the Council's figure is the correct one. Should compelling evidence arise to support a contrary position prior to the decision of the Secretary of State then that will be drawn to his attention in advance of that decision.

65. Thus, for the purposes of the Inquiry, Mr Spry adopts the Council's estimated OAHN of 716 dpa derived from the evidence base from the emerging BNLP. There is no disagreement between any of the parties to this Inquiry that this approach is reasonable and thus, this is the appropriate starting point.
66. The disagreement between the parties relates to the following areas:
- i) Liverpool or Sedgefield approach for addressing the shortfall: - The applicants and the Council have agreed, again for the purpose of this Inquiry, that the correct approach is Sedgefield. It is noted that the Council is pursuing the Liverpool methodology at their Local Plan examination, however it properly accepts, that without specific support from the examining Inspector, it could not reasonably support such an approach for the purpose of this Inquiry;
 - ii) 5% or 20% buffer;
 - iii) The supply of deliverable sites - There is a dispute between SPMRG and GDL/DWH on the sites that should be considered to be deliverable and therefore included in the supply with SPMRG arguing for the inclusion of draft local plan allocations. That position is expressly rejected by the Council which does not consider that those sites should be afforded sufficient weight to be included, given the stage in the process and the degree of unresolved controversy which relates to them. There is then the more important debate about the likely yield from a handful of disputed sites as between the Council and Mr Spry. This disagreement on yield on those sites is essentially one of judgment based upon agreed facts and is covered in detail in ID1.14 where the difference between the parties is reduced to a yield of 68 dwellings.
67. HPPC lead no evidence on the point. The submissions made in closing on which sites should be included must therefore be given no weight.

Liverpool v Sedgefield

68. The only parties advocating for a "Liverpool" approach - ie spreading the shortfall over the whole of the local plan period - are the Rule 6 parties. The Council has agreed that this is not the correct method for calculating the 5YHLS position for this Inquiry, whilst arguing for that position through the BNLP examination. Its reasoning is robust - until the examining Inspector endorses a different approach then based upon recent appeal decisions, the "preferred" approach of Planning Practice Guidance (PPG) of the Sedgefield methodology is to be preferred.
69. Notably there was no discernibly logical argument put forward by either of the Rule 6 parties to support a contrary case for the use of Liverpool. The best that was offered was that the Liverpool methodology would be appropriate because when looking back at the record of under delivery it is claimed that the Council cannot meet its requirement in the short term and therefore Liverpool should be used - repeated in the SPMRG closing (paragraph 86(ii), ID49). With the greatest of respect, this is not sound planning. Not only is it in conflict with

guidance to the contrary in PPG, but also it has serious social consequences, given that the shortfall in delivery is not one which arises over the next 15 years but rather it exists right now, at the start of the 5 year period under consideration. Not to do so now means deferring the meeting of needs - which is the antithesis of the tone and content of Framework paragraph 47.

70. The argument is that it is simply not possible to deliver the undersupply in the first 5 years. It is accepted the PPG says that the undersupply should be addressed within 5 years "where possible". However, self-evidently the correct approach to this guidance is to start from a position that it is possible and only change that view where it is shown to be impossible. An impossibility cannot be proven through previous undersupply - the very problem the buffer seeks to address. An impossibility might be proven in cases where the LPA's area is highly constrained e.g. AONB, Green Belt, other designations, or where there is clear market evidence of saturated demand. However, it is strongly submitted that "not possible" is a high bar and one which is not close to being met in this case.
71. The illogic in respect of the DWH site is even more striking since it argues that a site should not be released to a national housebuilder in a sustainable location because there are concerns about the ability of the market to deliver.
72. Thus, if a local planning authority cannot meet its housing requirement, the answer is to release more sites, not to accept that past under delivery represents the benchmark for future delivery and to thereby leave more families without a home.
73. The reality of the Rule 6 parties' position is clear from the SOCG on Additional Housing Supply Sites (ID37). This shows that they need to convince the Secretary of State in respect of all of their points in order to demonstrate a marginal excess against the 5YHLS - i.e. it is only on their flawed analysis of the additional sites together with the use of the Liverpool method and with only a 5% buffer that they can mathematically demonstrate a marginal excess over the 5YHLS. If nothing else this evidences just how dire the position on 5YHLS is in this District. If objectors have to argue for a swathe of implausible assumptions and can still only just show a mathematical exceedance then the clear reality of the land supply position is Braintree falls significantly below what is needed. If there was any doubt to the contrary then no doubt the Council would not have readily conceded the absence of a 5YHLS a matter of weeks before the start of the BNLP examination hearings.
74. In her written evidence, Mrs Jarvis for HPPC attempted to make a somewhat curious secondary argument that even if there was a need for additional housing then development should be distributed evenly within the hierarchy of settlements at the tier within which Hatfield Peverel falls (paragraph 2.15, HPPC2) However, in cross examination that point was rapidly abandoned.
75. First, she accepted that the table within the adopted CS is a minimum figure and therefore one can conclude that the table does not form a basis for a mathematical exercise in allocating the shortfall of housing within the hierarchy. Second, when she was carefully taken through the emerging BNLP she readily accepted that it contained significant changes to the adopted strategy of housing distribution - most obviously in its dependence upon the new Garden Communities - but crucially given the enhanced role of Hatfield Peverel as part of

the A12 corridor of growth. With all due respect to Mrs Jarvis her point went nowhere and it certainly does not support the proposition that she intended that the DWH proposals are out of scale with the settlement, let alone the more radical distribution point made at paragraph 2.15 of her proof.

76. In conclusion, DWH, supported by the Council, strongly submit that the Sedgefield approach must be preferred for this Inquiry. The social dimension of sustainable development must require the shortfall to be delivered within the 5 years - to do otherwise is simply to put off the requirement to boost significantly the supply of housing and results in a failure to meet the requirements of those who want to own a home in this part of the country.

The Buffer - 20% or 5%

77. The Council argues for a 5% buffer, GDL/DWH for 20%. The evidential basis for the debate is the update (ID1.11) to table 5.1 in Mr Spry's proof of evidence (4/POE). This updated the completions figures for the early part of the period. The updated table shows:

- i) The Council has not met annual requirement figure since 2011/12;
- ii) There has been persistent and significant under-delivery between 2012-2017;
- iii) There is under-delivery against current half year (April to Sept 2017);
- iv) In combination, there has been under-delivery of housing against the requirement of:
 - 458 - 16.5 yrs
 - 1,002 - 10.5 yrs
 - 1,448 - 9.5 yrs

78. This table compellingly illustrates the inescapable conclusion that there has been persistent under delivery of housing in Braintree. Against this, the Council's unconvincing contention was to argue that it was "unfair" to judge them against an OAHN of 716 from 2013 when the figure was only introduced in November 2016. Rather it was argued that the lower Structure Plan figure should be used. However, the Council will have been well aware that an increased OAHN was likely given the household projections figures (detailed in the updated table 5.1) which were consistently in excess of the Structure Plan figure.

79. It is also clear that the Council was aware of the likely increase in OAHN as evidenced in the minutes of the Council's meeting on 30 June 2014 (1/POE, Appendix 2). Under agenda item 23 the Council decided to withdraw the Site Allocation Development Management Development Plan Document. One of the points noted by the Council was that the Framework would impact on the housing need figures derived from the CS and that under a Framework compliant methodology, those numbers would go up. It is disingenuous by the Council to now say at this Inquiry that they were not aware of the housing numbers going up; plainly they were aware of this from at least 30 June 2014. Therefore not only is it sound planning to backdate the OAHN to 2013, but the Council were also well aware of the requirement to increase their housing figures.

80. The Council's approach is wholly unconvincing. Not only would it be to "reward" tardy plan making but it means judging under-delivery against the wrong metric. The intention of the buffer is not one of "punishing" a local authority which would

- then bring in concepts of fairness. Rather it is an objective exercise to determine whether or not there is a need to increase the well of sites from which the development industry can draw in order to achieve the OAHN. In this case it is now known that the target of the adopted plan was substantially below what it ought to have been in order to meet the agreed OAHN and that delivery was also well below the OAHN. It is therefore known that delivery was persistently below what it should have been and more importantly there is no suggestion that the lower Structure Plan target was somehow constraining delivery.
81. The Framework, published in 2012, could not be clearer at Framework paragraph 215: local planning authorities had a period of 12 months to bring policies into line with the Framework and after this date, the weight to be given to any pre-Framework policy would depend on the consistency with it. This includes, as it must, pre-Framework housing requirement figures, such as those used by the Council taken from the now-revoked East of England Plan. The Council ought to have updated their housing requirement in this 12-month period and done so in a way that reflects Framework paragraph 159 which establishes that this should meet "household and population projections" (the figures for which are included in Mr Spry's updated table 5.1 and would have been known to the Council at the time). They could have done so in a Framework compliant way with a partial review. They did not do this and still have not done this. The only Framework compliant way is therefore to back date the OAHN requirement to 2013/14.
82. The Council argue in their closing (paragraph 23 to 24, ID47) that the OAHN figure from 2013/14 was not the "target" at the time as that figure only became known in 2016. Target is the wrong word; it is about meeting housing need. The Framework is clear. Framework paragraph 47 bullet point 2 requires local planning authorities to identify sites to meet their "housing requirements", that means the need at the time. It does not mean the need as it was last identified. To adopt such an approach could result in years of need being unmet simply because a Council has not carried out the necessary work to assess the actual housing need in its area. Mr Cannon's approach would be another reward to the sluggish authority and must be rejected. Mr Spry's must be preferred as an approach that supports the Government's clear objective of boosting the supply of housing by assessing need as it actually is, not as it once was.
83. The appeal decisions cited by SPMRG on this point (paragraphs 90 – 92, ID49) are not on point. The first decision (ID44) was in the context of an authority that had over supplied for an 8 year period. Plainly this Council is a long way from this having undersupplied over a number of years. The second decision (ID43) is also in the context of an authority that had over supplied. The arguments of DWH on this point should be preferred.

Conclusions on 5YHLS

84. If the Secretary of State accepts that the correct approach to calculating the land supply position in Braintree is Sedgefield/20%, then the supply is 3.3 years against the Council's OAHN figure. It is only if the Secretary of State concludes that all the stars have aligned and that the correct approach is Liverpool/5% with the additional sites put forward by the Rule 6 parties, that the Council could crawl over the line and show a 5YHLS - 5.38 years. It is GDL/DWHs' submissions that such a conclusion, given the weakness of the argument and absence of

supporting evidence, grossly over-stretches the elastic potential of planning judgment.

85. Should the Secretary of State conclude that the correct approach is Sedgefield/20% (or indeed Sedgefield/5, or Liverpool 5/20), then the Council cannot demonstrate a 5YHLS and there is a serious deficit against the minimum policy requirement of Government such that there is an immediate need to redress that deficit. Moreover relevant policy consequences kick in.
86. In the absence of a 5YHLS, Framework paragraph 49 says that "relevant policies for the supply of housing" are not to be considered up to date. The Supreme Court in *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37 concluded that decision makers should adopt a narrow approach to identifying which policies should be considered as "relevant policies for the supply of housing" (paragraph 57, CD31.2 set C). However, this may not be the point of the exercise (paragraph 59):

The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies.

87. The approach is endorsed at paragraph 83:

If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.

88. The weight to be given to particular policies in the adopted and emerging local plans is addressed in due course. However, the point that must be taken from *Suffolk Coastal* is that where it is environmental (or other) policies that have resulted in the failure to demonstrate a 5YHLS, then those policies are as susceptible to having their weight reduced in the balance as those policies that fall within the definition of "relevant policies for the supply of housing".
89. HPPC's closing submissions on the ratio of *Suffolk Coastal* must be rejected (paragraph 36 and 37, ID48). The Supreme Court is not removing the s38(6) test; that is at the heart of decision making. It is a judgment about the weight to be given to policies where the plan is absent, silent or out of date. Mr Graham's approach of dismissing Framework paragraph 14 as "no more than guidance" rather than crucially important national policy which should be afforded substantial weight, is an invitation to the decision maker to fall into serious error.
90. Overall therefore it is firmly submitted:
- i) there is plainly a substantial deficit as against the minimum requirement to demonstrate a 5YHLS;
 - ii) the effect of that is that Framework paragraph 49 is engaged;
 - iii) that alone is sufficient to warrant engaging the presumption in Framework paragraph 14;
 - iv) it is agreed that there is no immediate prospect of the emerging BNLP being adopted and therefore the only means by which the deficit can

be addressed is through the grant of planning permissions in sustainable locations; and

- v) substantial weight should be afforded to the provision of general market housing which contributes to meeting that deficit.

Landscape issues

91. The Secretary of State is invited to place substantial reliance upon Jeremy Smith's proof of evidence (DWH3) and the landscape and visual impact assessment (LVIA) that underpins it which sets out the landscape considerations in a balanced and compelling way. That is not merely an exercise in advocacy, but for the following compelling reasons:

- i) the LVIA is the only LVIA which has been produced by anyone;
- ii) that LVIA was audited by the Council before it resolved to grant planning permission and was found to be methodologically sound;
- iii) no serious attack has been launched by anyone on the methodology of the LVIA. Whilst in cross examination HPPC sought to "test" some of the elements of the LVIA, HPPC had no comparable evidence to set against it;
- iv) the case in fact put to Mr Smith appeared to be to criticise him because he had taken localised viewpoints where either the application site will be seen in the context of immediately adjacent infrastructure or housing, or where it will be barely seen at all. Rather than making the HPPC's case, such arguments lead to the conclusion that the loss of this ordinary field, which is heavily influenced by adjacent urban development will give rise to no more than highly localised impacts which are readily capable of mitigation. What views will remain will be of housing from within the existing urban area - which is self-evidently characteristic and not harmful.

92. Thus, the reality from the Inquiry is that the totality of HPPC's landscape objections to the DWH scheme, both those put in a couple of pages of Mrs Jarvis's proof as well as the case put in cross examination, are deeply unconvincing. Whilst it is undoubtedly the case that the development of previously undeveloped land on the edge of a settlement gives rise to some inevitable harm, the loss of this otherwise unremarkable and unimportant area of agricultural land gives rise to harm at only the lowest end of the spectrum.

93. HPPC's case prior to the start of the Inquiry was that such a loss was not warranted - in particular because it will impinge upon an important view highlighted in the NDP and secondly that it will result in an unwarranted erosion of the gap between Hatfield Peverel and Witham. It is respectfully submitted that this approach is deeply a misguided one in both landscape and planning policy terms.

Erosion of the Gap

94. At policy HPE 1, the NDP seeks to prevent coalescence between Hatfield Peverel and Witham. It aims to do this by identifying a "green wedge" (page 24 – 25, CD16.3 set C). The previous version of this policy in an earlier draft of the NDP inappropriately references "Green Belt", rather than the provision of a green wedge as now included in the consultation draft of the NDP. While ostensibly recognising that this was inappropriate, the NDP policy now remarkably attempts

to promote a policy which is even more restrictive than Green Belt, as examined in evidence. Thus, in the Green Belt, planning permission ought to be granted if very special circumstances were evidenced, yet HPE1 provides no such provision. Similarly if a Green Belt were being established then a local planning authority would look to identify safeguarded land for future development to protect the inner boundary of the Green Belt, but here the HPE1 designation comes hard up against the settlement edge.

95. Mr Renow accepted in cross examination that the gap between Hatfield Peverel and Witham would still be almost a kilometre with the development. The assertions in paragraph 191 of HPPC's closing submissions were not put to Mr Smith and were not made by either HPPC witness.
96. The reality of policy HPE 1 is that it is trying to bestow Green Belt-style protection on the land between Hatfield Peverel and Witham, which probably provides an even more constrained policy context, contrary to any reasonable interpretation of the Framework.
97. It is also plain that this NDP policy draws no support from any credible evidence base, nor from adopted or emerging local plan policy. The BNLP (paragraphs 8.31 to 8.36 and policy LPP72, CD16.2 set C) sets out the thinking on green buffers by the Council. Notable by its absence is any protection for the gap between Hatfield Peverel and Witham, in which sits the DWH site.
98. Similarly the underlying landscape evidence base of the NDP does highlight concerns over coalescence, but not in relation to the tract of land within which the application site sits, which makes no mention at all about its supposed role in supporting an important gap.
99. It is noted that HPPC seeks some comfort in its approach from a single sentence email from an officer in the policy team of the Council (ID26), who provides a view which is patently at odds with that of the Council in promoting draft policy LPP72. It is unclear on what possible authority such an email might have been written, but the weight to be afforded to it must be very limited indeed. More importantly, policy HPE1 is subject to substantial and serious objection from both the public and the private sector which seriously diminishes the weight to be afforded to it. Most notably, there is an outstanding objection to this policy by the Essex County Council Spatial Planning Manager. In his objection he notes:

ECC notes that this [policy HPE 1] is not consistent with Policy LPP 72... The area along the eastern boundary of Hatfield Peverel is subject to a development, which has been approved by BDC, but is subject to a call-in. Consequently, this would infer that BDC does not consider this area as meeting the requirements, which seek to prevent coalescence of settlements.

100. It is remarkable that HPPC did not seek to draw this to the attention of the Inquiry. With respect however it is the death knell for any contention that any more than the most limited weight should be afforded to policy HPE1.

An Important View?

101. Policy HPE 6 in the NDP (CD16.3 set C) seeks to:

protect the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment (2015). Any proposed development, or alterations to an area within these views must ensure their key features can continue to be enjoyed including distant buildings, areas of landscape and open agricultural countryside.

102. There are a whole host of reasons why this policy should be given very little, if any, weight in the final planning balance:

- i) As Mrs Jarvis accepted, it is not consistent with policy LPP72 in the BNLPP.
- ii) In 2015, the Landscape Partnership carried out a Local Landscape Character Assessment for Hatfield Peverel (LLCA) (CD18.4 set C) that forms a fundamental part of the evidence base for the Neighbourhood Plan. The DWH site is within LLCA 4 (page 23 CD18.4). This independent study produced by landscape experts, identifies the key views within the LLCA as shown on the plan on page 23. The blue arrow pointing northeast goes along the public right of way which runs approx. 200m south of the site save for a very thin sliver of land to the extreme south of the site proper which it is intended will provide a landscaped link to the footpath network. When that is compared with the key views that have been included in the NDP (page 33, CD16.3, set C), what is immediately striking is that the view within the proximity of the application site identified by the independent experts is not the one carried forward into viewpoint 5 in the NDP. The experts, undertaking an approach with a recognisable methodology, identify the views out from the start of the public right of way which runs along the southern/eastern boundary of the site and which will be covered by public open space in the application, that view will be entirely unaffected by the appeal proposals. The NDP, at viewpoint 5, dismisses this and instead promotes a view from the end of a residential cul-de-sac, with no entrance to a public right of way that looks directly across the development site.

The reasons given for this change by Mr Renow in cross examination were that these views were voted for by local people and are considered to be the views deserving of policy protection within the NDP although Mr Renow did fairly accept that VP5 in the NDP is clearly inconsistent with the LLCA. More fairly still, he accepted that this was not a proper basis to plan protected views. Therefore HPPC's own evidence given by the person who claims to be at the heart of the neighbourhood planning process, is that the view protected in the NDP has no proper evidential basis. Instead, as Mr Smith made clear in his evidence, the view along the public right of way, that does have landscape value, will have any impacts upon it mitigated through boundary planting and the provision of public open space.

- iii) The Workshop for Important Views document (CD 18.6 set C) which sets out the analysis that supposedly led to the inclusion of viewpoint 5 in the NDP as an important view, exposes the reality of the selection. This document, at page 6, where the potential views within LLCA 4 were considered, states as follows with regard to the view across the

application site that eventually became important view 5 in the NDP - "*Key features - line of tall trees, flat field, hedgerows and trees*", but perhaps most revealing "*Value to the community - not sure if this area has any value but the residents like the view*" (emphasis added). The true purpose of the identification of the important views is finally revealed when examining why some of the sites were removed from the NDP. The view of the River Ter (CD18.6 set C, page 2, row 6), that one might consider to be a quintessential view, was removed as it is "*Not subject to planning*". Likewise that the view over St. Andrews Church was removed despite being the "*Historic core of the settlement*". Thus, if the view in the NDP has any claim to be an important one then it is in the teeth of the evidence and based upon the fact that an unknown number of people seem to "like it". As put in cross examination, it is difficult to escape the inference that those promoting the NDP have sought to promote not the important view recommended by an expert but an unimportant view in order to make a case opposing the DWH site.

- iv) Mr Renow sought to criticise the DWH assessment for not having taken account of the views of the community. A landscape character assessment undertaken by a professional landscape architect is intended to convey the objective judgment of the "assessor" and therefore is very rarely materially influenced by the views of the public, unless representations raise an objectively justifiable concern which had not been previously considered. The point is that it is a professional piece of work, which follows recognised guidance, not an informal local referendum on popularity of views. Indeed, when the Neighbourhood Plan team did attempt to take the view of locals as to which views were "important" it did so in a haphazard and inconsistent way which deviated from its purported evidence base. However even on that approach it is of note that the view from Gleneagles Way (proposed to be protected in the NDP) came 4th out of 5 proposed views. So even on his own argument, it does not suggest that even the local community find the view particularly important.
- v) The final piece of evidence exposing the real intentions of the NDP is set out at CD18.3, set C - Hatfield Peverel Site Assessment 2017. The application site is considered at page 8. It identifies no beneficial opportunities at the site, despite those drafting this document in 2017 being aware of this application to develop the site. Mr Renow accepted in cross-examination that the non-preferred sites were marked in this document with no opportunities in contrast with the preferred sites. It is in short an admitted exercise in advocacy and not evidence worthy of the name. Mr Renow reasonably made the above concession and it must be given significant weight. Paragraph 99 of the HPPC closing submissions which row back from this concession on this point can be afforded no weight at all.
- vi) HPPC note in their closing submissions that policy HPE6 deals with views 'identified by the community and the Hatfield Peverel Landscape Character Assessment'. Those are the words in the policy, but so far as relevant to the appeal site those words are flatly contradicted by the evidence base (see above). Indeed Mr Renow properly accepted in

cross examination that the choice of views was only based upon community views - a process with no recognised methodology.

The emerging NP

103. The reality is that the NDP, insofar as it addresses landscape issues, is a partial document. It is not a balanced piece of planning analysis that looks to meet housing need and protect landscapes meriting protection. The motivation appears to have been in part to stymie development in Hatfield Peverel other than on the Arla Dairy site. Consequently, the landscape policies within the NDP should be given very limited, if any, weight. They lack any balanced and considered evidence base and are subject to detailed and robust objection. Additionally, as will be addressed in more detail below, the NDP is some considerable way from being made and is best described as being "stalled" with no immediate hope of being restarted.

Landscape Conclusions

104. The reality of the landscape evidence with regard to the DWH site as it has emerged to the Inquiry is that Mr Smith's approach and assessment withstood challenge and were essentially not contradicted by contrary evidence. The effects of the development on the wider landscape are assessed as minor. Likewise, the visual effects of the development are properly characterised as highly localised especially once the mitigation has matured. As Mr Smith's photographs readily demonstrate there will then be no intervisibility between Hatfield Peverel and Witham, both as a result of distance, intervening landscaping, proposed landscaping as well as the marked effects of the intervening ridge that Mr Smith described. That position will not alter even if the emerging BNLP allocations are endorsed. No proper challenge was raised to Mr Smith's assessment of the scheme against the Eastleigh test. To be blunt just as with landscape, the issue of an impact upon coalescence of settlement is a makeweight point as far as the Gleneagles site is concerned.
105. Regrettably, Mr Graham has not properly recorded the evidence of Mr Smith on landscape. He did not accept that there would be clear intervisibility between the application site and Witham - evidenced in the photo montages. Mr Smith did state that it would be possible to see Wood End Farm as one leaves Hatfield Peverel on the A12. This is not the same as views from the DWH site and nor would it impact upon coalescence.
106. HPPC seek to draw attention to the view from D's Diner as making a positive contribution to the character of the area (paragraph 193 ID48). As Mr Smith made clear in cross examination, this view includes the A12 on the left, the cycle path, an unsurfaced car park in the foreground and the existing housing and diner to the right. The proportion of the view that is occupied by the application site is relatively small and, most importantly the context of new homes in this view, would be existing urban development and substantial infrastructure to both the left and right. Using the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA3) process there is no doubt that this visual effect would be less than significant.
107. Finally, DWH, through Mr Smith, produced a document to the Inquiry (Statement of Landscape Principles, ID46), which should be read alongside the parameters plan (SAV4) and the design and access statement (SAV7). This sets

out in plain terms the approach the developer will take to mitigating the limited landscape harms caused by the development. The conclusion the Secretary of State will be invited to make is that there are no supportable landscape reasons for refusing this scheme. HPPC seem to suggest (paragraph 192 ID48) that a 9 metre high barrier of planting along the eastern edge of the site would "detrimentally change the character of the locality". There is however already a belt of shrubs and trees along this edge of the site and these extend to above 15 metres in height. Some of the existing trees are non-native. The DWH proposals would augment and enhance the existing planting in a manner which is entirely in character with the area.

Planning

108. DWH's planning case is set out in the proof of evidence from Mr Jonathan Dixon (DWH1), which was subject to only the most limited of challenges.
109. As stated in opening, the site is not in or adjacent to any heritage or landscape related designations and there are no technical reasons put forward to warrant the withholding of consent. The landscape objections put forward by HPPC have been addressed above and do not come close to providing a sound policy and legal basis for withholding consent, let alone comprising a basis to displace the presumption in favour of sustainable development.
110. The relevant policy issues in adopted and emerging local plans are limited to policies of minimum housing provision within the settlement hierarchy (CS1); general protection for the countryside (CS5); emerging policies on development boundaries (LPP 1); and policies in the NDP that have already been considered.
111. Dealing firstly with CS1. As Mrs Jarvis rightly accepted, this policy is presumed to be out of date as a result of the failure to show a 5YHLS. Therefore, it will carry reduced weight in the overall planning balance. However, it is also out of date and therefore of reduced weight, for several other reasons.
112. Had plan preparation proceeded properly, then the settlement boundaries, which were first established in the mid-1990s, would have been reviewed many years ago. However, there is nothing before the Inquiry to suggest that the settlement boundaries in the District have ever been subject to a comprehensive review (as opposed to merely amending settlement boundaries to accommodate strategic allocations), let alone in Hatfield Peverel. On the evidence it appears highly likely, therefore, that twenty year old boundaries have simply been rolled forward from an old (and a now-withdrawn) plan. Without an evidence base to support the policy, it is not enough to simply point at the words on the page and cry refuse - it must have an evidence base.
113. Mrs Jarvis suggested that the emerging BNL part 2 (CD16.2 set C) had been based upon a review of the boundaries. However, she was only able to provide a short report which appears to have been provided at an early stage of plan preparation to identify what principles would be applied to a future review (HPPC2, Appendix PJ3). It emphatically does not record or detail that any such review has taken place. When Mrs Jarvis was pressed, she readily conceded in cross examination that she had not been able to identify any documentation to support the proposition that the boundaries in the District have been reviewed as part of the emerging BNL process. It is plain from the evidence of all the

- planning witnesses, including HPPC, that Mr Dixon's approach to the out of datedness of settlement boundaries is manifest.
114. What is clear is that the Council readily accepts that in order to meet its immediate needs that greenfield land will need to be released.
115. Hatfield Peverel is a KSV within the adopted and emerging plans. Far from being preclusive of growth, that designation explicitly anticipates that the settlement can accommodate growth. Indeed in the emerging BNLP the settlements on the A12 corridor (including Hatfield Peverel) are identified as being a particular focus for growth - a point noted by HPPC in their closing submission (paragraph 70 ID48). Mrs Jarvis readily accepted that Hatfield Peverel could accommodate additional growth. However her point appeared to be that the development of the appeal site would lead to excessive growth. However the yardstick against which she sought to judge whether that was excessive related to a plan whose period has expired and relating to a table of indicative distribution of growth which is explicitly a minimum. When pressed, she accepted that there was no policy limitation which is breached by the grant of planning permission. Certainly it is untenable to contend that the grant of planning permission in this case would comprise disproportionate growth for Hatfield Peverel.
116. Given the considerable under supply, it is essential that further land comes forward for development in Hatfield Peverel to meet the unmet need. Given the very limited objections to this site (both in substance and number), the DWH site is well placed to help the Council get closer to delivering its housing requirement.
117. Turning now to Policy CS5, this comprises a general blanket countryside protection policy. Mrs Jarvis rightly accepted that the weight to be given to this policy must be interpreted with regard to its consistency with the Framework. This policy imposes a blanket ban upon development in the countryside, which is not included in the Framework. Mrs Jarvis sought to place reliance upon Framework paragraph 17 which sets out the overarching principles. Eventually she conceded that the word "strictly" in CS5 went beyond what is included in the Framework. This policy should be given much reduced weight as it is inconsistent with the Framework and, recalling Lord Gill in *Suffolk Coastal*, such overly restrictive policies that result in less than 5YHLS must be given reduced weight or they would be frustrating the objectives of the Framework (CD31.2 set C).
118. The Council seek to argue that policy CS5 should attract moderate weight because that is what other Inspectors have concluded and it complies with Framework paragraph 17 by recognising the intrinsic character and beauty of the countryside. That submission on Framework paragraph 17 is flawed for the reasons above. Previous Inspectors' conclusions are persuasive but they are not binding, given the strength of argument that this policy carries limited weight the Inspector and ultimately the Secretary of State can, and should, come to a different conclusion.
119. Turning to the emerging BNLP (CD 16.2 set C). This directs substantial growth to the garden villages, however Mrs Jarvis accepted that the emerging plan was still subject to a lot of objections. Despite this (and remembering the terms of Framework paragraph 216) Mrs Jarvis inexplicably concluded that the BNLP

should carry "fairly significant" weight as it was compliant with the Framework. It is not entirely clear what is meant by "fairly significant weight".

120. This is particularly inexplicable as she accepted that the substantial controversy still attached to the BNLP would reduce the weight that could be attached and she finally concluded that the Inspector should "be cautious" about the weight to be attached to the plan. It seems that this conclusion is well founded and accords with the careful analysis of Mr Dixon. Mrs Jarvis agreed with Mr Dixon that the BNLP was not in a position to solve the immediate problems with the 5YHLS and that it will not solve it in the next 18 months. It was further accepted that the plan would not be adopted soon - "It has some way to go". All of these points of agreement support the position of the applicant, as put forward by Mr Dixon, that the BNLP should be given significantly reduced weight.
121. Finally, on the NDP. Despite the misguided optimism of Mr Renow, this is a very long way from being made:
122. Since the NDP proposes to allocate land and does so in a way which is inconsistent with both the adopted and emerging LP (Mr Renow cross examination), then it will need a Strategic Environmental Assessment (SEA) to be carried out. Such an exercise has not been undertaken and as Mr Renow accepted (cross examination), no steps have been taken to complete one. Indeed at times he appeared not to understand what an SEA was. The simple and undeniable fact is that if the NDP wants to allocate sites it must complete an SEA unless it is merely parasitic upon an adopted local plan (which it plainly is not). It does not remotely depend on the outcome of a Habitats Regulation Assessment (HRA) screening assessment as Mr Graham submits (para 84 ID48) which is an important but parallel legal process. The point made by SPMRG (paragraph 122 ID49) should also be rejected. Whilst the lack of the SEA might not directly affect landscape or protected views, it manifestly affects the ability of the plan to move (lawfully) to the next stage. If it cannot move forward in the process, then the weight to all policies in the plan cannot increase. Notwithstanding this, there are the other concerns with landscape and protected view policy in the NDP already explained. Mr Graham is simply wrong on this point.
123. Mr Renow's explanation as to why an SEA was not needed was because the Council has completed a HRA in respect of the planning application upon the Arla site, ie the site that the NDP proposes to allocate. This exercise was undertaken, as is required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010, because a development is proposed on the site for 145 units. To suggest that this HRA would displace the need for an SEA to allocate the site in the NDP is a fundamental misunderstanding of what is required for the NDP to allocate a site in a lawful manner. An HRA for a specific proposal is not an SEA for an allocation in a plan. If the NDP proceeds on the basis advocated by Mr Renow, it will be unlawful.
124. SAV49 is a letter from the independent examiner of the NDP. As of the letter date, 20 September 2017, it was anticipated by the neighbourhood group, as expressed to the examiner, that the SEA and HRA Screening Report would be available within 3 - 4 weeks - i.e. around mid-October 2017. No such reports have been prepared, nor is there any clear indication as to whether they ever will

be. (*note: this submission was written before HPPC notified the parties that the document had in fact been submitted to Natural England [10]*)

125. The basic conditions against which a neighbourhood plan is to be judged include compliance with European requirement and conformity with the adopted development plan. There is very clear authority that whilst there is nothing wrong with a neighbourhood plan being prepared to be consistent with both the emerging and the adopted development plan, it is against the adopted plan that the neighbourhood plan should be tested (paragraph 82 CD31.1 set C). Thus, the NDP cannot avoid meeting the obligation for a development plan which contains allocations as a plan or project to be subject to an SEA simply because it follows the lead of the emerging BNLP. Nor can it simply piggy-back on the back of the SEA for the emerging BNLP since that relates to a different plan with different considerations which will not be adopted until mid-2018 at the earliest.
126. Mr Renow accepted in cross examination that there may be a substantive problem with the SEA, but despite this, he considers that the NDP will be made well before the BNLP is adopted, at the latest June 2018. If that was the case then it would be the source of an allocation which has been untested by an SEA, and inconsistent with the adopted local plan. One reason for this is that CS policy CS4 requires the retention of existing employment sites. Paragraph 6.2 of the CS makes it clear that this also relates to KSVs. A housing allocation is plainly inconsistent with CS4. To allocate a housing site on the Arla site in advance of the emerging BNLP being adopted with such an allocation within it, and without an SEA would plainly not meet the basic conditions for a neighbourhood plan required by law.
127. In any event, it seems highly unlikely that the NDP could be lawfully made by June 2018 as a matter of simple practicalities. If the NDP seeks to allocate sites and proceeds to do so without an appropriate SEA, then it will be unlawful. Of course it could avoid any such problems by not allocating any sites or by waiting to progress further until after the BNLP is adopted, which would thereby abrogate the need for an SEA. If the NDP were modified so that it does not allocate any sites then it would still be fundamentally flawed because of the evidential issues with HPE1 and HPE 6. However if those flaws were also addressed (by deleting HPE1 and removing viewpoint 5 then such an adopted plan would not benefit from the protection of the Written Ministerial Statement on Neighbourhood Planning.
128. Moreover, just promoting the proposed allocation of the Arla Dairy site in the NDP is out of step with the BNLP (policy LLP 31) that identifies the Arla Dairy site for "mixed use of up to 200 dwellings". The NDP has far from a smooth flight path to landing. Indeed, to borrow Mrs Jarvis's words, it is a "hiccupped" plan that has various stages still to complete. She went further and said that she could not be sure whether the NDP was compliant with the Framework.
129. The argument put forward to support the argument for HPPC that the NDP should carry significant weight was because it had the support of the local community, as shown through the poll carried out by the Neighbourhood Plan group. This is wholly unsupportable in planning terms. The informal poll is not a referendum and weight does not depend simply upon popularity. It is also not an official stage in the development of the NDP. The weight to be given to the NDP must be in accordance with the requirements of Framework paragraph 216. It is

plain that Mr Renow's view of how weight is to be ascribed to a neighbourhood plan has absolutely no support in national policy or guidance.

130. The conclusion on the NDP is that the policies that are relevant should only be given very limited weight for the reasons above. Therefore, whilst HPPC seeks to argue that the development is in breach of policies HPE1 and HPE 6, the weight to be afforded to such conflict with policy is substantially reduced.

Education

131. The applicant relies upon the Education SOCG (ID1.8) to evidence the absence of any education harm requiring mitigation from this development. Whilst some local residents have expressed concern at finding school places, the applicant submits that greater weight must be placed upon the education SOCG. There is no objection from Essex County Council as local education authority and planning permission should not be withheld on this basis.
132. HPPC seek to make submissions that "for many years, primary-age occupants of the Inquiry scheme would be required to travel further afield for schooling". There is simply no evidence of this before the Inquiry, which comprises evidentially unsubstantiated scaremongering and should be rejected. Had Essex County Council considered that the proposed education provision was unacceptable then it would have objected.

Highways

133. DWH rely upon the Transport Assessment (SAV25) and the highways evidence produced as part of the application to demonstrate that all highways impact can be properly mitigated. The Highways Authority has no objections to the scheme, and there is no basis to come to a different conclusion.

Conclusion

134. The Council cannot demonstrate a 5 year supply of housing land. Therefore, substantial weight should be afforded to a proposal for general market housing which helps to redress that deficit and, critically, the tilted balance in Framework paragraph14 applies. What is plain from the evidence put before this Inquiry, is that no objections have come close to significantly and demonstrably outweighing the considerable benefits of this scheme - the delivery of much needed market and affordable housing, the provision of public open space and the economic benefits of developing such a scheme. The application proposals comprise sustainable development which should be consented without delay.
135. For the Gleneagles site there can be no issues with regard to deliverability since it is controlled by a national housebuilder who, on instructions, is keen to bring the site forward for development as soon as possible.
136. As such, it is respectfully submitted that the Inspector recommends permission be granted so that development on this site can get underway - contributing meeting the housing requirement in this part of Essex.

Points from the Case for Gladman Developments Ltd adopted by David Wilson Homes and/or relevant to the determination of this application

The sustainability of Hatfield Peverel as a location for development

137. There is no evidence that Hatfield Peverel is anything other than a sustainable location for new housing growth. There are a range of services, facilities, clubs and activities that could accommodate new residents and to which new population within the village would contribute.
138. Mr Renow seeks to suggest that the village lacks the services and facilities to accommodate new development (paragraph 10 HPPC1). However, he includes at Appendix MR5 a list of clubs, organisations and businesses that exist within the village - they demonstrate the wealth of services and facilities that are available - with Mr Renow confirming that some clubs are so popular, they have had to find other venues outside of the village. Hatfield Peverel is a thriving settlement.
139. What Appendix MR5 confirms is that there are a range of social opportunities for new residents as well as a number of services and facilities that will cater for day to day living. Those include convenience stores that would provide for top up shopping, as well as hairdressers, beauticians, garages, a library, dry cleaner, florists and a number of restaurants, to name just a few. There is also the school and the surgery. Mr Renow accepted that all of those businesses give rise to employment opportunities for people working in the village.
140. Mr Renow's point was that, over time, employment opportunities in the village have reduced. However, despite that, there are no allocations within the emerging NDP for an employment site and the one allocation for housing (the Arla site) does not require a mix of uses to come forward. Mr Renow accepted there were good links for commuters from the village to travel to work either by train or bus and thus residents of Hatfield Peverel can access employment centres in a sustainable way without having to rely on the private car.
141. He also accepted the train service begins around 5am in the morning, with trains to London and runs until after midnight. He accepted that the train station is within walking distance of the site and that other nearby towns and job opportunities can be accessed by sustainable transport modes. Mr Renow accepted that people would not have to commute by car if they were leaving the village to find work.

Planning policies

Policy CS5

142. It is not GDL's case that policy CS5, or indeed the need to recognise the intrinsic beauty of the countryside can be forgotten about because CS5 is based on out of date boundaries and there is not a 5YHLS. The impact of the scheme on the landscape is an important consideration in this appeal, but CS5 requires all schemes in all open countryside to satisfy a threshold that the Framework requires only in relation to valued landscapes - to "protect and enhance". It is that threshold - a fundamental component of the policy - and what it is seeking to achieve that is inconsistent with the Framework and was exactly the point that was addressed in *Telford and Wrekin* (CD31.3 set C).

143. Mrs Jarvis alleged that the policy was consistent with the aims of the Framework paragraph 17(7) but also agreed in cross examination both that the relevant bullet point of Framework paragraph 17 does not set an absolute threshold for all development and that there is no general duty to enhance the countryside. It will be clear that the part of Framework paragraph 17 relied on provides a broad overarching principle which is to be implemented by more detailed policies within the Framework. It is relevant in that respect that Framework paragraph 6 does not include paragraph 17 within the definition of "sustainable development".
144. Moreover, that particular bullet point directly correlates to Framework Chapter 11 and paragraph 109 where what is required to be enhanced and protected are valued landscapes - not ordinary countryside.
145. Further, the observance of development boundaries is absolutely integral to the policy. If that part of the policy is removed as it must be given the out datedness of the boundary (the Council does not apply rigid boundaries – paragraph 59, CD32.2 set C), it no longer makes any sense. There is no criterion against which to measure the acceptability of development such as those before the Inquiry other than whether it is the right or wrong side of the boundary.
146. The weight to be given to CS5 is of course a matter of planning judgement for the decision-taker but regard should be had to the reasoning in *Telford and Wrekin*. HPPC on *Cawrey Ltd v SSCLG* [2016] EWHC 1198 in response (paragraph 51 ID48). However, the submission also omits a key part of the very paragraph it relies on that makes clear the important distinction in that case - that the Inspector had found the Council could demonstrate a 5YHLS. That finding had a direct bearing on the Judge's findings at paragraph 50 which are reproduced in full below:

Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission. If reliance is then placed on NPPF, one must remember always what Lindblom LJ has said in Suffolk Coastal about its status. It is not suggested in this case that this is one where the NPPF paragraph [14] test applies, which given the Inspector's findings on the effect on the landscape, and the fact that HBBC is the Borough, and Ratby the settlement, where the policies considered in Bloor applied, is unsurprising. Nor is it suggested that he should have applied NPPF [49] given his findings on housing land. There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990. (emphasis added)

Policy RLP2

147. GDL agrees with the Council that policy RLP2 can attract only limited weight for the reasons set out in its submissions (paragraph 35 ID47). Both HPPC and SPMRG rely on the policy but do not engage with the weight to be given to it. It is clearly out of date and incapable of delivering housing to meet the needs of the population now.

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148. The three schemes each conflict with the statutory development plan and so the starting-point is that they should be refused permission. In essence, the decisions on the three schemes will come down to whether the potential supply of housing should be given priority over the policy objectives of directing growth to other locations within development boundaries and at higher-order settlements in order to protect the environment (including the character of the settlement and historic assets), avoid excessive pressure on local facilities and infrastructure, and reduce the need to travel. This is a question of weight, which may depend on the extent to which any shortfall in 5 year housing land supply is identified, and on the Secretary of State's confidence that the proposed housing would be delivered on site within the 5 years.

5 year housing land supply: the four step approach

Step 1: quantify the deliverable sites

149. The Secretary of State will need to ask for the purpose of applying the Framework whether there is any shortfall in terms of 'supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements' (that is, the OAHN) and the extent of any shortfall (Framework paragraph 47, second bullet, emphasis added). This is a matter of planning judgment in terms of assessing whether a particular site is 'deliverable', and the capacity of a particular site to take a given quantity of housing, but it is otherwise a straightforward quantification exercise.
150. The policy test whether housing land is to be included in the 5YHLS is merely whether there is a 'realistic' - that is, non-fanciful - prospect of housing delivery (*St Modwen v SSCLG* [2017] EWCA Civ 1643 paragraphs 35-39, CD32.18 set C). A site does not have to be allocated in any plan, let alone be granted permission, in order to be included in the 5YHLS. Its delivery does not have to be a certainty, nor even more likely than not; the policy requires that it be 'realistic'.
151. Just because a site is outside development boundaries of the current plan does not mean it should be treated as having an unrealistic prospect of development where the planning authority has allocated it in an emerging plan and is currently of the view that it is a suitable and available site, viable and achievable within 5 years for the purpose of footnote 11 of the Framework, so has included it in its 5YHLS trajectory. In the Council's closing submissions, they give the example of the Gimsons site, and assert that "[u]ntil such time as the draft allocation supersedes the present development plan status, it cannot be considered 'deliverable'."
152. This statement demonstrates that the Council has taken and continues to take a legally erroneous approach to counting sites within its 5YHLS for the purpose of Framework paragraph 47. What the Council has done is to treat sites not

- allocated in the current plan as *ipso facto* incapable of being considered suitable, and has not included a single one in its land supply monitoring figures for the next 5 years. It is elementary that the adopted development plan is the starting-point but it does not predetermine the outcome of any planning application where there are good reasons for determining it otherwise than in accordance with that plan. If it were, this Inquiry would have been unnecessary. The Council cannot rationally treat sites as suitable for housing for the purpose of its forward planning but at the same time automatically treat them as unsuitable when determining actual applications just because the emerging plan has not been adopted.
153. Of course there might be other circumstances where a site allocated in an emerging plan would only become realistic for delivery in the 5 years if the plan was adopted (such as a site requiring planned infrastructure and/or a new settlement to be in existence first, if that new infrastructure or settlement would not otherwise come forward in time). No such circumstances apply here; the new settlements proposed in the emerging local plan are not proposed to come forward in the first 5 years of the plan, and are not relied upon in the early part of the housing trajectory. This is the advice in the PPG which states "If there are no significant constraints (eg. infrastructure) to overcome such as infrastructure [sic] sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe." (Paragraph: 031 Reference ID: 3-031-20140306).
154. On this analysis, it was wrong to exclude the sites that the Council is satisfied are soundly evidenced for inclusion in the trajectory showing the 'expected rate of housing delivery' for the purpose of promoting its local plan.
155. On that basis, the Secretary of State is entitled to rely on the sites counted in the housing trajectory appended to the Council's letter to the Rt Hon Priti Patel dated 29 November 2017 (ID42). On that basis, there is no, or no material, shortfall for the purpose of Framework paragraph 47. The trajectory table shows delivery in the first 5 years of the plan period as (501 + 577 + 1128 + 1443 + 1329), which is 4978 dwellings. Taking OAHN of 716, multiplying by 1.05 to allow for the 5% buffer gives 751.8 (say 752) dwellings per year, this gives 6.62 years' supply. If the Liverpool approach to adding backlog is adopted ((716 + 107) x 1.05), the annual requirement would need to be 864 which gives 5.76 years' supply (taking the OAHN figures from Alison Hutchinson's proof, (BDC1, table 1 on p.11). If the Sedgefield approach is adopted ((716 + 332) x 1.05 using Ms Hutchinson's figures) an annual requirement of 1,100 and 4.52yrs' supply is the outcome. The text of the letter to Ms Patel quotes figures of 6.24yrs and 4.9 yrs respectively, but the workings for arriving at those are not indicated.
156. Furthermore, the housing land supply position is improving and may have improved further by the time the Secretary of State issues a decision. For example, Mrs Hutchinson's Proof, (BDC1 table 2, page 12) shows improvement from 3.91 to 3.97yrs on the Liverpool approach and 3.1 to 3.9 years on the Sedgefield approach between 31 March 2017 and 30 September 2017, adopting the Council's approach of excluding the emerging allocations.
157. It is appreciated that the prospect of delivery of housing on one or more of the sites before this Inquiry may also be relevant to the determination of these

schemes, if - contrary to HPPC's submissions that these sites are not suitable - the Framework footnote 11 requirements were thought to be met and it were considered that housing on one or both was realistically likely to be delivered within 5 years (whether or not by virtue of these applications). Some addition to the supply might need to be made for that by the Secretary of State depending upon how each appeal or application is to be determined, when determining the others.

Step 2: take the OAHN

158. There was uncontested evidence at this Inquiry that the extent of OAHN is 716 dwellings annually.

Step 3: decision as to whether to add to the requirement to allow for past shortfall and over what period to expect this to be made up

159. At the Inquiry there was a debate about whether an addition should be made to the housing requirement to make up for previous shortfalls using either the Liverpool or the Sedgfield methods.

160. This exercise is essentially a policy judgment for the decision-maker which, importantly, is not prescribed by Framework paragraph 47. As Lindblom J noted in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (paragraph 108, ID61) upholding a decision to apply a Liverpool approach:

Neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF. In my view the inspector was free to come to his own judgment on this question.

161. Framework paragraph 47 does not say to add previous years' shortfalls to the current OAHN to arrive at an annual requirement figure. This may be of significance when applying Framework paragraph 49 and determining whether the second bullet of the decision-taking limb of Framework paragraph 14 should apply.

162. The closest is the advice in the PPG section dealing with plan-making rather than decision-taking, which says, "Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate." This guidance is consistent with the plan-led system, and does not dictate whether to add to a current years' annual requirement when taking a particular decision to make up for previous shortfalls, nor dictate a method for doing so.

163. If an allowance to make up for past shortfalls is to be added, the Liverpool method is appropriate here because the emerging local plan contains a strategy shared with partner Essex authorities to accommodate growth in new garden communities and large allocated sites, which can better respond to the requirements for new infrastructure, and will come forward later in the plan period. The evidence of the Council's professional planner Ms Hutchinson was that in her judgment the Liverpool approach was amply justified, but that the Council felt constrained not to advocate such an approach until the examination of its emerging local plan as it had lost other appeals.

164. However, HPPC considers this to be over-timid and inappropriate. The spatial strategy of the emerging BNLP would be undermined if development in less sustainable locations was permitted with the intention to meet a short-term need, to the detriment of what the Council properly consider to be the best long-term plan for the District. At this Inquiry there was no evidence led to contest the soundness of the Council's overall approach in its emerging BNLP. Indeed, Mr Lee sought to argue consistency with it, albeit on the selective basis that some growth was proposed for Hatfield Peverel whilst downplaying the fact that the Stone Path Drive site was located in the countryside for the purpose of the emerging plan (paragraph 13.3.6,1/POE). Although no party would contend that the emerging plan should be treated as if it were already the adopted development plan, the Secretary of State is fully entitled to give weight to it and to apply the Liverpool approach to these applications and appeal.

Step 4: add buffer

165. The Framework paragraph 47 provides guidance that an adjustment should be made to the OAHN by the addition of either a 5% or a 20% buffer. This requires a different form of judgment to be made about whether the record of the local planning authority is one of 'persistent under-delivery'.
166. A buffer of 5% is the default for ensuring choice and competition in the market for land. A buffer of 20% should be added 'to provide a realistic prospect of achieving the planned supply' where there is a record of 'persistent under-delivery' (Framework paragraph 47). The point is to make an allowance for proven persistent failures of delivery, to correct for over-optimism about meeting planned-for targets or requirements and to build in a margin for failure to deliver the targets currently planned for.
167. There is no further or different purpose (other than also ensuring choice and competition in the market) for the 20% buffer suggested by the Framework. It is not specified to apply by reference to a particular level of accumulated current shortfall, and is not designed to hasten the delivery of units in response to a particular urgency of need. The purpose of the buffer is not to correct for a particular shortfall, but to address the problem of over-optimism. Any accumulated shortfall in delivery against what is now understood to be the OAHN is reflected automatically in the figure for current housing need.
168. It would be quite wrong to test 'under-delivery' anachronistically against requirements that were not known at the time. HPPC respectfully adopt the archery analogy given by Mr Cannon (paragraphs 22-23, ID47). There is no record of persistent under-delivery here.
169. Even if there were a record of persistent under-delivery, the Framework is only guidance and the purpose of applying the higher 20% buffer is to ensure 'a realistic prospect of achieving the planned supply'. The Secretary of State is entitled to assume that sites in the Council's housing trajectory are 'realistic' (HPPC has not given evidence of its own on suitability and deliverability other than on specific comprehensive development area sites at Hatfield Peverel) and can be counted on as indicating the expected rate of housing delivery.

Summary

170. Adopting the correct *St Modwen* approach to the meaning of 'deliverable sites', the Liverpool method for apportioning past under-delivery and a 5% buffer, there is no shortfall and the Council has a healthy 5.76 years' housing land supply on the latest figures. Even if one were able to demonstrate that some of the allocated sites were not realistic prospects, one would still have a 5 year supply on the Liverpool approach if there were land sufficient for 4,320, so there is a built-in healthy margin for error.
171. Whilst HPPC do not consider adopting the Sedgefield method to be appropriate, if we include the emerging allocations and a 5% buffer, there would be 4.52 years' supply, even on that basis, which is a very modest shortfall in the context of a rapidly improving supply position.

Policy issues in respect of all schemes

Framework paragraph 14 and its application-updatedness

172. The question of 'updatedness' does not depend on chronological age in itself (Framework paragraph 211) but on changes in circumstances and/or planning policy.
173. By virtue of Framework paragraph 49, shortfall in 5YHLS would usually be treated as a factor indicating policies for the supply of housing were 'out of date', hence the materiality of the 5YHLS question.
174. The term 'policies for the supply of housing' has a narrow meaning, but as the Framework is only guidance it is not appropriate to embark on a legalistic exercise of classifying policies (paragraph 59, CD31.2 set C). Whether policies for the supply of housing (or indeed other policies) are out of date does not determine the weight to be given to them, which remains a matter for the decision-maker (paragraphs 29, 55 to 56 CD32.2 set C).

Framework paragraph 14 and its application-silence

175. Mr Lee –but not Mr Dixon- sought to argue that the development plan was 'silent' in relation to these appeals, because "the Development Plan is now silent in respect of where development should be located outside of the strategic areas identified on the Core Strategy Proposals Map" (paragraphs 6.4.3 to 6.4.4 1/POE).
176. Mr Lee's argument cannot be sustained here. In *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 at [100]-[101], Holgate J rejected as a 'fallacy' the analogous argument that 'first, the inspector had to consider whether the plan was "silent on a particular issue" and second, that issue was where land to provide for a shortfall of 6,823 square metres of B8 floorspace should be located'. The learned judge ruled:

Neither paragraph 14 of the NPPF nor SD1 of the RTVLP [the local plan at issue] enable a party simply to select one of the "issues" relevant to the outcome of a planning application or appeal, so that it may be claimed that the plan is "silent" on that particular issue. Instead, the proper question for the decision-maker is whether there is a sufficient policy content in the plan taken

as a whole to enable the planning application to be determined as a matter of principle...

... In the Bloor Homes case Lindblom J explicitly stated, at para 59, that the fact that allocations have yet to be put in place in a development plan (in that case for housing), does not mean that the development plan is "silent".'

177. The policies in the adopted Braintree Core Strategy, taken as a whole, indicate that permission should be refused because the strategy places both the Gleneagles and Stone Path Drive sites outside the village boundary in the countryside and directs growth to brownfield sites and infills within the village. Furthermore, there are emerging plan policies at an advanced stage which maintain both the Stone Path Drive and the Gleneagles sites outside the village boundary, and specifically protect the sites (particularly emerging NDP policies HPE6 on landscape setting and HE1 on coalescence).

178. Mr Lee referred to *South Oxfordshire District Council v Cemex Properties UK Limited* [2016] EWHC 1173, but that case needs to be considered on its peculiar facts. There, a core strategy stated that at least 1154 dwellings would be allocated in certain larger villages including Chinnor, but no allocations had been made. The inspector had regard to the fact that the emerging local plan was at a very early options stage, and there was not even a draft emerging neighbourhood plan to give direction. It was in those circumstances that the Inspector concluded there was a 'policy vacuum on the issue of site allocations in the larger villages' (judgment at paragraphs 43 and 48, citing decision letters). The judge ruled that:

'91 ...the question for the decision maker is...(1) does this development plan contain a body of policy relevant to the proposal being considered; and (2) is that body of policy sufficient to enable the development to be judged acceptable or unacceptable in principle? The first question involves an identification of the policies in question, and their correct interpretation; the second involves the exercise of planning judgment on the practical effect of that body of policy on the making of the decision in issue.

92...It follows also from the fact that the decision maker must make a planning judgment that... what matters is not simply whether the plan contains a policy which can be looked at to determine the question posed in Bloor at [50] and repeated in the last sentence of my [91] above: for its sufficiency at the time the decision is being made is an essential issue, and that involves the making of a qualitative planning judgment. I emphasise that the judgment to be made is at the time of the decision. A Development Plan may not have been "silent" when adopted, but has become so.

93... In the case of this Development Plan, the mechanism by which its housing requirement figures were intended to be translated into actual allocations was the DPD, which SODC had since abandoned. The question "how much housing does the Development Plan intend should be allocated in the period x to y" is not the same question as "where does the Plan say that that housing could or should be built?" In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.'

The judge concluded:

97 'This was a case where it was her planning judgment that it was the answer to the second question above which mattered... Thus, she found that there was effective silence on the critical issue. That was a planning judgment which she was entitled to form.

98 Her conclusion...is a planning judgment that was open to her'

179. Although in the case before this Inquiry, the initially envisaged site allocations document to follow the CS did not proceed to adoption, there are important distinctions from the situation in the Oxfordshire case. CS policy CS1 states that the dwellings 'will be located...On previously developed land and infill sites in the Key Service Villages and other villages'. Furthermore, unlike the South Oxfordshire case where the development boundaries and countryside protection policies were merely contained in a previous saved plan pre-dating the core strategy, CS5 states as set out above (paragraph 30).
180. This gives a further clear steer that large housing developments in the countryside are not in accordance with the CS. Thus, Braintree's adopted plan is not, in its policies, silent about where it expects the growth to take place. The policies do not require the Site Allocations DPD before being able to say whether in principle development in green open countryside adjacent to Hatfield Peverel is encouraged: the answer is a clear 'no'. By way of further distinction, there are submitted examination drafts of the emerging BNLP, and emerging NDP. Furthermore, the question of how much development is intended in Hatfield Peverel matters as well as where that development is located.
181. In this regard, the situation here is more akin to that in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754, where the site lay within a 'green wedge' designated by a policy in the core strategy and the High Court upheld the decision that the plan was not 'silent' even though the core strategy had contemplated that a future site allocations DPD would review that boundary (see judgment at paragraphs 29, 30, 36 and 51-58).
182. The unsustainability of any argument that the development plan is silent is perhaps demonstrated by the subsequent length of Mr Lee's proof where he sets out and considers the relevant policies, and by his eventual acknowledgement (paragraph 13.2.2, 1/POE) that "Having tested the proposals against the material policies contained within the Braintree development plan I accept that the appeal proposals conflict with the Plan". Notwithstanding his subsequent oral equivocation over this point during his cross-examination, that acknowledgement in the Proof was rightly made.

Framework paragraph 14 and its application-Specific policies in this framework

183. 'Specific policies in this framework' means policies that, applied here, indicate in the judgment of the decision-taker that permission should be refused. Such policies may include relevant development plan policies within the framework of the Framework.
184. The second bullet-point in the decision-taking limb of Framework paragraph 14 is no more than guidance and only applies where a development plan is absent, silent or out-of-date. It does not displace the statutory presumption in favour of determining applications in accordance with the development plan so that

proposals conflicting with the plan should be refused unless material considerations indicate otherwise (Framework paragraph 12). It has to be read consistently with that presumption. Where, although the plan may be generally or in some particular respects (e.g. in its policies in relation to the supply of housing) out-of-date so as to engage Framework paragraph 14, that does not determine the weight to be given to particular development plan policies. Over-legalistic interpretation of the Framework, drawing fine, unintended distinctions, is to be deprecated. These principles are clear from *Suffolk Coastal* (paragraphs 14, 21, 23, 54-56, 74 and 85 CD32.2 set C).

185. At Framework paragraph 154 it is emphasised that 'Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where'. A decision-maker is fully entitled to conclude that specific policies within the Framework -such as for protection of countryside and favouring greenfield over brownfield development- indicate that permission is to be refused without having always to conclude that benefits are 'significantly and demonstrably' outweighed by harms.

The adopted development plan

The spatial strategy

186. The CS is based on a 'hierarchy of place' (paragraphs 2.4-2.14, HPPC2) focusing growth at settlements higher up the hierarchy. In that context, at policy CS1 it identifies a minimum requirement of 600 homes for the period 2009 to 2026 at the six KSVs. The number of dwellings to be provided in these Inquiry schemes (up to 260 across the two Inquiry sites), in combination with the development permitted since 2009 in Hatfield Peverel, would greatly exceed a proportionate distribution across the villages. The proportions are relevant as well as the numbers: six KSVs are to take 12% of the homes between them (paragraphs 2.15-2.18, HPPC2).

187. Policy CS 1 further states:

*These dwellings will be located (as set out in table CS1):
On previously developed land and infill sites in the Key Service Villages and other villages.*

188. This means that the growth is being directed within the village, and to previously developed land, rather than to greenfield sites outside the village such as those at issue at this Inquiry.

189. The supporting text to the CS (para 9.11) noted that sites would be allocated in a subsequent DPD, and stated, 'There will also be sites, which are not yet identified in the Housing Supply Trajectory or Table 6, which could come forward through minor extensions to town or village development boundaries in the Site Allocations DPD', but this text was not part of the policy and does not cut down or qualify the policy to direct growth outside the settlement boundaries (paragraph 16, *R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567).

190. In that context, policy CS5 is an intrinsic part of the spatial strategy (paragraphs 2.19 to 2.25, HPPC2). It should be given full or substantial weight for the reasons explained by Ms Jarvis in her Proof and later in these

submissions. Saved Policies RLP2 and RLP3 are not merely hangovers but are reflected in the CS.

191. Accordingly, there is a conflict between the spatial strategy of the adopted local plan and the principle of the Inquiry schemes. The strategy has been based on sound planning principles and is consistent with the objectives in the Framework paragraphs 17, 34, 37, 38, 70, 110-111, 112 of being genuinely plan-led, minimising the need to travel, focusing development in locations that are or can be made sustainable, preferring land of lesser environmental value and previously developed land over green field land, taking account of the different roles and character of different areas, protecting the intrinsic character and beauty of the countryside, minimising adverse effects on the local and natural environment, undertaking significant development on agricultural land only when necessary, and planning for the location of housing, economic uses and community facilities and services in an integrated way.
192. Hatfield Peverel is a fairly small village with 1815 households in 2011. It has a limited range of services and little employment potential, having lost employment with loss of the Arla Dairy. For weekly or big-ticket item shopping, employment and indoor leisure facilities, it is already necessary to travel outside the village. The village can only sustainably accommodate housing growth in proportion to its role in the settlement hierarchy.

Boundaries and review

193. Mr Tucker suggested in cross-examination that the Hatfield Peverel settlement boundaries in the current and emerging local plans were merely holdovers from previous plans and that their maintenance had not been reviewed. This is not a submission supported by the evidence.
194. Both the adopted CS and the emerging BNLP have been subject to sustainability appraisal and the latter exercise specifically considered the question of retention of boundaries, assessing this as environmentally positive to landscapes and townscapes, service centre vitality, sustainable travel, climate change and accessibility compared to relying on the Framework alone; and the question of new allocations was considered (PoE/Jarvis pages 17-20 and paragraph 2.40 and Appendix PJ2, HPPC2). Spatial Strategy Formulation (ID33) refers to review criteria, options, KSVs, countryside and draft allocations. The adopted CS was found sound by the Secretary of State.
195. It is right that the policy was not to alter the boundaries to take the Inquiry sites within the village envelope of Hatfield Peverel. Strategic policy choices were taken to retain the settlement boundaries, subject to specific allocations and to creating new urban areas or extensions, and to focus growth elsewhere. These were legitimate policy choices.
196. Whilst HPPC accepts that the Secretary of State is entitled to consider provision of housing to be a material consideration weighing against applying the development plan at the Inquiry sites, there are no grounds to give less weight to the adopted or emerging development plan just because successive plans have retained the Hatfield Peverel boundary south of the A12.

Policies for the protection of the countryside

197. The suggestion by GDL that the adopted countryside policies and policy CS5 in particular are inconsistent with the Framework is wrong. Two further assertions are also misconceived. First, that the Framework draws a distinction between valued landscapes and the countryside such that 'ordinary' countryside is not subject to general protection. Second, that because the countryside and emerging NDP green wedge policies do not have built-in exceptions for beneficial housing development made them inconsistent with the Framework.

198. The Framework comprises general policy guidance. It is not a statute and must not be read like a statute. In contrast to statutes, which must be obeyed unless there is an express exception, it is an intrinsic feature of policies and guidance that they may be departed from for good reasons, where material considerations indicate otherwise. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) at paragraphs 43 and 45, Gilbert J cited Lindblom LJ's judgment in *Suffolk Coastal*:

The NPPF is a policy document. It ought not to be treated as if it had the force of statute... It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense."

... Before Suffolk Coastal it had been striking that NPPF, a policy document, could sometimes have been approached as if it were a statute, and as importantly, as if it did away with the importance of a decision maker taking a properly nuanced decision in the round, having regard to the development plan (and its statutory significance) and to all material considerations. In particular, I would emphasise this passage in Lindblom LJ's judgment at [42]-[43], which restates the role of a policy document, and just as importantly how it is to be interpreted and applied. NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it.'

199. In *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 at paragraphs 175 and 186, Lindblom J (as he then was) considered the argument that a 'green wedge' policy was inconsistent with the Framework if it restricted all house-building without an exception for a positive cost-benefit analysis, rejecting 'the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the Framework, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal'.

200. Mr Lee cited the case of *Telford and Wrekin BC v SSCLG* [2016] EWHC 3073 (Admin) (CD31.3 set C), where Lang J declined to quash a decision by a planning inspector that a policy which sought to 'strictly control' development in the countryside 'is not up-to-date and in conformity with the more recent planning policy context established by the Framework, where there is no blanket protection of the open countryside and where there is a requirement to boost

significantly the supply of housing,' such that he would give it 'less than full weight'. The *Cawrey* judgment was not cited. Lang J stated at paragraph 47,

In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational. (emphasis added).

201. At its highest, the *Telford* case was therefore decided on the basis that the weight to give to various principles within the Framework pulling in different directions (supply of housing and other principles versus protecting intrinsic character and beauty) was a matter of planning judgment that Lang J would not interfere with. It is not automatically inconsistent with the Framework, as a matter of law, to have a general policy to protect the countryside by restricting the development that is presumed to be appropriate there. This judgment does not require the Secretary of State to follow the Telford inspector's approach to weight as a matter of planning judgment, which remains a matter for the decision-maker even if a policy is judged to be out of date (per *Suffolk Coastal* cited above).
202. Whether a policy is judged to be inconsistent with the Framework is a matter of planning judgment depending upon the weight to attach to different passages of the document, so long as the wording of the Framework is understood correctly. Clearly, the actual character and attractiveness of particular countryside will be relevant to the weight to place on a policy protecting the countryside, and the merits of making an exception in the particular case. Policies cannot just be applied mechanistically for the sake of it in a 'blanket' way, without regard to features of particular sites. But that is a straw man argument, because HPPC are not contending for such an approach here.
203. HPPC commend the approach taken by the Secretary of State in his decision regarding Land East of Ditchling Road, Wivelsfield, East Sussex (ID25). The relevant part of the decision concerned the question whether a materially indistinguishable general policy to protect the countryside ('CT1') outside development boundaries was inconsistent with the NPPF. In the decision letter, (para 15), the Secretary of State concluded, 'for the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision'. The Inspector had concluded as follows:

[IR 327] With respect to the adopted plan, there is conflict only with one policy, CT1, of the Local Plan, but this leads to an overall conclusion that the proposal is not in accordance with the development plan as a whole.

[IR 328] The defined Planning Boundaries as the means through which policy CT1 operates are related to development requirements that no longer apply, with an end date for these of 2011. While policy CT1 gives blanket protection to countryside, the NPPF directs specific protection to valued landscapes. Nevertheless, a core planning principle of the NPPF includes recognising the intrinsic character and beauty of the countryside. Policy CT1 is expressed as the 'key countryside policy' in the Local Plan. The proposal would involve the incursion of development on a greenfield area of countryside. Taking into account also the finding above that a five-year housing land supply is demonstrated, I consider that policy CT1 is not out-of-date for the purposes of paragraph 14 of the NPPF, and that the conflict with it should be given significant weight in the decision'.

204. It should be noted that unlike Wivelsfield, where the countryside boundaries were merely in a saved out of date policy in a time-expired plan, in this case they are a tool utilised by policy CS5 in the adopted CS which has an end date of 2026.

205. HPPC readily acknowledges that Wivelsfield was a case where there was a 5YHLS and that the weight to give to such a policy may depend on whether there is a 5YHLS, but that is a different point to the question whether it is inherently inconsistent with the Framework, and therefore always to be given low weight by virtue of Framework paragraph 215 regardless of the housing land supply. The clear decision in Wivelsfield (DL para 15) was that there is no such inconsistency. That is a planning judgment which is right and should be followed here.

206. HPPC also draws the Secretary of State's attention to the Finchingfield decision where the Inspector considered CS policy CS5 and likewise determined that it was consistent with the Framework for the purpose of Framework paragraph 215:

I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215.'(paragraph 39, CD32.10 set C).

Paragraph 109 and value to attach to a given area of countryside

207. Mr Lee in particular was anxious to argue that Framework paragraph 109 did not apply and that this would mean less weight should be given to the policies protecting the countryside (paragraphs 7.1.14 and 8.2.43-48, 1/POE).

208. Paragraph 109 is merely providing sensible general guidance that 'The planning system should contribute to and enhance the natural and local environment by among other things, protecting and enhancing valued landscapes, geological conservation interests and soils'.

209. The countryside is itself a type of landscape. The value to place on protection of any particular part of the countryside is ultimately entirely a matter for the Secretary of State's planning judgment, depending upon the advice in this report concerning the appreciation of the site and its features or attributes. If the Secretary of State considers the current landscape valuable at a particular spot, it is likely to be desirable, other things being equal, to preserve and enhance it. That is all paragraph 109 is getting at.
210. It would be quite inappropriate to treat paragraph 109 like a statute establishing a special category apart of 'valued' landscapes that has to be closely defined and given special status, and implying that the remainder of the countryside is not worth protecting or enhancing generally. That would be quite against the spirit of the Framework and would be just the kind of legalistic exercise that was deprecated in the *Suffolk Coastal* case by the Court of Appeal and Supreme Court.
211. The only cases to consider Framework paragraph 109 in light of argument about its meaning have stressed that a decision-maker must have regard to demonstrable physical attributes and not merely popularity. For instance, in *Stroud DC v SSCLG* [2015] EWHC 488 (CD31.20 set C), where Ouseley J stated:

[13] It is important to understand what the issue at the Inquiry actually was. It was not primarily about the definition of valued landscape but about the evidential basis upon which this land could be concluded to have demonstrable physical attributes. Nonetheless, it is contended that the Inspector erred in paragraph 18 because he appears to have equated valued landscape with designated landscape. There is no question but that this land has no landscape designation.... The Inspector, if he had concluded, however, that designation was the same as valued landscape, would have fallen into error. The NPPF is clear: that designation is used when designation is meant and valued is used when valued is meant and the two words are not the same.

[14] The next question is whether the Inspector did in fact make the error attributed to him. There is some scope for debate, particularly in the light of the last two sentences of paragraph 18. But in the end I am satisfied that the Inspector did not make that error. In particular, the key passage is in the third sentence of paragraph 18, in which he said that the site to be valued had to show some demonstrable physical attribute rather than just popularity. If he had regarded designation as the start and finish of the debate that sentence simply would not have appeared....

[16] ...The closing submissions of Miss Wigley referred to a number of features and it is helpful just to pick those up here. The views of the site from the AONB were carefully considered by the Inspector. There can be no doubt but that those aspects were dealt with and he did not regard those as making the land a valued piece of landscape. That is a conclusion to which he was entitled to come.'

212. What *Stroud* did not do was hold that Framework paragraph 109 creates a rigid category or implies that protection of countryside not within that category was not desirable for the purposes of the Framework.
213. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198, Gilbert J ruled:

[49] NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that paragraph [109] may recognise that some has a value worthy of designation for the quality of its landscape does not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in Stroud DC v SSCLG [2015] EWHC 488 per Ouseley J or in Cheshire East BC v SSCLG [2016] EWHC 694 per Patterson J which suggests otherwise. Insofar as Kenneth Parker J in Colman v SSCLG may be interpreted as suggesting that such protection was no longer given by NPPF, I respectfully disagree with him. For it would be very odd indeed if the core principle at paragraph [17] of NPPF of "recognising the intrinsic beauty and character of the countryside" was to be taken as only applying to those areas with a designation. Undesignated areas - "ordinary countryside" as per Ouseley J in Stroud DC - may not justify the same level of protection, but NPPF, properly read, cannot be interpreted as removing it altogether. Of course if paragraph [49] applies (which it did not here) then the situation may be very different in NPPF terms.

[50] Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission...There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.' (emphasis added).

214. Accordingly, the fact that no witness or party at this inquiry argued for any special 'valued' status by reference to paragraph 109 does not mean that the Secretary of State cannot or should not give weight to the protection of the countryside at these sites and to the adopted and development plan policies that seek to achieve this, nor that as a matter of law he cannot treat the physical attributes of the sites as favouring their protection. It is simply a subjective question of judgment for the Secretary of State in the particular case what value to place on the sites.
215. This also accords with the GLVIA3 (para 5.26) which advise that the fact that a landscape is not designated 'does not mean that it does not have any value. This is particularly true in the UK where in recent years relevant national planning policy and advice has generally discouraged local designations unless it can be shown that other approaches would be inadequate. The European Landscape Convention promotes the need to take account of all landscapes with less emphasis on the special and more recognition that ordinary landscapes also have their value'.

The emerging BNLP

216. The emerging BNLP can be given significant weight as it has progressed to examination stage. It properly seeks to meet the identified OAHN with an

additional 10% margin in a strategic way in collaboration with other Essex authorities.

Spatial strategy

217. This is again based upon a hierarchy of place. Part 1 policies SP2 and SP3 which set out the spatial strategy and the number of homes to be planned for across north Essex and in the Council area are summarised above (paragraph 34).
218. The way in which the quantum of new homes to be provided in Braintree District is to be apportioned is explained by Ms Jarvis (paragraphs 2.29-2.53, HPPC2). The order of focus of new development is the town of Braintree, new planned garden communities, then Witham, then the KSVs in the A12 corridor, then other settlements. The principle of garden communities is fully consistent with national policy (e.g. Framework paragraph 52).
219. An allocation of land for 285 homes (2% of the total) is made at the Comprehensive Redevelopment Area (CRA) in Hatfield Peverel by draft Policy LPP31.
220. The District's population is about 150,000 (paragraph 3.3, CD16.3 set C). The populations of Witham and Hatfield Peverel were 25,353 and 4,500 in 2011 (paragraph 2.44, HPPC2). Hatfield Peverel therefore has around 3% of the District's population. Given that about 3,650 (25%) of the new homes in the District are to be located in the 2 new garden communities, it is evident that the emerging BNL P envisages Hatfield Peverel accommodating the planned housing growth in scale with its share of the population. Development significantly in excess of the 285 homes allocated in the draft plan would not be in keeping with the spatial strategy for distribution of housing.
221. Furthermore, Policy LPP17 makes clear that 'Sites suitable for more than 10 homes are allocated on the Proposals Map and are set out in Appendix 3', and no other site outside the CRA is allocated in or adjacent to Hatfield Peverel. Paragraph 6.63 of the supporting text makes explicit what is already implicit, that 'All sites suitable for delivering ten or more homes are allocated for development on the Proposals Map' (emphasis added). This indicates that the spatial strategy does not envisage either the Stone Path Drive site or the Gleneagles site being suitable for large-scale housing development. The unsubstantiated assertions made in cross-examination by Mr Tucker that the boundaries have not been reviewed and considered is flatly contradicted by paragraph 5.17 of the supporting text in Section 2 to the emerging plan, which states:
- Development boundaries within this document have been set in accordance with the Development Boundary Review Methodology which can be found in the evidence base.*
222. This is evidently linked to the assessment of constraints. Paragraph 5.7 of Section 2 of the emerging BNL P supporting text explains that 'Development may be considered sustainable within a KSV, subject to the specific constraints and opportunities of that village' (emphasis added).
223. One such constraint is the surrounding countryside and local character. It is not envisaged that there should be built development outside of the settlement boundaries, nor ribbon development along the A12. That is seen at Policy LPP1,

the full text of which is given at paragraph 35 above. For reasons explained above, it is perfectly consistent with the Framework to have such a general policy that built development is considered not to be appropriate in the countryside, so long as it is always applied in individual cases with the particular characteristics of a particular site in mind.

224. Another constraint is local infrastructure, services and facilities including roads, healthcare and schools. Draft Policy SP 5 states that development 'must be supported by provision of infrastructure, services and facilities that are identified to meet the needs arising from new development', including sufficient school places in the form of expanded or new schools.

225. For reasons already alluded to above in relation to the 'Liverpool method' and the adopted plan, the spatial strategy in the emerging local plan seeks to advance planning objectives underlying the Framework. It should be given significant weight and provides comfort that the District's OAHN will be met sustainably without the Inquiry schemes coming forward and encroaching on the countryside setting of Hatfield Peverel.

The emerging NDP

226. Mr Renow's evidence has set out in detail why the NDP is supported by written national policy and the political commitments made by the present Secretary of State.

Emerging stage and status of the NDP

227. The NDP can be given significant weight insofar as it indicates the concerns and aspirations of the local community and their vision for the village of Hatfield Peverel.

228. The NDP can be given at least as much weight, if not more weight, as it was given by Inspector Parker in connection with the 80 dwelling appeal, as it has now progressed to examination.

229. Whilst it is accepted that there are likely to be modifications to the drafting of the NDP before it is put to referendum, in particular to ensure that it allocates no less development than the emerging BNLP, the Secretary of State can be confident that a plan containing the relevant restrictive policies directly in issue at this Inquiry (Policies HPE6 and HPE1) in materially the same form will be passed.

230. The Regulation 14 consultation indicated extremely high (89%) support for the vision and objectives of the draft NDP, support between 77% and 92% for each of the individual draft policies (HPPC1, Appendix MR 18). The survey in September 2017, with 570 respondents, indicated 96% approval of the draft plan at that stage (HPPC1, Appendix MR26). Subject to the question of legal compliance with the 'basic conditions', the Secretary of State can be confident that the NDP would pass a referendum and proceed to adoption.

Basic conditions

231. Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990, as modified by section 38C(5) of the Planning and Compulsory Purchase Act 2004, requires the examiner to consider the following:

- i) whether the draft plan 'meets the basic conditions' (defined at subparagraph (2));
- ii) whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and
- iii) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and
- iv) whether the draft plan is compatible with 'the Convention rights', as defined by the Human Rights Act 1998.

232. There can be no suggestion that the NDP is incompatible with anyone's human rights, and there has been no suggestion that the referendum area should be wider than the parish.

233. The Examiner is not considering whether the neighbourhood plan is 'sound' (the test in section 20(5) of the 2004 Act for local plans), and the tests of paragraph 182 of the NPPF do not apply. In other words, unless the strategic environmental assessment procedure applies, the Examiner does not have to consider whether a draft policy is the 'most appropriate strategy' compared against alternatives, nor is it for her to judge whether it is supported by a 'proportionate evidence base' (paragraph 13, *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin)). The 'basic conditions' only require consideration whether it is 'appropriate' to make the plan having regard to national policy and guidance, whether it is in general conformity with the adopted plan; whether the making of the plan contributes to sustainable development, whether the making of the plan is compatible with EU obligations, and prescribed conditions are met. Regulation 32 of and paragraph 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 prescribe the condition that: '[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).'

HRA

234. As it is one of the prescribed 'basic conditions' that the plan should not be likely to have a significant effect on a protected European site and as the likelihood of such an effect is also an important, if not determinative, consideration to decide whether SEA is required, it made sense for HPPC to commission a re-screening examining possible effects on European protected sites before it reconsidered the broader question whether SEA was required.

235. As Mr Renow explained in his evidence (pages 12-13, HPPC1), Section 2 of the emerging BNLP which includes an allocation of 285 dwellings at the CRA as well as much larger quantities of other development, has been assessed for compliance with the Habitats Directive and found compliant. No issue is predicted to arise except in combination with other forthcoming district plans envisaged by Section 1.

236. The draft NDP would progress in advance of those other plans and would be for a much smaller quantum of development than the BNLP which proposed at least 14,320 dwellings as well as employment development and other development.

237. In *R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 at [13] Sales LJ ruled:

where a series of development projects is in contemplation, the strict precautionary approach required by the Habitats Directive will be complied with in relation to consideration of the first particular proposed development project if that project will not of itself have a detrimental impact on a protected site and there will be an appropriate opportunity to consider measures in relation to a later project which will mean that any possible in-combination effect from the two projects together will not arise (failing which, permission may have to be refused for the later project, when it is applied for: see the Smyth case, paras 87–102. In other words, so long as the relevant assessment of options has been carried out at the level of the relevant development plan (land use plan), as explained in Commission v United Kingdom [2005] ECR I-9017, it will be lawful when planning permission is sought for the first specific development project in the series for the relevant planning authority to assess that that project taken by itself will not have any relevant detrimental impact on the protected site (and then grant planning permission for it), even though it is possible that there might be future in-combination effects on the protected site if planning permission were later granted for the next project in the series.'

This was based upon opinions of the Advocate General Kokott in the *Commission v United Kingdom* and *Waddenzee cases*, and the need to 'avoid sclerosis of the system' (Sales LJ at paragraphs 15-18).

238. This principle applies by analogy to plans as well as to projects. Where a draft plan (here the NDP) is the first in a possible series of plans that would be promoted separately by other authorities (here, the Local Plans of Braintree District and the other North Essex districts), it is sufficient to assess the draft plan in combination with other existing plans and permitted projects, without attempting to speculatively assess combined future effects of other plans. The impacts of those plans can be assessed when they come forward.

239. Furthermore, a habitats regulations screening assessment in July 2017 found no requirement even for 'appropriate assessment' before grant of planning permission for up to 145 homes at the Arla site (ID14).

240. In the light of the above, the Secretary of State can be confident that the requirements of the Habitats Directive will not prevent adoption of the NDP.

SEA

241. The Examiner's concern was that the SEA screening was done when the plan was at an earlier stage of development and premised on no allocation being made in the Draft NDP, when the Arla site was subsequently allocated by draft Policy HO6. If the allocation policy were dropped and allocations left entirely to the emerging local plan, it is unlikely that SEA would be required.

242. As regards SEA, article 3(2) of Directive 2001/42/EC only requires strategic assessment of plans that 'determine the use of small areas at local level and

- minor modifications' to broader town and country planning plans if the Member States 'determine that they are likely to have significant environmental effects'.
243. Whether potential environmental effects are 'significant' is a matter of judgment for the planning authority, subject to review on grounds of reasonableness.
244. It is not anticipated that the NDP is likely to give rise to significant environmental effects, and no evidence has been presented at this Inquiry by any party proving that it would.
245. It is therefore anticipated that the Examiner and the Parish and District Councils would conclude that the NDP determines the use of small areas at local level (the parish) and that it is not likely to have significant environmental effects in combination with existing plans, programmes and projects. This is particularly the case given that the Arla site has already been granted permission for a greater number of homes than contemplated in the current Draft NDP, the project is on brownfield land and that project has been found not to be likely to have significant effects on a protected European site which is one of the important factors relevant to the assessment (ID14). If that is the eventual conclusion, no SEA would be required.
246. SEA has already been conducted for the emerging BNLP. Article 4 of the Directive expressly provides that 'Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).' Article 5(2) and (3) in turn state that where an environmental assessment report is required, the level of detail should take account of 'the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment', and the report may use 'information obtained at other levels of decision-making or through other Community legislation'. This is reflected in regulation 12(3) and (4) of the Environmental Assessment of Plans and Programmes Regulations 2004.
247. Even if it were considered that NDP does require SEA, then the sustainability appraisal could draw upon the work already carried out in that regard rather than duplicate it. Whilst some additional months would be required to assess the draft plan and the reasonable alternatives, Mr Renow's evidence was that this could be expected to have been completed by summer 2018. The requirements of the SEA Directive are not 'showstoppers'.

Evidence base for not allocating the Inquiry sites

248. It was suggested that the Parish Council should have sought to take a more proactive approach to maximise housing delivery and that the exercise was only aiming to allocate sites sufficient to provide 78 homes. However, that criticism does not impinge on the appropriateness of adopting the draft NDP. A neighbourhood plan does not have to make any site allocations. The written and oral evidence of Mr Renow was that HPPC would accept a pre-emptive 'future-proofing' modification of the text to bring the draft into line with the CRA in the

emerging Local Plan. Its policies would be superseded by specific conflicting policies in later development plan documents such as the emerging BNLDP in any event.

249. An attack was made on the ranking assessment when determining which sites to allocate for development in the NDP (CD18.3 set C). It was put to Mr Renow that the exercise unfairly failed to expressly mention in the 'opportunities' column of the table the opportunities afforded by the Gleneagles site to provide housing. This was itself an unfair critique; it was a given, as the whole point of the exercise was to determine which of the sites to allocate for housing and one of the scoring criteria was the number of homes that could be accommodated.
250. In any case, sites HATF313, HATF630 and HATF608 which correspond to the CRA all scored more highly in their ranking than the Inquiry sites. The scoring system was one that was perfectly reasonable and lawful. The choice of policy objectives and the weight to attach to each was a matter for the judgment of the democratically elected Parish Council.
251. Lastly, the criticism was levelled that the site assessment was not considering these particular projects with mitigation measures. Such is almost always the case when engaging in forward planning of this nature and does not invalidate the assessment.

The evidence base for protected views

252. The NDP specifically designates views for protection and enhancement in order to protect the landscape setting of the village (Policy HPE6). It is evidence that the specified 'views and open spaces...are valued by the community and form part of the landscape character' (NDP 'objectives' p.32).
253. Extensive evidence was given by Mr Renow of the local engagement that the Parish Council undertook with the local community, including the survey, the 'walkabout' and photographic competition referred to in the supporting text to the policy, as well as public consultation. The reality is that the abovementioned engagement and evidence-gathering programme provided a sufficient evidence base.
254. DWH sought to suggest that the Parish Council had been disingenuously misrepresenting that View 5 in the table accompanying HPE6 had been identified in the Landscape Character Assessment of October 2015 (CD18.4 set C), and consequently that the policy lacked an evidence base. However, this line of attack was misconceived. The text of HPE6 makes very clear that it protected both views 'identified by the community (see pages 33-37) and the Hatfield Peverel Landscape Character Assessment' (emphasis added), and was not purporting to say that all the views were identified in the Landscape Character Assessment.
255. Although the Landscape Character Assessment (CD 18.4 set C) did identify 'key views' and photographs, these were selected to 'reflect the key characteristics of each area' (para 3.12) by an individual professional consultant as part of an exercise to characterise the area and make suggestions for its management. That exercise had not involved public consultation to ascertain the views of the community. Meanwhile, the residents' survey in October 2015 indicated that 'views towards Witham looking from Gleneagles Way' was selected

as one of the 3 views to 'be safeguarded if new development takes place in the parish' by 237 respondents (HPPC1, Appendix MR28). In those circumstances, it was perfectly proper to reflect the wishes of the community.

256. The Table at pages 34-35 of the NDP identifies the key features/physical attributes of the views, and any access by residents. It is not merely about popularity but rather the NDP explains the features of the views that are valued. Views 1 and 5 are attractive open vistas and it is readily understandable why the views are valued by the local community.
257. Criticisms were directed at the Parish Council's reviewer of the feedback from the workshop held in December 2016 (CD 18.6 set C). A comment was made by that individual that in respect of the view from Gleneagles Way (view 16 in that document) they were not personally sure if the view had value but people liked it, and so it had been retained.
258. Insofar as it was suggested for DWH that it was illegitimate for the draft NDP to reflect the views of the community, the whole point of neighbourhood plans is to 'reflect the... priorities of their communities' (Framework paragraph 1), giving 'communities direct power to develop a shared vision for their neighbourhood' (Framework paragraph 183) and to 'shape and direct sustainable development in their area' (Framework paragraph 185). Landscape value and the degree of attractiveness of any view is highly subjective and it is a matter that the Secretary of State will form his own view on, informed by this report, itself informed by the inspection of the site and surrounding area. Any argument that the personal opinions of a particular hired consultant or parish working-group volunteer are privileged over the views of the community reflected in a neighbourhood plan is to be deprecated.
259. It was also suggested that the response to the workshop is evidence that views were chosen merely to stymie development at those locations and not because of the value of the views. However, it is plain as can be that the reviewer in question in December 2016 was engaged in a whittling-down process determining which of the views identified by the community to retain as most valued and meriting protection, not introducing new views of their own. It was perfectly proper to choose to designate and protect only those valued views that might realistically be subject to development. Neighbourhood plans are supposed to be practical documents to shape and direct development. Mr Renow explained in his oral evidence and cross-examination how views identified by the public were then whittled down to retain the most locally valued views that required protection.

Coalescence and the propriety of policy HPE1

260. Mr Renow's evidence was that maintenance of the distinctive separate character of the village of Hatfield Peverel and prevention of coalescence were identified as objectives that were important to the local community (pages 24-26 HPPC1 and Appendix MR29).
261. Consistently with the purposes of neighbourhood plans, as alluded to in the Framework and the localism agenda, it was therefore entirely proper for this to be reflected in the Vision and in Objective 4 of the NDP and translated into draft policy HPE1.

262. DWH sought to contend that the green wedge policy was 'strategic' and trespassing on the remit of the emerging Local Plan. They argued that it amounted to a green belt which the PPG and the Framework stated should only be designated by a local plan at district level. They also argued that it was somehow inconsistent with the emerging BNLP because draft Policy LPP 72 ('Green Buffers') had not included a green buffer between Witham and Hatfield Peverel.
263. Those arguments are unsustainable. The Prevention of Coalescence Areas that would be designated by draft policy HPE1 in the NDP are small areas on the outskirts of a fairly small village within one parish, aimed purely at preventing intrusion into those wedges to retain separation between Hatfield Peverel and the nearby hamlet of Nounsley and expanding town of Witham. In no sense are they 'strategic' and nor can they credibly be contended to create a 'green belt'.
264. Just because the emerging Local Plan did not include a policy contained in the NDP, that does not mean there is an inconsistency; otherwise no NDP could ever contain a distinct policy. In fact, the additional green wedge is complementary rather than inconsistent.
265. Alan Massow, the Senior Policy Planner at the Council, had liaised with and advised HPPC in the NDP drafting process and had confirmed that the District did not designate a Green Buffer in the Local Plan on the understanding that one would be promoted by the NDP, a decision that it considered to be up to the Parish Council and to be consistent with the emerging BNLP (ID26). This was in full accordance with Framework paragraph 185 which states in terms: 'Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.'

Housing delivery

266. Any argument that an exception should be made to allow development conflicting with the statutory development plan on the basis that there is not currently a 5 year supply of housing land has to be premised on the scheme in question being delivered within 5 years, so as to meet that housing need.
267. It is therefore relevant not only what the level of OAHN is (and the extent of any shortfall) but also how likely it is that the housing in any particular scheme will actually be completed and occupied as a home within 5 years. The evidence in relation to delivery is addressed separately in respect of each scheme later.

Health, education and infrastructure/sustainability issues common to all 3 schemes

268. There would be conflict with Policy SP5 of the emerging BNLP ('Development must be supported by provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.'). Development whose needs are not served should not be considered acceptable in planning terms, and where planning obligations are inadequate to make the development acceptable, permission should be refused (Framework paragraph 176).
269. In both his written and oral evidence Mr Renow explained the existing situation in terms of the lack of employment opportunities for new residents within Hatfield Peverel (pages 26-27, HPPC1); the pressure on health facilities and their lack of space to physically expand (pages 27-28, HPPC1); the requirements for

- additional school places (pages 29-33, HPPC1); the lack of a safe walking route to Witham along the A12 (pages 33-35, HPPC1); and pressures with regard to transport infrastructure and traffic (pages 36-38, HPPC1).
270. No suggestion was made by the applicants that it was safe for children to walk to Witham along the A12, with reliance being placed instead on potential travel by bus (paragraph 7.2.35, 1/POE).
271. As regards healthcare and the physical inability to extend the Sidney House surgery, the factual evidence of Mr Renow was not challenged or rebutted. The developments would generate additional occupiers who would require health services. There was no evidence that mere internal reconfiguration of the surgery would provide the required extra accommodation for an extra doctor; furthermore there is no indication that any such improvement to the Sidney House Surgery is planned or even practicable.
272. As regards current and projected school places, and the number of students generated by the developments, the numerical situation appears to be common ground (ID1.8).
273. The occupiers of the dwellings would require school places. There are currently 484 primary pupils on the roll of schools within Hatfield Peverel, which have a capacity of 525. The number without additional housing is predicted to fall slightly to 470 by 2021/22. The extant Former Arla Dairy and Bury Lane permissions would generate an additional 58 primary school pupils between them (ID1.8, Appendix). This means that any of the Inquiry schemes would result in excess demand that could not be met by existing capacity.
274. Village schools' admissions policies give preference to village children if they become over-subscribed, but this is subject to sibling preference. It would also only apply to children newly entering the school and existing pupils would not be moved. This means that for many years, primary-age occupants of the Inquiry schemes would be required to travel further afield for schooling. This is contrary to the objectives in the Framework of minimising the need to travel and providing schools within walking distance of larger scale housing development (Framework paragraphs 34 and 38).
275. The corollary of that outbound travel phenomenon diminishing in scale would be a diminishing in-school choice for parents living outside the village and the requirement for children residing outside the village who otherwise would have attended the Hatfield Peverel schools having to be found school places elsewhere. As a result, the developments would generate a demand for additional school places whether for the children of occupiers or those children who otherwise would have been accommodated at the village schools. This requirement for additional educational provision is a negative externality of the developments to be weighed in the planning balance.
276. The cost of that externality would not be internalised by means of a Section 106 planning obligation. None was requested by Essex County Council in respect of the costs occasioned by these schemes because it was concerned that the CIL Regulations prohibit pooling of 5 or more contributions in respect of a particular project or type of infrastructure (CD21 set C). In fact, CIL regulation 123(3) prevents pooled planning obligations being relied upon as 'a reason for granting planning permission'. This is not exactly the same as a prohibition upon pooling

such contributions, or against treating absence of such contributions as a reason for refusing permission. There is no CIL charging schedule in place either. As a result, the cost of putting in place the educational provision would be borne by the taxpayer.

277. Moreover, the additional travel costs in terms of bus transport would either fall to be borne by the local authority (to the extent that it is statutorily obliged or agrees as a matter of discretion to pay them) or by parents. This would be a particular burden for parents on low incomes.

278. Framework paragraph 72 states that 'The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities...local planning authorities should... give great weight to the need to create, expand or alter schools' (emphasis added). This principle is also reflected in Draft Policy SP5 of the emerging BNL. The Secretary of State should attach great weight to the failure of these schemes to provide for the necessary school places and the impact on parental choice.

Summary of HPPC's case respecting the DWH scheme

Conflict with the spatial strategy

279. The development conflicts with the spatial strategy in the adopted and emerging development plans for the reasons set out above. That means there is a statutory presumption against granting permission by virtue of s.38(6) of the Planning and Compulsory Purchase Act 2004. Specifically, there is conflict with policies CS1, CS5, and RLP2 of the adopted plan; and draft policies LPP1 and LPP17 of the emerging BNL. This conflict should be given great weight because the Framework expects the system to be genuinely plan-led.

Harm by reason of Coalescence

280. Draft anti-coalescence policy HPE1 of the NDP reflects the vision of the community for Hatfield Peverel. The conflict with this policy should be given significant weight given the current status of the NDP as a submitted examination draft for the reasons set out above.

281. Coalescence is a material consideration in this application. The development would result in expansion of the settlement of Hatfield Peverel to the east, narrowing the gap between it and the settlement of Witham (as substantially extended by the Wood End Farm, Lodge Farm and the development to the west of Maltings Lane (ID13) to approximately 1km, down from 1.4km. This would be a relatively small gap, which would be traversed in around 30 seconds travelling at 70mph on the A12.

282. DWH's witness, Mr Smith, stated that in his view the key consideration was whether there would remain a perception of leaving one place and entering another. However, that test could be met even within an urban area. Although there would remain some fields between Witham and Hatfield Peverel, the settlements would begin to feel uncomfortably close and the rural village character of Hatfield Peverel would be eroded as the net effect of the Gleneagles Way development and the new development on the edge of Witham would be that it came to feel more like a southern extension of Witham.

283. In his oral evidence, Mr Smith accepted that there would be clear inter-visibility between the permitted and as-yet-unbuilt development at Witham north of the A12 and the development at the Gleneagles site, particularly from upper floors. The only way to prevent this and screen views would be to significantly strengthen the planting along the eastern edge of the application site to a height of 9m or more, as was indeed proposed. That would fundamentally and detrimentally change the character of the locality by blocking broad open views out across what remained of the countryside. The line of vegetation would only serve as a marker for the built development behind, adding a prominent and abrupt edge to what had been filtered views in to the houses from the footpath

Landscape, character and visual harm

284. The development would fundamentally obstruct and mar the pleasant views out across open countryside enjoyed from The Street outside D's Café Diner, (ID13 photographs, Mr Renow's viewpoint 1 for this site), the 3 culs-de-sac of Wentworth Close, Birkdale Rise and Ferndown Way (ID13 viewpoints 2-7), and Gleneagles Way (ID13 viewpoint 8), which make a positive contribution to the character of the area.

285. Although the view protected by the NDP policy HPE6 is not from the same place as the view identified as characteristic by the Local Landscape Character Assessment of October 2015 (CD18.4, set C) which was not based on consultation of residents, that document did highlight the physical attributes of this landscape character area as including large and geometric fields under arable cultivation, with 'broad open views possible across open farmland' which it recommended should 'be safeguarded'. For the reasons explained above, the conflict with draft policy HPE6 by reason of loss of the 'key feature' of 'open arable farmland' should be given significant weight.

286. The Essex Landscape Character Assessment (ELCAA) (pages 94-95, CD14.5, set B) noted that potential residential expansion of settlements... 'would be conspicuous on the surrounding rural landscape' and recommended that any development be 'small-scale'. As explained above, the emerging BNLP allocated all the sites considered suitable for development of more than 10 dwellings, which indicates that development on this scale was rightly judged inappropriate at this location.

287. Currently, the estate off Gleneagles Way has a spacious, open and rural character by reason of the view out across open countryside. Its village character would become more suburban.

288. The character of the application site itself would fundamentally and detrimentally change as the open countryside was lost and replaced by a housing estate.

289. These views out from the village are experienced by pedestrians, very low-speed traffic, and residents of the houses who are moderate and highly sensitive receptors for the purpose of the GLVIA3.

290. These views are more highly valued by the community than the views in from the surrounding footpath as they are more frequently experienced.

291. There would additionally be harm to views from Footpath 40. The views towards the village are already filtered to a degree from this footpath and the

most attractive views from it are to the south and east. Nevertheless, there will undoubtedly be harm to views from Footpath 40 looking towards the village to the west- the worst of which have not been accurately shown in a montage and the users of the footpath will be high-susceptibility receptors as advised by the GVLIA3 passages previously cited.

292. The tall boundary screening would create a strong sense of enclosure, which would be much stronger than that which currently exists and would undermine the character of the area. Rather than integrating the development, the planting would simply block it off from the countryside that currently forms an intrinsic part of the setting of the settlement edge. The future residents of the estate, and the residents of the Gleneagles estate, would be prevented from enjoying the views of the surrounding countryside setting.

293. These changes would harm the character of the area.

294. There are conflicts with Policy RLP80 in that the development would harm the distinctive landscape features of the area and would not integrate successfully into the local landscape. There is also related conflict with Policy CS8 in that it fails to enhance the character of the landscape and results in loss of best and most versatile agricultural land; this point is elaborated upon below.

Evidence regarding delivery

295. The question of delivery was raised before the opening of the Inquiry in the second pre-inquiry note (INSP2). The only evidence regarding delivery was given orally by Mr Dixon in evidence. It amounted to a statement that DWH are a housebuilder with the intention to develop the site, an assertion that had the application not been called in, they would have submitted a reserved matters application already and an assertion that 'the likelihood is' that the development would be completed within the 5 years. No details as to DWH's track record were given. This is a slender basis indeed for the Secretary of State to give extra weight to provision of housing as a benefit on the strength of any claimed shortage of 5YHLS.

Unsustainability/ demand for services

296. The development would generate demand for and increased pressure on local public services in conflict with policy as explained above.

297. In relation to schools, the development would generate an estimated 36 additional primary pupils (ID1.8).

298. The healthcare contribution of £378.54 per dwelling (SAV56, schedule 8) would not actually address the problem of insufficient staff for the reasons referred to above.

Loss of BMV agricultural land

299. DWH's own evidence discloses that this site is best and most versatile agricultural land, although no details as to its quality are given. The site area is 5.2Ha (SAV2, application form). The loss of this land to agriculture is material, particularly in combination with the other consented and planned green-field development in the area (including the emerging BNLP allocations) and conflicts with CS Policy CS8 with Framework paragraph 112.

5YHLS/weight attaching to provision of housing

300. HPPC's case is that on the correct approach, there is no shortfall in 5YHLS for the reasons set out above. Even if that be wrong, the shortfall does not justify departure from the development plan. The specific development plan policies and the physical and policy harms referred to (including conflict with the Framework) significantly and demonstrably outweigh the benefits of providing 120 dwellings at this location.

Conclusion of HPPC case to the Inquiry

301. For the reasons set out above, the 3 schemes should be refused planning permission; the GDL 140 dwelling and the DWH 120 dwelling applications should be refused and the GDL appeal dismissed.

The Case for Stone Path Meadow Residents Group on policy and housing land supply

Introduction

302. There are three parts to the case for SPMRG. First, identifying conflict with the Development Plan; second, the application of Limbs 1 and 2 under the fourth bullet point of Framework paragraph 14; and third, a consideration of the planning balance. Only extracts from the first two parts are of relevance to the determination of this application.

303. In very brief summary, SPMRG submit that with respect to part one, there is a conflict with development plan in respect of seven separate policies only some of which are relevant.

304. With respect to part 2, SPMRG submit that there is a five year housing land supply and that as such the fourth bullet point does not, in fact, apply.

Part one

305. SPMRG submits that the evidence presented at the Inquiry demonstrates that there is significant conflict with the following adopted development plan policies:

- i) Policy RLP2: Town Development Boundaries and Village Envelopes;
- ii) Policy CS5: in relation to the countryside and development outside village envelopes;

Development Boundaries: RLP2 and CS5

306. Both GDL application schemes (and by extension this application scheme) clearly fall outside the adopted development boundaries, and it was accepted by Mr Lee for GDL that both proposals would therefore breach policies RLP2 and CS5 (this is also the position of DWH). Significant weight should be given to these breaches. The relevant policy in the emerging BNLP is LPP1 the wording of which is set out above (paragraph 35).

307. Ms Jarvis was asked in cross-examination about the date when development boundaries were last reviewed. It is submitted that, in the context of this District and this site, this is irrelevant. It is apparent from the emerging Local Plan that the Council's spatial strategy, as discussed by Ms Jarvis in her written and oral evidence, is focused on significant development in other areas of the District and, in particular, on a number of Garden Villages. It is plain from BNLP Inset Map 36

that the development boundaries of Hatfield Peverel are intended to remain exactly the same in relation to this site as they are in the adopted development plan documents. The current intention of the Council as seen through the emerging Local Plan therefore clearly demonstrates that the development boundaries are appropriate in their current location.

308. It is acknowledged that the RLP2 and CS5 date from before the introduction of the Framework and therefore must be judged against Framework paragraph 215. In the very recent appeal decision (CD.32.10 set C, paragraph 39), on the same policies under consideration here, the Inspector discussed Policy CS5:

I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215. (emphasis added).

309. Contrary to suggestions made at Inquiry that this Inspector had erred in her analysis, she has clearly identified that it was open to her to attach "due weight... according to [its] degree of consistency with this framework" to CS5 as set out in Framework paragraph 215. It is submitted that the Inspector found that the policy was highly consistent with the Framework, focusing in particular on Framework paragraph 55 and therefore determined that, given its closeness to the Framework, she could accordingly give it greater weight than if it had been inconsistent with the Framework. In accordance with the well-rehearsed principles set out in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) in relation to how to read an Inspector's decision letter, it is therefore submitted that the Inspector's analysis is sound, based on an accurate understanding of the Framework and should be adopted here.

310. It is therefore submitted that significant weight should be attributed to the breaches of RLP2 and CS5 that would occur should either proposal be granted planning permission. As set out below when considering the tilted balance, emerging policy LPP1 would also be breached.

Part two:

311. This second part addresses the two limbs of the fourth bullet point of Framework paragraph 14: the "tilted balance" in Limb 1 and the "unweighted balance" to be applied to the identified heritage harm in Limb 2.
312. First it is necessary to consider whether the proposals fall within the fourth bullet point at all - is the development plan "absent, silent or [are] relevant policies out of date" - before considering the restrictive heritage policies under Limb 2, followed by the tilted balance under Limb 1, in the event that the Secretary of State disagrees with the first two conclusions.
313. Only the general points relating to 5YHLS set out below are relevant to the determination of this application.

Five Year Land Supply

314. As per the table of the parties' agreed positions (ID1.13), it is SPMRG's case that the Council can demonstrate a 5YLS, such that Framework paragraph 49 does not apply and "relevant policies for the supply of housing" are "up to date", such that there is no access to the tilted balance on this ground.
315. SPMRG's position on the disputed elements of the 5YLS calculation is as set out in Mr Leaf's adopted proof of evidence (RG5) and as per the discussion at Inquiry.

The Liverpool approach

316. The appropriate approach to take in addressing the backlog is the Liverpool approach, spreading the backlog of 1,660 dwellings out over the remaining plan period.
317. As explained by Mrs Hutchinson on behalf of the Council, the Liverpool approach forms the basis of the emerging Local Plan which is currently at examination. SPMRG submits that to adopt the Sedgefield method would be to undermine this approach taken by the Council after considerable consultation and work and, consequently, would be inappropriate in a plan-led system.
318. Paragraph 35 of the PPG provides that undersupply should be addressed "where possible" during the first five years of a plan. SPMRG submit that, here, it is not "possible". Adopting the Sedgefield method plus 5% produces an annual requirement of 1,100 dwellings or 1,258 dwellings with 20%: these targets are far in excess of anything achieved by the Council going back as far as 2001 and it is therefore extremely unlikely that the Council would be able to achieve these targets. There is therefore no practical purpose to adopting this approach: it is simply not possible for the Council to meet these requirements given their historic performance. Similarly, Mrs Hutchinson notes in her first proof that it is unrealistic to expect that the scale of increase in delivery required could be achieved straight away (paragraph 4.16, BDC1).
319. The significant increase in housing requirement from the Core Strategy figure of 272 dwellings per annum to an OAHN figure of 716 also indicates that the Liverpool approach is appropriate. This sudden upsurge in the annual requirement is another reason why it is not possible for the Council to address the existing backlog in the next five years.
320. It is also highly relevant that the Council is bringing forward new Garden Communities in its area as set out in policies SP2 and SP7 of the BNLP, Section 2. The Council has thus deliberately planned its anticipated housing delivery over the Plan Period as a stepped housing trajectory based on the delivery of a strategic site, as opposed to a "standard annualised requirement". The latest 5YLS Statement predicts that 40,000 new homes in North Essex will be delivered by these Garden Communities. This also suggests that the Liverpool approach is appropriate, given the way in which the Council is planning its approach to housing delivery over the whole plan period.
321. SPMRG notes that Planning Inspectors have adopted the Sedgefield approach in the recent decisions at Coggeshall (paragraph 14 to 15, CD32.2 set C), Steeple Bumpstead (paragraph 9, CD32.10 set C). In the first place, the BNLP has now been submitted for examination since these decisions, which is a significant step

forward in terms of the certainty of the Council's approach to Garden Villages (although plainly the Plan has yet to make it through examination). Secondly, neither Inspector's analysis addresses the points raised above in respect of whether it is possible for the Council to make up the backlog in the first five years.

5% or 20% Buffer

322. As submitted at Inquiry, SPMRG's case is that the appropriate target against which the Council's record of delivery should be measured for the purposes of applying either a 5% or 20% buffer is the requirement that was in place at the time. SPMRG therefore agrees with the Council's closing submissions on this point.
323. Further support is provided for this use of contemporary targets for measuring delivery by the two planning decisions submitted by SPMRG on the first day of the Inquiry.
324. The first is the Navigator L decision, dated 20th January 2015 (ID44). Here the Council had "oversupplied" against local plan figures from 2006-2014, but had undersupplied against a SHMA figure dating from April 2011. The Council argued that it should have its policy "oversupply" deducted from the requirement figure going forward over the next five years, on the grounds that it could not have known about the SHMA figure until 2014, so the requirement should not be calculated using that figure. The Inspector rejected that argument, noting that "I fully accept that during 2011-2014 the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here." In footnote 8 to this paragraph, the Inspector goes on to say that the Council's being unable to meet a need of which it was not aware "might be relevant in other circumstances, such as where the point at issue relates to where there has been "persistent under-delivery" for the purposes of the NPPF-buffer". The issue he was deciding was different but he clearly took the view that the Council should be measured in "persistent under-delivery" terms against the targets which it knew it was aiming for.
325. The second decision is Land North of Cranleigh Road, dated 14th August 2017 (ID43). Here, the Council had a low pre-Framework Core Strategy housing target, on which it sought to rely for establishing a forward requirement (unlike the Council here). The Inspector disagreed and found that the forward requirement should be calculated using much more recent and much higher OAHN figures, even though these were not yet tested or adopted in a development plan document.
326. The developer also argued that "persistent under-delivery" should also be measured against these new figures from 2011, the date from which the requirement was calculated. This argument was rejected by the Inspector, referencing the Navigator decision, on the grounds that "in the period up until 2014 when the then PUSH SHMA identified a OAHN the LPA could not have been expected to meet a need that it was not aware of. On this basis, allowing for peaks and troughs, significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified."

327. Both of these decisions provide support for adopting the targets in place at the time when determining whether the Council has persistently under-delivered. It is plain that there is no under delivery in the present case.

Supply

328. As set out in Mr Leaf's letter (ID21), SPMRG submits that the Council has underestimated its supply by 461 dwellings (including the Sorrell's Field at 50 dwellings), such that there ought to be a 5YLS of 5.35 years using the Liverpool method plus 5%. Individual treatment of these sites is set out in Mr Leaf's letter and is not repeated here.

329. SPMRG has identified these sites on an application of the principles in Framework paragraph 47 and footnote 11 of the Framework and paragraphs 35-9 of *St Modwen Developments Ltd v SSCLG and others* [2016] EWHC 968 (Admin) (CD31.18, set C). It is submitted that it is plain that these sites fall within the definition of "deliverable", which does not require a site either to be allocated or to have planning permission.

330. SPMRG makes the following submissions in response to the Statement of Common Ground between GDL, DWH and the Council (ID39).

331. SPMRG maintains that the identified sites can be considered to be "available now": the fact that steps need to be taken before the site can be developed does not prevent the site from being available any more than GDL's need to sell the site to a housing developer prevents Stone Path Meadow from being available.

332. The figure for Sorrell's Field was adjusted down from 52 dwellings to 50 on the understanding that the application was being revised down to 50 units.

333. Contrary to the penultimate paragraph of the SOCG, the Gimsons site (WITC 421) is included in the housing trajectory appended to the letter to Priti Patel MP, headed "Copy of full housing trajectory including draft allocations re query". The entry is on the last page, showing 70 dwellings over the next five years and noting that "Planning application expected to be submitted Autumn 2017 by Bellway Homes".

334. Should the Secretary of State find that there is a 5YLS deficit, contrary to the above submissions, this deficit should be given limited weight for the reasons set out in Mr Leaf's adopted proof and applying the principles in the case of *Phides Estates (Overseas) Limited v SSCLG [2015]* EWHC 827 (Admin) (CD31.10 set C) as set out in the Statement of Case (at paragraphs 103-108 and not repeated here).

The Case for Braintree District Council

Introduction

335. The background to this inquiry is set out in the Procedural Matters at the beginning of this report. The case set out addresses all three schemes before the Secretary of State unless otherwise stated.

336. As was made clear in Opening, the Council's position to this inquiry is that there is no sufficient basis to refuse planning permission for these schemes, notwithstanding that they are in conflict with the adopted development plan. It stands by the assessments that its officers made of the schemes. It recognises

that had the two larger schemes not been called in, it is likely that they would have planning permission by now. It has not sought to challenge the developers' core case that, respectively, their schemes merit planning permission.

337. Equally it is of course primarily for those developers to persuade the Secretary of State that their schemes are worthy of planning permission, and the Council has not, in that same context, sought to attack the case mounted against the schemes by SPMRG and HPPC, even where those parties have been critical of the Council's approach. That does not mean, of course, that the Council accepts those criticisms are well-founded - they are not - but stems from a recognition that the purpose of this Inquiry is to consider the case for granting planning permission for each of the schemes.
338. In that same context, the Council will not descend into the detail of many of the disputes which will govern the ultimate outcome of this process; not because the Council does not have a view on them, but because it recognises that additional submissions from the Council on those points, beyond those made by the party advancing a particular position, are unlikely to assist. Accordingly, the Council's case is relatively brief. It does, however, touch on some of the controversial issues where the Council has taken a particular position on them which may not be mirrored by the relevant other party. The first is in respect of housing land supply.

Housing Land Supply

339. A key element of the Council's conclusions on the ultimate acceptability of these schemes - all of which are contrary to the adopted development plan - is that it could not then and cannot now demonstrate a 5-year supply of housing land. Efforts were made 'behind the scenes' to reach an agreed position with the two appellants as to housing land supply (including the suggestion of agreeing a 'range') but that did not bear fruit.
340. The Council was pleased to agree a position in respect of OAHN but in the light of Mr Spry's eventual position, remain surprised that further agreement could not be reached. Broadly we accept the Inspector's characterisation of the position when summarising the round table discussion, that it is unlikely that there would be a materially different effect on weight whether there was a c.3.3-year (GDL/DWH high water-mark) or c.3.9-year (Council's best case) deficit. In either scenario, the deficit is considerable and weighs in favour of granting permission for more housing.
341. Nonetheless GDL/DWH maintained that the true position was the lower end of that range, for reasons the Council do not accept are valid. As such a number of points arise for further comment.
342. Before moving to the specific controversies, it is important to be absolutely clear about the Council's approach to its BNLP. It would not have submitted its draft Plan for examination if it was not confident about its soundness. It is not inconsistent with that confidence to recognise that until the examination process has been carried out and expert consideration given to the contents, some uncertainty remains. Confidence in the plan's soundness does not exclude a pragmatic view of the reliance that can be placed on its draft provisions in the development management context until such time as they are confirmed.

343. Indeed such an approach accords with national policy in the Framework, which at paragraph 216 advises that weight should be afforded to emerging policy according to various factors, all of which are referable to the inherent uncertainty about the contents of draft plans until they are adopted.
344. A good example is the inclusion of draft allocations for housing on sites which under the existing adopted plan - which retains its statutory primacy - would be contrary to the development plan. The Gimsons site - identified by SPMRG in this case as one draft allocation that should be included in the five-year supply - makes the point neatly. While the emerging plan allocates it for housing development, the adopted plan has it as a Visually Important Space under Policy RLP4, meaning it is inappropriate for housing. Until such time as the draft allocation supercedes the present development plan status, it cannot be considered 'deliverable'. Of course, there is the additional irony that Priti Patel MP, in whose office Mr Leaf works, has objected to the draft allocation of the Gimsons site in the emerging plan and yet here (by extension) argues that it should be treated as a deliverable site for housing.
345. This general approach is relevant to the Council's position in two respects. First, in terms of the Liverpool/Sedgefield dichotomy in dealing with the shortfall since 2013 and, second, in terms of the additional sites that SPMRG sought to promote as being deliverable in their letter of 12 December 2017 (ID21). The Council turns next to the specific components of the supply debate.

OAHN

346. There is no challenge in this inquiry to the Council's position that its OAHN is 716 dwellings per annum. That figure has been derived from the latest household projections (in accordance with the PPG), and uplifted by 15% to account for 'market signals' (essentially past unmet need). That means that the ultimate figure of 716 dpa specifically accounts for unmet need in past years, in the way the PPG requires.
347. The figure is one of the key elements of the first Section of the emerging plan, which will be considered at the EiP in January 2018. All parties will be likely to wish to make submissions on the outcome of that EiP on the OAHN, and its ramifications (if any) for the matters before this Inquiry if they remain undetermined at that point.

Shortfall

348. The quantum of the shortfall against the OAHN of 716 (effectively unmet need) since 2013 is uncontroversial, but the period over which it is sought to be 'recovered' is not. GDL/DWH argue that it should be recovered in the next five years, relying on the PPG, which suggests that this 'Sedgefield' approach is appropriate unless it is unachievable. The Rule 6 parties contend for the shortfall to be recovered over the entire plan period, the so-called 'Liverpool' approach.
349. The Council will contend at the forthcoming EiP into its emerging plan that the examining Inspector should accept, for the purposes of the soundness of the emerging plan, the 'Liverpool' approach. This is in large part because that same plan contains an overall strategy (shared with its partner authorities) of seeking to meet future growth in Braintree (and beyond) by creating new Garden Communities and allocating larger housing sites, which can better respond to the

requirements for new infrastructure to support housing development, a strategy which the Council considers accords with government policy and is a sound approach to meeting future growth needs.

350. That same strategy means, however, that some of the new land for housing will not come forward until the middle of the plan period (and indeed beyond). If it is confirmed by the EiP as a sound strategy, it will provide ample justification for the Liverpool approach. The Council hopes it will be so confirmed. However, it has argued in three recent s.78 appeals that it provides that justification now, even as a draft strategy, and in each case has failed to persuade the Inspector of that. The failure in each case has been broadly on the basis that until there is greater certainty about the emerging plan, the Sedgefield approach should be preferred. That appears to be rooted in Framework paragraph 216.
351. On that basis, and for essentially pragmatic reasons, the Council's position to this Inquiry has been that it accepts that until its strategy is confirmed, it is likely to remain the case that the Sedgefield approach to making up the shortfall is appropriate for development management decisions. It recognises the clear steer in the Framework and PPG towards meeting needs, and doing so for the next five 5 years in particular. It has had regard - entirely properly - to the conclusions on this very issue reached by three recent s.78 appeal Inspectors. Its key justification for the Liverpool approach depends on a strategy within a plan that is still emerging and has yet to be tested. Its approach here is pragmatic but also sound and sensible, and there is no inconsistency with its approach to the emerging local plan.
352. It is also consistent with its position of relying on the other conclusions of those three Inspectors, in respect of (for example) the weight to be attached to policies of the development plan. It is generally unattractive to seek to rely only on those parts of a recent decision that suit one's case, while ignoring other elements which do not. The Council does not fall into this trap.

Buffer

353. This debate was essentially reduced, via the round table session, to a binary disagreement about whether one treats the OAHN of 716 dpa as being the 'appropriate target' from 2013, or only from the time when it became a target at all (i.e. in 2016). Mr Spry says you should 'backdate' it to 2013, Mrs Hutchinson says not.
354. The Council adopts the Inspector's characterisation of Mr Spry's approach as illogical. Unlike the consideration of the shortfall since 2013, this exercise is not one of quantifying unmet need. It is specifically considering how likely it is that the planned supply will be met, using past performance against applicable targets as an indicator of likely future performance. This is clear because the purpose of including a 20% buffer (where there has been 'persistent under-delivery') is 'in order to provide a realistic prospect of achieving the planned supply' (see Framework paragraph 47). A local authority which has persistently, as it were, fired its arrows wide of the target must be moved closer to the target in order to improve its chances of hitting that target in future.
355. It thus follows that the nature of this exercise is considering past performance, not in terms of meeting actual needs but in terms of meeting planned targets. It is not about being 'unfair' to anyone - that was Mr Spry's straw man - but about

the nature of the exercise. The advocates for GDL/DWH were quite correct to say this has nothing to do with 'punishing' anyone and should be carried out in an entirely dispassionate way. It also explains why it is not helpful here to consider whether past targets were themselves likely to be lower than actual needs. The question is how often Braintree's arrows hit the target, not whether those targets ought to have been different. Nothing in the *Cotswold* judgment (ID1.15) indicates otherwise.

356. The simple fact is that 716 was not in any sense a 'target' for this Council prior to 2016 and it makes no sense in this context to consider its performance in hitting a 'target' that it was not aiming for; that would say precisely nothing about the likelihood of 'achieving the planned supply' in the future. The usefulness of the exercise relies upon identifying what the target in fact was at the time. It was not 716 until 2016.

357. For those reasons a 5% buffer is appropriate. Mrs Hutchinson's evidence makes clear that Braintree has not persistently under-delivered.

Supply

358. There is (now) an immaterial difference, some 68 units, between GDL/DWH and the Council on the quantum of supply.

359. Of more materiality is the SPMRG position that ten further sites should have been included in the supply as set out in Mr Leaf's letter of 12 December (ID21). The question of whether those sites should be included in the supply is the subject of a SOCG between GDL/DWH and the Council (ID37), both as a matter of principle and on a site-by-site basis. The Council does not repeat, but does rely upon, those points here.

360. There is ample justification for the position taken by the Council in respect of those sites, as accepted by GDL/DWH. In short and in general terms the draft allocations may only attract limited weight until the emerging plan within which they appear has progressed further along its journey to adoption. Looking at the sites individually results in the conclusion in each case that they are not yet to be considered 'deliverable' for development management purposes.

361. It is also clear that these sites only make a material difference to the position if the position of the Rule 6 parties (contrary to the case presented by the Council and GDL/DWH) that the Liverpool approach should be adopted now is correct.

Conclusion - housing land supply

362. The above points lead to the conclusion that the Council is correct to say that it cannot yet demonstrate a five-year supply of housing land. Insofar as it matters, the position is that it can demonstrate something in the region of 3.9 years, at least until its emerging plan attracts greater weight. That means that the proposals fall to be determined having regard to the 'tilted balance' in Framework paragraph 14. There is, therefore, justification for not applying the restrictive policies of the development plan 'with full rigour'; and the delivery of housing attracts greater weight in favour of the proposals than it might if there was a five year supply.

The approach to the development plan

363. These proposals are all contrary to the adopted development plan. The controversy revolves around how that conflict should be treated within the context of the Framework and the statutory test.
364. GDL/DWH and the Council agree that the ultimate outcome of that exercise is that planning permission should be granted for all three schemes. However, there is some divergence in the way in which the parties arrive at that conclusion. On that basis it may assist to have the Council's position set out clearly.
365. The proper approach to the development plan, where there is no five year supply of housing land, has been considered a number of times recently by Inspectors on s.78 appeals in Braintree District Council. The Council respectfully adopts the reasoning of Inspectors Hill and Gregory in the Coggeshall (CD32.2 set C) and Steeple Bumpstead (CD32.10 set C) Inquiries (respectively), and the consistent decision of Inspector Fagan at Finchingfield (CD32.4 set C). It is of note that both GDL, and its counsel here, appeared at Steeple Bumpstead and advanced the same argument there as here in respect of restrictive policy CS5, and it was roundly rejected. There does not appear to have been any real recognition of that in their position to this inquiry.
366. In short:
- i) There is a sound basis in principle for reducing the weight to be applied to restrictive policies of the development plan on account of the lack of a five year supply of housing land;
 - ii) The quantum of that reduction depends on a number of factors, including the extent of the shortfall, the purpose of the policy, and the consistency of the policy with the Framework;
 - iii) There is no sound basis for reducing the weight to be attached to restrictive policies on account of their age alone (paragraph 40 iii F6f); and
 - iv) In terms of consistency with the Framework, a nuanced approach is required by Framework paragraph 215 which calls for due weight to be attached depending on the degree of consistency with the Framework (paragraph 52, *Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459).
367. Saved policy RLP2 can be afforded limited weight because it is restrictive of housing and the District has a shortfall in housing land supply. The boundaries on which it relies were set with reference to housing needs for a period that has expired. This is the same conclusion reached by Inspector Fagan in the Finchingfield decision (CD32.4 set C, paragraph 10).
368. Although Saved policy RLP80 is not criteria based and applies a generalised approach in protecting landscape features and habitats, it is generally in conformity with the Framework and the Council maintains that it should be given considerable weight.
369. CS policy CS1 is a 'policy for the supply of housing' and is out of date by virtue of Framework paragraph 49. Insofar as there is a breach of its terms it attracts

limited weight as found by, for example, the Finchingfield Inspector (CD32.4 set C, paragraph 10).

370. By contrast, CS policy CS5 attracts more than the 'very limited weight' argued for by Mr Lee (for GDL) and the 'limited weight' argued for by Mr Dixon (for DWH). For the reasons set out by Inspectors Hill (CD32.2 set C, paragraph 59), Gregory (CD32.10 set C, paragraphs 39 & 65) and Fagan (CD32.4 set C, paragraph 59), policy CS5 should be afforded more than moderate, but not full, weight. It is consistent with the Framework core principle concerned with protecting the countryside from harm. There is some justification for a reduction in weight on account of the lack of a five year supply but no justification for that reduction to be as great as argued for by GDL/DWH here. This has been confirmed three times in s.78 appeal Inquiries since July 2017. It may be that Mr Dixon's evidence is in line with this, following clarification in his evidence in chief that it is the precise position of the boundaries, rather than the protective element, that attracts reduced weight.
371. GDL is correct to say that the Framework provides for a hierarchy of protection; at the top are designated landscapes, then below those come 'valued landscapes' and then the residual category of landscapes within which the Stone Path Drive site sits. It does not follow, however, that those at the bottom of this hierarchy get no protection. The hierarchy simply requires that they attract a lesser degree of protection than might categories above them in the hierarchy. In the Finchingfield and Steeple Bumpstead decisions, both of which concerned 'valued landscapes', it was held that Framework paragraph 109 was a 'footnote 9 policy' indicating that development should be restricted, providing an additional level of protection by disengaging the 'tilted balance'. That alone is sufficient to satisfy the hierarchy argument. Policy CS5 permits this hierarchy of protection to be respected.
372. Lastly, the emerging NDP. This is not yet part of the development plan and attracts only limited weight on that basis. It does not provide any sufficient basis for refusing any of the schemes. In particular, the debate about the wording of policy HPE1 (whether it is or is not restrictive of all - or all large - housing development in the countryside, and thus its consistency with the Framework) is precisely the kind of debate that will be resolved when the NDP is examined. It is an excellent example of why only limited weight attaches to plans at this stage of their development.
373. It would be remiss not to mention the Alan Massow e-mail (ID26). The position vis-à-vis the draft Green Gap between Hatfield Peverel and Witham is a draft policy in an emerging neighbourhood plan, which has some way to go before it is made and becomes part of the development plan. As Mr Massow's e-mail suggests, and as Mrs Hutchinson clarified in her evidence, the District Council considers that the question of whether there should be a green gap in this location to be a non-strategic one and for that reason it is not included as a draft policy in its emerging plan.
374. The question of whether a green gap in this location should be part of the development plan is left to the neighbourhood level, which is entirely proper. This Inquiry is not the place to examine either the emerging local plan or the emerging neighbourhood plan. The debate is sidestepped by acknowledging that the weight to be attributed to the terms of the emerging draft neighbourhood

plan - including the draft Green Gap policy - is limited, pursuant to Framework paragraph 216.

The planning balance

375. In each case, on the above basis, a balance must be carried out using the 'tilted balance' contained within Framework paragraph 14. A finding that such an exercise points to the proposal being sustainable development (i.e. the harms not outweighing the benefits) will be a weighty material consideration pointing towards a grant of permission notwithstanding the conflict with the development plan. That is, essentially, the conclusion that the Council reached in respect of all three schemes. It is the conclusion the Council suggests should be recommended to the Secretary of State.

376. The crucial benefit here, in each case, is the delivery of much-needed housing in a situation of deficit. Given that the deficit is, on any view, more than a year's worth of housing at this stage, and is unlikely to be eliminated until such time as the new local plan is adopted, the weight to be afforded to that benefit is substantial and is not outweighed by the harms, which are relatively limited.

Conclusion

377. The conclusions reached by the Officer's Reports in respect of each scheme are sound and should in effect be confirmed.

The Case for Interested Persons

378. A total of six people made presentations to the Inquiry and answered questions from Mr Tucker. All responded positively to my request for a written statement and these are listed in Annex A. Mr Webb and Mr Hutton gave their statements by way of a PowerPoint presentation, copies of which are included in the documents. Thanks are due to the Council officers for making the necessary equipment available. What follows is a summary of the main points made by each speaker. The full submissions are available to read.

379. John Webb is a resident of the Gleneagles Way estate. His evidence focused on the traffic implications arising from the proposed development. He noted that Gleneagles Way is already a cul-de-sac development with a single point of access to the wider highway network. That single point of access would remain; it would however serve triple the number of dwellings if the proposal went ahead.

380. The junction of Gleneagles Way and The Street is inherently dangerous as it requires turning into (to exit the estate) or across (to return home) the off-slip from the A12. Traffic leaves the A12 at speed and has only a short distance to slow to 30mph. He put the distance from the 30mph sign to the junction at some 60m.

381. Local people did not accept the reported results from the speed survey carried out and submitted by DWH. HPPC commissioned another. He included the outcome figures and argued that using the average speeds as DWH had completely distorts the true picture. In fact, the new survey shows that 45% of the vehicles going past the junction do so at speeds in excess of 30mph. Proposed improvements to the visibility splay miss the point entirely. It is the design of the off slip that makes speed difficult to judge combined with the failure to enforce speed restrictions that cause the danger. (*Inspector note: DWH were*

not aware of this additional survey data until Mr Webb presented it. Document ID20 is its response).

382. Michael Hutton has been resident in the Gleneagles Estate for some 23 years. His presentation contained a number of annotated images. These showed the effect that new developments on the edge of Witham such as Lodge Farm and Woodend Farm were already having on the distance between Witham and Hatfield Peverel. The application scheme would reduce this separation distance further to just under 1km from just over 2km before these developments took place.
383. The application site is beyond the village boundary and previous planning applications have been refused. Photographs of views (which appear several times in the evidence) illustrate views across the application site.
384. The NDP already includes a comprehensive development area which is well-placed in relation to the main line station.
385. Lesley Moxhay has been a local resident for 34 years. She spoke about the ecology of the area. She suggested that the field margins provided a rich habitat while the land itself was Grade 2 and therefore best and most versatile agricultural land. Building on it was therefore contrary to Framework paragraphs 111 and 112.
386. In summary, her evidence is that the human activity that will be introduced into the area will have an adverse impact on the many protected species on or near to the site such as bats, badgers, grass snakes and slow worms. Furthermore, the measures put forward and agreed by the Council in mitigation of potential impacts on the Blackwater Estuary Natura 2000 site will be wholly inadequate and potentially counter-productive for local wildlife. The cumulative effect on the ecosystem from all of the developments planned in Hatfield Peverel should be given great weight in the planning process.
387. A resident of Woodham Drive whose property abuts the south western tip of the site, Ron Elliston made a number of points all of which are raised by HPPC or others. In summary, these include:
- a. That the site is not allocated in any development plan and lies beyond the settlement boundary;
 - b. The site is best and most versatile agricultural land;
 - c. Previous applications have been refused and this one is opposed by the local MP, County Councillor and District Councillor;
 - d. The green wedge between Hatfield Peverel and Witham will be further eroded;
 - e. The A12 is a source of noise and exhaust emissions which the acoustic barrier proposed will not mitigate even though it will have a landscape impact;
 - f. Similar traffic safety concerns to those expressed by Mr Webb;
 - g. Local schools and the surgery are already at capacity with more pressure to come from planned development;
 - h. Few employment opportunities with the closure of Arla dairy resulting in increased commuting.

388. In a supplementary statement (ID11a), Mr Elliston challenged the proposed provision of a new crossing point on Maldon Road near to the junction with The Street on the basis that it did not and could not comply with current guidance.

389. Andy Simmonds has lived in the village for 36 years. His statement was essentially a criticism of the way that the Council had dealt with the application.

390. Kenneth Earney spoke with respect to the effect on habitats, the lack of allocation in the development plan, the pressure on local schools and health facilities and traffic; he made similar points to other speakers.

Written Representations

391. At application stage the Council received 94 objections with some residents and households submitting multiple representations. The main material and non-material reasons for objection are summarised in the report to Committee (SAV38). The main headings under which they are grouped are principle of development; layout, design and appearance; landscape and ecology; highways; living conditions; and other matters. Most, if not all, of these issues have been raised by either or both HPPC and the interested persons in their evidence to the Inquiry.

392. A further seven representations were received by the Planning Inspectorate. These generally refer to matters raised in the initial objections to the scheme. Two are from Mr Webb and Mr Elliston and make the same or similar points as recorded above.

Conditions and Obligations

393. These were discussed at a round table session on the final sitting day of the Inquiry.

Conditions

394. Various drafts of the conditions that might be imposed if the Secretary of State decides to grant planning permission were submitted. The wording and need for each was discussed and a consolidated set helpfully provided by the Council following the discussion (ID53). In considering the conditions to recommend to the Secretary of State I have had regard to the advice in the relevant section of the PPG. The conditions that are recommended are set out in Annex C and the following references are to the conditions there.

395. Conditions 1 to 4 inclusive are standard outline planning permission conditions which define the reserved matters that will be subject of further approval. DWH explained that the Statement of Landscape Principles, (ID46) should be read alongside the parameters plan (SAV4) and the design and access statement (SAV7) in order to appreciate the approach the developer will take to mitigating the limited landscape harms caused by the development [107]. However, neither the Council nor DWH suggested that these should be subject to a condition and I consider to do so would go beyond what is normally specified at outline planning permission stage. No doubt the Council will nevertheless have regard to both when considering the reserved matters applications.

396. Condition 2 sets 2 years as the period within which the reserved matters applications must be submitted for approval to ensure that the eventual developer of the land brings forward housing in good time.
397. Condition 5 secures the access arrangements which are for approval now. It also secures a number of improvements to the crossing points and footways in the general vicinity of Gleneagles Way, The Street and A12 overbridge. Included among these is the new zebra crossing on Maldon Road proposed as part of ID1.5 and shown on Drawing 45604-P-SK207. Having walked the area in the afternoon I consider that an additional controlled crossing point is necessary to achieve a safe route to the bus stop for those wishing to travel by bus to Witham and further afield. This is especially important given the expectation that both primary and secondary pupils may have to travel in that direction to secure a school place.
398. Conditions 6 and 7 work together to control the ridge heights of the dwellings on those boundaries of the developable area that affect views of the settlement edge from the countryside. The height specified is that upon which the LVIA is based. The restriction is necessary to integrate the current settlement edge into the setting of the village.
399. Conditions 8 and 9 are necessary to ensure that any air quality issues arising from the proximity of the site to the A12 are addressed in the interests of the health and well-being of the future residents. Condition 10 is necessary to protect wildlife during construction and condition 11 is required to ensure that in bringing forward the reserved matters applications the scheme is landscaped in accordance with the parameters set out and maintained thereafter as specified.
400. In order to ensure that disturbance to the existing residents in the area is minimised as far as is practicable while the development takes place conditions 12 and 13 should be imposed to control the management and operation of the site and the hours during which work can take place and materials can be moved on and off site. The requirement for details of any piling to be approved (condition 15) arises for the same reason.
401. A number of schemes are required before development begins to ensure that any issues not already identified are explored and addressed as appropriate. These include conditions 16 (archaeology), 17 to 19 (surface water drainage) and 20 (foul water drainage). Condition 21 is similar in that it requires the measures to be put in place to protect all the identified existing trees and hedges that are to be retained to be approved prior to construction. I have removed the phrase 'to the complete satisfaction of the local planning authority' from the suggested condition 21 as this is an uncertain specification and therefore unenforceable. It would not therefore meet the tests on the PPG.
402. There are a number of conditions that are required to protect the nature conservation interest of the site and surrounding area. These include no clearance of trees and hedges during the defined nesting season (condition 23), the provision of nest and roost sites as the development becomes occupied (condition 24) and reviews of already submitted surveys prior to the submission of reserved matters (condition 25) or if the development is delayed or suspended such that circumstances might have changed (condition 26). Condition 14 (external lighting) is required primarily to mitigate any disturbance that may be caused by light pollution to roosting and foraging bats. It is my understanding of

- the discussion that this is its purpose. It is not intended to provide detailed control over the lighting that individual occupiers might wish to provide for, say, security. It is more to address the lighting of public spaces that will be provided as part of reserved matters applications.
403. Condition 28 is necessary in the interests of promoting sustainable modes of travel. The achievement of a high quality development where people will wish to live will be enhanced by the undergrounding of existing overhead power lines and that will be secured by condition 29.
404. A number of conditions were subject of debate and disagreement in some cases.
405. Condition 22 secures the important provision of space for the necessary materials recycling bins in order to facilitate the more sustainable management of waste materials by the local collection authority.
406. During the discussion of that condition it was suggested that its scope be widened to include the provision of other infrastructure such as high speed broadband. While there was a consensus that this would be desirable, its provision was not in the control of the developer. A condition of that nature would therefore be unenforceable and so would not meet the tests set out in the PPG.
407. While there is no dispute that the condition is required to protect the health of future residents living close to the A12 there is a disagreement about the timing of the submission of details. I agree with the Council that the details need to be approved before reserved matters are submitted rather than together with them. The approved details may well influence the layout if not the appearance and to risk a refusal which meant a review of an already submitted reserved matters application seems to run counter to the objective of expedited housing delivery. It seems though unwise to restrict by condition the mitigation to the boundary even if that is what is ultimately approved. Suggested condition 27 therefore represents compromise wording of the two suggestions put forward.
408. Two other conditions were suggested by the Council and these are included within Annex C as conditions 30 and 31. They are set out there in italics as, in my view, neither is required. The suggested wording is nevertheless included should the Secretary of State take a different view.
409. Condition 30 is a standard materials condition of the type commonly imposed where this is either unclear at application stage or the local planning authority wishes to exercise further control over the matter. However, in this case 'appearance' is a reserved matter. It seems to me that the materials to be used are fundamental to the appearance of the buildings and I fail to understand why this important matter cannot be addressed then.
410. The Council explained that condition 31 is required to ensure that, initially, each plot is provided with some means of enclosure. The condition is not intended to remove the rights available under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. That may not be the intention but I consider that it would be the effect. No evidence was put forward to justify such a restriction which the PPG advises

should only be imposed where circumstances require. Those circumstances do not exist here in my judgement.

411. A third condition suggested by the Council related to car parking standards. It was very specific in its requirements and referred to the Essex Parking Standards Design and Good Practice 2009 as the source. During the discussion it was argued that this condition was unnecessary as the reserved matters applications would be determined in accordance with the development plan policy and any supplementary planning document applicable at the time. I agree and do not suggest this condition be imposed.
412. A fourth suggested condition would have required a number of highway works and improvements to bus stops. It seems to me that the former are already secured by condition 5 while the latter relate not to this development but to those proposed at Stone Path Meadow which are the subject of separate reports. The condition is therefore not required in this case.
413. Finally, the Council suggested a condition requiring the submission for approval of a landscape and ecological management plan. From the body of the condition and the non-exhaustive list of matters it should cover it seems to me that it would duplicate a number of other landscape and ecological conditions that are already suggested to the Secretary of State. It is therefore unnecessary in my view.

Obligations

414. A planning obligation in the form of an agreement between the Council, ECC, the landowners and the developer has been submitted (ID59). It is signed by all parties and dated and is explicitly made pursuant to s106 of the principal Act with the obligations entered into being enforceable by the Council and ECC. The commencement date is defined as being when a material operation for the purposes of s56 of the Act is carried out.
415. The obligations are set out in 11 schedules. These make provision either in the form of financial contributions or other mechanisms for outdoor sport (Schedule 1), allotments (Schedule 2), community building (Schedule 3), highway works (Schedule 4) open space (Schedule 5), affordable housing (Schedule 6), education (Schedule 7), healthcare (Schedule 8), Blackwater Estuary mitigation contribution (Schedule 9), public rights of way contribution (Schedule 10) and housing phasing and landscape strategy (Schedule 11)
416. The Council has submitted a statement of compliance with the CIL Regulations (ID29) setting out the policy justification for each of the obligations provided.
417. In my judgement each of the obligations is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development proposed. In my judgement each obligation meets the requirements of CIL Regulation 122 and Framework paragraph 204.

Conclusions

418. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion or inference is based.

Policies in the Framework on delivering a wide choice of high quality homes

419. This is the first reason for the application being called in by the Secretary of State [4]. Little evidence was given about this.
420. Schedule 6 of the s106 obligation (ID59) will secure the provision of a substantial number of affordable homes within the development proposed. A mix of market and affordable housing would be delivered on-site and the policy set out in Framework paragraph 50, bullet 3 would therefore be delivered.
421. All of the other elements that go towards delivering the requirements for good design set out in Framework section 7 will be subject of the reserved matters applications that would need to be submitted. The Statement of Landscape Principles (ID46) sets an important context for the development and the Design and Access Statement (SAV4) also establishes some important principles that will no doubt guide the Council's development management process at reserved matters stage although no condition was suggested in this regard [395].
422. There is no evidence to suggest that the application site which is being promoted by a national housebuilder will not provide a range of high quality homes.

The extent to which the proposed development is consistent with the development plan for the area

423. This is the second reason given by the Secretary of State for the call-in [4]. In addressing this I shall also deal with the third reason, namely 'Any other matters the Inspector considers relevant'. These were set out in my first pre-Inquiry note (INSP1) and have been developed in the light of the written and oral evidence given. They encompass what, in my view, are the main considerations upon which the decision should be based.
424. However, before considering the application scheme against the policies of the adopted development plan I shall address the weight that I consider should be given to the emerging BNLN and NDP.
425. Turning first to the BNLN, the SOCG between DWH and the Council records that the weight to be given to the emerging plan policies should be determined in accordance with Framework paragraph 216 (paragraph 6.12, SOCG 4). That is different to the Council's agreement with GDL that limited weight should be given to the BNLN as a whole (paragraph 3.3.10 SOCG1). In closing submissions the Council considers the weight that should be attached to individual policies rather than the plan as a whole [363 to 374].
426. DWH reached the same initial agreement with HPPC (paragraph 6.12 SOCG 5). In closing submissions HPPC has revised its position and argues that the emerging BNLN can be given significant weight as it has progressed to examination stage [216]. That however is only one of the three considerations in Framework paragraph 216 that have to be taken into account.
427. The BNLN is subject to a considerable number of representations that it is unsound. For example, in an extensive representation (CD33.1 set C) GDL argues that policies SP1, SP3, SP5, SP7, SP8, SP9, SP10, LPP 1, LPP 18, LPP 19, LPP 22, LPP 37, LPP 49 and LPP 72 are unsound. Of these, only policy LPP 1 is a

relevant policy. No criticism is made by GDL of the others (such as SP 2 and LPP 71) referred to above [36 and 37].

428. The stage reached remains as set out above [33]. That is an advanced stage in the process to adoption but it is, nevertheless, the first stage at which independent scrutiny of the plan takes place. The Council is best placed to know the full extent of the challenge to the plan and its individual policies and thus the number and nature of the unresolved objections to them. The degree of consistency with the policies in the Framework must therefore be viewed in that context. Taking these three components of Framework paragraph 216 into account, I see no reason to take a different view to that which the Council took in the SOCG with GDL that only limited weight should be given to the BNLP.
429. The weight that should be given to the NDP is a matter of legal dispute between DWH [121 to 130] and HPPC [227 to 247]. I am not legally qualified to resolve that dispute and the Secretary of State may need to take his own legal advice to do so if he considers it necessary.
430. In my view, the position is actually quite straightforward. The NDP has been submitted for examination [39]. The exchange between the examiner and HPPC set out there seems to me conclusive. The examiner's first letter (Appendix MR24, HPPC1) is quite explicit that 'as it stands...the NDP fails to meet the Basic Conditions...'. Her second letter (Appendix MR25) declines to continue the examination because '...the issues raised are sufficiently substantive...' that to do so would risk abortive and unnecessary costs to the Council.
431. Both GDL (CD33.2 set C) and DWH (SAV50 and SAV52) have objected to the submission version of the NDP. Among the policies objected to are HPE1, HPE2, HPE6 and HPE8. Given the nature of the additional work to be done, the uncertainty over the timescale in which it will be completed and the effect that the outcome of that work and indeed the examination itself may have on the form of the NDP put to a referendum I consider that, in line with the guidance in Framework paragraph 216, very limited weight can be given to the NDP at this stage. I do not consider that the late information provided by HPPC [10] alters that conclusion. Although HPPC says the required work has now been done, Natural England's comments have not been made available; the outcome of the meeting with the Council to discuss the way forward is similarly unknown; and the views of the examiner about all of this are unknown in any event.

Would the proposal be in accordance with the spatial strategy?

432. The CS spatial strategy is set out in policy CS1 [29]. It promotes development in the KSVs and Hatfield Peverel is so categorised. The emerging BNLP does not alter the spatial strategy in that regard and identifies the A12/Great Eastern Mainline corridor as a location for future development [36]; Hatfield Peverel lies within that corridor.
433. As I explain a little later in this report I agree with GDL, DWH and the Council that the Council cannot show a 5YHLS. Framework paragraph 49 says that in those circumstances relevant policies for the supply of housing should not be considered up to date. Policy CS1 is clearly such a policy.
434. Whether it is the whole of the policy including the spatial strategy or just that part of the policy that sets the housing requirement that should be considered

out of date was the subject of post Inquiry sessions correspondence (INSP4 and ID54 to ID56).

435. Taking those views into account it is my judgement that, although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight. The Council is having to address a substantially increased OAHN in the emerging BNLP. How it is doing so is set out in the evidence base (ID33). This confirms that the Settlement Fringes Evaluation (SFE) is part of the evidence base used to develop the strategy. That confirms that to meet the OAHN '...development will need to be accommodated on the periphery of the main towns and larger settlements...' (paragraph 1.4, CD14.4 set B) with Hatfield Peverel being identified as one of the nine settlements studied. Furthermore, ID33 explains why both the 'new settlement only' and 'constrained growth' options were rejected.
436. It seems to me therefore very likely that any strategy coming forward through the BNLP will include development at the KSVs, especially where these are within the A12/Great Eastern Mainline corridor that is identified as a location for future development.
437. I therefore conclude that the development proposed would be in accordance with the spatial strategy. There is no evidence to support the contention by HPPC that development in any settlement needs to be 'proportionate' [186]. Nevertheless, HPPC is correct in my judgement to argue that the spatial strategy does not, of itself, dictate that the boundary in this part of Hatfield Peverel needs to be altered [214 and 215] but that is a different point that relates to policy CS5 which I turn to now.

Would the proposal conflict with policies RLP2 and CS5?

438. These two development plan policies are summarised at [26] and [30] respectively with the precise wording of policy CS5 set out. They are worded differently but their effect is the same. Both establish that outside the defined development boundaries of settlements, countryside policies will apply. Policy CS5 goes further explaining that development will be strictly controlled to uses appropriate to the countryside.
439. It is a matter of fact that the application site adjoins, but is nevertheless beyond, the development boundary of Hatfield Peverel. The proposal is therefore in conflict with the development plan in this regard, a fact acknowledged by DWH (paragraphs 6.12 and 6.34 DWH1). The point in issue is the weight that should be given to this conflict in the overall planning balance.
440. There are two aspects to this. First, whether the policy is inconsistent with the Framework; that argument applies only in respect of policy CS5 [142 to 146]. Second, whether the development boundaries that are critical to the application of the policies are out of date because they are based on out of date housing requirements. They have not been subject to review for many years [112 and 113].
441. Dealing first with consistency with the Framework, policy CS5 has three components. The subject of the policy is (of relevance to this appeal) development outside village envelopes. The 'action' of the policy is to strictly control that development to uses appropriate to the countryside. The purpose is

- 'to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside'.
442. The policy does not, in my view, apply blanket protection to the countryside. It makes clear that uses appropriate to the countryside would be permitted. The policy itself and its supporting text do not explain what those uses might be but it is difficult to imagine that a substantial village expansion housing development would fall into that category. Some guidance is however given elsewhere in the CS (at paragraph 4.24) in the discussion of 'The Countryside'. Some of the uses there (for example, development necessary to support traditional land-based activities such as agriculture and forestry) are not dissimilar to one of those listed in Framework paragraph 55 (the first bullet).
443. One of the core planning principles set out in Framework paragraph 17 requires local planning authorities in both plan-making and decision-taking to recognise the intrinsic character and beauty of the countryside. To my mind a policy that seeks to 'protect and enhance', as policy CS5 does, is not seriously out of kilter with that core principle.
444. Although drafted in advance of the publication of the Framework I therefore do not consider policy CS5 to be inconsistent with it. As the Council notes when arguing that more than moderate but not full weight should be afforded to this policy [370] three previous Inspectors have considered the same policy in relation to appeal proposals submitted by GDL in the District (CDs 32.2, 32.4 and 32.10 all in set C). My conclusion with respect to this aspect of the policy is consistent with each of theirs.
445. Turning to the development boundaries point, there is no evidence before this Inquiry of any review of the development boundaries as part of the preparation of the BNLP [113]. While the methodology for doing so has been approved by Council members (Appendix PJ3, HPPC2), there is no evidence that the review has actually taken place. However, DWH contends [90] and the Council accepts [362] that a 5YHLS cannot be shown. For reasons that I will discuss later, that is also my conclusion. If then the development boundaries are rigidly applied through the operation of both policies they would restrict the supply of housing and frustrate the aim of Framework paragraph 47. The court has held that in those circumstances the weight that can be afforded to them is much reduced [117]. That is also the view of the Council and the reason for it with respect to policy RLP2 [367] and, by inference, policy CS5 [370].
446. That was also the view taken by the three Inspectors in the decisions referred to above [370]. I see no reason to take a different view given that circumstances are more or less unchanged. Therefore, while there is a conflict with the adopted development plan policies, overall those policies can attract only moderate weight when it comes to the overall planning balance.
447. For completeness, the wording of BNLP policy LPP 1 is set out above [35]. It is not materially different from policy CS5. For the reasons set out above [425 to 428] the weight that can be given to that policy is limited.

The effect of the development on the landscape character of the area and the visual impact that the development would have

Landscape character

448. In my view, it is necessary to take into account the way in which Hatfield Peverel has developed. The historic maps in Mr Hancock's evidence (Appendix A2, 3/APP) shows how Hatfield Peverel has evolved from a linear settlement focused on The Street, shown as the Roman Road on the 1874 map and part of the route linking London with Colchester. By 1955 the land between Church Road and Maldon Road to the south of The Street had begun to be developed as had land to the north of The Street between it and the railway. This pattern continued to 1980 as more and more edge-of-settlement fields and allotments became housing developments. The 1978-80 map shows the Gleneagles Way and Woodham Drive cul-de-sac developments extending the village into the countryside to the east beyond Maldon Road. By 2002, (the next map in the sequence provided) what is now the Stone Path Drive development had breached the Church Road boundary and taken the village onto yet more former allotments on its western flank.
449. Under cross examination by Ms Scott of the case for GDL Mr Holliday confirmed his view that as a result of this pattern of development the character of Hatfield Peverel had changed over the last 50 years or so from a linear settlement to a nucleated form and that the development proposed by GDL would simply continue that pattern and, by inference, be in keeping with what is now the character of the settlement. He rejected Ms Scott's suggestion that the Stone Path Drive development would be a complete departure from the settlement pattern. His view was that each time housing development has taken place on the edge of the village a field has been lost but there has been no further change to the character of the village; the GDL development proposed would be no different.
450. Mr Smith was not present when Mr Holliday gave this evidence. I summarised that evidence as being that the character of Hatfield Peverel was that of a fair-sized settlement in a rural setting and that, while the GDL development would extend the village into the countryside, that fundamental relationship between the village and its setting would not be altered. I asked Mr Smith if he agreed with Mr Holliday's assessment and whether it applied equally to the DWH development. Mr Smith agreed with Mr Holliday's assessment and confirmed that it was relevant to the consideration of the DWH application. In a further answer Mr Smith confirmed his view that the village had evolved over time through edge-of-settlement accretions of similar scale to each of the proposals before the Inquiry. Each would therefore simply continue that evolution.
451. This assessment is supported by Braintree Historic Environment Characterisation Project 2010 (CD28.1 set C). This report has been produced to assist ECC and the Council in the production of their development plans. It studies the historic landscape character, archaeological character and historic urban character and weaves the three strands together to establish the historic environment character. Discussing the Hatfield Peverel area (HLCA 13) it notes the historically dispersed settlement pattern with Hatfield Peverel being the only nucleated settlement of any size (emphasis added). The post-1950s boundary

- loss ‘...can be described as moderate, however the overall grain of the historic landscape is still clearly visible.’
452. Furthermore, there are a number of studies that have had an assessment of the landscape capacity of various areas of land around the settlement edge to absorb further development as their broad purpose.
453. CD14.1 set B focuses on eight key settlements in the District. Its purpose is to assess the sensitivity and capacity around those settlements to accommodate new development. The application site lies within a study area (HP4) to the east of the settlement and to both sides of the A12.
454. From the analysis set out in summary form in Table 4.1 of the document it is clear that of the four study areas encircling the village this was the one that had the highest capacity to accommodate change without significant effects on landscape character. Contributory points in reaching this conclusion include the lack of distinctiveness along the settlement edge; the moderate contribution to the setting of eastern Hatfield Peverel and the wider landscape because of the enclosure provided by landform and peripheral vegetation; and the influence of the A12 which ‘cuts through’ the area and introduces movement and noise within the landscape thus reducing its overall sensitivity to change.
455. The Landscape Partnership prepared CD14.4 set B for the Council. This followed and built upon the earlier Chris Blandford Associates document (CD14.1 set B) and has the same broad objective for Hatfield Peverel but at a finer grain of analysis. As Mr Smith notes (paragraphs 83 and 84 DWH3), it did not investigate area HP4 further since this had already been found to have a higher overall potential to accommodate development than the other three study areas (paragraph 2.2, CD14.4 set B).
456. The Landscape Partnership also prepared the Hatfield Peverel Landscape Character Assessment for HPPC (CD28.3 set C). Its purpose is to assist ‘the village’ in commenting on development proposals coming forward and to support the emerging NDP. One of the aims is to provide an assessment of the landscape character and sensitivity of it around the village building on work undertaken at district level (paragraph 1.4). The application site is within local landscape character area 4 (Wickham Bishops Road – Upper valley slopes with pits/reservoirs). This area is less extensive than study area HP4 being confined to the south of the A12 although it does extend to include a small area of land further to the south east.
457. This study does not assess the capacity of the area to accommodate development. Rather, it sets out a general commentary about the characteristics of the landscape and some landscape guidelines which, on a fair reading, appear to assume development taking place to facilitate them.
458. Of relevance from the general commentary are the sharp transition between the existing residential fringes reflected in the linear garden boundary line of Gleneagles Way and Woodham Drive and the farmland beyond and the broad open views that are possible across the open arable farmland that characterises the area. Guidelines include tree belt planting along the northern boundary to provide a visual break to the A12, enhancement of the ecological value of the area through hedgerow retention and enhancement and safeguarding of open views across arable farmland towards the steep ridge at Wickham Bishops.

459. In my view the above document review demonstrates that the Council has been considering the potential for further edge-of-settlement development at Hatfield Peverel in accordance with the emerging or adopted spatial strategy since at least 2007. Indeed, as set out above [435] this was an explicit purpose of the SFE which states that such development was ‘...inevitable...’ if the OAHN was to be met (paragraph 1.4 CD14.4 set B). The application site would extend the Gleneagles Way cul-de-sac development into what is the next field to the east and, moreover, into a modest part of a larger area that several studies have confirmed has the landscape character capacity to accommodate it subject to development guidelines being met. The Statement of Landscape Principles (ID46) demonstrates that those guidelines can be met. While not subject to a condition [421] it will be for the Council to take these into account at reserved matters stage; this is the expectation of the applicant [107].
460. That is not to say that the development would not have an adverse effect on landscape character. The submitted LVIA acknowledges this (Table D4 SAV16). These effects would however be limited to the loss of the gently sloping landform which would be replaced by a housing estate. That has both a physical effect in that a landscape feature would be lost and aesthetic/ perceptual effects all of which would be negative. They would nevertheless be very localised and largely contained to the site itself, particularly given the mitigation measures that would be put in place. At a wider regional and county level the loss of a small (in context) arable field would have a negligible effect on landscape character.

Visual impact

461. It seems to me that although the landscape character effects and visual impacts that the development would have are not clearly distinguished from one another, this is the nub of the HPPC case on this consideration [284 to 294].
462. During my visit to the area I walked all of the routes that I was invited to [1]. These are shown on HP 003A in the LVIA (SAV16) and on HP/EJS/01 (Appendix 2 DWH4) and allowed a complete circuit of the application site on public land.
463. The application site itself is an open arable field that is devoid of any feature of significance. Its value, in my judgement, is that it enables views across it. Those views will be interrupted by the development but the effect of that varies greatly depending on the viewpoint.
464. Views to the east in the direction of Witham across the site to the farmland beyond are available from a very limited number of places. Walking through the Gleneagles estate it is only possible to see between the houses to the application site when passing the entrances to the three culs-de-sac. Photograph 8 (ID13) shows the type of view that would be available; it is a glimpse only.
465. Photographs 2 and 4 (ID13) and viewpoint 9 (HP 012 SAV16) show views that are representative of those available towards or at the end of each cul-de-sac. They are not representative of the view obtained by people passing through the estate on foot, cycle or in a vehicle or by the vast majority of residents in their homes. Viewpoint 9A (HP 012 SAV16) appears to represent that view but it would only be available to those living at the very end of a cul-de-sac; that would be about six properties. Photographs 3, 5, 6 and 7 (ID13) may represent the view from the gardens of the properties at the ends of each cul-de-sac but, as they do not seem to have been taken from public land, I cannot be sure.

466. What is beyond dispute is that each of these views would be replaced by a view of housing. DWH correctly assess this effect to be 'major' and 'negative' at all assessment dates (Table E3 SAV16).
467. From all other viewpoints on public paths generally to the north, east and south of the application site the proposed development would not be the dominant feature in the view in my judgement.
468. It is only along a short length of the footpath adjacent to the A12 and the off-slip to the village that the application site adjoins a public path. At this point the development would be largely screened by existing planting as shown by representative viewpoint 10 (HP 013 SAV16).
469. From the other representative viewpoints 1, 2, 4, 5, 6, 7 and 8 (respectively HP004A & B, HP 005, HP 007, HP 08A & B, HP 009, HP010 and HP010 SAV16) one view is to the settlement edge of Gleneagles Way and Woodham Drive across the intervening farmland which would remain undisturbed. At points that view is in any event screened by existing planting as the SAV16 photographs show.
470. That is however only one view. As HP003A & B (SAV16) show, viewpoints 1, 4 and 5 are along a footpath that runs parallel to the application site but is separated from it by a further field. While the settlement edge is visible if the walker turns to look that way, turning the other way or looking in the direction of travel would give a view across open countryside. That is also the case from viewpoints 5, 6 and 7. Indeed, travelling north east is moving away from the application site which would be increasingly to the rear and thus not really in the normal view.
471. No evidence was given about the extent to which these paths are actually used. At the time of my site visit a woman was exercising a dog from the path running parallel to the application site and two lads were riding what looked like a trials bike across the fields around the point where the path turns south west towards the village. It is not clear to me how well used the path would be since the end-point is the path alongside the A12; an unpleasant walking experience in my view.
472. Photomontages have been produced to show how the development might look from certain viewpoints after the mitigation planting has become established (HP004A & B, HP008A & B). Taking those and my own observations into account, I consider the applicant's assessment that the visual effects from all these representative viewpoints would ultimately be minor/moderate at worst is fair.

Conclusion

473. There would be a localised adverse effect on the character of the landscape which DWH acknowledge [460]. That harm must, however, be seen in context.
474. Several studies have considered the capacity of the settlement-edge landscape to accommodate the additional development that would be 'inevitable' if the OAHN is to be delivered. The application site is part of an area that independent landscape professionals consider capable of accommodating that development subject to guidelines to mitigate the effects being put in place. At least one of those studies has been prepared for HPPC [456 and 457]; no alternative LVIA has been put in evidence by HPPC.

475. The application site is an arable field with no distinctive features. There is no reason in my view why the landscape principles set out in ID46 could not be achieved at reserved matters stage. While a new settlement edge would be created as a result of extending the existing residential edge the width of a field further into the countryside, all existing boundary trees and hedgerows would be retained and enhanced as appropriate. To the extent that these are distinctive landscape features there would be no detrimental impact upon them. As the new planting matures over time the development would, in my judgement, be successfully integrated into what is a settlement-edge landscape.
476. There would therefore be no conflict with the landscape elements of policy RLP 80.
477. It is only the third paragraph of policy CS8 that is relevant to this consideration. It is clear from the submitted LVIA and the evidence presented to the Inquiry that the applicant has had regard to the character of the landscape and its sensitivity to change. That is what the policy requires and that part is therefore satisfied. Whether the development would enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment is a matter of judgement. Appendix 5 of the CS confirms that it is the 2007 study (CD14.1 set B) that is being referred to. In detail, that has been developed or superseded by later studies. In my view, the development would enhance the settlement edge as it appears as a feature in the landscape and thus this part of the policy would be complied with too.
478. Neither of these policies deals explicitly with the visual impact of proposed developments although these are the only two development plan policies that are referred to by HPPC as being breached in respect of this overall consideration [294]. I have found that there would be harm caused by the development with respect to visual impact although that would be limited to the occupiers of the properties along the three culs-de-sac off Gleneagles Way and, even then, mainly to those living at the end of each.
479. To the extent that weight can be attached to the policies of the emerging NDP [431] there would be conflict with policy HPE6 in this regard. However, in addition to the general point concerning progress on the NDP there are specific concerns about the evidence base that underpins the views to be protected and enhanced under policy HPE6 [101 to 103]. Mr Graham addresses this [252 to 259] but in my judgement there is some strength to Mr Tucker's case that this policy has been developed to frustrate development coming forward on the settlement edge [103]. This is nevertheless a matter properly for resolution through the NDP examination and, in any event, the impact and thus the conflict would be limited to a small number of adjoining residents and to users of certain footpaths pending the mitigation planting maturing. While this harm needs to be weighed in the overall balance, it attracts very limited weight in my view.

The effect of the development on community infrastructure

Education facilities

480. The concern relates only to primary school places and has been something of a moving feast as ECC, as education authority, has come to appreciate the full impact of planned and speculative development in Hatfield Peverel and the changing position over time with respect to school rolls (series of letters in CD21

set C). In my view, the SOCG (ID1.8) does not take things much further although the letter dated 1 September 2017 to Priti Patel MP from the ECC chief executive attached to it does. So does the helpful report from EFM that was prepared for GDL/DWH in response to my pre-Inquiry note (INSP1) and is appended to the proof of Mr Dixon (Appendix 8, DWH2).

481. The EFM report explains that estimating the numbers likely to be demanding a place at any particular school in future years is an inexact science. It is compounded, in the author's view, by the inherent contradiction between the duty placed upon education authorities to promote choice and variety of schools on the one hand and the Framework paragraph 38 requirement to locate, where practical, primary schools within walking distance of most properties on the other hand (report paragraph 27). The position in Hatfield Peverel is further complicated as the Council does not have a CIL charging schedule in place.
482. The letter is slightly opaque but, as I understand it, any one of the four residential developments listed in the letter could, in isolation, be accommodated without the need for additional primary school capacity. As two of the potential developments are allocated in the BNLP and the other two are this application scheme and whichever of the schemes put forward by GDL that is implemented (both cannot be), it is unlikely that only one scheme in isolation will come forward. Depending on the decisions made by the Secretary of State, all four could come forward.
483. Both the letter and the EFM report say that in that circumstance it is necessary to look more closely at where the children attending the Braintree Group 10 schools (Hatfield Peverel Infant, St Andrew's Junior and Terling CE Primary) actually live. It appears that some 35% live in the priority admissions areas of other schools but choose to be educated at one of those three named schools.
484. Given that the education authority has a duty to secure sufficient school places (and there is no evidence that it will not do so) the assumption is that this issue will resolve itself over time through the operation of the admissions policy. In short, in-catchment applications will always trump out-of-catchment applications (report paragraph 42) and, while no pupils will be displaced, over time more and more pupils in the Braintree Group 10 schools will come from Hatfield Peverel if that is their choice.
485. In evidence in chief Mr Dixon confirmed that his position on this matter did not differ from that of Mr Lee for GDL whose evidence he had heard. Mr Tucker further sets out the position in his closing submissions [131 and 132]. Mr Lee's position can perhaps be summarised best by his answer to my question when he confirmed that had ECC asked for a contribution to primary school provision it would have been paid. There is therefore no resistance from either GDL or DWH to addressing the issue. Although Mr Graham believes that ECC may have misdirected itself in respect of CIL Regulation 123(3) [276] the fact remains that its understanding of the pooling restriction prevented it from seeking any contributions from the applicant.
486. Nevertheless, while the situation settles down, and there is no indication as to how long that may take, Mr Lee accepted during cross examination by Ms Scott for SPMRG that there would be a short term impact which neither developer would be able to mitigate. That impact is most likely to manifest itself through additional journeys to school, either by bus or private car. In my judgement it is

very unlikely that any pupils would walk to schools in Witham. The walk is by the A12 and unpleasant in my view and likely to be perceived as dangerous even if, in fact, it is not.

Health facilities

487. On this topic too DWH effectively adopts the position of GDL since, once again, in evidence in chief Mr Dixon confirmed that his position did not differ from that of Mr Lee. The consultation response from NHS England is not available but its contents are summarised in the report to Committee (SAV38). The consultation responses by NHS England to the GDL schemes have been submitted in evidence and have the 'feel' of a template letter (CD3.16 set A and CD4.11 set B). At paragraph 5.1 of the response to the 80 dwelling scheme it says that the development would give rise to a need for improvements to capacity by way of 'extension, refurbishment or reconfiguration at the Laurels surgery'. The terms used in the definition of the 'healthcare contribution' in the s106 Obligation [415] are 'extension or reconfiguration of the Sydney House surgery'.

488. It is clear in my view that the impact of the development and the contribution sought to mitigate it is established purely in terms of the need for additional floor space generated. Unchallenged evidence was given by Mr Renow to the effect that Sydney House could not be physically expanded [272]. GDL's response, which has been adopted by DWH, was that capacity can be increased without necessarily having to physically expand the building and could be achieved by, for example, internal alterations.

489. However, a letter from the Practice Manager is somewhat confusing as to what is meant by 'capacity' (CD20.1 set C). One reading is that it is the number of medical staff available that is the issue, not the physical space available. Not only is the concern expressed that the contribution would not be spent by NHS England at that surgery (clearly wrong given the terms of the Obligation) but that it was not recurrent funding. That is suggestive of the concern locally not being one of space constraints.

Conclusion

490. CS policy CS11 says, in essence, that the Council will work with partners, service delivery organisations and developers to provide required infrastructure services and facilities in a variety of functional and service areas that include education and health. Provision is to be funded through among other things, planning obligations and CIL. In the absence of the latter, the Council is reliant in this case on planning obligations.

491. The evidence suggests that there may be some short term harm in terms of additional journeys to schools while a new equilibrium is established in the primary education sector. It may well be that what appear to be current capacity issues at the surgery may be exacerbated if, as HPPC contend (and SPMRG made the same point), the surgery cannot be physically expanded and that is, as NHS England would appear to believe, actually the issue.

492. However, having identified those concerns it must be acknowledged that DWH has obligated to make all the contributions that have been requested to mitigate any effect from the application scheme. In my view, a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Whether the development would erode the gap between Hatfield Peverel and Witham

493. Coalescence of settlements is not a matter that is addressed by any adopted development plan policy. It is addressed by emerging BNLP policy LPP 72 [38] and emerging NDP policy HPE1 [41]. Strictly therefore, this matter has 'material planning consideration' status.
494. The straightforward answer to the question is 'yes' because, as a matter of fact, the development proposed would extend the built development of the village into the open countryside between the two settlements by the width of a field. As a matter of fact there would therefore be a conflict with emerging NDP policy HPE1 as the application site is within the area designated as a green wedge.
495. The key issue that this policy is drafted to address is to prevent the encroachment of the nearest town, Witham and the merging of Hatfield Peverel and Nounsley to protect the uniqueness and separation of these settlements (page 24 CD16.3 set C) (emphasis added). The objectives are to prevent coalescence between Hatfield Peverel and each of the others.
496. However, it is again a matter of fact that Witham is being extended on its southern/south eastern boundary as a result of planned development. Development of the town is therefore eroding the gap. BNLP policy LPP 71 does propose a green buffer for Witham but not between Witham and Hatfield Peverel (CD16.2 set C). As a matter of policy therefore it would appear that the Council does not agree with HPPC that this is a matter of concern that should be addressed through the development plan. I give very little weight to the views of an officer of the Council in this respect [99, 373 and 374].
497. The key issue that policy HPE1 is drafted to address emerged from the October 2015 Residents Survey (paragraph 9.2 HPPC1) with the outcome being shown graphically in Appendix MR29 (HPPC1). In my view there is a significant issue with the way the question that prompted this outcome is framed and the response rate is therefore hardly a surprise.
498. There is a further issue in my view with the extent of the green wedge identified. It falls far short of the NDP Designated Area Boundary (page 5 CD16.3 set C) and, in fact, leaves most of the area between Hatfield Peverel and Witham unprotected by the policy. That can be contrasted with the green wedge between Hatfield Peverel and Nounsley which seems to include almost the whole of the gap. If confirmed in the NDP as now drafted and illustrated on the map, it is not clear to me how the policy will achieve the retention of the kind of gap that HPPC considered to be required to maintain adequate separation [281].
499. However, both of these points will be for the appointed examiner if she considers them to be material.
500. In that context, I have already noted that this policy is subject to objection [431]. The weight that can be given to the policy is again a matter of dispute between DWH [94 to 100] and HPPC [260 to 265]. My view on the weight that can be given to the NDP and therefore the 'in principle' conflict with policy HPE1 is set out above [431]; it is very limited weight (also broadly the view of the Council [374]) but it remains a material consideration.

501. Mr Smith addressed this issue by reference to what have become known as the Eastleigh principles (section 5 DWH3). His analysis was not subject to substantive challenge [104]. My note simply records an agreement by Mr Smith that physically the gap would be eroded slightly and a further answer on the sense of leaving a place in which he disagreed with Mr Graham's example of moving within the urban area of London but nevertheless leaving one distinctive area and arriving in another.

502. In my judgement the A12 is a very significant factor in the sense of leaving Hatfield Peverel and arriving in Witham. I do not believe that it is possible to walk between the two on the shorter route without travelling alongside the A12 for some distance. The quickest route by road both ways requires travel actually along the A12 albeit for a short distance. Therefore in my judgement the A12 would remain a very significant physical and psychological barrier between the two settlements and would continue to give a sense of separation even if the actual separation was less than it is now.

503. Furthermore, there is no inter-visibility between the two settlements because of the intervening ridge (sections 5.3 and 5.8 DWH3). This can be seen on HP/EJS/03 (Appendix 2 DWH4) and is, as I saw for myself, even clearer on the ground.

504. In my judgement, the loss of the field to residential development would have no perceptible effect on the effective gap between Hatfield Peverel and Witham. That was also the view of the Council when considering the application (page 87 SAV38).

Loss of best and most versatile agricultural land

505. Although Mr Dixon confirmed in evidence that no invasive survey had been undertaken to establish the agricultural land classification of the application site he was content to proceed on the basis that it was grade 2 and thus best and most versatile agricultural land. This was because '...in North Essex you don't bother to look because it all is.'

506. That, in essence, was the advice given by the Council's officers in the report to members on the application (page 85 SAV38).

507. The relevant part of policy CS8 simply states that development should protect the best and most versatile agricultural land; the application proposal would not do so. Mr Dixon considers that this part of the policy is inconsistent with Framework paragraph 112 (paragraph 6.45 DWH1) and that would also appear to be the view of the Council officers as they quote the Framework paragraph in full before reminding Members that since most of this part of Essex is land of that quality the loss of the application site to development would not be a sufficient basis for resisting the application.

508. Whether or not the application proposal amounts to significant development of agricultural land is a matter for debate since the term 'significant' in this context is not defined in the Framework. However, what does seem clear is that if development is to take place in accordance with the spatial strategy to direct future development to the A12/Great Eastern Mainline corridor (among other places), there would be little opportunity to use areas of poorer quality

agricultural land since it is not widely present. In my judgement, the application would not conflict with Framework paragraph 112.

509. In my judgement policy CS8 is inconsistent with the Framework in this respect since it does not permit the more considered analysis inherent in the Framework to be undertaken. Applying Framework paragraph 215, I consider limited weight should be given to the conflict with policy CS8.

Conclusion - The extent to which the proposed development is consistent with the development plan for the area

510. I have concluded that the development would accord with the spatial strategy [437]; would not conflict with policy RLP 80 [476] or policy CS8 [477]; and would not conflict with policy CS11 [492]. There would be some visual impact from the development [478]. However, the harm would be limited and very localised in effect. Moreover, this matter does not appear to be subject of a relevant adopted development plan policy. With respect to best and most versatile agricultural land take I do not consider there to be any conflict with Framework paragraph 112 which has greater weight than CS policy CS8 which is inconsistent with its provisions [508 and 509]

511. The sole conflict that I have identified with the development plan is that with policies RLP 2 and CS5. The conflict arises because the application site lies adjacent to but beyond the development boundary of the village. For the reasons set out the weight that should be attributed to this conflict is moderate [438 to 446].

Five year housing land supply

Background

512. For the purposes of the Inquiry there is no challenge to the Council's assessed OAHN of 716 dwellings per annum [64]. The requirement side of the equation is therefore accepted and the focus of the debate is on the extent to which that requirement can be met over the five year period by the supply of specific deliverable sites.

513. Again, for the purposes of this Inquiry only, the Council accepts the 'Sedgefield' method to deal with the shortfall [351 and 352]. It does not agree with GDL/DWH that there has been persistent past under delivery of housing and does not therefore agree that a 20% buffer should be applied [353 to 357]. On supply there is an immaterial difference between the Council and GDL/DWH of 68 dwellings [358].

514. The final and agreed position is that there would be a 3.4 years' supply (GDL/DWH – Sedgefield+20%) or 3.9 years' (Council – Sedgefield+5%) (Appendix 3 ID37). It was agreed during the Inquiry when I summarised my understanding of the position that this was not close enough to 5 years for the Secretary of State to give anything other than substantial weight to the shortfall. However, as it was not possible on even the most favourable assumptions to get below 3 years, GDL/DWH accepted the implications of the Written Ministerial Statement on Neighbourhood Planning if the NDP passed a referendum before the Secretary of State determined the application.

515. In those circumstances it is not necessary to resolve the small difference between the Council and GDL/DWH.

516. HPPC [170] and SPMRG do not agree with this and suggest that there is a 5YHLS. They contend that the 'Liverpool' approach should be used to deal with the shortfall and that the buffer should be 5%. However, as is clear from the SOCG (Appendix 3, ID 37) that alone is not enough to show a 5YHLS. It also requires most, if not all, of the additional supply sites first mentioned by SPMRG during the round table discussion and then confirmed in writing (ID21) to be 'deliverable' within the meaning of Framework footnote 11.

Supply of deliverable sites

517. Except for Mr Tucker's criticism of Mr Graham's specific interpretation of *St Modwen* regarding the term 'realistic' [61], it appears to be agreed between the parties that whether a site is deliverable or not is determined by the ordinary and everyday meaning of the words in Framework footnote 11 and not on the planning status of the site in question. It is in that context that GDL/DWH/the Council have reviewed and commented upon (ID 37) the sites put forward by SPMRG (ID21). ID37 is dated 21 December 2017, the final day of the Inquiry sessions. Ms Scott's first and only opportunity to respond was through her closing submissions although what she says [332 and 333] is, in fact, taken into account in ID37.

518. Appendix 1 to ID37 sets out in detail the positions of both GDL/DWH and the Council in respect of each site. None has planning permission and only three are subject of planning applications. A number are subject of objections and until these are resolved through the BNLP examination they must be considered uncertain notwithstanding their allocation in the draft BNLP. Furthermore, some are owned or part owned by the Council. The mechanism by which they will be developed has yet to be confirmed by the Council and they cannot be considered as available now.

519. Ms Scott puts the additional sites suggested by SPMRG as adding a further 461 dwellings to the supply [328]. In only challenging ID37 in respect of two sites (Sorrell's Field and Gimsoms), it must be assumed that SPMRG accept the case made on the others. Even if the SPMRG response to ID37 is agreed, GDL/DWH/the Council say that it adds only about 25 units net to the supply. They further contend that this additional supply makes no material difference to the 5YHLS position.

520. In my view that must be correct. However, the extent of the shortfall below 5 years may still be material and it is therefore necessary to consider the next most significant factor which is whether 'Sedgefield' or 'Liverpool' is the appropriate approach to take to dealing with the shortfall.

Sedgefield or Liverpool?

521. The shortfall arises because the OAHN has been applied, as it should be, from the start of the plan period in 2013 but the plan itself, the strategy and the allocations to deliver it are not yet approved and planned delivery is thus delayed. I appreciate that some of the developments that may come forward as a result of the adoption of the submitted BNLP may do so towards the latter part of the period. That may well be an argument for the Liverpool approach and is

likely to be put by the Council to the examining Inspector. However, that is all for the future and the shortfall exists now. Although Ms Scott argues that the BNLP is now far more advanced than when Inspectors Hill and Gregory considered their respective appeals [321], in practice that is not so as she implicitly acknowledges ('although plainly the Plan has yet to make it through examination').

522. The PPG is quite clear that Sedgefield should be preferred unless there are sound reasons for not doing so. The case made by SPMRG that the Council is simply not able to deliver housing in the numbers required following the Sedgefield approach [318] is attractive at first sight. However, there is no analysis as to why that has not been the case in the past (is it lack of market demand, lack of available sites, lack of planning permissions being granted against a former development plan requirement?) so the past is not necessarily a guide to the future performance. In any event, even an under-shoot would still make up some of the shortfall.
523. The approach advocated by HPPC [159 to 164] makes the plan strategy point referred to above and, referring to *Bloor Homes* (ID61), argues that it is a matter of judgement for the decision taker.
524. In my judgement there has been no material change in circumstances since my colleagues determined the Coggleshall and Steeple Bumpstead appeals. They both concluded that Sedgefield was the appropriate approach to adopt and this has influenced the Council's acceptance of that for the purposes of this Inquiry [350]. There is no cogent evidence before this Inquiry to take a different view.

Conclusion

525. As Mr Tucker put it [84], in order for HPPC and SPMRG to get the 5YHLS 'over the line' all the stars must align. The evidence shows that when the assessed supply of deliverable sites is taken into account and the Sedgefield approach is applied it makes no material difference whether it is 5% or 20% that is applied as the buffer. On either, the best that can be achieved is still less than 4 years' supply.

Framework Paragraphs 49, 14 and the 'tilted balance'

526. In the circumstances that I have just found Framework paragraph 49 is clear that relevant policies for the supply of housing should not be considered up to date. In turn, that means Framework paragraph 14 is engaged. Planning permission should be granted unless either of the limbs of Framework paragraph bullet 4 indicates that the tilted balance should be dis-applied.
527. It is not part of HPPC's case as I understand it that there is any conflict with a policy in either the development plan or the Framework that can be construed as falling within the scope of Framework footnote 9. The tilted balance is not therefore dis-applied by virtue of the second limb of Framework paragraph 14 bullet 4.
528. Turning now to the first limb, the harms that I have identified are set out above [510 and 511] with the conflict with development plan policies identified where appropriate. The totality of the harm or adverse impacts is limited and localised and restricted to visual impact and an 'in principle' conflict with the two development boundary policies. The benefits are set out by Mr Dixon under the

'economic', 'social' and 'environmental' headings found in Framework paragraph 7 (section 8 DWH1). In fairness, Mrs Jarvis for HPPC acknowledges many of these benefits and confirms that appropriate weight should be given to many, including significant weight to the provision of market and affordable housing and economic benefits (paragraphs 6.33 to 6.38 HPPC2). In my judgement that is correct. The limited adverse impacts of the proposal are some distance from significantly and demonstrably outweighing those benefits. Accordingly, I do not consider the first limb dis-applies the tilted balance either.

529. To conclude on this consideration, the tilted balance set out in Framework paragraph 14 applies in this case and is a material consideration that should be given substantial weight in the planning balance.

The planning balance

The development plan

530. The application proposal would conflict with the policies of the development plan. The application site is beyond the development boundary of Hatfield Peverel and it is not a use appropriate to the countryside. There is a conflict therefore with policies RLP 2 and CS5 which attracts moderate weight in the balance [511]. I do not consider there to be any other conflict with the development plan.

531. The application should therefore be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there are a significant number of material considerations to take into account.

Material considerations against the development

Visual impact

532. In my understanding, the effect on landscape character and visual impact are two separate, but related, issues although they are usually considered in a single LVIA. My conclusion on landscape character is part of my assessment of the development against the policies of the development plan.

533. In relation to visual impact, I conclude that there would be some harm caused [478 to 479]. However, that would be limited, affecting very few residential occupiers and users of certain public paths only pending the maturing of mitigation planting. Although I agree with DWH's categorisation of the scale of adverse effect, the harm caused is limited and localised. Given my conclusions on the weight that should be given to the emerging NDP [431] any conflict with emerging policy HPE6 on this consideration can only be given very limited weight, particularly as this is a policy that is subject to objection from GDL and possibly others although there is no evidence about that.

Material considerations in favour of the development

Tilted balance

534. I have concluded that the Council cannot show a 5YHLS [525]. Moreover, at less than 4 years' supply, the shortfall is of some significance. In these circumstances Framework paragraph 14 is engaged by virtue of Framework paragraph 49. There is no reason why the tilted balance should be dis-applied [527 and 528] and I consider that it should attract substantial weight [529].

Housing delivery

535. There is no reason to suppose that the proposal would not deliver a high quality development that includes a mix of market and affordable housing [420 and 422].
536. Mr Graham has raised a concern about housing delivery [295]. What he says accords with my note of Mr Dixon's evidence in chief which Mr Tucker draws upon [135]. This is a dispute between the parties with little firm evidence before the Inquiry to allow a resolution. However, Framework footnote 11 is clear that sites with planning permission (which, as not excluded, must include outline planning permission) should be considered deliverable unless there is clear evidence (examples are set out) to the contrary. In this case at this point in time there is no such evidence. It must be assumed therefore that the whole site could be developed within five years. It is also noteworthy in this context that suggested condition 2 reduces to two years the period within which the reserved matters applications must be submitted. There is no reason therefore not to afford some weight to the delivery of housing over the five year period.

Spatial strategy

537. Notwithstanding any conflict with the development plan arising from the position of the village development boundary, the application proposal would accord with the longstanding and continuing spatial strategy for the area [437]. That attracts some weight in the balance.

Economic, social and environmental benefits

538. These are the three dimensions of sustainable development set out in Framework paragraph 7. The applicant's assessment of each is set out by Mr Dixon (section 8, DWH1).
539. Although not quantified, a range of positive economic benefits are claimed which include an enlarged labour force of economically active residents; extra household spending in the local area and thus improved viability and vitality of local services and facilities; direct support for additional employment in the local area arising from that additional demand; investment in construction and support for construction jobs; New Homes Bonus for local investment; and increased council tax revenues.
540. While it is reasonable to assume that 120 homes will generate additional spending power, there is no evidence in my view to support the contention that this will be spent to the benefit of local businesses and services. However, there is nothing in the Framework to suggest that the economic benefit of a development must be enjoyed by the area in which the development is located to meet this objective. I therefore consider that some weight should be attributed to this set of benefits.
541. I have already accounted for the delivery of a mix of affordable and market housing in the planning balance. The other social benefits claimed are social infrastructure and transport.
542. Under social infrastructure the applicant includes provisions to mitigate the impact of the development on community facilities. First, I do not believe that providing mitigation of a harm that would be caused can be counted as a benefit;

at best it has a neutral effect in the balance. Second, in this case, I do not consider the harm to education and health infrastructure will be mitigated [491]. Nevertheless, I do not consider that there can be a conflict with the development plan policy since DWH has obligated to provide all the contributions sought by the service providers [492].

543. Also included under this heading is the provision of safe access routes to the application site. I accept that some of these measures will be of wider benefit but they arise principally to mitigate what the applicant sees as a potential harm arising from the development taking place.

544. I therefore conclude that very little weight should be attributed to the social benefits claimed.

545. Most of the paragraphs set out under the environmental benefits heading by the applicant in fact explain how the proposal would accord with the policies of the development plan. Such considerations do not amount to benefits in my view.

546. Also claimed are new tree and hedge planting and the creation of additional ecological habitat. I note that in reporting to members on the application, Council officers recognised the potential to add to the ecological value of the site (page 89 SAV38). However, most of the required schemes still need to be worked up and approved [402]. I therefore afford limited weight to this benefit.

Conclusion

547. In my view the conflict with the development plan, which attracts moderate weight applying Framework paragraph 216, and the single material consideration that weighs in favour of determining the application in accordance with it are significantly outweighed by those that indicate it should be determined other than in accordance with the development plan. In my judgement the application represents sustainable development as defined in the Framework and planning permission should be granted.

Recommendation

File Ref: APP/Z1510/V/17/3180729

548. I recommend that planning permission be granted subject to conditions.

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon of Counsel	Instructed by Ian Hunt Legal Services Braintree District Council
He called	
Alison Hutchinson BA MRTPI	Partner, Hutchinsons Planning & Development Consultants

FOR THE APPELLANT:

Paul Tucker QC and Philip Robson of Counsel	Instructed by Jonathan Dixon BA MA MRTPI Associate Director Savills (UK) Ltd
They called	
Matthew Spry BSc (Hons), DipTP (Dist) MRTPI MIED FRSA	Senior Director Nathaniel Lichfield and Partners
Jeremy Smith BA CMLI	Director SLR Consulting Limited
Jonathan Dixon BA MA MRTPI	Associate Director Savills (UK) Ltd

FOR HATFIELD PEVEREL PARISH COUNCIL:

David Graham of Counsel	Instructed by direct access
He called	
Mike Renow	Parish Councillor
Philippa Jarvis BSc DipTP(Hons) MRTPI	Principal PJPC Ltd (Planning Consultancy)

INTERESTED PERSONS:

Andy Simmonds	Local resident
Kenneth Earney	Local resident
Ron Elliston	Local resident
Lesley Moxhay	Local resident
Michael Hutton	Local resident
John Webb	Local resident

Annex A

CORE DOCUMENTS

Set A: Appeal Ref: APP/Z1510/W/16/3162004

CD1 Application Documents

- 1.1 Application Covering Letter, Application Form and Certificates
- 1.2 Location Plan
- 1.3 Framework Plan
- 1.4 Planning Statement
- 1.5 Design and Access Statement
- 1.6 Landscape and Visual Impact Appraisal
- 1.7 Transport Assessment
- 1.8 Travel Plan
- 1.9 Ecological Appraisal
- 1.10 Arboricultural Assessment
- 1.11 Flood Risk Assessment
- 1.12 Foul Drainage Assessment
- 1.13 Air Quality Assessment
- 1.14 Noise Assessment
- 1.15 Archaeological Desk Based Assessment
- 1.16 Heritage Assessment
- 1.17 Phase 1 Preliminary Risk Assessment
- 1.18 Utilities and Infrastructure Statement
- 1.19 Statement of Community Involvement
- 1.20 Socio-Economic Impact Report
- 1.21 Sustainability Report
- 1.22 Framework Plan Rev H 09.08.16
- 1.23 Education and Heritage response 25.08.16
- 1.24 Bat and GCN survey 05.10.16
- 1.25 Icen Heritage letter 07.10.16

CD2 Correspondence with Local Planning Authority

- 2.1 Email with minutes of pre-ap meeting 29.03.16
- 2.2 Pre-ap response letter from BDC 08.04.16
- 2.3 Email from GDL to BDC requesting pre-ap response 11.05.16
- 2.4 Email and letter from GDI to BDC 11.05.16
- 2.5 Email exchange re conference call 08.06.16
- 2.6 Email from BDC re Chris Paggi contact 10.06.16
- 2.7 Email from Chris Paggi re POS 17.06.16
- 2.8 Email from GDL to BDC re POS 21.06.16
- 2.9 Email exchange re additional land 30.06.16
- 2.10 Email exchange re education meeting 30.06.16
- 2.11 Email exchange re site visit 05.07.16
- 2.12 Email from GDL to BDC re response to additional land request
12.07.16
- 2.13 Email from GDL to BDC re officer support 12.07.16
- 2.14 Email from GDI to BDC re submission of 2nd application 13.07.16
- 2.15 Email and letter from BDC re additional land 21.07.16
- 2.16 Email from BDC to GDL re education 01.08.16
- 2.17 Email from GDL to BDC re amendment to Framework (footpath)
12.08.16

- 2.18 Email from BDC to GDL re legal agreement 23.08.16
- 2.19 Letter from GDL to BDC re legal agreement/conditions 23.08.16
- 2.20 Email from GDL to BDC re legal agreement/heritage 24.08.16
- 2.21 Email from GDL to BDC re education 25.08.16
- 2.22 Email from BDC to GDL re legal agreement 25.08.16
- 2.23 Email from GDL to BDC re feedback from Conservation Officer
07.09.16
- 2.24 Email from BDC to GDL re financial contributions 09.09.16
- 2.25 Email from GDL to BDC re photos of the site from Hatfield Place
13.09.16
- 2.26 Email from BDC to GDL re HoTs/conditions 20.09.16
- 2.27 Email from GDL to BDC re legal costs 21.09.16
- 2.28 Email from BDC to GDL re HoTs 23.09.16
- 2.29 Email from BDC to GDL re TRO 27.09.16
- 2.30 Email from BDC to GDL re highways 05.10.16
- 2.31 Email from BDC to GDL re survey work 05.10.16

CD3 Consultation Responses

- 3.1 Anglian Water - 24.08.16
- 3.2 BDC - Environmental Health
- 3.3 BDC - Landscape - 05.09.16
- 3.4 ECC - Archaeology 11.04.16
- 3.5 ECC - Drainage 18.04.16
- 3.6 ECC - Education 1 - 20.04.16
- 3.7 ECC - Education 2 - 30.08.16
- 3.8 ECC - Heritage 1 - 24.05.16
- 3.9 ECC - Heritage 2 - 06.09.16
- 3.10 ECC- Highways 12.05.16
- 3.11 Hatfield Peverel Parish Council 12.05.16
- 3.12 Highways England 25.05.16
- 3.13 Highways England 21.06.16
- 3.14 Historic England 16.08.16
- 3.15 Housing Research and Development 27.04.16
- 3.16 NHS England 19.04.16
- 3.17 PRoW 15.04.16

CD4 Validation Letter

- 4.1 Validation letter from Braintree District Council dated 30.03.16

CD5 Committee report and Decision Notice

- 5.1 Committee Report
- 5.2 Decision Notice

Set B: Appeal Ref: APP/Z1510/V/17/3180725

CD1 Application Documents

- 1.1 Application Covering Letter, Application Form and Certificates
- 1.2 Location Plan
- 1.3 Framework Plan
- 1.4 Planning Statement
- 1.5 Design and Access Statement
- 1.6 Landscape and Visual Appraisal
- 1.7 Transport Assessment

- 1.8 Travel Plan
- 1.9 Ecological Appraisal
- 1.10 Arboricultural Assessment
- 1.11 Flood Risk Assessment
- 1.12 Foul Drainage Analysis
- 1.13 Air Quality Assessment
- 1.14 Noise Assessment
- 1.15 Archaeological DBA
- 1.16 Heritage Statement
- 1.17 Phase 1 Preliminary Risk Assessment
- 1.18 Utilities and Infrastructure Statement
- 1.19 Statement of Community Involvement
- 1.20 Socio-Economic Report
- 1.21 Sustainability Report
- 1.22 SUDS checklist

CD2 Additional reports submitted after validation

- 2.1 Ecology Response to RSPB comments 14.12.16
- 2.2 Additional Heritage Statement to respond to HE 13.01.17
- 2.3 Rebuttal letter to HE comments 09.03.17

CD3 Correspondence with Local Planning Authority

- 3.1 Notice to Owners
- 3.2 EIA screening letter
- 3.3 Update and recommendation
- 3.4 RSPB objection
- 3.5 Letter to case officer
- 3.6 Landscaping photos
- 3.7 Bird mitigation land
- 3.8 Ecology matters
- 3.9 Ecology matters - Wistaston decision
- 3.10 Heads of Terms
- 3.11 Single storey buildings around perimeter
- 3.12 Timing of Reserved Matters application
- 3.13 Heads of Terms
- 3.14 Blue land management
- 3.15 Response to RSPB objection
- 3.16 Ecologist qualifications
- 3.17 Overall recommendation
- 3.18 On agenda
- 3.19 Education contribution
- 3.20 HRA matters
- 3.21 Maintenance of blue land
- 3.22 Farmland bird surveys and contributions
- 3.23 Interim breeding bird surveys

CD4 Consultation Responses

- 4.1 Essex County Council Specialist Archaeological Advice
- 4.2 Essex County Council SUDS
- 4.3 Braintree District Council Environmental Health
- 4.4 Parish Council
- 4.5a Historic England
- 4.5b Historic England

- 4.6 Essex County Council Education Statement
- 4.7 Essex County Council Historic Buildings Consultant
- 4.8a Highways England
- 4.8b Highways England
- 4.8c Highways Recommendation
- 4.9 Essex County Council Economic Growth and Development
- 4.10a RSPB Response to applicants ecologist
- 4.10b RSPB
- 4.11 NHS Statement
- 4.12 Essex County Council Highways
- 4.13 Essex County Council Ecologist
- 4.14 Braintree District Council Wynne-Williams Landcape Review
- 4.15 Shaun Taylor Landscape Services
- 4.16 Natural England
- 4.17 Anglian Water
- 4.18 Police
- 4.19 Braintree District Council Ecology
- 4.20 Essex County Council Flooding and Water update
- 4.21 Essex Field Club
- 4.22 Archaeology Place Services
- 4.23 Braintree District Council Environmental Health

CD5 *Third Party Representations*

- 5.1 Mr Mark Scofield
- 5.2 Ms Allison Hinkley
- 5.3 MP Priti Patel
- 5.4 Mrs Diana Wallace
- 5.5 Mr Paul Hawkins
- 5.6 Mrs Linda Shaw
- 5.7 Mr John Dinnen
- 5.8 Mrs Amanda Millard
- 5.9 Mrs Angela Peart
- 5.10a Mr Peter Harvey
- 5.10b Mr Peter Harvey
- 5.10c Mr Peter Harvey
- 5.11 Mr Kenneth Earney
- 5.12a Mr Mark East
- 5.12b Mr Mark East
- 5.13 Mrs S.J.Freeman
- 5.14 Miss Marine Page
- 5.15 Mr Philip Swart
- 5.16 Mrs Susan Farrell
- 5.17 Ron and Marel Elliston
- 5.18 Mr M Fleury
- 5.19 Mrs Rita Hocking
- 5.20 Mr Tom Bedford
- 5.21 Mrs Helen Sadler
- 5.22 Mr B.Knight
- 5.23 Ms Serena Grimes
- 5.24 Andy and Stephanie McGuire
- 5.25 Mr Nicholas Carey
- 5.26 Mrs Greta Taylor

- 5.27 Residents Group
- 5.28 Mr K. Kearns
- 5.29 Mrs Margaret Freeman
- 5.30 Kenneth and Jackie Earney
- 5.31 Mr Kevin Dale
- 5.32 Mr Robert Shales
- 5.33a Ms Janis Palfreman
- 5.33b Ms Janis Palfreman
- 5.34 Mrs Diane Wallace
- 5.35 Mrs Faye Churchill
- 5.36 Mr Derek Jones
- 5.37 Mrs Janet Jones
- 5.38 Miss Grace Clemo
- 5.39 Mrs Valerie Bliss
- 5.40 Mr Bryan Hale
- 5.41 Mr Les Priestley
- 5.42 Ade
- 5.43 Ms Janice Robinson
- 5.44 Mr James Knights
- 5.45 Mr Guy Bosworth
- 5.46 Rachel and Liam Bone
- 5.47 Mr Robert Anstee
- 5.48 Mr Lee Vandyke
- 5.49 Frank Diane Flynn
- 5.50 Mrs Stella Miller
- 5.51 Dr Judith Abbott
- 5.52 Mr Mitchell Cooke
- 5.53 Ms Jane Russell
- 5.54 Mrs Lesley Naish
- 5.55 Mr John Wallace
- 5.56 Mr Peter Naish
- 5.57 Mr Tim Steele
- 5.58 Ms Irene Lindsell
- 5.59 Mr and Mrs Edwards
- 5.60 Kathleen and Albert Evans
- 5.61 Mr Paul Harris
- 5.62 Mr Mark Nowers
- 5.63 Mr Ian May
- 5.64 Ms Ann Ford
- 5.65 Ms Alexandra Harris
- 5.66 Mr Nick Harris
- 5.67 Lynsey and Rob Deans
- 5.68 Ms Theresa Brewster
- 5.69 Ms Sue Pienaar
- 5.70 Ms Karen Devlin
- 5.71 Mr Peter Devlin
- 5.72 Ms Catherine Devlin
- 5.73 Ms Lisa Hanikee
- 5.74 Mr Timothy Barber
- 5.75 Mr Martin Gibbs
- 5.76 S.Warrant
- 5.77 Mr David Bull

- 5.78 Mr Sean Osborne
- 5.79 Mr Richard Parker
- 5.80 Miss Joanna Burch
- 5.81 Mr Colin Moore
- 5.82 Mr Chris Earwicker
- 5.83 Mrs Kate Bryant
- 5.84 Mrs Gillian Jones
- 5.85 S.Warrant
- 5.86 Ms Rita Hocking
- 5.87 Mrs Karen Williams
- 5.88 Mr Philip Hawkins
- 5.89 Ms Jane Hawkins
- 5.90 T Davis
- 5.91 J.C.Roche
- 5.92 Mr Keith Wright
- 5.93 Mr Peter Haldane
- 5.94 Mr John Campbell
- 5.95 Ruth Ramm
- 5.96 No Name
- 5.97 Ms Deborah Fraser
- 5.98 Ms Lindsay Gilligan
- 5.99 Mr Michael Renow
- 5.100 Mr Neil Ruston
- 5.101 Mr Vincent Hawkins
- 5.102 Mr Trevor Wilson
- 5.103 Mr Sebastian Gwyn-Williams
- 5.104 Mr Darryl Day
- 5.105 Mrs Ann Walker
- 5.106 Mr Richard Butler
- 5.107 Mrs Angela Lapwood
- 5.108 Mrs Teresa O'Riodan
- 5.109 Mrs Elise Gwyn-Williams
- 5.110 Mr Daniel McDermott
- 5.111 Mr Richard Windibank
- 5.112 Mrs J.Buckmaster
- 5.113 Mrs J P Wright
- 5.114 Carole and Howard Cochrane
- 5.115 Chistine C Lingwood
- 5.116 D.R.Wallis
- 5.117 Mrs Jean Ashby
- 5.118 Mrs Lesley Wild
- 5.119 Mr Paul Hanikene
- 5.120 Mr George Boyd Ratcliff
- 5.121 Mrs Helen Peter
- 5.122 Mr Mark East
- 5.123 Graham and Jean Lightfoot
- 5.124 Mr Roderick Pudney
- 5.125 Mr Stephen Mitchell
- 5.126 Mrs L.Wild
- 5.127 Mr and Mrs David Warburton
- 5.128 Ms Marian Headland
- 5.129 Mrs Chris Marks

5.130 Mrs Carole Allen
5.131 Mrs Amanda Bright
5.132 Mrs Joe Quieros
5.133 Mr Richard Quieros
5.134 Mrs Joanne Melly
5.135 Mrs Claire Harris
5.136 Miss Natasha Wilcock
5.137 Mr Ted Munt
5.138 Mr Neil Ekins
5.139 Margaret and Robert Parry
5.140 Mr Neville Oldfield
5.141 Ms Joanne Middleton
5.142 Ms Steph Gunn
5.143 H.J.Lane
5.144 Mrs M.Blake
5.145 Mr I and Mrs J Jolly
5.146 Derek and Jan Newell
5.147 Henryk Podlesny
5.148 Lorraine Podlesny
5.149 Glenn Blake
5.150 Mr Paul Wallace
5.151 Stone Path Residents Group
5.152 Mr David Bebb
5.153 Mrs Jo Bull
5.154 Mr David Groves
5.155 No Name
5.156 No Name
5.157 Julie Gammie
5.158 No Name
5.159 Mrs Ann Westhersby
5.160 C Merritt
5.161 Mr Tony French
5.161 Mrs Elsie Filby
5.163 Mr Charles William Joiner
5.164 Michele Lewars
5.165 Mr Andrew Jackson
5.166 Mrs Julia East
5.167 A.W.Mabbits
5.168 No name
5.169 Mr Paul Thorogood
5.170 No name
5.171 Jane and Eddie Cook
5.172 Richard Foulds
5.173 Mrs M.E.Gratze
5.174 S.Hughes
5.175 No Name
5.176 No Name
5.177 No Name
5.178 Alan J Evans
5.179 Ron and Marel Elliston
5.180 Elizabeth Pryke
5.181 Suzanne Evans

- 5.182 Mr Mark Schofield
- 5.183 Sonya Foulds
- 5.184 Daniel Power
- 5.185 Daniel Power
- 5.186 Miss Susan Nye
- 5.187 Philippa Moody
- 5.188 Moira and Steve Hagon
- 5.189 Kevin and Sue Aves
- 5.190 Allison Hinkley
- 5.191 Mr Peter Fox
- 5.192 Mrs Elizabeth Simmonds
- 5.193 Mr Mark Bayley
- 5.194 Mr Andy Simmonds
- 5.195 Mr Stephen Armson-Smith
- 5.196 Miss Charlotte Greaves
- 5.197 Mrs Jodi Earwicker
- 5.198 Mrs Vivian Cooke
- 5.199 Mrs Victoria Wren
- 5.200 Mrs Natacha Murphy

CD6 *Committee Report*

- 6.1 Committee Report
- 6.2 Committee Meeting Minutes

CD7 *Habitats Regulations Assessment*

- 7.1 HRA Screening Report
- 7.2 NE response in respect of HRA

CD8 *Draft Legal Agreement*

- 8.1 Engrossed legal agreement

CD9 *Appeal decisions*

- 9.1 Walden Road, Thaxted
- 9.2 Chapel Lane, Wymondham

CD10 *Braintree District Local Development Framework Core Strategy*

- 10.1 Core Strategy Policies

CD11 *Braintree District Local Plan Review*

- 11.1 Extracts of Policies

CD12 *Braintree District Council Draft Local Plan*

- 12.1 Current status of draft local plan
- 12.2 New policy numbers for publication of draft local plan
- 12.3 Publication draft Local Plan part 1
- 12.4 Publication draft Local Plan part 2

CD13 *Supplementary Planning Guidance/Documents*

- 13.1 Essex Design Guide
- 13.2 External Artificial Lighting 2009
- 13.3 Open Space contributions 2017
- 13.4 Open Space contributions effective 01.04.16
- 13.5 Open Space Action Plan
- 13.6 Open Space SPD Nov 2009

- 13.7 Parking Standards
- 13.8 Affordable Housing SPD

CD14 Other Guidance

- 14.1 2007 Landscape Character Assessment
- 14.2 E40 Landscape Character Assessment preface 2006
- 14.3 E40 Landscape Character Assessment intro 2006
- 14.4 Settlement Fringes Landscape Area Evaluation 2015
- 14.5 Landscape Character Assessment

CD15 Draft Hatfield Neighbourhood Plan 2015-2033

- 15.1 Reg 14 version of NHP (Superseded)
- 15.2 Pre-examination version HP NHP

Set C: Appeal Ref: APP/Z1510/V/17/3180725, APP/Z1510/V/17/3180729 & APP/Z1510/W/16/3162004

CD16 Policy

- CD16.1 Emerging Local Plan Part 1
- CD16.2 Emerging Local Plan Part 2
- CD16.3 Emerging HP Neighbourhood Plan

Parish Council Documentation

CD17 Housing documents

- CD17.1 Neighbourhood Area Housing Requirement Study
- CD17.2 Slipping through the loophole
- CD17.3 Government response online petition
- CD17.4 BDC draft five year supply table at 30/09/17

CD18 Neighbourhood Plan Background Documents

- CD18.1 Basic Conditions Statement
- CD18.2 Consultation Statement
- CD18.3 HP Site Assessment 2017
- CD18.4 HP LLCA Oct 2015
- CD18.5 Character Assessment HP
- CD18.6 Workshop for important views
- CD18.7 NPD Support results
- CD18.8 Residents survey Oct 2015
- CD18.9 Residents survey results Oct 2015
- CD18.10 Business survey Sept 15
- CD18.11 Business survey results Sept 15
- CD18.12 RCCE HN report Feb 2015
- CD18.13 Estate agents survey March 2015
- CD18.14 BDC letter to PC re SEA screening
- CD18.15 HP NP SEA screening report 2016
- CD18.16 BD economic dev prospectus 2013-2026
- CD18.17 Minutes 08/12/14
- CD18.18 Minutes 26/01/15
- CD18.19 Minutes 30/03/15
- CD18.20 Minutes 21/03/16
- CD18.21 Minutes 16/08/16
- CD18.22 Minutes 27/02/17
- CD18.23 Minutes 25/09/17

CD19 Stone Path Drive (SP) Correspondence 80 & 140

- CD19.1 PC email to BDC 12.05.16
- CD19.2 PC letter to BDC 24/11/16
- CD19.3 PC presentation 28/03/17
- CD19.4 PC email to BDC 30.05.16
- CD19.5 PC letter to BDC 04/04/17
- CD19.6 BDC letter to PC 19/04/17
- CD19.7 Extract PC minutes 24/04/16 - 17/08/16
- CD19.8 MP letter to PC 21/04/17
- CD19.9 Extract PC Minutes 16/11/16
- CD19.10 Extract minutes BDC 11/10/16
- CD19.11 Development boundary 80 & 140

CD20 SP - Health

- CD20.1 HP Surgery Letter 31/08
- CD20.2 Surgeries constraints
- CD20.3 Extract village Healthcare Cllr Bebb
- CD20.4 Letter to PINS surgery_ Schools 25/09/17

CD21 SP - Education

- CD21.1 ECC letter 12.01.17 SPM
- CD21.2 ECC letter 15.0617 Arla
- CD21.3 ECC letter 11.0117 GE
- CD21.4 ECC emails 21&22.1216 GE
- CD21.5 ECC letter 27.07.17 Bury Farm
- CD21.6 ECC letter 10.08.17 Sorrells

CD22 SP - Road infrastructure

- CD22.1 HE A12 Widening Intro
- CD22.2 Existing traffic capacity and journey times
- CD22.3 Extracts HE A12 Widening Options
- CD22.4 Environmental Constraints Plan
- CD22.5 Ecology impact A12
- CD22.6 Bus stops

CD23 Gleneagles Way (GE) correspondence

- CD23.1 PC letter to BDC 11.01.17
- CD23.2 PC presentation 25.04.17
- CD23.3 PC letter to BDC 11.05.17
- CD23.4 MP letter to PC 11.05.17
- CD23.5 BDC letter to PC 01.06.17
- CD23.6 MP letter to PC 02.06.17
- CD23.7 Extract minutes 11.01.17
- CD23.8 List of 3rd Party reps
- CD23.9 Comments from residents (combined)

CD24 Gleneagles Way (GE) documents

- CD24.1 PC letter to BDC 30.11.15

CD24.2	Extract minutes 25.11.15
CD24.3	CMTE report 26.04.16
CD24.4	Decision Notice 26.04.16
CD24.5	Extract minutes BDC 26.04.16
CD24.5	Location Plan

Gladman documentation

CD25 Stone Path Drive Plans for determination

CD25.1	Revised Framework Plan (80)
CD25.2	Tree retention plan (80)
CD25.3	Access Plan for both schemes
CD25.4	Email re access plans
CD25.5	Tree retention plan (140)

CD26 Ecology

CD26.1	Breeding bird survey report - 2nd application
CD26.2	Stonepath Bird Survey (Paul Hawkins) Jan 17

CD27 Heritage

CD27.1	Conservation principles
CD27.2	HE Managing Significance
CD27.3	HE The setting of Heritage Assets
CD27.4	Correspondence between Iceini ECC and HE
CD27.5	Heritage Statement - Additional information

CD28 Landscape

CD28.1	Braintree HEC extracts
CD28.2	Essex LCA extracts
CD28.3	HP LLCA
CD28.4	NCA 86 extracts

CD29 HLS/OAN

CD29.1	PPG - Housing and Economic development
CD29.2	PPG - Housing and Economic Land availability assessments
CD29.3	OAN Study Nov 2016 Update, Peter Brett Associates
CD29.4	SHMA Update December 2015
CD29.5	BDC: 5 Year Supply Statement as at 30 June 2017
CD29.6	BDC: 5 Year Supply Housing Trajectory as at 30 June 2017
CD29.7	BDC: 5 Year Supply Statement as at 30 September 2017
CD29.8	BDC: 5 Year Supply Housing Trajectory as at 30 September 2017
CD29.9	BCD Authority Monitoring Review 2015/2016 (AMR, May 2017)
CD29.10	Planning for the right homes in the right places – Consultation Proposals (Sep 2017)
CD29.11	Housing White Paper (February 2017)
CD29.12	Planned and Deliver (Lichfields, 2017)
CD29.13	Start to Finish (Lichfields, 2016)
CD29.14	A long-run model of housing affordability, University of Reading
CD29.15	OBR Working Paper No. 6 – Forecasting House Prices (2014)
CD29.16	Review of Housing Supply, Delivering Stability: Securing our Future Housing Needs' (March 2004), Kate Barker
CD29.17	Developing a target range for the supply of new homes across England' (October 2007), NHPAU
CD29.18	Housebuilding, demographic change and affordability as outcomes

- of local planning decisions; exploring interactions using a sub-regional model of housing markets in England' (2 October 2014) in Planning 2015
- CD29.19 Business West: Wider Bristol Housing Market Area Strategic Housing Assessment 2015: Commentary by Bramley
- CD29.20 Building more homes' 1st Report of Session 2016–17 (15 July 2016)
- CD29.21 The Redfern Review into the decline of home ownership' (16 November 2016)
- CD29.22 Forecasting UK house prices and home ownership' (November 2016) Oxford Economics
- CD29.23 OBR March 2017 Economic outlook accompanying tables and charts – Chart 3.21 on house prices
- CD29.24 Planning Application (ref. 15/01319/OUT) Transport Assessment & Framework Travel Plan, September 2017 (ref. VN30215), Vectos
- CD29.25 Application of proposed formula for assessing housing need DCLG, 14 September 2017
- CD29.26 East Hampshire Local Plan Inspector's Report (April 2014)
- CD29.27 Eastleigh Local Plan Inspector's Report (2015)
- CD29.28 House of Lords Select Committee on Building more homes
- CD29.29 OAHN Study Nov 2016 Update
- CD29.30 Bramley and Watkins report on Housebuilding

CD30 Planning

- CD30.1 Committee transcript
- CD30.2 Local plan sub committee 25.05.16
- CD30.3 Examiner procedural matters letter
- CD30.4 PPG determining a planning application (prematurity)
- CD30.5 HP Independent examination correspondence 20.09.17

CD31 Planning Judgements

- CD31.1 *BDW & Wainhomes Vs CWAC* 2014
- CD31.2 *Suffolk Coastal* Supreme Court Judgment -2017
- CD31.3 *Telford and Wrekin v SoS for CLG* - 2016
- CD31.4 *Palmer v Hertfordshire Council* - 2016
- CD31.5 *Forest of Dean & SoS for CLG & Gladman* - 2016
- CD31.6 *Colman & SoS for CLG & NDDC & RWE Npower Renewables Ltd* – 2013
- CD31.7 *SODC & SoS for CLG and Cemex Properties UK Ltd (Crowell Road)* 2016
- CD31.8 *Barwood Strategic Land II LP & East Staffs & SoS for CLG* 2017
- CD31.9 *Lee Vs FSS & Swale BC* 2003
- CD31.10 *Phides Estates Ltd & SoS for CLG & Shepway DC & Plumstead* – 2015
- CD31.11 *St Albans City and District Council v (1) Hunston Properties Ltd and (2) SoS for CLG* - 2013
- CD31.12 *(1) Gallagher Homes Ltd and (2) Lioncourt Homes Ltd v Solihull MBC* - 2014
- CD31.13 *West Berkshire District Council v SoS for CLG & HDD Burghfield Common Ltd*

- CD31.14 *Satnam Millennium Limited and Warrington Borough Council* 2015
 CD31.15 *Kings Lynn and West Norfolk Borough Council v SoS for CLG*
 2015
 CD31.16 *Wainhomes and SoS for CLG* 2013
 CD31.17 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council*
and (3) Save Our Ferriby Action Group 2016
 CD32.18 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council*
and (3) Save Our Ferriby Action Group 2017
 CD31.19 *Chelmsford City Council v SoS for CLG* 2016
 CD31.20 *Stroud DC v SoS for CLG* 2015

CD32 Appeal Decisions

- CD32.1 Land at Blean Common, Blean Appeal Ref:
 APP/J2210/W/16/3156397
 CD32.2 Land at West Street, Coggeshall, CO6 1NS, Appeal Ref:
 APP/Z1510/W/16/3160474
 CD32.3 Land east of Crowell Road, Chinnor, Appeal Ref:
 APP/Q3115/W/14/3001839
 CD32.4 Land of Wethersfield Road, Finchingfield Appeal ref.
 APP/Z1510/W17/3172575
 CD32.5 Land north of Pulley Lane and Newland Lane, Newland, Appeal ref
 APP/H1840/A/13/2199426
 CD32.6 Land off Stone Path Drive, Hatfield Peverel, Appeal Ref:
 APP/Z1510/W/16/3162004
 CD32.7 Land off Western Road, Silver End, Appeal Ref:
 APP/Z1510/W/16/3146968
 CD32.8 Land off Plantation Road, Boreham, Essex CM3 3EA Appeal Ref:
 APP/W1525/W/15/3049361
 CD32.9 Land at Southwell Road, Farnsfield, Nottinghamshire Appeal Ref:
 APP/B3030/W/15/3006252
 CD32.10 Land off Finchingfield Road, Steeple Bumpstead ref.
 APP/Z1510/W/17/3173352
 CD32.11 Land to the south of Dalton Heights, Seaham, Appeal Ref:
 APP/X1355/W/16/3165490
 CD32.12 Longbank Farm, Ormesby, Middlesbrough, TS7 9EF Appeal Ref:
 APP/V0728/W/15/3018546
 CD32.13 Land at Flatts Lane, Normanby Appeal Ref:
 APP/V0728/W/16/3158336

CD33 Representations made by Gladman

- CD33.1 Representations to the Braintree Local Plan (Reg 19) July 2017
 CD33.2 Representations on the HP NHP (Reg 16) July 2017

Documents submitted by David Wilson Homes Eastern

(Where a number in the sequence is missing the document is already listed elsewhere in this Annex)

Application drawings and documents

- SAV1 Cover Letter
 SAV2 Application Form
 SAV3 Location Plan
 SAV4 Parameters Plan

SAV5 Access Plan

Supporting drawings and documents

SAV6 Planning Statement
SAV7 Design and Access Statement
SAV8 Affordable Housing Statement
SAV9 Air Quality Assessment
SAV10 Archaeological Desk-Based Assessment
SAV11 Design Review
SAV12 Draft S106 Heads of Terms
SAV13 Extended Phase 1 Habitat Survey & HSI Assessment
SAV14 Pre-Planning Assessment Report (Incl.: 15/12/16 letter from RJIE to DWH & Proposed Foul Sewerage Plan)
SAV15 Objective Assessment of Housing Need
SAV16 Landscape and Visual Impact Assessment (2 parts)
SAV17 Great Crested Newt eDNA Results
SAV18 Noise Impact Assessment
SAV19 Phase One Desk Study Report (4 parts)
SAV20 Reptile Survey and Badger Walkover Survey
SAV21 Site-Specific Flood Risk Assessment Report (4 parts)
SAV22 Statement of Community Engagement
SAV23 Sustainability Statement
SAV24 Topographical Survey
SAV25 Transport Assessment (4 parts)
SAV26 Tree Survey & Constraints Plan & Schedule
SAV27 Utilities Report
SAV28 Letter to landowners dated 20/12/16 enclosing Article 13 Notice.

Post submission relevant correspondence

SAV29 Email from BDC (Neil Jones) to DWH (Sean Marten) on 01/03/17 @ 11:15 re noise and air quality attaching: Consultation response from BDC EHO (unknown date).
SAV30 Letter from Savills (Jonathan Dixon) to BDC (Neil Jones) dated 21/03/17 re noise and air quality, enclosing: Technical Memo re noise (24 Acoustics) dated 21/03/17; and Technical Letter re air quality (MLM) dated 17/03/17.
SAV31 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 29/03/17 @ 17:13 re Committee date.
SAV32 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 30/03/17 @ 12:27 re S106.
SAV33 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 10/04/17 @ 08:51 re air quality.
SAV34 Email from Savills (Jonathan Dixon) to BDC (Neil Jones) on 11/04/17 @ 15:58 re air quality.
SAV35 Email from Savills (Jonathan Dixon) to BDC (Neil Jones) on 11/04/17 @ 17:35 re air quality.
SAV36 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 21/04/17 @ 16:25 re air quality & HRA Screening attaching: Consultation response from BDC EHO dated 13/04/17.

Documents referenced in Jonathan Dixon proof

SAV37 Letter from BDC to DWH c/o Savills (Jonathan Dixon) dated 20/12/16 acknowledging receipt of the application.

- SAV38 Report to BDC Planning Committee Meeting on 25/04/17 re application, plus Appendix and Addendum.
- SAV39 Minutes to BDC Planning Committee Meeting on 25/04/17 re application (see pages 5-9).
- SAV40 Letter from DCLG (Dave Moseley) to BDC (Tessa Lambert) dated 11/05/17 re potential call-in.
- SAV41 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) & DWH (Sean Marten) on 31/05/17 @ 08:50 re potential call-in.
- SAV42 Letter from DCLG (Dave Moseley) to DWH c/o Savills (Jonathan Dixon) dated 12/07/17 confirming call-in.
- SAV44 Extracts from Reg. 18 Braintree Local Plan 'Draft Document for Consultation' dated 27/06/16 re housing requirement of 845 dpa (see page 30).
- SAV45 Extracts from East of England Plan dated May 2008 re housing requirement of 290 dpa (see page 30).
- SAV46 Reg 22 Notice of Submission of Braintree Local Plan dated 09/10/17.
- SAV47 Evidence (from BDC website) that Hatfield Peverel Neighbourhood Plan (NDP) has been submitted for Examination.
- SAV50 Letter from Savills (Jonathan Dixon) to HPPC dated 30/09/16 setting out representations on behalf of DWH to Reg. 14 NDP consultation.
- SAV51 Report to BDC Local Plan Sub-Committee on 05/10/16 setting out representations to Reg. 14 NDP consultation (see reps to draft NDP Policy HPE 1 on p13).
- SAV52 Letter from Savills (Jonathan Dixon) to HPPC dated 17/07/17 setting out representations on behalf of DWH to Reg. 16 NDP consultation. (NB Subject line incorrectly refers to Reg. 14.)
- SAV55 Letter from Natural England to BDC (Neil Jones) dated 26/10/17 re no objection (or need for HRA).
- SAV56 Draft s106 Agreement
- SAV59 Braintree Pre Submission Site Allocations and Development Management Plan (as amended by further changes) dated September 2014.

Statements of Common Ground

- SOCG4 David Wilson Homes Eastern and Braintree DC
- SOCG5 David Wilson Homes eastern and Hatfield Peverel PC

Proofs of Evidence

David Wilson Homes Eastern

- DWH1 Jonathan Dixon Proof (Planning)
- DWH2 Jonathan Dixon Appendices
- DWH3 Jeremy Smith Proof (Landscape)
- DWH4 Jeremy Smith Appendices
- 4/POE Matthew Spry Proof and Appendices (Housing Land Supply)

Braintree District Council

- BDC1 Alison Hutchinson Proof

BDC1a Alison Hutchinson Appendices
BDC4 Alison Hutchinson Rebuttal Proof

Hatfield Peverel Parish Council

HPPC1 Mike Renow Proof and Appendices
HPPC2 Philippa Jarvis Proof and Appendices

Gladman Developments Limited (where relevant)

3/APP Laurie Handcock Appendices

Documents submitted during the Inquiry by the parties

ID1.1 *Lee v First Secretary of State and Swale BC* [2003] EWHC 2139 (Admin) (GDL)
ID1.2 *Arun DC v Secretary of State for Communities and Local Govnt and Green Lodge Homes LLP* [2013] EWHC 190 (Admin) (GDL)
ID1.3 What is Neighbourhood Planning? PPG extract (GDL)
ID1.4 Cumulative Air Quality Impact Assessment (GDL & DWH)
ID1.5 Transport/Highways Note in response to Inspector's pre-Inquiry note No. 1 (GDL & DWH)
ID1.6a 7015-L-106 rev B Green Infrastructure Strategy for 80 dw scheme (GDL)
ID1.6b 7015-L-108 rev C Green Infrastructure Strategy for 140 dw scheme (GDL)

ID1.7 Plans omitted from CD14.4 set B (GDL)
ID1.8 Statement of Common Ground Education (GDL & DWH)
ID1.9 Secretary of State Appeal decision APP/D3830/A/12/2189451RD (GDL)
ID1.10 Council decision on land adjacent to Walnut Tree Cottage, The Street, Hatfield Peverel (GDL)
ID1.11 Updated table showing past supply against housing requirement 2001/2-2017/18 (GDL & DWH)
ID1.12 Reworked Table 6.1 as requested by Inspector on 7 December 2017 (GDL & DWH)
ID1.13 Update post exchange of proofs re 5 year housing land supply at 30/9/17 (GDL & DWH)
ID1.14 Schedule of supply table for round table discussion (GDL & DWH)
ID1.15 *Cotswold DC v Secretary of State for Communities and Local Govnt and others* [2013] EWHC 3719 (Admin) (GDL)
ID1.16 Supplementary Unilateral Undertaking (GDL)
ID2 Opening statement (GDL)
ID3 Opening statement (DWH)
ID4 Opening statement (Council)
ID5 Opening statement (HPPC)
ID6 Opening statement (SPMRG)
ID7 Note on housing land supply (Council)
ID8 Statement by John Webb (interested person)
ID9 Presentation by Michael Hutton (interested person)
ID10 Statement by Lesley Moxhay (interested person)
ID11 Statement by Ron Elliston (interested person)

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- ID11a Further Statement by Ron Elliston (interested person)
 - ID12 Statement by Kenneth Earney (interested person)
 - ID13 Viewpoints and photographs (HPPC)
 - ID14a Council HRA Screening Report Arla Dairy Site (HPPC)
 - ID14b Natural England consultation response on above (HPPC)
 - ID15 Suggested conditions for the 80 dw and 140 dw schemes (GDL)
 - ID16 Email from Sue Hooton to Council dated 12 December 2017 (GDL)
 - ID17 Draft agreement under s106 (DWH)
 - ID18 Suggested conditions for Gleneagles Way scheme (DWH)
 - ID19 Consultation comment by Essex County Council on Hatfield Peverel Neighbourhood Plan (DWH)
 - ID20 Briefing Note: clarification of presentation provided by Mr John Webb (GDL & DWH)
 - ID21 Note on additional five year land supply sites (SPMRG)
 - ID22 Now ID11a
 - ID23 Statement by Andy Simmonds (interested person)
 - ID24 Not used
 - ID25 Secretary of State Appeal decision APP/P1425/W/16/3145053 (HPPC)
 - ID26 Email thread between Diane Wallace and Alan Massow re green wedge policy in neighbourhood plan (HPPC)

 - ID27 Extract from Chapter 7 of the Lewes Local Plan (HPPC)
 - ID28 Statement of compliance with CIL Regulations re: Gladman schemes (Council)
 - ID29 Statement of compliance with CIL Regulations re: David Wilson Homes scheme (Council)
 - ID30 Conserving and enhancing the historic environment: PPG extract (GDL)
 - ID31 Letter dated 12 December 2017 from Cala Homes (GDL)
 - ID32 Email from Linden Homes dated 15 December 2017 (GDL)
 - ID33 Spatial Strategy Formation (Council)
 - ID34 Call in conditions comparison (DWH)
 - ID35 Not used
 - ID36 Not used
 - ID37 Statement of Common Ground: joint position on additional housing land supply sites (Council, GDL & DWH)
 - ID39 Viewpoints and Photographs (HPPC)
 - ID40 Article re: housing at Towerlands park Bocking (SPMRG)
 - ID41 Consultation notification re: housing at Church Road, Great Yeldham (SPMRG)
 - ID42 Letter from the Council to Priti Patel MP dated 29 November 2017 re: five year housing land supply (SPMRG)
 - ID43 Appeal decision APP/A1720/W/16/3156344 Portchester, Fareham, Hampshire (SPMRG)
 - ID44 Appeal decision APP/A1720/A/14/2220031 Lower Swanick, Hampshire (SPMRG)
 - ID45 Report to Cabinet dated 27 November 2017 re: proposed disposal of land to provide access to residential development site off Maldon Road, Witham (SPMRG)
 - ID46 Land east of Gleneagles Way: Statement of Landscape Principles (DWH)

- ID47 Closing submissions (Council)
 ID48 Closing submissions (HPPC)
 ID49 Closing submissions (SPMRG)
 ID50 Closing submissions (DWH)
 ID51 Closing submissions (GDL)
 ID52 Historic Environment Good Practice Advice in Planning Note 3 (GDL)
 ID53 Consolidated suggested conditions post Inquiry round table session (the Council)
 ID54 Response to INSP4 (GDL)
 ID55 Response to INSP4 (DWH)
 ID56 Response to INSP4 (HPPC)
 ID57a Completed planning obligation for 80 dwelling scheme (GDL)
 ID57b Addendum to planning obligation for 80 dwelling scheme (GDL)
 ID58 Completed planning obligation for 140 dwelling scheme (GDL)
 ID59 Completed planning obligation for 120 dwelling scheme (DWH)
 ID60 Letter dated 29 January 2018 re progress on the NDP (HPPC)
 ID61 *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) (BDC)
 ID62 *Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459 (BDC)
 ID63 *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) (SPMRG)
 ID64 *Steer v SSCLG* [2017] EWHC 1456 (SPMRG)
 ID65 *R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22 (HPPC)
 ID66 *R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 (HPPC)
 ID67 *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin) (HPPC)
 ID68 *Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) (HPPC)
 ID69 *R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 (HPPC)
 ID70 *South Oxfordshire District Council v Cemex Properties UK Limited* [2016] EWHC 1173 (HPPC)
 ID71 *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (HPPC)

Inspector Documents

- INSP1 Pre-Inquiry Note no. 1 dated 8 November 2017
 INSP2 Pre-Inquiry Note no. 2 dated 5 December 2017
 INSP3 Email to parties dated 7 December 2017
 INSP4 Post Inquiry sessions note dated 18 January 2018

Annex B

Abbreviations

5YHLS	5 year housing land supply
BNLP	Braintree New Local Plan
CRA	Comprehensive Redevelopment Area
CS	Braintree District Core Strategy
DWH	David Wilson Homes Eastern
ECC	Essex County Council
ELCAA	Essex Landscape Character Area Assessment
Framework	National Planning Policy Framework
GDL	Gladman Developments Ltd
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
HPPC	Hatfield Peverel Parish Council
HRA	Habitats Regulation Assessment
KSV	Key Service Village
LCA	Landscape Character Area
LLCA	Local Landscape Character Assessment for Hatfield Peverel
LPR	Braintree District Local Plan Review
LVIA	landscape and visual impact assessment
NCCA	National Character Area Assessment
NDP	Hatfield Peverel Neighbourhood Development Plan
PPG	Planning Practice Guidance
PROW	Public Right of Way
OAHN	objectively assessed housing need
SEA	Strategic Environmental Assessment
SFE	Settlement Fringes Evaluation
SOCG	Statement of Common Ground
SPMRG	Stone Path Meadow Residents' Group

Annex C

Suggested Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 120 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the approved plans listed below:
Approved Plans:
Location Plan: 1296/01 FINAL
Access Details: 45604-P-SK205
- 5) Prior to first occupation of the development hereby permitted the provision of the following works shall have been completed, details of which shall have been submitted to and approved in writing by the local planning authority prior to implementation:
 - The access to the application site shown in principle on drawing 45604-P-SK205
 - The cycle/pedestrian access between Gleneagles Way and Glebefield Road as shown in principle on Drawing 45604-P-SK200
 - Improved no entry signage at the end of the A12 southbound off-slip for drivers on The Street, plus improved speed limit signs and road markings for drivers leaving the A12 as show in principle on Drawing 45604-P-SK202
 - Improvements to the visibility splay from Gleneagles Way towards the A12 southbound off-slip shown on Drawing 45604-P-SK20 to include trimming/removal of vegetation/trees, relocation/replacement of signs/street furniture/lamp column(s), regrading/hardening of highway land.
 - A footway and (A12) road signage improvements at The Street/A12 north bound on-slip junction as shown in principle on Drawing 45604-P-SK201.
 - Improvements to the (A12) road signage, kerb alignment and road markings at The Street/Maldon Road as shown in principle on Drawing 45604-P-SK201.
 - The provision of dropped kerbs and associated works where the footway from Hatfield Peverel to Witham crosses the A12 northbound on-slip to the south of the Petrol Filling Station (former Lynfield Motors site), Hatfield Road, Witham.
 - The provision of a zebra crossing on B1019 Maldon Road in the approximate position shown on Drawing 45604-P-SK207

- 6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.
- 7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

- 8) Together with any submission of reserved matters, details of sound insulation measures must be submitted to and approved in writing by the local planning authority. The details must demonstrate that internal noise levels do not exceed 35 dB LAeq 16 hour in living rooms during the daytime (07:00 - 23:00) and also do not exceed 30 dB LAeq 8 hour in bedrooms during the night-time period (23:00 - 07:00) as set out in BS 8233: 2014. In addition, the details must demonstrate that maximum night-time noise levels in bedrooms should not exceed 42 dB L_{Amax} more than 10 to 15 times per night. The development must be carried out in accordance with the approved details.
- 9) Together with any submission of reserved matters, details of the proposed boundary mitigation (noise barrier) must be submitted to and approved in writing by the local planning authority. The details must demonstrate that external noise levels will not exceed 55 dB LAeq 16 hour in any of the private residential gardens. The development must be carried out in accordance with the approved details.
- 10) Prior to the commencement of development hereby permitted, a wildlife protection plan shall be submitted and approved by the local planning authority identifying appropriate measures for the safeguarding of protected species and their habitats within that Phase. The plan shall include:
 - i) an appropriate scale plan showing protection zones where any construction activities are restricted and where protective measures will be installed or implemented;
 - ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
 - iii) details of how development work will be planned to mitigate potential impacts on protected species, as informed by the project ecologist;
 - iv) a person responsible for:
 - a) compliance with legal consents relating to nature conservation;
 - b) compliance with planning conditions relating to nature conservation;
 - c) installation of physical protection measures during construction;
 - d) implementation of sensitive working practices during construction;

- e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
- f) provision of training and information about the importance of "Wildlife Protection Zones" to all construction personnel on site.

All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

- 11) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

- 12) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;
- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during construction;
 - A scheme for recycling/disposing of waste resulting from demolition and construction works.
 - A scheme to control noise and vibration during the construction phase
 - Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.
- 13) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 14) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:
- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.
- All lighting shall be installed, maintained and operated in accordance with the approved details.
- 15) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

- 16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

- 17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Limiting discharge rate to 1.25l/s/ha;
- Providing sufficient storage to manage the 1 in 100 year + 40% climate change storm event on site with no flooding of the formal drainage system during the 1 in 30 year event. Provide sufficient storage so that no flooding will occur during the 1 in 30 year event in the case of pump failure;
- Provide adequate treatment across all elements of the development.

- 18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

- 19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.
- 21) As part of the submission of the first reserved matters application as detailed within Condition 1, an Arboricultural Method Statement (AMS) shall be submitted and approved in writing by the local planning authority. The AMS will include a Detailed Tree Protection Plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (to include frequency of visits; and key works which will need to be monitored) and how they will record their monitoring and supervision of the site.

The development shall be carried out in accordance with the approved details.

Following each site inspection during the construction period the Project Arboricultural Consultant shall submit a short report to the local planning authority.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities within that Phase of the development and shall remain in place until after the completion of the development.

The local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

- 22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.
- 23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the

presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

- 24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.
- 25) Prior to submission of the first application for Reserved Matters pursuant to this planning permission an updated survey of the application site will have been carried out by a suitably qualified and experienced ecologist to investigate the potential presence on the application site of badgers, bats, reptiles and Great Crested Newts.

Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority for approval as part of the first application for Reserved Matters pursuant to this planning permission.

- 26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.
- 27) Prior to the submission of the first reserved matters application, details must be submitted to demonstrate that ambient concentrations of nitrogen dioxide will not exceed the UK annual mean objective concentration of 40µg/m³ at any residential property location within the development.
- 28) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residents' Travel Information Pack for sustainable transport, approved by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).
- 29) Prior to the first occupation of the development hereby permitted the overhead electricity cables crossing the site east /west shall be diverted underground.
- 30) *No above ground development shall commence in the relevant phase of the development until a schedule and samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.*
- 31) *Prior to first occupation of the relevant phase of the development, details of all gates / fences / walls or other means of enclosure within the relevant phase of the development shall be submitted to and approved in writing by the local planning authority. The details shall include position, design,*

height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the relevant plot.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

EP1G



Appeal Decision

Inquiry Held between 30 July and 7 August 2019

Site visits made on 29 July and 2 August 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Appeal Ref: APP/J2210/W/18/3216104

Land off Popes Lane, Sturry, Kent CT2 0JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Canterbury City Council.
 - The application Ref 18/01305, dated 22 June 2018, was refused by notice dated 24 September 2018.
 - The development proposed is the erection of up to 140 Dwellings, with public open space, landscaping, sustainable drainage system, and vehicular access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

General

2. The appeal proposal is for outline permission with all details reserved except for access. In so far as the submitted Framework Plan includes details of other elements, including the type and disposition of the proposed open space and planting, it is agreed that these details are illustrative.
3. During the inquiry, a Section 106 planning agreement was completed. The agreement secures the provision of affordable housing and the proposed on-site open space and sustainable urban drainage (SUDs) system, and a system of travel vouchers for future house purchasers. It also provides for financial contributions to schools, libraries, community learning, healthcare, adult social care, youth services, highways, cycle routes, public rights of way, traffic regulation orders (TROs), and ecological mitigation.
4. In the light of these provisions in the S.106 agreement, the Council withdrew Refusal Reasons (RRs) Nos 6, 7 and 8, relating to housing tenure, infrastructure, and the effects on a designated Special Protection Area (SPA). In addition, the Council withdrew RR5, relating to air quality, in the light of further information submitted prior to the inquiry.

Matters relating to internationally designated sites

5. The SPA contribution provided for in the S.106 agreement relates to mitigation measures for recreational disturbance to the Thanet Coast and Sandwich Bay SPA, for which the Council has established a mitigation scheme in consultation

with Natural England (NE). NE was consulted on the original application and raised no objection subject to this contribution. Subsequently, the appellants prepared a Shadow Appropriate Assessment. The Council has expressed itself to be satisfied with that Assessment.

6. At the inquiry, a copy was produced of a letter from NE regarding certain other proposed developments within the Sturry area. In that letter, NE raised issues relating to possible impacts on water quality at another protected site, the Stodmarsh Special Area of Conservation (SAC), which is also a Ramsar Site and a Site of Special Scientific Interest (SSSI). In the light of this letter, the Council wrote to NE, inviting any further comments regarding the present **appeal proposal**. **NE's reply, dated 16 August 2019 and therefore received** after the inquiry had finished sitting, indicates that similar concerns are now considered applicable to this appeal site.
7. In the circumstances, it seems to me that, without further information as to the potential impacts on the Stodmarsh site, planning permission for the appeal proposal could not be granted without contravening the relevant provisions of the Conservation of Habitats and Species Regulations 2017. This is because, in **the light of NE's stated position, I cannot be certain that the development could** be carried out, either individually or cumulatively, without adversely affecting the **protected site's** integrity. If in other respects the balance of the evidence had pointed towards granting permission, I would have been minded to allow the appellants some further time to address this new issue before making my decision. However, having fully reviewed all the evidence, I find that is not the case. I have therefore proceeded to my decision, on the evidence that is already before me.

Relevant Development Plan Policies

8. The development plan policies relevant to the appeal are contained in the Canterbury District Local Plan (the CDLP), adopted in July 2017. Policy SP2 sets out the overall housing requirement for the District, of 16,000 dwellings over the period 2011-31.
9. Policy SP3 identifies twelve strategic housing site allocations. One of these comprises land at Sturry and Broad Oak, which is allocated for 1,000 dwellings, business floorspace, local shopping and community facilities. The allocation is also intended to help deliver a new Sturry Relief Road, by-passing the centre of the village. The present appeal site is not included in any of the strategic allocations.
10. Policy SP4 sets out the overall spatial strategy, including the settlement hierarchy. Sturry is identified as a rural service centre, **within the hierarchy's** second tier.
11. Policy SP1 broadly reflects the presumption in favour of sustainable development in the National Planning Policy Framework (the NPPF). Where other relevant policies are out of date, planning permission is to be granted, unless material considerations indicate otherwise, taking account of whether the adverse impacts would significantly and demonstrably outweigh the benefits, and whether specific NPPF policies indicate that development should be restricted.
12. Other policies relating to particular issues in the appeal are identified elsewhere in this decision, where relevant.

Main Issues

13. Having regard to all the submissions before me, I consider the main issues in the appeal to be as follows:
- whether the district has an adequate supply of deliverable land for housing;
 - the effects of the proposed development on the highway network and safety;
 - the effects on the character and appearance of the area and its landscape;
 - the effects on the setting of nearby listed buildings;
 - the effects on 'best and most versatile' agricultural land;
 - and whether the appeal site is a suitable location for the proposed development, **having regard for the CDLP's policies** for the location of housing.

Reasons for Decision

Housing land supply

Base data

14. The evidence prepared for the inquiry by both parties, including the agreed Statement of Common Ground (SCG), was based on the **Council's** 'Housing Land Supply Statement 2017/18'. That document has a base date of 1 April 2018, and looks to a 5-year period of 2018-23 (the 2018 HLSS). Shortly before the inquiry, the Council produced a draft version of the annual update, with a base date of 1 April 2019, and a 5-year period of 2019-24 (the 2019 HLSS). The 2018 HLSS identifies a requirement for 4,611 dwellings, including a 5% buffer, and a supply of 6,059 dwellings, giving a surplus of 1,448. In the 2019 version the requirement, based on the same method, is 4,801 units, whilst the supply is 6,455 units, and the surplus 1,654.
15. The 2019 document has some limitations, in that it has not yet been subject to final checking and internal approval, and is not yet publicly available. Nor did the appellants have a great deal of time to appraise the contents, before the inquiry. But nonetheless, the information within it is more up to date, and provides a basis for a forward view spanning almost five full years from now. In the circumstances, whilst I have had regard to both of the HLSSs, I have based my calculations principally on the 2019 version.

The housing requirement

16. In both versions of the HLSS, the 5-year housing requirement figures are based on the broad phasing indicated in CDLP Policy SP2, which shows a stepped annual requirement, starting from 500 dwellings per annum (dpa) in 2011-16, and then 900 dpa in each of the subsequent phases of the plan period. I accept that elsewhere in the Local Plan, and in the Examining **Inspector's** report, there are statements or other indications which appear to support a flat rate of 800 dpa across the plan period. But in the event of any contradiction, it is the policies that must prevail over the supporting material. In the present case, that means using the phasing set out in Policy SP2.

17. I acknowledge that in another appeal¹ (in which I was the inspector), in February 2018, the land supply calculations were based on a flat rate approach. But each decision must be based on the evidence given at the time. In the present appeal, the **Council's approach differs from that advanced in the earlier case**. But this inconsistency does not change my view as to the merits of the two approaches, as set out above.
18. The **Council's** approach to the housing requirement in the present appeal is based on the '**Liverpool**' method, whereby any past shortfall in delivery is to be made up over the remainder of the plan period. I accept that, in general, the advice in the Planning Practice Guidance (PPG) favours the alternative '**Sedgefield**' method, of seeking to make up the deficit within the next five years. But the PPG also advises that a Liverpool-type approach may be acceptable, provided that approach is put forward and accepted through the Local Plan examination process. In the case of the CDLP, the Liverpool method was expressly endorsed by the Examining Inspector in 2017. I agree that this does not mean that the methodology can never be reviewed, but having regard to the reasons given by the Inspector at that time, I see no compelling argument for departing from the approach that was agreed only two years ago.
19. For my calculations therefore, I have primarily addressed the requirement figure of 4,801 dwellings, and the period 2019-2024, which are contained in the 2019 HLSS.

Deliverability

20. The NPPF requires that sites which are to be included in the 5-year supply should be deliverable, within the terms of definition set out in the Glossary. To come within that definition, amongst other things, sites should be available now, and be achievable, with a realistic prospect that housing will be delivered on the site within five years. Sites for major development, without detailed planning permission, will only be counted as deliverable where there is clear evidence that completions will begin within that period. In addition, the PPG gives examples of some types of evidence which may be relevant.
21. In the present case, **the Council's 5-year supply** relies heavily on sites in this category, having only outline permission or no permission at all. In the 2019 HLSS, sites of this kind account for 3,923 units, representing some 60% of the claimed supply for the 5-year period. The evidence before me, in so far as it relates to the 2019 supply schedules, focuses on eleven such sites which are disputed by the appellants². In considering this evidence, I am keenly aware that part of the reason that the Council is reliant on sites of this type is because the CDLP seeks to achieve a rapid increase in the rate of housing delivery, and that process is still in the early stages. However, the NPPF makes it clear that the planning system should aim to ensure continuity in the housing supply in the short term, as well as planning for the longer-term future, and it seems to me implicit that this is what the 5-year supply test is primarily designed to achieve.

¹ Land at Old Thanet Way, Whitstable

² In the Table in the Housing SCG, the disputed sites that are relevant to the 2019 supply are Nos 1-7, 9, 11, 12 and 17. Sites Nos 8 and 13-16 are not forecast in the 2019 HLSS to produce any completions in the relevant period, so are no longer relevant to my consideration. Site No 10 is now under construction, and is no longer disputed.

22. In the light of these considerations, I have given close attention to the nature of the evidence which the Council has produced to demonstrate the disputed **sites'** deliverability. In this regard, I fully appreciate the efforts that Officers have gone to, to introduce new systems for liaising with developers and landowners, and monitoring progress, particularly through the establishment of the Housing Delivery Group, and the preparation of the Phasing Methodology. I have no doubt that these systems are designed to enable housing delivery forecasts to be accurate, robust, flexible and up to date. But nevertheless, it is clear from the NPPF and PPG that, until sites achieve detailed planning permission, they should not be treated as deliverable, unless the evidence clearly demonstrates that this status is justified.
23. For a number of the disputed sites, the **Council's evidence is founded on** site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the **developer's or landowner's** stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.

Disputed sites

24. Only one of the disputed sites has any kind of planning permission. That site is Strode Farm (Site No 4 on the disputed sites list), which has outline permission for 800 dwellings. In the 2019 HLSS, the Council forecasts 190 dwelling completions within the relevant 5-year delivery period, 2019-24. A legal challenge to the outline permission has only recently been resolved, and to that extent it is not surprising that there has been no apparent progress towards an application for reserved matters. But even so, there is no clear evidence of any other kind to show deliverability. An SCG has been agreed with the site's promoter, but it appears that a development partner is to be appointed, and there is no indication that that party has been involved in the SCG. The timings and build rates suggested are not supported by any detailed programme, or explanation of how the timing would be achievable. The development is apparently to include major road infrastructure, both on-site and offsite (albeit now reduced from what was originally sought), and there is no evidence as to how this may affect the timing or viability. The evidence therefore does not demonstrate that the site is deliverable within the terms of the NPPF definition.
25. Five of the disputed sites are the subject of current outline or hybrid applications or appeals. One of these is the site known as South Canterbury (Site No 1). The overall outline scheme, supported by an allocation in the CDLP, is for 4,000 dwellings. The Council resolved in 2016 to grant a hybrid permission, including full permission for the first 140 dwellings, and outline for the remainder. In the 2019 HLSS, the site is forecast to produce 550 completions in the relevant delivery period. However, the permission has not yet been granted. Since 2016, further environmental information has been submitted, which has not been the subject of any further resolution. In

addition, Kent County Council (KCC) has requested an increase of over £7m in the education contribution. There is no information as to what effect this will have. The development also requires major infrastructure works, including on- and off-site highway works, sewer diversions, and the removal of pylons. Conditions relating to archaeology and contamination, amongst others, are proposed. The SCG from the site promoter contains no programme to show how the timescales for all the necessary approvals, advance works and site preparation can be accommodated. **At the inquiry, the Council's witness** admitted that the Council does not have this information. Without that kind of detail, on a site of such a scale and complexity, the SCG is unconvincing. I have little doubt that the necessary permission is likely to be granted at some point, but the critical factor is likely to be the lead-in time after that occurs, and on this the evidence is entirely lacking. On the evidence submitted therefore, the South Canterbury site cannot realistically be counted as deliverable at this stage.

26. In the same category is the allocated site known as Sturry/Broad Oak (Site No 2). This site is currently the subject of two planning applications, by different developers, totalling 1,106 dwellings. One of these is a hybrid, which seeks full permission for some of the dwellings. The Council forecasts 440 dwellings in the 5-year period. However, no decisions have yet been made on the current applications. As noted earlier, Natural England has raised an objection relating to the effects on the Stodmarsh SAC. The development as a whole is bound up with the proposed Sturry Relief Road, and although contributions to this have been agreed in principle, further funding is needed and is yet to be fully secured. KCC is said to be considering the phasing of the housing in relation to the new road, but this has not yet been agreed. The potential effects of this phasing on the scheme's overall viability are not yet known. From the evidence available, it is not clear how this may affect the scheme. The development also involves the provision of other local infrastructure, but there is no evidence of any binding agreement between the various parties as to how the costs are to be apportioned. Nor is there evidence of any detailed programme for the necessary approvals, site works and other works necessary prior to any house completions. In the face of so many unresolved issues, it seems to me that the prospect of any housing completions on the Sturry/Broad Oak site within the relevant 5-year period is far from certain. The site therefore cannot be classed as deliverable.
27. The next site in this category is Land at Hillborough (Site No 3), which is allocated in the CDLP for 1,300 dwellings, and is in three parcels. Two of the are the subject of current applications totalling 1,080 units. In the 2019 HLSS, the site is forecast to deliver 195 dwellings in the relevant 5-year period. However, the applications are undetermined. The **Council's evidence highlights** the complex nature of the issues relating to access and road infrastructure, and the apportionment of costs between the owners or developers of the different land parcels. In addition, it appears that these costs may now rise as a result of recent decisions which have reduced the amount that will be contributed by the Strode Farm site. It is said that discussions about viability and costs are continuing. However, there is no evidence as to how the admitted complexities can be overcome, or within what timescale. None of the evidence produced amounts to clear and realistic evidence that the site will deliver housing completions within five years.

28. The site known as Greenhill (Site No 5) has no planning permission, but is the subject of a current outline application. The site is said to have no major infrastructure requirements, and the Council expects it to produce 150 dwellings in the relevant 5-year period. However, the current planning application is for 450 dwellings, which exceeds the CDLP allocation for 300 units, by some 50 per cent. The principle of the site being developed on this scale is therefore unsupported by the Local Plan, and it cannot be regarded as certain that the current application will be found acceptable. Nor can it be assumed that an alternative, policy-compliant scheme would necessarily come forward within the relevant timescale. There is therefore no certainty as to whether any permission will be forthcoming to allow the development to proceed in its present form. As such, the development cannot currently be regarded as deliverable.
29. The only other site with a current proposal awaiting determination is the site known as Grassmere (Site No 9), where there is a current appeal for a hybrid scheme of 300 dwellings. The site is allocated in the CDLP, and is expected by the Council to produce 70 completions, in the 2019 HLSS. At the time of the present inquiry, the Council hoped to be able to withdraw its opposition to the appeal scheme, but had not done so yet. As long as the appeal is contested by the Council, there is clearly no certainty as to the outcome. If the appeal is dismissed, it may still be possible for an acceptable alternative scheme to come forward within the relevant five-year period, but there is no evidence to show that this would be likely, let alone that such a scheme would qualify as a realistic prospect. Consequently, while the appeal remains undetermined, the site cannot be treated as deliverable.
30. None of the other disputed sites is the subject of any current planning application. The largest of these other sites is Land North of Hersden (Site No 7), which is allocated in the CDLP for 800 dwellings, and has been the subject of pre-application discussions. The Council sees it as delivering 160 completions in the relevant 5-year period. But there is no evidence of any firm progress towards a planning application, or any site assessment work. Contractual negotiations between the landowners and the prospective developer appear to be still on-going. The site is likely to be required to make a contribution in excess of £5m to the Sturry Relief Road. The SCG, although involving the developer, contains no details of how the development would be delivered within the relevant timescales, or whether the required contribution would be viable. The evidence does not demonstrate a realistic prospect of completions being achieved within the five years, and the site therefore does not come within the definition of deliverable.
31. The disputed sites at Canterbury West Station (Site No 11), and Rosemary Lane car park (Site No 12), have been allocated for housing since the previous Local Plan, in 2006. Between them, these two small sites are forecast in the HLSSs to deliver a total of 40 dwellings in the relevant 5-year period. But both are currently in active use as Council car parks. Although they may be freed up from that use in February 2020, when a new multi-storey park is completed, this means that they are not available now. From the evidence presented, it also seems that no formal decision has yet been taken by the Council regarding any future development. The sites are therefore not currently deliverable.
32. The site known as Land at Rough Common Road (Site No 17) was likewise allocated in the 2006 CDLP, and is now forecast to produce 16 dwellings in the

relevant period. Pre-application discussions have been held. But there is no evidence of any further progress towards the submission of an application. The site therefore does not qualify as deliverable.

33. The final disputed site is Land North of Thanet Way (Site No 6), which has outline permission for 400 dwellings, and a current reserved matters application for 138 of these units. In the 2019 HLSS the site is forecast to deliver 297 completions in the relevant five years. The site is not challenged by the appellants on grounds of deliverability, but on timing and build rates. Given the involvement of a Registered Provider as lead developer, I consider the forecast in the 2019 document reasonable. I therefore make no further adjustment in respect of this site.

Conclusion on housing land supply

34. In the light of the above, I conclude that the disputed sites numbered 1, 2, 3, 4, 5, 7, 9, 11, 12 and 17 should all be excluded from my assessment of the deliverable supply. In all these cases, this is because there is insufficient clear evidence **to show that they meet the NPPF's definition of deliverable**. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.
35. In total, these 10 non-deliverable sites are relied on in the 2019 HLSS to deliver 1,811 housing completions in the period 2019-24. The effect of excluding these sites is that the supply for that period is reduced to 4,644 units, which represents a shortfall of 157 **against the Council's requirement** figure of 4,801 units. On this basis, the deliverable supply is 4.8 years.
36. For completeness, if the calculations were instead based on the 2018 HLSS, the effect of deleting the same sites **from the Council's supply figures for 2018-23** would be to reduce the supply for that period by 1,760 units. The **result in terms of the years' supply would** then be very slightly lower, at just under 4.7 years. However, for the reasons that I have explained, I consider the use of the 2019-based figures to be more appropriate. In any event, the difference in the outcome is not significant.
37. For the reasons set out above, I conclude that the Council has been unable to demonstrate a 5-year supply of deliverable housing land. In the circumstances, the provision of up to 140 dwellings in the appeal proposal, including 30% affordable, would be a substantial benefit of the scheme.

Traffic and highway safety

Existing traffic conditions

38. Even though the inquiry took place during the summer holiday period, I was able to see on my visits to Sturry that the village suffers from a combination of factors that make it particularly prone to traffic problems. The coming together of the A28 and A291, at the centre of the village, funnels traffic from two main routes into one. The sharp bend, and the lack of signal controls, makes it difficult for traffic from the A291 to emerge at the uncontrolled junction. The gated railway crossing, directly adjacent, causes extensive queuing on the A28, which blocks the road junction and compounds the problems. The only practical alternative route involves a network of minor roads and narrow lanes, which are unsuited to through traffic.

39. The evidence of both parties confirms the scale of the existing problems. On the A28, **the appellants' traffic counts show** average 24-hour weekday flows of around 19,000 vehicles. In the morning and afternoon peaks, the average 2-way flow is over 1,400 vehicles an hour, with one-way flows in the busier direction of around 850 and 780 vehicles respectively. These latter figures exceed the link capacity for a road of this type, as advised in the DMRB³, even without taking account of the level crossing, which further restricts that capacity.
40. The Sturry level crossing is said to be amongst the '**top ten**' busiest crossings in Network Rail's **national** database. On average, the barriers close five times per hour, halting traffic flows for a total of about 12 minutes out of every hour, thus losing about 20% of the total time available. Some of the individual closure periods last for 4-5 minutes or more. **The appellants' surveys** show queue lengths during the barrier closures averaging 79 vehicles on the southbound side in the AM peak, and 115 vehicles northbound in the PM peak. The maximum lengths during the longer closures reached 144 vehicles and 215 vehicles respectively. Even on the less busy side of the crossing in each case, average queues were around 30-33 vehicles, with maxima of up to twice these numbers. Further queuing also takes place on the southbound A291, where the exit onto the A28 becomes blocked during these periods.
41. There is no disagreement that this congestion in the village centre is responsible for large numbers of vehicles diverting onto minor roads. To the west of the A291, on the rat-running route via Sweechgate, Shalloak Road and Broad Oak Road, the evidence indicates 2-way flows of over 700 vehicles an hour in the AM peak and only slightly less in the PM period. Over a full day, the Sturry and Herne Highway Capacity Study (the SHHCS) reports traffic flows of 7,000 vehicles on Shalloak Road. To the east of the A291, it is clear that some traffic from the A28 connects to this route, via Babs Oak Hill, Hawe Lane and Popes Lane. For much of their length, these circuitous rat-runs comprise narrow, winding lanes, with sharp bends and poor forward visibility. Their use by high volumes of through traffic is a cause for justified concern.
42. Some of the junctions along these routes, under existing conditions, are at or approaching their practical capacity. At the A291/Sweechgate junction (Junction SJ8), on the **appellants' figures**, the current RFC⁴ value for the right-turn movement into Sweechgate in the AM period is 0.97, with a queue length of 16 vehicles. At this point the A291 is only wide enough for one lane in each direction, so all southbound traffic is held behind the vehicles that are waiting to turn. In the PM period, the RFCs on Sweechgate are 0.90 for the left-turn and 0.83 for the right-turn, and again in practice most of the turning vehicles on this arm are combined into a single queue, with **the Council's** survey showing that this can reach 150m. At the Broad Oak/Vauxhall Road roundabout (SJ 10), the RFCs on all three arms are between 0.92 - 0.95 in either one or both of the peaks. At SJ9, Shalloak Road/Mayton Lane, the RFC in the PM peak reaches 1.08. All of these RFCs indicate that these junctions are operating at, or very close to, their limits. Given the range of daily variation which is evidenced in the traffic counts, it seems likely that on some days their capacities will be exceeded.

³ Design Manual for Roads and Bridges (Mr Finch's Appendix C)

⁴ Ratio of flow-to-capacity

43. The evidence identifies a high number of accidents in the Sturry area, with 108 recorded in a 5-year period in the village as a whole. Although the A291 has **been downgraded from the highest risk category in the 'EuroRAP' system**, it is apparently still classified as medium-high risk, and the A28 as medium risk.
44. The difficulties of the existing traffic conditions in Sturry, together with those at Herne village, a little further along the A291, are recognised and indeed highlighted in the CDLP. Moreover, it is the need to address the traffic problems of these two villages that has clearly dictated a large part of the plan's spatial strategy, as a significant number of the largest housing allocations have been chosen at least partly for their ability to contribute to a comprehensive highway solution for the A291 corridor.
45. Overall, it seems to me that the evidence adds up to a picture of a local road network in and around Sturry that is under considerable strain, and where delays, inconvenience, unnecessary extra mileage, and potential safety hazards are evidently part of the everyday experience of local residents and other road users. Clearly, none of these problems **are of the appellants' making, and** refusing permission for the present proposal will not in itself bring any improvement. But nonetheless, the development does have the potential to make the situation worse. The extreme difficulty of the existing traffic conditions in Sturry is a material consideration to which I attach considerable weight in this case.

Committed developments and the Sturry Relief Road

46. The **appellants' Transport Assessment** (TA) models the impact of the appeal proposal in relation to two scenarios, relating to 2018 and 2031 respectively. The 2018 assessment is based on the observed traffic flows at that date, with no changes to the network, and no other new developments apart from the appeal proposal. The 2031 scenario takes account of known housing commitments, and also assumes the completion of the Sturry Relief Road. The modelled scenarios therefore do not include any assessment of the appeal scheme in a situation where some or all of the other committed developments may have been completed, but not the Relief Road.
47. From the evidence of Mr Finch, on behalf of Kent County Council (KCC) as the Highway Authority, the earliest date envisaged for the completion of the southern section of the Relief Road is in the year 2023/24, and the time lag between this and the northern section is expected to be around four years. The earliest date for the completion of the whole Relief Road is therefore likely to be about 2027/28. These dates have not been challenged. Although the road is designed to be constructed in these two phases, it is self-evident that it can only start to serve its main purpose of bringing traffic relief to the village, when the whole route is complete.
48. KCC is evidently keen to start work on the southern section as soon as possible, and the above programme reflects this aim. Nevertheless, it is equally clear that the Authority is unlikely to start any part of the construction work until they can be confident that the whole of the road can be delivered. As a minimum, this is likely to mean having all the necessary approvals in place, and full funding secured. As things stand, that position seems some way off. Neither of the two planning applications for the road itself have yet been approved, and objections are said to remain outstanding, including that from

Natural England. Planning permission for the northern section is also bound up with the applications for housing on the Sturry/Broad Oak site. Discussions regarding some aspects of these, and the terms of the permissions that might be granted, are evidently still on-going. With regard to funding, contributions are required not only from these two developments, but also from the North of Hersden site. None of these contributions can be regarded as certain until the relevant planning permissions have been granted. Partial funding is said to have been secured from the LEP⁵, but this appears to be to some extent conditional on the timing. Ultimately, it seems more likely than not that all the necessary approvals and funding arrangements will fall into place. But nonetheless, substantial hurdles remain. At the present time therefore, neither the timing nor indeed the actual delivery of the Relief Road are yet assured. Having regard to the terms of the judgement in *Manor Oak Homes*⁶, the delivery of the road in this case is not beyond sensible doubt.

49. The seven committed housing developments identified in the TA amount to a total of over 5,200 dwellings. The assessment carried out for the SHHCS in 2016 estimated that the traffic generation from five of these sites, those that were known at that time, would add 1,084 additional peak-hour trips to the road network through Sturry. Since that assessment, some 150 or so of the dwellings at the Herne Bay Golf Course site have now been built and occupied, **and thus may be accounted for in the appellants' traffic counts. But these are** partly balanced out by the Sturry/Broad Oak scheme, where the overall number of proposed dwellings has now grown by about 100, with the current applications totalling 1,106 dwellings compared to the 1,000 units originally allocated. The other sites identified in the SHHCS, at Strode Farm, Hillborough and North of Hersden, are all unchanged. The two additional sites identified in the TA, at Hoplands Farm and Chislet Colliery, amount to 620 dwellings. The traffic from these two sites will therefore be over and above that which was anticipated in the SHHCS.
50. The developments at Herne Bay Golf Course, Strode Farm, Hoplands Farm and Chislet Colliery all have planning permission and are unrestricted in terms of their timing or phasing in relation to the Sturry Relief Road. Although the allocated sites at Hillborough and North of Hersden are not yet permitted, the Council made it clear at the inquiry that it does not anticipate imposing any such restrictions. In the case of the Sturry/Broad Oak applications, the Council will be seeking to agree limits on the number of dwellings to be occupied before the Relief Road is completed, but those numbers have not yet been decided. KCC is currently testing a phasing limit of 350 units for the Sturry part of the scheme, and is also to consider a separate allowance for the Broad Oak part. It is fairly clear from this that the combined limit for the site as a whole is likely to exceed 350 dwellings. Indeed, given that this is the development that will have to contribute the most to the new road, not only financially but also in physically delivering part of it, it would not be surprising if the number of dwellings allowed in advance were to increase further.
51. In any event therefore, the Sturry/Broad Oak development is the only one of the committed sites that is likely to be subject to any timing or phasing restrictions in relation to the Relief Road, and even there a significant part is

⁵ Local Enterprise Partnership

⁶ *Manor Oak Homes v SoS & Aylesbury Vale DC* [2019]EWHC 1736 (Admin)

likely to be unrestricted. All of the other dwellings in the **TA's** list of commitments are free to come forward ahead of the new road. Although a number of these developments are not yet far enough advanced to be classed as deliverable for the purposes of the 5-year housing supply, they are all potentially capable of being developed, either wholly or largely, prior to the opening of the Relief Road, even if the road is delivered by its earliest date of 2028. If this timing were to slip by as little as two or three years, then the evidence suggests that all of the unrestricted dwellings could be completed in full.

52. All of these committed developments are expected to have an impact on traffic in Sturry. This is evident from the fact that they are identified in the TA and taken account of in its 2031 scenario, albeit that this is the scenario that includes the completed Relief Road. Having regard to the traffic generation figures identified previously in the SHHCS, it seems probable that the numbers of dwellings at Sturry/Broad Oak which will be subject to phasing restrictions will roughly balance the number of units added in the new sites at Hoplands and Chislet Colliery, which were not included in the SHHCS assessment. In round figures therefore, the SHHCS's estimate of about 1,000 additional vehicles through Sturry, from committed developments, probably remains broadly applicable.
53. To my mind it seems likely that the addition of these extra 1,000 traffic movements to the 2018 base model, without the benefit of the Relief Road, is likely to result in some further deterioration in the performance of the network, especially given the number of key junctions which have been shown to be already at or close to capacity. In my view, this likely further deterioration forms part of the context within which the impact of the appeal scheme should be viewed. In the TA however, none of the committed developments is taken into account in any modelled scenario except that which also includes the Sturry Relief Road. Consequently, in so far as the existing network is concerned, the cumulative effect of the appeal scheme together with these other relevant developments is untested.
54. I appreciate that there is a high degree of optimism that the Relief Road will be achieved, but the prospect remains of a lengthy period before it is completed, and indeed there is as yet no certainty about the road at all. This latter scenario is not so remote that it can be disregarded. I appreciate that the scoping for the TA was agreed in advance with the Highway Authority, but this does not change the fact that the necessary testing and modelling, of what in my view is a critical alternative scenario, is conspicuously lacking. To my mind, this flaw significantly weakens the case now advanced by the appellants with regard to traffic impact.

Traffic impact of the appeal scheme

55. The proposed development is forecast to generate 79 traffic movements in the AM peak hour, and 72 in the PM peak. These are not large numbers. But in a situation where some junctions are already under pressure, a relatively small increase may be significant, especially where the effect would be to push some junctions closer to their capacity, or beyond. And in any event, the NPPF makes it clear that traffic impacts should be considered on a cumulative basis, and that a severe cumulative impact may amount to grounds for refusal of permission.

56. At the junction of Popes Lane with the A291 (Junction SJ2), on **the appellants'** 2018-based figures, the appeal scheme is forecast to add 71 vehicles to the existing AM peak traffic flow on the Popes Lane approach, an increase of 8.7%. As shown in the TA, the effect of this would be to increase the RFC value significantly, from 0.81 to 0.94, with queue lengths and delay times approximately doubled. This sharp increase in the RFC indicates that the junction would, within the space of 4-5 years, come to within a few vehicles of **the 'absolute'** capacity level of 1.0, and significantly in excess of the 0.85 threshold which is often **cited as 'practical' capacity**. Furthermore, in so far as these figures indicate that the junction would still have any reserve capacity left at all, the TA records a daily variation of 41, indicating that on some days this reserve would be further reduced by that number of additional vehicles. And in any event, as already noted, these figures exclude any traffic from the other committed developments that are expected. It is common ground that when and if the Sturry Relief Road is built, the level of through traffic on Popes Lane will fall, **and the junction's performance will improve**. But without the new road, the evidence of the TA indicates that it will be overloaded.
57. A large proportion of the traffic at Junction SJ2 currently turns right onto the A291, heading for the rat-run route via Sweechgate, and in the absence of the Relief Road, this is likely to continue. At this point the A291 has a speed limit of 40mph, and the daily flow is said in the SHHCS to be around 7,500 vehicles. The junction has some recent history of accidents, albeit not a large number. In this type of situation, there seems a strong possibility that the increase in queuing time would result in drivers exiting from Popes Lane taking more risks. I accept that the installation of a toucan crossing on the A291 could potentially help, by creating gaps in the traffic flow. But this would depend on the amount of use. Apart from the Broad Oak Village Stores, there is nothing to attract pedestrian trips to this semi-rural section of the road. I am therefore not convinced that the toucan crossing would improve the safety of the junction to any significant degree.
58. To my mind, the **development's** potential impact on Junction SJ2, without the Relief Road, gives justified cause for concern. Even without any other development, the effect of the appeal scheme alone would be to significantly increase pressure on the junction, pushing it towards the limits of safe operation. Cumulatively with the other planned developments, the development would be likely to go beyond those limits.
59. Elsewhere on the network, at the already overloaded junctions identified in the TA, the proposed development would lead to further significant deterioration. At SJ8 (A291/Sweechgate), in the AM peak, the RFC on the A291 southbound would be elevated to 0.99. The queue of right-turning vehicles on the main carriageway would extend to over 19 vehicles. In the PM period the Sweechgate arm would reach 0.96 and 0.93, for the left and right turns respectively, with a further lengthening of queues and delay times. This junction has a significant accident history, and this record combined with the high RFC levels suggests that the risk of further accidents would be increased. At SJ9 (Shalloak Road/Mayton Lane), in the PM peak period the queue length would extend to 30 vehicles, with an RFC of 1.13, indicating a junction significantly beyond its capacity. Again, there is no dispute as to the fact that both of these junctions are expected to improve considerably if and when the Sturry Relief Road is available, but for the reasons already given, I consider that the interim situation must also be taken into account.

60. At all of these locations, the RFC values presented in the TA show that the proposed development would depend on these junctions being able to continue to operate under the pressure of congestion levels even worse than those suffered now. And in all cases, when the development is considered cumulatively with the other developments already committed, the RFCs, queue lengths and delay times associated with these junctions would be likely to be higher than those shown in the TA. Even though the TA does not quantify the impacts of those other commitments, the other evidence before me indicates that they would be significant. Where the network is already under strain, it seems to me that these cumulative effects, taking account of the appeal scheme and the other committed developments, would amount to a severe impact on the highway network.
61. The appellants point to the fact that in some cases the incremental effect of the appeal scheme would be less than the existing daily variation in flows. But the **scheme's** impact would be additional to that daily variation, not in place of it. Just like the base flows, the cumulative impact would vary from day to day. This means that there would be some days when the impact would be less than indicated in the TA, but equally there would be others when it was worse. The argument therefore has little merit.

Mitigation

62. The highways contribution in the S.106 agreement would cover part of the cost of converting Junction SJ10 (Broad Oak Road/Vauxhall Road) to a full-size roundabout. If this improvement were carried out, then Junction SJ10 would function better with the proposed development than it does currently without it. But the proposed contribution would not cover the full cost of the improvement; indeed it would leave something in the order of £1m still to be raised from other sources. There is no evidence as to where this balance could be found, and therefore no apparent prospect at present that the improvement could be realised. And even if it were, an improvement to this single junction, well away from the appeal site, would not remove the adverse effects on the three others that I have identified, which are all closer to it.
63. Various other transport-related mitigation measures are proposed by the appellants, including the toucan crossing, improvements to pedestrian routes and cycleways, and a travel plan which would include a travel voucher scheme. But although these measures would be potentially beneficial in their own ways, there is no evidence to suggest they would reduce traffic impacts that have been identified. Indeed the TA makes it clear that measures of these kinds were taken into account when the trip generation and distribution rates for the development were decided.
64. During the inquiry, the **possibility was mooted of a 'Grampian' condition**, restricting the development until the Sturry Relief Road is in place. But neither party appears to support such a condition. In any event, given the degree of uncertainty over the road, and the likelihood that it will not become available within the normal 3-year life of an outline planning permission, I consider that a condition along these lines would not be reasonable.

Conclusion on traffic impact

65. For the reasons explained above, I conclude that the proposed development would have an unacceptably severe cumulative impact on traffic flows, and on

the operation of the highway network, and on highway safety. In all these respects, the scheme would be contrary to paragraph 109 of the NPPF, which provides for permission to be refused in these circumstances. It would also conflict with CDLP Policy T1, which amongst other things seeks to control the level of vehicular traffic and its impacts.

Effects on the character and appearance of the area and the landscape

66. The appeal site is essentially a flat, rectangular arable field. Although the trees and woodland on two of its boundaries provide a pleasant backdrop to outward views, the site itself is featureless. These trees separate the appeal site from the surrounding countryside, so that the site is seen only as a discrete compartment rather than as part of any wider landscape context.
67. If the site were developed with housing and open space as now proposed, the main change would be the loss of its openness. With that loss would go the close-range views from Popes Lane, and from the two public footpaths which cross the site. The medium-range views across the site from a short section of the A291 would also be altered, although to a lesser extent. The site itself would change in character from semi-rural to suburban. These impacts would result in some harm **to the area's** appearance and visual amenity, but the degree of that harm would be no more than minor. The change to the wider landscape would be insignificant.
68. In order to accommodate 140 dwellings, given the constraints of the gas pipeline that crosses the site, the density would be higher than that of most of the other nearby housing. But those existing areas are not necessarily an appropriate guide for new development. And in any event, the site has ample space for structural planting and open space, to create a strong landscape framework. The height of the buildings could also be controlled by condition, if thought necessary.
69. Overall, I conclude that the harm that the development would cause to the **area's character** and appearance, including any effects on the landscape, would be so minor as to be insignificant. In the light of this conclusion, I find no conflict in this respect, either with Policy DBE3 or with any other policy in the CDLP, nor with the relevant provisions of the NPPF.

Effects on nearby listed buildings

70. The significance of the Grade II listed Sweech Farmhouse lies primarily in its evidential and illustrative value as a 15th century hall house. Some value also derives from its later use as a farmhouse, at the centre of a farmstead with a group of ancillary buildings, including the listed stables and the former listed barn. The stables has some evidential and illustrative value derived from this functional relationship. Although the barn is no longer standing, there is apparently permission for its reinstatement, and although there seems some uncertainty as to what its status would then be, it is likely that it would retain some heritage value, as part of this group.
71. It is an agreed matter that the appeal site lies within the setting of at least the Farmhouse, and in my view it must therefore also form part of the setting of the whole group. But to my mind, its role in the setting is a limited one. The site is separated from the building group by trees and vegetation. There is

little intervisibility. Although the roof and chimneys of the Farmhouse can be made out from the appeal site, the views from this direction are not important ones, and do not assist in the appreciation of any of the buildings. It is believed that the appeal site can be seen from the **Farmhouse's upper** windows, but such views would be heavily filtered by the trees. In views from further south on the A291, the buildings and the appeal site can be seen as part of the same panorama, but only at some distance. In the more important views, facing the front of the house and the group as a whole, the appeal site cannot be either seen or sensed. There is no evidence of any historic functional relationship between the any of the buildings and the appeal site.

72. **The site's contribution to the buildings' setting** is therefore confined to its role in illustrating the relative isolation that the farmstead would once have had from any nearby settlements. But in so far as that quality may have been **important to the buildings' significance at one time, it has now been eroded** by other developments, particularly the 20th century housing at Broad Oak, and the modern A291 which runs immediately in front of the building group. In addition, although there are differing accounts of the various planning applications within the Sweech Farm site, it appears that permissions have been granted for up to three new dwellings, as well as for the residential conversion of the Stables. Whilst the details of these developments are not before me, it seems likely that they would have the effect of further emphasising the **former farmstead's continuing evolution, away from its one-time agricultural role, and back to its original purely residential function.** Having regard to this historical and present day context as a whole, it seems to me that the appeal site makes a very limited contribution to the **buildings' significance** as heritage assets.
73. If the appeal site were developed as now proposed, the glimpsed views of the Farmhouse from within the site would either be lost or would be seen from within a much-changed context. The same change of context would also be evident in the sideways view from the A291. Housing sited as shown in the Development Framework plan would be well away from the boundary of the listed buildings. Although lighting within this area might be discernible from the Farmhouse and parts of the former farmyard, at night this would not be readily distinguishable from that associated with the existing development in Popes Lane. Any lighting or built development in the part of the site closest to the listed buildings could be adequately controlled by conditions. If a mini sports pitch was located in this part of the site as suggested, there could be some noise, but the development could take place without this facility if required.
74. Overall therefore, I consider that the harm to the setting of the listed buildings would be minor. Given also the limited role that this part of the setting plays in contributing to the **buildings' significance**, it follows that the harm to their significance would also be minor. To my mind, the characterisation of this by **the appellants' heritage witness as being 'at the lower end of less than substantial'** is a reasonable way of describing the extent of the harm in this case. Notwithstanding that the effect is agreed to amount to harm, in these circumstances it seems to me that the harm identified would be so minor that, to all intents and purposes, it would be inconsequential.
75. In coming to my conclusion on this issue, I have had full regard to the desirability of preserving **listed buildings' settings**, and the need to give due

weight to any harm in that respect. I have also taken account of **the NPPF's** advice that great weight is to be given to the conservation of heritage assets, and that less than substantial harm is to be weighed against any public benefits. In this case, I have found only minor harm to the setting, and to the **assets' significance**. Given the low level of this harm, even when great weight is attached to it, I consider that in the present case the harm would be outweighed by the benefit of providing the proposed housing, as well as the other benefits identified elsewhere in this decision.

76. In the light of the above, I conclude that the harm identified would be so minor as to involve no significant conflict with CDLP Policy HE1, which seeks to protect, conserve and enhance all historic assets, or with Policy HE4, which has similar aims and is targeted specifically at listed buildings.

Effects on best and most versatile land

77. The appeal site is said to comprise 9.36 ha of agricultural land, of which about 5.06 ha is classed as best and most versatile (BMV) land. CDLP Policy EMP12 states that BMV land will be protected, but permission for significant development on agricultural land may be granted, including BMV land, where the development is shown to be necessary, and where no sites within the urban area or on poorer quality agricultural land are available.
78. I accept that the amount of BMV land in the appeal proposal would be significant. But in view of my findings with regard to the housing land supply, it is evident that some additional housing development is necessary, and also that the available sites on urban and poorer quality land are insufficient to meet the need.
79. As part of its aim to contribute to and enhance the natural and local environment, NPPF paragraph 170 advocates recognising the economic and other benefits of BMV land. But this aim seems to me to be reflected in Policy EMP12, and thus needs no further response beyond compliance with that policy.
80. In the circumstances, I find no conflict with Policy EMP12, and no conflict with NPPF paragraph 170. I conclude that the loss of BMV land in this case would not be unacceptable.

*Whether the scheme would accord with **the CDLP's** locational policies*

81. The principal CDLP policy relevant to the location of housing on unallocated sites is Policy SP4. The policy states that the main focus for development is to be at the three larger urban areas, together with development at the rural service centres, of which Sturry is one, and also at the local centres. In relation to Sturry and the local centres, paragraph 2 of the policy goes on to say that, in addition to the **plan's** allocations, the provision of new housing of a size, design, scale, character and location appropriate to **these villages'** character and built form will be supported, provided the proposal is not in conflict with certain other policies. Under paragraph 5 of SP4, development in the open countryside will be permitted for agriculture and forestry. In addition, Policy HD4 sets out in more detail the circumstances in which new dwellings in the countryside may be permitted, none of which apply to the appeal scheme.

82. Policy SP4 therefore gives some encouragement to development at Sturry and the local centre villages, as settlements where development is to be focussed, and also allows for some sites to come forward over and above those already allocated. Nothing in this part of the policy requires sites to be within the existing built confines, and in the absence of a defined boundary, it seems to me that the policy permits some flexibility with regard to sites on the village edge. **In this context, I note that 'flexibility'** was the term used by the Examining Inspector in explaining the need for the modifications that he recommended to the policy⁷, and I consider that his comments in this regard are helpful in understanding the way the policy is designed to operate.
83. In the present case, the appeal site is adjacent to **Sturry's main built-up** area, and relates reasonably well to the existing development pattern. Although its size would be substantial, the settlement itself is a large village, and the development would not be out of scale with it. Design is a reserved matter, and the final criterion, character, is largely a function of the others. None of these criteria therefore seem to rule out the proposed scheme from being supported within the terms **of SP4's second paragraph**.
84. With regard to **Policy SP4's** fifth paragraph, I agree that there is a clear inference that development in open countryside that is not for the specified purposes will not normally be permitted, and this approach is reinforced by Policy HD4. In the case of Sturry, with its lack of a defined boundary, this leaves unanswered the question of whether a particular site falls within open countryside, or within the ambit of **SP4's** second paragraph. But to my mind this is part and parcel of the same flexible approach that is inherent in that paragraph as a whole. I therefore find nothing in either Policy SP4 or Policy HD4 that specifically requires the appeal site to be treated as countryside.
85. In coming to this view, I accept that the CDLP is to be read as a whole, and I have had regard to all the various paragraphs that I have been directed to, including the explanatory text supporting Policies SP4 and HD4, and Policy HD3 relating to exception sites, and also page 237 which refers to **the plan's** objectives for the countryside. However, nothing in these seems to me to be conclusive, and I have therefore drawn my interpretation of Policy SP4 from the words of the policy itself. I have also noted the **Inspector's reasoning** in the recent appeal relating to a site in Westbere. But Westbere is defined as a hamlet, in the lowest tier of the settlement hierarchy, where a different policy approach applies, under another part of Policy SP4.
86. I fully agree with the Council that Policy SP4 cannot have been intended to permit development on each and every site around the fringes of Sturry, or the other paragraph 2 villages. Rather, it seems to me, the policy allows decisions on proposals at these settlements to be made on a case-by-case basis, having regard to **the policy's own criteria**, together with the nature of the particular site, and the circumstances at the time. Different and more restrictive approaches for the lower tiers of the settlement hierarchy are set out in Policy **SP4's other paragraphs**, and it seems to me that the greater flexibility given to Sturry and the local centres is clearly intended to complement that approach.
87. For completeness, I note that the final proviso in **Policy SP4's second** paragraph, regarding compliance with other CDLP policies, is relevant to the

⁷ **Inspector's Report** on the CDLP Examination, paras 55 and 97

appeal, as I have already found the proposal to conflict with Policy T1 with regard to traffic impact. However, that matter is taken into account elsewhere in this decision, and does not affect my conclusion as to the **policy's** locational aspects.

88. In the circumstances of this case, I find that the appeal proposal falls within the type and scale of development that could be accepted within the terms of the second paragraph of Policy SP4. As a result, it follows that Policy HD4 is not relevant in this case. The proposal is therefore not in conflict with either of these policies.

Other Matters

The Section 106 agreement

89. The provisions of the S.106 agreement relating to the provision of 30% affordable housing are needed for compliance with CDLP Policy HD2. This provision, amounting to up to 42 affordable units, has no mitigatory role and would therefore represent a substantial public benefit.
90. The provisions relating to the proposed on-site open space, including an equipped play area, a proposed mini pitch and a trim trail, and also the SUDs drainage system, are all needed to ensure a high standard of development and future maintenance. The quantity of the proposed open space exceeds policy requirements, but is necessary because of the large amount of land within the site that is sterilised by the pipeline. The open space would be available to the public and would therefore be a general benefit, to which I give some weight.
91. The agreed contributions to the Canterbury-Herne Bay cycle route, surfacing and improvements to public footpath CB59, and the provision of travel vouchers for new residents, are all necessary to manage travel demand and **mitigate the development's transport impacts to the levels assumed in the TA**, in accordance with relevant policies. The first two of these items would also have benefits for the general public, carrying a small amount of weight.
92. The contributions to primary and secondary education, community learning, healthcare, adult social care, libraries, youth services, and the SPA, are all **needed to mitigate the development's impacts on these services**, in accordance with the relevant CDLP policies. The contribution for TROs is needed, to allow for the introduction of waiting restrictions on Popes Lane, in order to mitigate any impact on safety in connection with the proposed site access.
93. All of the above obligations have been demonstrated to be necessary to make the development acceptable, and to be relevant to the development and reasonably related in scale and kind. I have therefore taken these into account, and where I have identified that these would involve public benefits, I have given weight to those benefits accordingly.
94. The proposed contribution to highway works at Junction SJ10, Broad Oak Road/Vauxhall Road, would help to relieve congestion at that junction. It would thus have potential benefits for the general public, assuming that the balance of the cost could be raised from another source, and the improvement scheme could then be implemented. However, the junction is remote from the appeal site, and is not one of those where the impact of the proposed development would be most severe. Nor would the improvement to this junction, if carried out, make the development acceptable, in terms of its

overall traffic impact. In the circumstances, the proposed contribution does not meet the necessary legal tests, and I have therefore not taken the potential benefit of this obligation into account.

Other benefits of the development

95. In addition to the benefits already identified above, the development would have significant benefits for the local and national economy. The overall construction spend is estimated by the appellants at £16.3m. Over the construction period, it is estimated that 140 full-time equivalent direct jobs, and 152 indirect jobs, would be created. The gross value added is put at £5.4m. The **development's future residents are** estimated to generate a total household expenditure of £4.17m, and the Council would benefit from Council Tax receipts and New Homes Bonus payments totalling around £3.2m. The **appellants'** figures for these items have not been challenged. These beneficial economic effects would be additional to the **District's** other committed housing sites. I consider that the economic benefits carry moderate weight.
96. In addition to the contributions in the S.106 agreement, improvements are also proposed by the appellants to existing pedestrian routes between the site and the village centre⁸. These improvements could be secured by condition. Although minor in nature, they would have some benefits for existing residents as well as future occupiers at the development itself. These carry modest weight.
97. The creation of new and enhanced wildlife habitats, and other biodiversity gains, could also be secured through conditions, likewise attracting some modest weight.
98. Although new public parking bays are proposed in Popes Lane, these would merely replace the on-street spaces lost due to the necessary TROs. As such, this would represent mitigation rather than a net benefit.

Planning Balance and Overall Conclusions

99. For the reasons set out in this decision, I find that the proposed development would **fit acceptably well with the CDLP's spatial strategy**, embodied in Policy SP4. I also find no serious adverse consequences for the **area's character and appearance, or for** the nearby listed buildings, or for agriculture. Having regard to all of the above matters, I find no significant conflict with the development plan in respect of any of these matters.
100. However, **in the light of the development's impact on the road** network and highway safety, there would be a serious conflict with Policy T1. Numerically, this conflict is with only one policy compared to the larger number where I have found no such conflict in relation to other issues. But nevertheless, the conflict with Policy T1 is in my view so substantial that it is not outweighed merely by causing no harm in those other respects. In the context of this particular scheme therefore, I find Policy T1 to be the most important development plan policy in the appeal. The proposal before me is in clear conflict with that policy.

⁸ Shown on Plan no. 1592/13, Revision A

101. Weighing against this conflict with Policy T1, and in favour of the appeal, are the benefits that I have identified. **Given the Council's failure to** demonstrate a 5-year supply of housing land, the most significant of these benefits is the provision of up to 140 dwellings, and especially the 30% which would be affordable. I have therefore given the benefits of providing housing substantial weight. The other benefits, in order of weight, are firstly the economic effects, particularly the construction jobs and investment; then the on-site public open space, including the proposed play and leisure facilities; the improvements to pedestrian and cycle routes; and also the opportunity for gains to biodiversity. But in my view, given the seriousness of the traffic impacts that I have identified, even when these benefits are all added together, they do not outweigh the harm to the road network and safety.
102. I have had regard to Policy SP1, and paragraph 11 of the NPPF, which both embody a presumption in favour of sustainable development, including a 'tilted balance' to be applied where relevant policies are out of date. But in this case the most relevant policy, T1, is not out of date. Nor is it made out of date simply by the shortfall in the housing supply. The **NPPF's policy** towards developments which would have a severe impact on the road network, or an unacceptable impact on highway safety, is very clear. Policy T1 supports that aim and is consistent with it. Consequently, despite the need that I have found for additional short-term housing land in the District, I do not see any basis for reducing the weight given to these important national and local transport policies.
103. I therefore do not consider that the tilted balance provisions of either the NPPF or Policy SP1 should be applied in this case. But in any event, even if the tilted balance were to be applied, I consider that the harm that I have identified, due to the **scheme's** impacts on traffic and safety, significantly and demonstrably outweighs the benefits. In these circumstances, the appeal scheme does not constitute sustainable development, and should be refused.
104. I have had regard to all the other matters raised, but none alters or outweighs these conclusions. The appeal is therefore dismissed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Isabella Tafur	Of Counsel (instructed by the Principal Solicitor to the Council)
She called:	
Ms Shelley Rouse MA MRTPI	Principal Planner
Mr John Etchells MA BPhil CMLI	Consultant Landscape Architect
Ms Elizabeth Johnson BA MSc IHBC(Affiliate)	Senior Heritage Officer
Mr Colin Finch BTech MIPROW	Principal Transport and Development Officer, Kent County Council
Mr Chris Pragnell LLB	Principal Planning Officer

FOR THE APPELLANT:

Mr John Barrett	Of Counsel (instructed by Ms Richardson of the appellants)
He called:	
Mr Desmond Dunlop BA(Hons) MRTPI	D2 Planning
Ms Silke Gruner Ba(Hons) LArch CMLI	CSA Environmental
Ms Gail Stoten BA(Hons) MCIFA FSA	Pegasus Group
Mr Benjamin Jackson BEng(Hons) MSc MCIHT	Ashley Helme Associates
Ms Diana Richardson BA(Hons) MA MRTPI	Gladman Developments Ltd

INTERESTED PERSONS:

Ms Ann Davies	Local resident and Sturry Parish Councillor
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DOCUMENTS TABLED DURING THE INQUIRY

DOCUMENTS TABLED BY THE COUNCIL

- C/1 Manor Oak Homes v SoS and Aylesbury Vale DC [2019]EWHC 1736 (Admin)
- C/2 Opening submissions
- C/3 Email dated 1 August 2019 from R Hill, Regeneration Programme Manager, re Station Road West and Rosemary Lane car park sites
- C/4 Email from Persimmon Homes, dated 2 August 2019, re land north of Hersden
- C/5 Email dated 2 August 2019 from L Barden, Streetworks Co-Ordinator, re S.74 roadworks charge
- C/6 List of appearances for the Council
- C/7 CIL compliance statement by KCC Highways
- C/8 Closing submissions

DOCUMENTS TABLED BY THE APPELLANTS

- AP/1 List of appearances for the appellants
- AP/2 Opening submissions
- AP/3 Email from BDW Homes, dated 18 July 2019, re Broad Oak housing site
- AP/4 Table comparing 2018 and 2019 housing site trajectories (Mr Dunlop)
- AP/5 The **Council's** land supply evidence to Old Thanet Way inquiry, 2018
- AP/6 Letter from KCC, dated 12 June 2019, re South of Canterbury site – education contributions
- AP/7 Note re land north of Hersden – land ownerships
- AP/8 '**Yotta**' highways works record sheets
- AP/9 Location plans relating to appeal site at Staines Hill, Westbere
- AP/10 Closing submissions
- AP/11 Executed S.106 agreement, dated 15 August 2019
- AP/12 Email from D Richardson dated 27 August 2019 in response to Natural England comments

OTHER DOCUMENTS

- GEN/1 Jointly suggested site visit route plan
- GEN/2 Letter from Natural England dated 28 June 2019, re Sturry/Broad Oak housing sites
- GEN/3 Housing Delivery Test: 2018 measurement results
- GEN/4 Main Modifications to the Canterbury District LP, April 2017
- GEN/5 Agreed joint note on Habitat Regulations Assessment
- GEN/6 Policies Map 2017, extract
- GEN/7 Plan of the proposed A28 Sturry Link Road
- GEN/8 Draft conditions and comments, based on list tabled on 24 July 2019 (including **appellants' agreement to pre-commencement conditions**)
- GEN/9 Further comments on draft conditions, tabled on 6 August 2019
- GEN/10 (not used)
- GEN/11 Consultation letter from Council to Natural England, dated 10 December 2018
- GEN/12 Notification letter from Council to Natural England, dated 9 July 2019
- GEN/13 Consultation email from Council to Natural England, dated 6 August 2019
- GEN/14 Email from Natural England dated 16 August 2019, Habitat Regulations Assessment

EP1H



Appeal Decision

Inquiry Held on 28, 29, 30 and 31 January 2020

Site visit made on 31 January 2020

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/W1145/W/19/3238460

Land at Caddywell Lane/Burwood Lane, Great Torrington, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Beechcroft Land Ltd against the decision of Torrington District Council.
 - The application Ref 1/0340/2019/OUTM, dated 12 April 2019, was refused by notice dated 12 August 2019.
 - The development proposed is an outline application for residential development of up to 181 dwellings and ancillary development with vehicular access from Hoopers Way, Burwood Lane and Caddywell Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline application for residential development of up to 181 dwellings and ancillary development with vehicular access from Hoopers Way, Burwood Lane and Caddywell Lane, Great Torrington, Devon in accordance with the terms of the application, Ref 1/0340/2019/OUTM dated 12 April 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this Decision.

Procedural Matters

2. Planning permission was refused for the proposal under delegated powers on 12 August 2019 for three reasons. Reason for Refusal (RfR) 3 alleged that insufficient information has been provided by the Appellant to satisfy the Council that the proposal would be acceptable in terms of surface water drainage. The Council, **having taken advice from the County Council's Flood Risk Management Officer**, now accepts that sufficient information has been provided and it therefore has no 'in principle' drainage objection. It was agreed that RfR3 is no longer in dispute between the main parties and that the matter can be dealt with on the basis of appropriate planning conditions.
3. The application was submitted in outline with all matters except access reserved for subsequent approval. It was agreed that the plans on which the appeal should be determined are:
 - A Location Plan - Drawing Number AP01 (Doc A20)
 - A Revised Access Plan - Drawing Number 2696.14B (Doc 36)

A Proposed Site Layout Drawing AP02 (Doc A21) was submitted for illustrative purposes.

4. In addition, the application was supported by a number of reports and technical information **in accordance with the Council's validation requirements**. Details of these documents are set out in the Inquiry Documents A1-A27. They include an Aborigicultural Assessment, an Archaeology Assessment, a Design and Access Statement (DAS), an Ecological Assessment, a Flood Risk Assessment, Contamination Reports, Landscape and Visual Impact Assessments, a Planning Statement, a Transport Assessment and a Tree Survey Report.
5. I held a Case Management Conference (CMC) on 5 December 2019. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. It was agreed that questions raised by interested persons on matters relating to traffic and flood risk would be dealt with by the **Appellant's specialist witnesses** on the opening day of the Inquiry. It was further agreed that evidence on Housing Land Supply and Landscape could best be dealt with by separate topic based Round Table Sessions (RTS) supported by dedicated Statements of Common Ground (SoCG). In the weeks following the CMC both main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement (non-disputed matters) were documented in either SoCG or in draft Planning Conditions. In this case three SoCG were agreed (see below) by the main parties before the Inquiry opened and following the Housing Land Supply RTS on 29 January 2020 Updated Housing Land Supply Tables were provided in Doc APP10.
 - General SoCG (Doc 37)
 - Housing Land Supply SoCG (Doc 38)
 - Landscape SoCG (Doc 39)
6. At the Inquiry, a s106 Planning Obligation was submitted. The Planning Obligation is made by an Agreement between the Landowners, the Appellant, the Torrridge District Council (TDC) and Devon County Council (DCC).¹ The Agreement addresses all of the matters sought by the District and County Councils in connection with the provision of community and other services arising from the proposed development. The Planning Obligation is signed and dated 13 February 2020. It is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Schedule was submitted in support of the Planning Obligation.² I return to the Planning Obligation later in this decision.

Main Issues

7. In light of the above I consider that the main issues in this case are:
 - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance;

¹ LPA2

² LPA1

- Whether the Council can demonstrate a five year housing land supply and whether paragraph 11 (d) of the NPPF is engaged;
- The effect of the proposal on the character and appearance of the surrounding landscape particularly in relation to the central and western fields of the development;
- Whether the proposal makes adequate provision for affordable housing and for any additional infrastructure/services, such as education, drainage, transport and public open space arising from the development.

Reasons

The proposed development and the appeal site

8. The appeal site comprises three existing agricultural fields located on the south side of the town of Great Torrington abutting the existing settlement boundary and urban area. For the purposes of this appeal they are generally referred to as the eastern, central and western fields although they are also referred to as Phases 1, 2 and 3 respectively. Part of the western field (Phase 3) is excluded from the appeal site.
9. The proposed development seeks outline planning permission for up to 181 dwellings. Vehicular access is proposed from Caddywell Lane to the north of the western field and from Hoopers Way to the north of the eastern field. Within the site a 5.5m wide access road would continue through the centre of the site, with 1.8m wide footways on both sides. Off the access road a mix of shared surface cul-de-sacs and driveways are proposed. The proposed illustrative site layout plan (Doc A21) demonstrates how 181 2, 3 and 4 bedroom dwellings and parking provision could be accommodated on the site with associated open space (including play provision) and landscaping. It is supported by a detailed DAS (Doc A6).
10. The land currently comprises agricultural land with no significant internal features except for its topography and the hedge banks/trees defining its boundaries. The eastern and central fields slope generally from north to south whilst the western field slopes away to the north west. The total area of the appeal site is about 9.35 hectares.

Planning History

11. The planning history of the appeal site is set out at Section 3 of the General SoCG³ and there is no need for me to repeat that here. Suffice it to say that outline planning permission for up to 60 dwellings on the eastern field was granted in December 2016.⁴ I also note that outline planning permission was granted for a 50 space car park, access, landscaping and ancillary infrastructure immediately to the west of the appeal site in June 2018.⁵

³ Doc 37

⁴ 1/0781/2015/OUTM

⁵ 1/0702/2017OUT

Planning Policy

12. The statutory development plan includes the North Devon and Torrington Local Plan 2011-2031 (NDTLP). The NDTLP, adopted in October 2018, is currently the principal relevant development plan document for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. The parties are agreed that the planning policies which are most relevant to this appeal are set out at Section 4 in the General SoCG and are not repeated here.⁶
13. A Great Torrington Neighbourhood Plan (GTNP) 2018-2031 is under preparation. The GTNP has been subject to examination, with the Examiner's report received on the 8 December 2019 and subsequently published. The Examiner concluded that the GTNP could meet the basic conditions, subject to the acceptance of the recommendations contained in his report and that if the recommended modifications are accepted (by the District Council), the GTNP 2018 - 2031 should be submitted to a referendum. On the 6 February 2020 the Town Council agreed to accept and incorporate the Examiner's recommendations into the GTNP; also agreeing to the extension of the 56 day deadline for the Plan to be subject to referendum.
14. The GTNP is currently programmed to go to the Full Council meeting of TDC on the 6 April 2020 to consider the findings of the **Examiner's report and seek** authorisation for it to subsequently go out to referendum. In parallel the GTNP is being amended by the Town Council to reflect the findings of the examination. The GTNP will not be proceeding to referendum in advance of the TDC meeting on the 6 April 2020. In my view, the weight to be attributed to the emerging GTNP policies is currently limited by the provisions of paragraph 48 of the NPPF, recognising the stage of preparation. The relevant policies which are considered material are set out in Section 4 of the General SoCG and are not repeated here.

First Issue - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance.

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 make clear that applications for development must be determined in accordance with the development plan, unless material considerations indicate otherwise.
16. The NDTLP was recently adopted in October 2018. Section 4 (i) of the General SoCG (Doc 37) sets out the policies from NDTLP which are considered relevant to this appeal. Although I have taken into account other policies listed in Section 4 (i), I consider the most important are: Policy ST01, Policy ST06, Policy ST07, Policy ST08, Policy ST21 and Policy GTT.
17. It is noteworthy that the Council accepts that the eastern field of the appeal site lies within the Great Torrington development boundary and is subject to a housing allocation under NDTLP Policy GTT05. The Council therefore accepts the principle of residential development on the eastern field as being in accordance with NDTLP Policies ST06, GTT and GTT05 and acknowledges that

⁶ Doc 37

the 60 dwellings that would come forward on this part of the appeal site form part of the Spatial Strategy.

18. However, the central and western fields fall outside of, but adjacent to, the development boundary for Great Torrington. I note that Policy ST06 sets out the Spatial Strategy and states that development will be supported within development boundaries. Moreover, Policy ST07 supports development which **accords with the Council's** settlement hierarchy. The broad locations for development are outlined in Policies ST06 and ST07 and these have been co-ordinated with transport and utilities infrastructure and the provisions of appropriate community facilities, retail, employment and open space to create sustainable communities. To the extent that the central and western fields fall outside the settlement boundary of Great Torrington then I accept that the proposal conflicts with NDTLP Policy ST06 and Policy ST07.
19. Turning to Policy ST08 and GTT, the Council argues that the appeal proposal would be in conflict with the settlement hierarchy which seeks to increase self-containment through sustainable growth and would also undermine the **Council's Spatial Strategy** for Great Torrington (Policy GTT). It is claimed that the proposal would disrupt the carefully planned balance of housing and employment development and as a speculative major housing development **would not serve to address local needs and the local vision's aspirations for** self-containment. Housing development over and above the minimum number allocated to Great Torrington, it is said, would destroy this delicate balance and would be in breach of the rationale of the Spatial Strategy. However, I **cannot agree with the Council's arguments** in relation to the alleged conflict with Policy ST08 and Policy GTT for a number of reasons.
20. Firstly, it said that there is at the heart of the NDTLP the objective of preserving or bringing about balance between homes and jobs, but the NDTLP does not say what that balance is now or indicate what jobs to homes ratio it aspires to achieve.
21. Secondly, I note that reliance is placed on paragraph 10.216 of the NDTLP⁷ which states that half of the working population of Great Torrington work in Great Torrington. However, this does not prove there are insufficient jobs in Great Torrington for the other half, as people may choose to work outside the settlement where they live, for all sorts of reasons. There is no information about how many people are commuting into Great Torrington from outside to work and increasing the number of jobs in Great Torrington could equally increase in-commuting as decrease out-commuting. It is plain, from the evidence base of the NDTLP,⁸ that maintaining the working population in Great Torrington at current levels requires the provision of about 1,000 dwellings. Capping the delivery of housing in Great Torrington at 632 could result in more in-commuting, not to mention the inevitable adverse impacts that this would have on social sustainability as the existing population ages.
22. Thirdly, from the evidence that is before me, it is plain that Great Torrington is a highly sustainable location in itself, with good accessibility to higher level facilities and jobs in Bideford and Barnstable, including by public transport. Its sustainability in these terms is acknowledged within the NDTLP itself at paragraph 10.212; in the SHLAA; and in the General SoCG at section 2 and

⁷ Page 156

⁸ APP5 Figure 60

section 8(7). In the light of this it would make no sense at all to construe the NDTLP as placing a cap on housing in Great Torrington because of a concern about unsustainable home to work travel patterns.

23. Fourthly, if the housing numbers in the NDTLP are firmly tied to the **employment allocations because only “balanced growth” is acceptable, there** would be a phasing policy in the NDTLP that prevented the delivery of housing unless it came forward in tandem with employment. Plainly, there is no such policy, and the reality is that the planning system has no way of ensuring that either the housing or the employment actually gets delivered, let alone in tandem.
24. Fifthly, if the NDTLP is aimed at ensuring that housing is restricted to the numbers set out in the NDTLP for each settlement so as to always be in line with the level of allocated employment land, why does it not cap the housing number to that set out in the Local Plan? That is the only way to give effect to the balance which the Council espouses. However, the NDTLP expressly states in Policy ST08 and emphasises that the dwelling numbers for the plan area as a whole and for individual settlements including Great Torrington are for a *minimum*. The dwelling provision figures included in Policy ST08 are not ceilings or targets and nowhere in the NDTLP is there any suggestion that provision should be constrained to these levels.
25. Sixthly, if there was any force in the **Council’s argument** then logically it would have to resist an additional 121 houses or indeed any number it thinks would unacceptably upset the balance between homes and jobs regardless of whether those houses are provided within or without settlement limits. Yet that is not what the NDTLP states – it works with minimum numbers, and whilst it expressly resists development outside settlement limits it has no policy to the effect that housing within settlement limits will be resisted.
26. Finally, the reference to self-containment in the NDTLP appears in precisely the same terms in respect of all settlements, no matter where they sit in the settlement hierarchy.⁹ The approach to distributing housing and employment in a coordinated, justified way is expressed in the same terms for each of the settlements.¹⁰ The logic of **the Council’s** argument dictates that it must resist housing development above the minimum numbers in the Local Plan in each and every one of its settlements, whether proposed within or without the settlement limits. The effect would be to turn minimum housing numbers into maximum housing numbers. Yet this was not the **Council’s** approach as explained at the Inquiry when it was suggested that additional housing in Barnstable and Bideford would be welcomed, but not in Great Torrington. In my view, the Council was unable to identify how the NDTLP differentiated between these settlements particularly in relation to self-containment.
27. In overall terms I consider that all the references in the NDTLP which the Council rely upon and which speak to self-containment have to be seen for what they are, namely a high-level explanation of why the decision was taken as part of the NDTLP to distribute the employment land in the manner set out in the Plan. These references are not to be read as directing decision-makers to cap housing delivery unless and until it comes forward in tandem with more employment land. In this context I consider the overarching Policy ST01 in the

⁹ Policy ST06

¹⁰ Paragraph 4.19 of the NDTLP

NDTLP is noteworthy and relevant. It states that the two Councils covered by the Local Plan will adopt a positive approach to all sustainable development and work with applicants and local communities to find solutions which mean that proposals can be approved wherever possible.

28. Furthermore, I note from the evidence that the Council considers that the most important policy in terms of breach of the NDTLP is Policy GTT and particular reliance is placed on Policy GTT criterion (c). However, this criterion is purely descriptive of the allocations for Great Torrington; it is not a criterion by which to assess non-allocated sites, whether within or without the settlement boundary. It seems to me that this simple point undermines the **Council's** reliance on the first paragraph of the Policy GTT (under Spatial Vision) which refers to supporting **Great Torrington's** future through small to medium scale employment and housing development. The policy itself describes, at criterion (c), the allocations as small to medium scale, including an allocation for 140 dwellings. That shows that a site for 140 is medium scale, and a site for 181 is of similar scale. Given the size of Great Torrington and its status as a Main Centre, a site of this size is self-evidently of medium scale.
29. From all of the above it is clear that the central and western fields abut the development boundary for Great Torrington but lie outside it. Development on this part of the site and thus the proposal as a whole, would not be in accordance with Policy ST06 and Policy ST07 of the NDTLP. However, the main parties accept that Policy ST21 is a key consideration in this case. I agree. This key policy was introduced towards the end of the NDTLP preparation process specifically to provide a framework for managing the delivery of housing based on maintaining a five year housing land supply and a particular methodology which is integral to the development plan. I shall deal with the implications of Policy ST21 in the context of the second issue below before returning to conclude on the development plan later in this decision.

Second Issue - Whether the Council can demonstrate a five year housing land supply and whether paragraph 11 (d) of the NPPF is engaged.

30. The starting point to enable an assessment of the five year housing land supply is to establish the *Housing Requirement*. It is agreed between the main parties that the overall housing requirement set out in Policy ST08 of the NDTLP applies to Northern Devon, across the joint plan area and is not disaggregated to individual constituent local planning authorities.¹¹ The NDTLP was adopted by TDC and by North Devon Council (NDC) in October 2018.
31. The NPPF at paragraph 73 requires the five-year supply to be measured against the housing requirement in an adopted plan where the plan is less than five years old. The NDTLP is less than five years old and the housing requirement within the NDTLP provides the appropriate NPPF compliant figure to use when calculating the five-year housing land supply. The housing requirement is therefore that set out in Policy ST08 and its supporting text.
32. The NDTLP through Policy ST08 establishes a requirement of a minimum of 17,220 dwellings; equating to an average development rate of 861 dwellings per annum over the plan period (20 years). It is agreed that, recognising the

¹¹ Paragraph 4.20 of the NDTLP

joint nature of the NDTLP, and in accordance with the PPG,¹² the five-year housing land supply for TDC and NDC should be calculated on a joint (aggregate) basis.

33. The base five-year requirement is five times the annual requirement of 861 dwellings or 4,305 dwellings. Any shortfall in delivery against the requirement from previous plan years, calculated from the base date of the Plan, should be factored into the five-year requirement calculation. From the base date of 1 April 2011 to the end of the last monitoring year, 31 March 2019, there have been a total of 5,285 completions against a requirement of 6,888. A shortfall of 1,603 dwellings.
34. It is agreed between the main parties that the base date of the five-year housing land supply assessment is 1 April 2019 and that the five-year period looking forward is 1 April 2019 to 31 March 2024.
35. I note that the NDTLP, at paragraph 4.24, adopts the Liverpool approach for accommodating a shortfall in housing delivery in future years. The PPG¹³ sets out that any shortfall from the base date of the adopted plan should be added to the plan requirements for the next 5 year period (the Sedgfield approach) unless a case is made (and accepted) as part of the plan-making and examination process by the strategic policy-making authority to deal with past under delivery over a longer period.
36. As adopted in the NDTLP, the Liverpool approach distributes and averages any shortfall across the remainder of the plan period. There are 12 years remaining of the plan period which establishes an annualised shortfall of 133.58 dwellings per annum. This figure multiplied by five is 667.92, rounded to 668, and is added to the base five-year requirement of 4,305 which produces a base line five-year requirement (without buffer) of 4,973 dwellings (or 995 dwellings per annum).
37. The components of the calculation for the five year housing requirement excluding buffer, as per the NDTLP and using the Liverpool approach, are agreed to be as set out in Table 1 of the Housing Land Supply SoCG (Doc 38).
38. There is an issue over whether a buffer should be applied to the Policy ST21 calculation as contended by the Appellant. The Council disagrees with the **Appellant's** contention that Policy ST21(2) is triggered; there is no reference to a buffer in the policy or in the supporting text to that policy. However, as **the Local Plan Inspector's Report** makes clear, modifications to ensure housing delivery were regarded as essential in order to rectify matters that would have led to the Plan being found unsound.¹⁴ Reference is made to the request by the Inspector to the Councils for a policy to rectify these shortcomings and she concludes that the maintenance of the five year housing land supply is the most effective means by which the Councils can ensure that decisions on housing development can continue to be made on the basis of the strategy set out in the NDTLP.¹⁵

¹² Planning Practice Guidance

¹³ ID: 68-031-20190722

¹⁴ Doc 2, page 6, paragraph 9

¹⁵ Doc 2, page 27, paragraphs 125 and 126

39. I appreciate that TDC wants to move away from the position set out in the NDTLP because the NPPF states that the level of the buffer should be determined by the HDT¹⁶ and if that is applied a 5% buffer is appropriate. I accept what the NPPF says about the buffer is a material consideration, but it does not follow that the approach in the NPPF should automatically be followed. The Local Plan Inspector addressed the question of the buffer and was well aware that the housing requirement was not being met and that a 20% buffer should be applied. She was well aware that the HDT had come in, but she did not think this was sufficient for 5% to be applied nor did she think it appropriate to say that in future this Council should determine the buffer by having regard to the results of the HDT.
40. What she said was that there should be no move away from the 20% buffer until the end of the Plan period, unless the shortfall was cleared, or the Plan was reviewed. There is no reason therefore why the Council should be allowed to adopt a mix and match approach. The reasons which persuaded the Inspector to impose the 20% buffer remain as pressing today as they were when she imposed it. If the Council maintains that the approach to the Plan in calculating the five year housing land supply is out of date, then it must accept that the policies of the Plan that determine when and where housing is acceptable are also out of date because all of these policies presume the existence of a five year housing land supply.
41. Policy ST21, with the supporting text, was therefore put forward to secure the position. It identifies the triggers and provides the mechanism to ensure the maintenance of a five year housing land supply. The Local Plan Inspector also considered it appropriate to make reference in the NDTLP to the application of the Liverpool method for the lifetime of the Plan. At the time of adoption, she also considered it appropriate to apply a 20% buffer with the Liverpool approach, but this may change over time.¹⁷
42. Accordingly, paragraph 4.24 of the NDTLP clearly states that the NDTLP at the time of the adoption applies a 20% buffer:

"For the purposes of identifying and updating annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against the housing requirements of the Local Plan, the Liverpool method of spreading the delivery of shortfall together with the 20% buffer shall apply to all reports published for the North Devon and Torridge Local Plan area until 2031 or until the Local Plan is first reviewed. In the event that the shortfall is delivered prior to the 1 April 2031 or to the review of the Local Plan, a buffer of 5% shall be applied to the five year housing land requirement."

43. In my view, the purpose of the buffer is to provide for past under delivery as paragraph 4.25 of the NDTLP explains – it is as much part of the housing requirement as is the base figure and is indivisible from it. It is intended to both help ensure that under delivery from the early years of the Plan period is made up as soon as possible and to maintain delivery to meet the remaining

¹⁶ Housing Delivery Test

¹⁷ Doc 2, page 26, paragraph 122

housing requirement. Accordingly, when paragraph 7.64 of the NDTLP (in the context of Policy ST21) talks about monitoring against the “**managed**” target “**to reflect any cumulative backlog**”, it must include the buffer otherwise it would not reflect the backlog in the manner intended by the Plan as set out at paragraph 4.25.

44. None of the prerequisites set out in the NDTLP for moving away from the 20% buffer apply: it is not 2031, the NDTLP has not been reviewed and the shortfall has not been delivered. Nonetheless, the Council’s Position Statement (Doc 31) has chosen to move away from the 20% buffer citing the introduction of the HDT, the results supporting a 5% buffer. In doing so the Council has ignored the primacy of the development plan and its commitment to applying the 20% buffer. If the Council is promoting that the NPPF and the introduction of the HDT are of such material **importance for the Plan’s** commitment to 20% to be put aside then in my view that should also apply to the Liverpool approach.

45. Neither the NPPF nor the PPG refers to the Liverpool approach. The PPG states

*“The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach), then the appropriate buffer should be applied. If a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process...”*¹⁸

The preferred approach is clearly that of Sedgefield with alternatives derived through plan-making, which is the position that applies here in TDC. That of course takes us back to paragraph 4.24 of the NDTLP.

46. The Appellant points out that the HDT results are measured against household growth and not the adopted housing requirement. I note from the evidence presented that the household growth figures do not represent the full housing requirement for the Local Plan area. The three year aggregate household growth requirement for the HDT is 1,844, whereas the Local Plan aggregate annualised requirement for three years is 2,583, before any additional uplift **for past shortfalls in delivery. Given the Local Plan’s commitment to a 20% buffer and making up for past under-performance it would seem strange to me to move away from this position.**¹⁹ **TDC’s position is that a 5% buffer should be applied whereas the Appellant’s position is that a 20% buffer should be applied.** The Appellant has a secondary position, that is Sedgefield and 5%, the NPPF position.

47. Drawing the threads of the housing requirement together, it is clear to me that Policy ST08 of the NDTLP sets a minimum of 17,220 dwellings over a 20 year plan period from 1 April 2011 to 31 March 2031. This annualises to a minimum of 861 dwellings per annum. Paragraph 4.24 of the NDTLP plainly states that when calculating the housing requirement, the Liverpool approach to addressing shortfall in delivery and the application of a 20% buffer will be applied for the lifetime of the Local Plan, until its first review or until the shortfall is cleared. The stipulated buffer was the consequence of a conscious decision by the Local Plan Inspector to recognise the shortfall in delivery from

¹⁸ Paragraph 031 Reference ID: 68-031-20190722

¹⁹ Mr Jacobs’ proof of evidence page 15 paragraph 4.11

the start of the Plan period. **The Council's Housing** Land Supply Statement accepts the NDTLP in part by applying the Liverpool approach but diverts in part by applying a 5% buffer and through this approach calculates a five-year requirement of 5,222 dwellings. I conclude that the five-year housing should be calculated in accordance with the commitment in the NDTLP applying the Liverpool approach and a 20% buffer producing a figure of 5,968 dwellings.²⁰

48. In terms of *Housing Supply*, it was agreed in the SoCG²¹ submitted to the Inquiry that minor developments consist of commitments on sites of less than 10 dwellings, some of which may have started and others which have yet to be implemented, amounted to 586 dwellings. There are a further 576 dwellings consented from this source but not yet implemented. Allowing for a 15% discount from this source of supply both parties agreed would yield 520 dwellings within the five plan period.²² Moreover, a windfall allowance of 117 dwellings per annum applied to years 4 and 5 totalling 234 is agreed.
49. It is common ground that Policy ST21 of the NDTLP is a relevant policy in the context of managing the delivery of housing in the NDTLP. Policy ST21 requires an annual review and an updated housing trajectory will inform the review. In the application of clause (1) of Policy ST21, if the number of dwelling completions across the Plan area is less than 110% of the annualised dwelling requirement in any monitoring year, in this case 2018/19, the provisions of that clause will be brought into force.
50. There is no dispute that the number of dwelling completions for 2018/19 was 951 dwellings, compared to an annualised (residual) dwelling requirement for that year of 991 dwellings. The level of completions as a proportion of dwelling requirement for that year is 96%; 14% (or 139 dwellings) below 110% of the annualised dwelling requirement required to trigger the provisions of clause (1) of Policy ST21 (1,090 dwellings). Accordingly, it is agreed that the provisions of clause (1) of Policy ST21 are triggered on the basis of the level of dwelling completions achieved in 2018/19.
51. Clause (2) of Policy ST21, states that if the number of dwelling completions in a monitoring year falls below 90% of the annualised dwelling requirement, and the housing trajectory indicates that the rate would not recover to an average of at least 100% for the two subsequent monitoring years, then proposals for additional residential development outside defined settlement limits will be supported subject to four stated criteria. It is common ground that for the purposes of clause (2) of Policy ST21, 90% of the annual (residual) dwelling requirement for the 2018/19 monitoring year, and without the addition of any buffer, is 892 dwellings (991×0.9).
52. It is agreed that there were 951 dwelling completions in the 2018/19 monitoring year, providing 96% of the annual (residual) dwelling requirement, or a surplus of 59 dwellings compared to the 90% requirement, if no buffer is applied. On the basis of applying no buffer, it is agreed that the provisions of clause (2) of Policy ST21 are not brought into force. The parties do not agree the appropriate buffer to be applied, nor do they agree the assessed five year

²⁰ Doc 38 page 12

²¹ Doc 38

²² Where the sites are for 1-4 dwellings or less than 0.1 hectare to allow for non-implementation or lapse rate

supply.

53. At the opening of the Inquiry, in the SoCG,²³ the Council considered the total supply of deliverable housing land for the period 1 April 2019 to 31 March 2024 to be 6,685 dwellings reflecting its Five Year Housing Land Supply Position Statement.²⁴ The Appellant considered the equivalent supply to be 4,874 dwellings. There were **38 sites from the Council's five-year** supply of deliverable sites on which the parties did not agree an attributable dwelling yield.²⁵ As a result of the differing positions the Council calculated there would be 6,685 dwellings (6.40 years supply using the Liverpool approach with a 5% buffer, whereas the Appellant using Liverpool with a 20% buffer calculated there would be 4,874 dwellings equivalent to 4.08 years supply. There is a difference of 362 dwellings in the supply forecast for Years 1 and 2.²⁶
54. Following the RTS on Housing Land Supply (HLS) there were a number of concessions made in respect of the disputed sites which affects both the Council **and the Appellant's position**. The changes are reflected in updated tables from the HLS SoCG.²⁷
55. I have assessed the disputed sites in the context of the test of deliverability set out in the Glossary to the NPPF. This specific guidance indicates which sites should be included within the five-year supply. The first list (Part A) is those sites where it is for the Appellant to provide evidence that sites will not deliver within five years while the second list Part (B) consisting of sites with outline planning permission for major development, allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register cannot be included within the five-year supply unless the Local Planning Authority can produce clear evidence that housing completions will begin on site within five years.
56. I have also had regard to the updated PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on 'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:
- "In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."***
- This indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.
57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed.

²³ Doc 38

²⁴ Doc 31

²⁵ Table 3 Doc 38

²⁶ Table 4 Doc 38

²⁷ Doc APP10

Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.

58. Turning to the sites in dispute, there was a narrowing of issues following the RTS but there remain 19 sites in dispute. The difference in deliverable supply between the parties for the supply sites listed in Table 3 is 1,099 dwellings.²⁸ Of the supply, the Council considers that in Year 1 (2019/20) 1,206 dwellings and in Year 2 1,260 dwellings will be delivered. The Appellant contends that figures of 1,206 and 1,145 are more realistic and robust. This is a difference of 115 dwellings and Table 4 lists the sites where the Appellant disputes the **Council's** supply for Years 1 and 2 of the five-year period.²⁹
59. Of these 19 sites, one site (IL Ref. 1)³⁰ falls within Part A where the burden of proof is put on the Appellant to demonstrate that the site will not deliver in **line with the Council's forecast i.e.** to provide clear evidence. From the evidence there are a number of uncertainties including whether the site has been sold and when a reserved matters application will be worked up, submitted and determined. There is nothing to indicate a start date on site and no indication of build out rates. I consider that Year 3 for first completions is more realistic and a nationally identified built out rate of 43dpa would be more appropriate. A minimum of 61 dwellings should be deducted.
60. The remaining 18 sites in dispute are Part B sites where the burden of proof is put on the Local Planning Authority to provide clear evidence to justify inclusion of sites within the forecast supply. Of these sites, one site (IL Ref. 14),³¹ which **the Council's commentary refers to** as being controlled by Linden Homes and based on information provided first completions are expected in 2020. However, the email from Linden Homes that the Council rely on suggests uncertainty around delivery and does not provide clear evidence of the **site's** deliverability for the five-year supply. The developer has provided a profile of delivery but there appears to be no interrogation of this. It is my understanding that the land is under option and price negotiations have yet to start with the landowner. The nature of these can be lengthy and far from straightforward. It is therefore unknown when development would come forward and the lack of clear evidence should remove this site from the supply reducing the supply by 170 dwellings.
61. In another Part B site (IL Ref. 15),³² **the Council's evidence states** that the agents for the site have indicated that a detailed application is likely in the near future. There is some uncertainty about progress on this application. However, as I saw on my visit, there are significant issues associated with this site not least ground conditions, demolition of a complex industrial heritage and viability. There are also suggestions that the site is to be sold and that it may become part of a wider redevelopment scheme. None of this information provides clear evidence for inclusion of the site within the five year supply and therefore 105 dwellings should be removed from the supply.

²⁸ APP10 pages 1-2

²⁹ APP10 page 3

³⁰ Larkbear Strategic Extension, Barnstaple

³¹ South of Clovelly Road, Bideford

³² The Former Creamery Site, Great Torrington

62. There is a major strategic Part B site (IL Ref.16)³³ listed which requires Government infrastructure funding to enable delivery. I accept that funding is forthcoming in the form of a Funding Agreement³⁴ but there is no information about when the funding will be available, what needs to be done to secure it, what the timeframe is for delivery of the infrastructure and how this plays out for housing delivery. Without clear evidence the site should not be included and therefore 150 dwellings should be removed from the supply.
63. There are many other Part B sites which the Council considers will contribute significant numbers of dwellings in the five year period. I note that with regard to site IL Ref. 26³⁵, **the Council's commentary refers to the site being under the control of a regional house builder and that it intends to submit an application in 2020.** This would suggest that the site is progressing. However, the site has yet to be sold and it is not known whether negotiations over price have commenced. Without this being resolved it undermines the clear evidence required to include the site within the overall supply and therefore 70 units should be removed.
64. Similarly, on site IL Ref. 33³⁶ I note that no planning applications have yet been submitted. Discussions with the developer are said to be on-going but there is no clear evidence of the issues, what needs to be resolved or whether there are any landownership issues that need to be overcome. On such a large strategic site greater justification is required before including dwellings within the supply. I consider that 128 dwellings should be removed from the supply. With regard to IL Ref. 54,³⁷ there is no planning permission and the site is subject to a s106 Agreement. I consider that there is a lack of clear evidence to justify inclusion of this site and therefore a further 174 dwellings **should be removed from the Council's supply.**
65. It is not necessary for me to go through all of the sites in Table 3 and Table 4 of APP10. In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position. Although the Council published on 19 November 2019 a Housing Land Supply Statement for the period 1 April 2019 to 31 March 2024 what is evident is that the evidence that underpins the report has been collected post-base date with evidence collection from Autumn 2019. In my view any update should be thorough and consistent across all aspects of housing land supply with evidence available and published at the base date.
66. Overall, **I consider that the Appellant's assessment of supply** is more realistic taking into account the test of deliverability set out in the Glossary to the NPPF and the updated PPG advice published on 22 July 2019. I am satisfied **that the Appellant's approach** is consistent with national policy, case law, appeal decisions and informed by research into current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times.³⁸
67. My conclusion on housing land supply is that there are a number of sites that together significantly reduce the Council's five-year housing land supply. A

³³ Ilfracombe Southern Extension

³⁴ LPA10

³⁵ Kingsley Plastics Ltd, Western Barn Road, Winkleigh

³⁶ Land at Adjavin Farm, Bideford

³⁷ Land north of Clovelly Road, Bideford

³⁸ See Appendix 14 and Appendix 15 of Mr Jacobs' evidence

large number of the sites that TDC includes within the supply cannot be justified applying the current definition of deliverable. I consider that **TDC's** supply should be reduced **to reflect the Appellant's position set out in Table 3, Table 4 and Table 5 of APP10**. It follows that **the Council's** supply figure of 6,145 dwellings in APP10 should be reduced by 1,099 to give a more robust total supply figure of 5,046 dwellings for the period 1 April 2019 to 31 March 2024. The Council maintains there is a 5.88 years supply using Liverpool and a 5% buffer; 5.15 years using Liverpool and a 20% buffer. Using the Liverpool approach with the 20% buffer, which I consider an integral part of the development plan, produces a housing land supply equivalent to 4.23 years.³⁹

68. It is accepted by both main parties in the General SoCG⁴⁰ under item 9 that Policy ST21 (1) is triggered on the basis of the monitoring year 2018/19. Specific action is thus required in accordance with the policy but there are no proposals to implement the necessary remedial measures. With regard to Policy ST21 (2) this test is also failed. As **Mr Jacob's** evidence demonstrates, completions for the monitoring year 2018/19 fall below the 90% threshold based on the NDTLP paragraph 4.24 approach and his assessment of completions against requirements for the two subsequent years 2019/20 and 2020/21 also fall below the 100% average.⁴¹ The principle of development plan support for residential development outside of defined settlement limits is established subject to four criteria. Policy ST21 (2) is engaged in this case.
69. The Council gave evidence that even if it was engaged, the four criteria set out within the policy were not met. However, the Council did accept in relation to criterion (a) that the location was suitable as it was on the edge of a Main Centre in a sustainable location. It also agreed that the proposal was commensurate with the deficit in required housing. I note the proposal does not need to be commensurate with the deficit as against the two years shown in the monitoring report prepared for the purposes of Policy ST21. It simply **has to be "commensurate to the deficit in required housing"**. The required housing is the housing that is required in the district, and the deficit in the housing required in the district is some 1,603 dwellings as at 31 March 2019.
70. With regard to criterion (b) delivery in a timely manner – if planning permission is granted the appeal site would have outline planning permission and a signed s106 Agreement. There is a contractual obligation to market the site as soon as possible. There are no impediments to the delivery of housing on the site as soon as the site is sold to a housebuilder. The agent's letter⁴² establishes that the volume housebuilders would be interested in a site of this size. There is nothing different about this site as regards delivery compared to any other site that would need to be released if Policy ST21(2) is engaged.
71. With regard to criterion (c) I consider the proposal would be broadly consistent with and not prejudicial to the overall spatial vision and strategy for northern Devon along with the settlement vision and development strategy. There is no need for me to repeat my assessment of the site in relation to Policy ST08 and Policy GTT which is set out above. On the basis that Policy ST21(2) is engaged and there is an express need to release housing sites outside of settlement limits to make up a deficit in supply, I consider that

³⁹ App10 page 5 Summary Table of 5 Year Housing Land Supply Position

⁴⁰ Doc 37

⁴¹ APP10 Updated Table 8 page 7

⁴² APP1

release of a site adjoining the settlement boundary of a Main Centre in what is conceded by the Council to be a sustainable location, would be appropriate.

72. With regard to criterion (d) subject to my assessment under the third and fourth issues below, I consider that there is no breach of other development plan policies. I note that paragraph 7.65 of the NDTLP indicates that if the circumstances set out in Policy ST21 (2) are triggered

‘It is expected that such sites will be developable or potentially developable Strategic Housing Land Availability Assessment (SHLAA) sites and will normally adjoin development boundaries or the principal built form for defined settlements without development boundaries.’

The SHLAA concluded that not only was this site developable, but that it was also suitable in all respects. This is precisely the type of site that should be released if Policy S21(2) is engaged.

73. I conclude on the second issue that the Council cannot demonstrate a five year supply of deliverable housing sites and that paragraph 11 (d) of the NPPF is engaged.

Third Issue - The effect of the proposal on the character and appearance of the surrounding landscape particularly in relation to the central and western fields of the development.

74. The landscape planning policies that are alleged to have been breached are set out in the **Officer’s Report to Committee**⁴³ and the **Council’s Statement of Case**.⁴⁴ These are agreed in the LSoCG⁴⁵ at paragraph 1 f) and g) and there is no need for me to repeat them here. I held a Landscape RTS on 28 January 2020 when the landscape witnesses for both main parties discussed the landscape and visual effects which are clearly set out in the comparison tables that they produced. I have considered the LVIA,⁴⁶ the Addendum to the LVIA⁴⁷ together with the plans and photographic viewpoints submitted by the parties.
75. From the RTS discussion and from the evidence that is before me, it is clear that the appeal site is not a valued landscape, and neither does it lie within or adjacent to any locally or nationally designated landscape. It has an ordinary condition typical of mixed Devon farmland, adjacent to existing residential development. The landscape character of the area in which the appeal site sits is one of arable and pastoral fields bordering the urban edge of a small town. Hedge banks border the majority of the appeal site, with some exceptions. The appeal site is not part of or adjacent to a conservation area. It is of medium value in landscape terms and given that what is currently a greenfield site would become a residential estate it is inevitable that within the confines of the site itself the impact is assessed as major adverse.
76. I accept that there would be a change from farmland to a residential area, which would change the perception of the area. The Council refers to a suburbanising effect on the landscape. However, no hedgerows or trees would be lost. The only landscape feature of note proposed to be lost would be hedge banks, but substantially more hedge bank is proposed. The proposed road

⁴³ Doc 14

⁴⁴ Doc 34

⁴⁵ Doc 39

⁴⁶ Doc A13

⁴⁷ Doc A11

layout would remove about 130m length of hedge bank and gap up about 5m of the existing boundary (a field gate). The remainder would be retained. The southern boundary of the central field, currently a post and wire fence would be replaced with 205m of hedge bank, which would be tied into retained hedge banks at the Caddywood Lane and Burwood Lane ends. With mitigation the adverse impact would reduce to moderate.

77. **Mr Randall's** assessment that the County Landscape Area (LCA) and District Landscape Type (LCT) have high sensitivity, simply cannot be right because he accepts that the appeal site is medium sensitivity and it sits within these larger character areas and is representative of them. The surrounding area is not designated, and **Mr Randall's** reference to the former AGLV designation is not of assistance because as the Council itself has confirmed it is no longer used. In any event the area upon which Mr Randall focuses was never part of the AGLV designation.
78. One of the two key inputs in the assessment of sensitivity of the landscape receptors is to ask how susceptible the area is to the development proposed, and Mr Randall has wrongly concluded that the surrounding landscape has high susceptibility. They are much larger areas and are less susceptible to the proposed development than the appeal site, not more. Neither can the impact on these surrounding areas be of medium sensitivity, as Mr Randall claims. There would be no impact on these areas because no development is proposed on them. Extending the south-eastern edge of the town by between 100m and 200m, which once developed would read as part of the town, cannot possibly have a high impact on the very large landscape areas surrounding the town.
79. Turning to the visual assessment of the appeal site, at my site visit I saw that visually it is extremely well contained. Mr Randall confirms that the medium range views extend to only 250m from the site and his long range views extend to no more than 1.5kms from the site.⁴⁸ In this regard he states that 'Within the built-up area, ground level views are confined to a few relatively elevated sections of road that are oriented towards the site. Within the countryside, views are constrained by landform, roadside hedge banks and countryside. There are very few opportunities for views towards the site from the majority of the built-up area, including historic town centre, or from the wooded sections of the Torridge Valley and its tributaries. I agree.'⁴⁹
80. Moreover, Mr Randall also concludes that the significance of effect for all the long range views and many of his medium range views is (at worst) none to moderate.⁵⁰ He states that 'The significance of the effects falls away to moderate and below in medium-range views, particularly views from within the built-up area in which a perception of the surrounding countryside remains. In longer range views, the effects generally become minor, since the development - whilst visible - would not represent a fundamental change to the character of the view'.⁵¹
81. Overall, I consider that the proposed development would have very little landscape and visual impact. It is noteworthy that the Council has allocated sites adjacent to the urban edge of the town in the NDTLP for residential

⁴⁸ Mr Randall's proof of evidence Table on page 21

⁴⁹ Mr Randall's proof of evidence page 20 paragraph 4.7

⁵⁰ Mr Randall's proof of evidence Table on page 31

⁵¹ Mr Randall's proof of evidence page 33 paragraph 6.10

development, including the eastern field (Phase 1) of the appeal site. By allocating these greenfield sites, the Council has demonstrated that there would be no breach of Policy ST14 i.e. that the development of these sites would conserve and enhance local distinctiveness, including tranquillity. Moreover, the proposed development for the central and western fields (Phases 2 and 3) is of similar layout, density and overall design principles to that which was permitted on the eastern field (Phase 1). As with Phase 1, there would be no breach of Policy DM04 or DM08A.

82. With regard to policies in the GTNP, the proposed development demonstrates sensitivity to the distinctive landscape character. Where important landscape elements would be lost e.g. sections of hedge bank, these would be replaced, and new lengths of hedge bank created as part of the mitigation. This is in **line with the mitigation hierarchy, set out in the Examiner's proposed changes** to the submitted Policy ENV1. With regard to Policy ENV3, the proposed development would provide new green infrastructure, which would benefit the existing and the new communities. In terms of Policy ENV4, the proposed development lies adjacent to the urban edge of Great Torrington. It would extend the light sources into the fields immediately to the south of the town. However, with the type and extent of the landscaping proposed,⁵² as well as an agreed lighting strategy, the light spill would be minimised. I find no conflict with the emerging GTNP policies.
83. I note the comments in the SHLAA,⁵³ under the headings of compatibility, landscape and light pollution, all of which are written by the Council itself and run directly to the **Council's** case that development of the appeal site would breach the landscape policies of the NDTLP. The SHLAA evidence demonstrates that the proposal would not breach any of those policies.
84. Drawing these threads together, I accept that as with most development of greenfield sites there would be adverse visual impacts in views either from within the site itself, or from some viewpoints immediately outside the site looking in. However, with mitigation, the proposed development on Phases 1 and 2 would not have a significant adverse effect on the existing landscape and visual resources. Similarly, the development of Phase 3 would not cause unacceptable landscape or visual harm, whether taken individually or together with Phases 1 and 2. The proposed development would comply with the relevant NDTLP policies listed in the RfR1, other relevant NDTLP policies referred to in evidence to the Inquiry and the relevant GTNP policies identified in the LSoG.⁵⁴ The proposal would also accord with paragraphs 8c, 122, 127 and 170 of the NPPF. Overall, I consider that, in landscape and visual terms, the proposal is acceptable. On the third issue, I conclude, there is no reason to withhold permission.

Fourth Issue - Whether the proposal makes adequate provision for affordable housing and for any additional infrastructure/services, such as education, drainage, transport and public open space arising from the development.

85. At the Inquiry, a s106 Planning Obligation was submitted by way of Agreement. The Planning Obligation is made by an Agreement between the

⁵² This would be agreed with the TDC at the detailed design/reserved matters stage

⁵³ Doc 10

⁵⁴ Doc 39 paragraph 1 f) and 1 g)

Landowners, the Appellant, TDC and DCC.⁵⁵ A CIL Compliance Schedule was submitted for the Planning Obligation.⁵⁶ I have considered the Planning Obligation in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.

86. Local Planning Authorities should only consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.⁵⁷ Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests:
- necessary to make the development acceptable in planning terms
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
87. Paragraph: 004 of the PPG⁵⁸ states that policies for planning obligations should be set out in plans and examined in public. It states that it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. Paragraphs 007 and 008 of the PPG concern funding for education and refer to the DfE guidance for local education authorities on developer contributions.⁵⁹
88. **NDTLP** Policy ST18 (Affordable Housing on Development Sites) sets out the basis on which the Council will require affordable housing on residential development proposals. Policy ST23 (Infrastructure) requires development to provide, or contribute towards the timely provision of physical, social and green infrastructure made necessary by the specific and/or cumulative impact of those developments. Policy DM10 (Green Infrastructure Provision) sets out the requirements for development to meet the green infrastructure typology, quantitative and accessibility standards as set out in Table 13.1 to meet the needs of intended occupants. The Green Infrastructure Strategy for North Devon and Torridge District Councils⁶⁰ provides the basis for the standards set out in the NDTLP with the supporting text at paragraph 13.68 indicating that regard should be had to the Strategy for a comprehensive interpretation of the overall approach towards green infrastructure provision.
89. The Planning Obligation secures the provision of 30% affordable housing on-site, with an agreed tenure split, in accordance with NDTLP Policy ST18(7), for 75% to be provided at a social rent level and 25% at intermediate level. The provision of affordable housing on-site is necessary to meet an identified need and is a requirement of both national and local planning policy. The provision is directly related to the development and the provision of 30% is fairly and reasonably related in scale and kind to the development. The actual numbers of affordable units would depend on the final approved number of dwellings.

⁵⁵ LPA2

⁵⁶ LPA1

⁵⁷ NPPF paragraph 54

⁵⁸ Reference ID: 23b-004-20190901

⁵⁹ Reference ID: 23b-007-20190315 and Reference ID: 23b-008-20190315

⁶⁰ Part 2 of 3; David Wilson Partnership/JPC Strategic Planning & Leisure, April 2014

90. The Planning Obligation would also secure green infrastructure provision on site pursuant to NDTLP Policy DM10 (incorporating Table 13.1) and provision for an off-site financial contribution of £18,718.61 towards Great Torrington Artificial Turf Pitch (ATP) in lieu of on-site provision towards youth play space. The provision of appropriate levels of green infrastructure is essential in the context of national and local policy. Policy DM10 and Table 13.1 provide a robust basis for establishing the green infrastructure required for the detailed design stage. The proposal would generate an estimated resident population of some 423 persons and Table 13.1 requires the proposal to provide 0.2 ha of Play Space (youth) per thousand population resulting in a requirement of 84.73m² of provision for the development. Whilst the NDTLP generally expects green infrastructure requirements for major developments to be provided on site, it recognises that financial contributions may be supported for off-site provision.⁶¹ I consider this provision would be fairly and reasonably related in scale and kind to the development.
91. The public transport contribution of £200,000 is necessary towards improving bus services serving Great Torrington. The appeal site is at the edge of Great Torrington and although walking and cycling as well as driving is possible to the town centre, trips would be made to Barnstaple and Bideford, so enhancements are necessary to public bus services. Policy ST23 of the NDTLP indicates that developments will be expected to provide or contribute towards the timely provision of infrastructure. The proposed service improvements would operate Monday to Friday with an estimated cost of £120 per day and total cost of £30,000 (5 days x 50 weeks excluding public holidays) per year. Additionally, a Sunday/Public Holiday service is proposed at a cost of £350 per day, or about £20,000 per year. The contribution would support these service enhancements for a 4-year period. I consider the provision would be fairly and reasonably related in scale and kind to the development.
92. Outline planning permission for a 50 space car park and associated access road immediately to the west of the appeal site was granted in June 2018.⁶² The construction of the car park is necessary. It forms part of the transport strategy to mitigate the impact of the proposal in relation to the additional traffic generated by the development and issues associated with activity outside Great Torrington Bluecoat Church of England Primary School in the morning and afternoon drop off/pick up periods. The provision of a 50-space car park would remove a significant proportion of vehicles from the street and remove any conflict arising from the development.
93. The Transport Assessment⁶³ indicates that there are around 50 vehicles typically parked on roads near to the school associated with dropping off and picking up pupils; this conclusion has been confirmed by the Local Highway Authority. The provision of a 50-space car park would therefore remove any additional impact from the development and would accord with NDTLP Policies ST23, DM05 and DMO6. I consider the provision of a 50 space car park would be fairly and reasonably related in scale and kind to the development.
94. The Planning Obligation secures contributions for the provision of nursery, primary and secondary education. The contributions requested by DCC are necessary to make the appeal development acceptable in planning terms and

⁶¹ Doc 1 page 425 paragraph 13.70

⁶² Reference: 1/0702/2017/OUT

⁶³ Doc A16 paragraph 6.3.5

- directly related to the development. An Early Years Education Contribution of £250 Index Linked per qualifying dwelling is required towards early years (2, 3 and 4 year olds) provision within Great Torrington. The new housing would add to existing demand through population growth which is confirmed by the provision for a new primary school in Policy GTT03 of the NDTLP.
95. A Primary Education Contribution of £3,336.55 Index Linked per qualifying dwelling is required towards the provision of new primary school places within Great Torrington. The new housing would add to existing demand through population growth which is confirmed by the provision for a new primary school in Policy GTT03 of the NDTLP. DCC has identified that the proposed 181 family type dwellings would generate an additional 45.25 primary pupils.
 96. The designated primary school for this development is Great Torrington Bluecoat Church of England Primary School which has a current net capacity of 525. When factoring in approved but not yet implemented developments in the area the Local Education Authority (LEA) has forecasted that in Spring 2023 the number of pupils expected to be attending the school is 517.45. This shows that there is capacity for 7.55 pupils and therefore a contribution towards the remaining 37.70 pupils would be required towards new primary education provision in the area. This contribution would relate directly to providing education facilities for those living in the development. In addition, as a new primary school is required, the LEA would also need to request a proportionate land contribution of 10sqm per family-type dwelling.
 97. As contributions towards a new school are being requested in the area, all **early years' requests would be towards early years provision at the proposed** new school. The contribution is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling and accords with guidance set out in DfE ` *Securing Developer Contributions for Education* ' November 2019; DCC ` *Education Section 106 Infrastructure Approach* ' October 2016 and NDTLP Policies ST23: Infrastructure and GTT03: Hatchmoor Common Lane. The contribution is fair and reasonable as it is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling.
 98. A Secondary Education Contribution of £3,288 Index Linked per qualifying dwelling is required towards provision of additional infrastructure at Great Torrington School. The new housing would add to existing demand through population growth. DCC has identified that the proposed 181 family type dwellings would generate an additional 27.15 secondary pupils, and this would have a direct impact on Great Torrington School. The net capacity for Great Torrington School is 900, when factoring in approved but not yet implemented planning approvals the forecast for Spring 2025 is 971 pupils, showing a shortfall of 71 secondary pupils in the area. An expansion of Great Torrington School to meet the increased population would therefore be required and the contribution request would facilitate this directly. The contribution is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling. It accords with aforementioned guidance.
 99. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the

CIL Regulations and should be taken into account in the decision. On the fourth issue, I conclude, there is no reason to withhold permission.

Other Matters

100. I have taken into account all other matters raised including the concerns raised by Great Torrington Town Council, the representations made by interested persons including those who gave evidence at the Inquiry and those who provided written submissions. I have already dealt with many of the points raised in the main issues.
101. A number of concerns related to highway safety matters and traffic impact. I note that the proposal was supported by a Transport Assessment (TA) and Travel Plan which complements the TA. The TA confirms that suitable vehicular site accesses can be provided on to Hoopers Way and Caddywell Lane and that the design of the site would be in accordance with the principles of Manual for Streets. The location of the proposed development is accessible for pedestrians, cyclists and public transport users and would integrate well with the surrounding residential area. The level of traffic generated by the proposed development would not have a material impact on the local road network or on the capacity at nearby junctions.
102. The ability for the new dedicated school car park to come forward as a result of the residential development would also be a benefit to the development proposals as it would alleviate congestion around the primary school at the start and end of the school day which in turn would improve road safety for pupils. The development would not have an impact on the road safety conditions on the wider road network. Locally improvements to footway provision on Caddywell Lane and the realignment of Tylers Meadow would improve existing road safety in the vicinity of the site and nearby primary school. The development could also remove on street parking around the school crossing points.
103. There is no objection to the proposal from DCC the Highway Authority but given the level of interest in the matter a statement has been prepared by the transport consultants advising the Appellant which is included in the evidence before the Inquiry.⁶⁴ The statement responds to the issues raised by third parties on this topic and sets them in the context of a summary of matters such as the site access, traffic impact and the general accessibility of the site. The statement demonstrates that there are no additional considerations identified by third parties under this heading that weigh against the proposal.
104. The concerns about drainage relate to both foul and surface water drainage. In relation to the former, South West Water have no objection to the proposal. As far as surface water drainage is concerned, RfR3 refers to an alleged lack of information on this topic. Further discussions have since taken place between the **Appellant's drainage consultant and the Lead Local Flood Authority** and additional information has now been provided. A conditional approach is now proposed whereby a detailed drainage scheme would be prepared and submitted to the Local Planning Authority for approval and implemented before any dwellings are occupied. It was agreed at the Inquiry that RfR3 is no longer in dispute between the main parties and that the matter can be dealt with via appropriate planning conditions. I agree.

⁶⁴ See Appendix A to Mr Simkins' proof of evidence

105. As with many proposals for new housing, interested persons have expressed concerns about the pressure on various services and facilities such as education facilities and green infrastructure. The Planning Obligation that has been completed and signed between the Landowners/Appellant, TDC and DCC in relation to the appeal addresses all the legitimate requirements in this regard arising from the proposal that have been identified including education, transport and recreation provision. I have dealt with the Planning Obligation and how it would mitigate the impact of the proposed development in relation to specific projects in the preceding section.
106. In terms of landscape and environmental impact some of the concerns raised are similar to matters which I have already dealt with under the third main issue. The proposed residential development would not result in a detrimental impact on the character and appearance of the surrounding area. It would not require the stopping up or diversion of any public rights of way. I recognise that residential development would have some effects on residential visual amenity. However, the effect on private views is not a planning matter, unless they are unacceptable which these are not. In my view, the indicative plans do show adequate separation distances between properties and potential for further landscaping to soften boundaries.
107. Concerns have been expressed about the principle of development including **the site's** relationship with the defined development boundary for Great Torrington and what is described in one response as '**unplanned**' growth. I **have already dealt with the site's suitability for residential development** in the first main issue and there is no need to repeat that assessment here.

Planning Balance

108. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The housing land supply position triggers the operation of Policy ST21(2). The appeal proposal meets all the requirements of the policy in terms of suitability of the site and its ability to meet the 2 and 5 year shortfalls as well as the overall shortfall of completions over requirement.
109. The key development plan policies are ST01, ST06, ST07, ST08, ST21 and GTT set in the context of the general, positive approach in the NDTLP. The way these policies operate in this case effectively means that Policies ST06 and ST07 are overridden by Policy ST21 which specifically includes support for sites such as the appeal site where the ST21(2) test is failed. These policies, in combination, reflect the positive approach in the NDTLP towards sustainable development, the principle of housing requirements as minimum levels to be achieved and the importance of ensuring that at least those minimum levels are met in a situation where, from the point of adoption, the NDTLP was already well short of achieving them. In all the circumstances of this case I find no conflict with any of the aforementioned policies including Policies ST08 and GTT which deal with self-containment. I conclude that the appeal proposal accords with the development plan when read as a whole.
110. Paragraph 11c of the NPPF provides that proposals which accord with an up to date development plan should be approved without delay. There is clear evidence before me with regard to the suitability of the site, including in

relation to environmental considerations. The material considerations in this case do not begin to outweigh the primacy of the development plan. To the extent that there is some residual harm involved in relation to the **development of any 'green field' site which involves a change from** countryside to becoming part of a settlement, it does not change what is a clear case for approving the appeal proposal in these circumstances.

111. Even if Policy ST21 (2) is not engaged then paragraph 11d) of the NPPF would be engaged and the tilted balance would be in play because the Council cannot demonstrate a five year housing land supply as I have demonstrated under the second main issue. There are no footnote 6 policies which would provide a clear reason for refusing permission and which would prevent the tilted balance from being applied. I do not consider that the most important policies for determining the proposal are out-of-date in relation to the use of a 20% buffer. However, if it is determined that the buffer is indeed out of date and thus so are the most important policies which I have identified based on the **Council's** approach in paragraph 2.17 of the November 2019 Position Statement,⁶⁵ then paragraph 11d) would also be engaged on this basis. If paragraph 11 d) is engaged I consider that planning permission should be granted because the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.
112. There would be a number of benefits of the appeal scheme which are powerful material considerations and they indicate taking a decision otherwise than in accordance with the Plan. These benefits were not undermined to any degree during the Inquiry. The following benefits would arise: (a) much needed market housing and affordable housing; this is a very significant benefit of the scheme where there is a shortfall in housing delivery; (b) significant economic benefits from the housing scheme. Whilst I accept that any benefits arising out of the construction phase would be temporary, the economic benefits arising from the building of the houses and the spending power of residents would be significant. It is estimated that this spending would be around £4.75m in the local area each year; (c) the provision of the proposed car parking for the Bluecoat School and associated footpaths would be a significant benefit; this would address existing safety issues; (d) the enhancement of existing bus services would be a significant benefit to both residents and the wider community and (e) the contribution towards an all-weather recreation facility would be a significant benefit which would also provide a valuable additional facility available to the wider community.
113. The only harm that would need to be weighed in the balance against the appeal scheme is the alleged harm in relation to landscape and visual effects. Other concerns raised by interested persons have been dealt with and none of the concerns raised amount to objections of any substance.
114. Therefore, even if I had accepted that the proposal is contrary to Policies ST06, ST07, ST08 and GTT of the NDTLP and thereby reached a contrary conclusion in terms of the appeal proposals accordance with the development plan, then in the context of paragraph 11(d) of the NPPF, any harm which might be identified as arising from the appeal proposals comes nowhere near significantly and demonstrably outweighing the many and varied benefits of

⁶⁵ Doc 31

the appeal proposals. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed

Planning Conditions

115. I have considered the conditions suggested by the Council⁶⁶ in the light of the **advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the use of planning conditions**. I have made minor adjustments to the conditions in the interests of clarity. Condition 1 is the standard time limit condition and Condition 2 is necessary to determine the scope of the application and for the avoidance of doubt. Condition 3 is required to ensure the development provides an appropriate mix of dwelling sizes, types and tenures to contribute to a mixed and balanced community and to reflect local needs. Condition 4 is necessary to determine the scope of the application and for the avoidance of doubt.
116. Condition 5 is necessary to enable the development to be delivered in controlled phases as part of an overall phasing plan. I have added the words **"in writing" in the interests of clarity**. Condition 6 is necessary to protect the trees to be retained on the site from damage before and during the course of development. Condition 7, which relates to a Construction Method Statement, is necessary to minimise the impact of the works during construction of the development in the interests of highway safety and the free flow of traffic and to safeguard residential amenity. Condition 8, which relates to finished floor levels, is necessary in the interests of amenity and to ensure a satisfactory overall development. Condition 9 is necessary to minimise the amount of waste produced and promote sustainable methods of waste management. I have added **the words "in writing"** in the interests of clarity. Condition 10 is required to safeguard heritage assets of archaeological interest.
117. Condition 11 is necessary to ensure the interests of protected species on the site are maintained and to achieve biodiversity enhancement. Condition 12 is necessary in the interests of highway safety and to ensure that adequate information is available for the proper consideration of the detailed proposals. **I have added the words "in writing" in the interests of clarity**. Condition 13 is required to ensure the development does not cause increased flood risk or increased pollution to the water environment. Condition 14 is necessary to protect the amenities of neighbouring properties. Condition 15 is necessary to ensure that adequate access and associated facilities are available for the traffic attracted to the site. Condition 16 is necessary to control the number of dwellings accessed from a single access point in the interests of the safe and free flow of traffic. Condition 17 is necessary in the interests of public safety and to prevent damage to the highway.

Conclusion.

118. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

⁶⁶ LPA4

SCHEDULE OF PLANNING CONDITIONS

TIME LIMITS FOR COMMENCEMENT OF DEVELOPMENT

- 1) Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last reserved matters to be approved whichever is the later.

DETAILS AND DRAWINGS SUBJECT TO WHICH THE PLANNING PERMISSION IS GRANTED

- 2) For those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the approved Site Location plan ref AP01 and Access plans 2696.05 and 2696.14B and with regard to the principles set out in the Design and Access Statement prepared by Inspire Design dated January 2017.

PRE-COMMENCEMENT AND CONSTRUCTION PHASE CONDITIONS

- 3) Prior to commencement of the development, a proposed dwelling mix for the development shall be submitted to and agreed in writing by the Local Planning Authority. The proposed dwelling mix shall be in broad accordance with Table 114 of the North Devon and Torridge Housing and Economic Needs Assessment (2016), which requires the following: 1 bed – 5-10%; 2 bed – 30-35%; 3 bed – 40-45%; 4 bed - 15-20%. Any deviation from this mix shall be justified in accordance with Policy ST17(a). The reserved matters shall come forward in accordance with the agreed mix.
- 4) Prior to the commencement of a phase or combination of phases of the development details of the following matters for that phase or combination of phases (in respect of which approval is expressly reserved) shall be submitted to, and approved in writing by, the Local Planning Authority:
 - (a) the scale of the development;
 - (b) the layout of the development;
 - (c) the external appearance of the development;
 - (d) the landscaping of the site;

The development shall be carried out in accordance with the approved details.

- 5) Prior to the commencement of the development a phasing plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include the following:
 - (a) the intended number of market and affordable dwellings for each phase;
 - (b) the general locations and phasing of key infrastructure including, surface water drainage, green infrastructure, and access for pedestrians, cyclists, buses and vehicles;
 - (c) the timing and delivery of the road improvements and part closure of Burwood Lane and Caddywell Lane; and

(d) the timing and delivery of the footway improvements.

The development shall be carried out in accordance with the phasing plan.

- 6) Prior to the commencement of any development hereby granted planning permission and before any equipment, machinery or materials are brought onto the site for the purposes of the development hereby granted planning permission, site specific details of the specification and position of the fencing for the protection of any retained tree/group of trees, a tree constraints report and plan in accordance with the recommendations in BS5837:2012, together with a site specific arboricultural impact assessment and arboricultural method statement shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved and the fencing shall be erected prior to the commencement of any of the development hereby permitted and shall be maintained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
- details of points of access of vehicles associated with the construction of the site;
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and
 - a scheme for recycling/disposing of waste resulting from demolition and construction works.

The Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) Prior to commencement of each phase or combination of phases of the development hereby permitted a plan identifying the finished floor level of the proposed dwellings and the finished garden levels in relation to an identifiable datum point shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details.
- 9) A waste audit statement shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of each phase or combination of phases of the development. The development shall be carried out in accordance with the approved statement.

- 10) No development shall take place on any phase or combination of phases until the developer has secured the implementation of a programme of archaeological work for that phase or combination of phases in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme.
- 11) Prior to the commencement of development, a Construction and Ecological Management Plan (CEMP) to detail measures to ensure habitat and species protection during construction and a Landscape and Ecological Management Plan (LEMP) to detail how retained and proposed habitats will be managed in the long term based on the Ecological Assessment dated March 2019 prepared by Ecology Solutions Ltd, will be submitted to and approved in writing by the Local Planning Authority. The development will be implemented in accordance with the approved CEMP and LEMP.
- 12) Prior to the commencement of development on any phase or combination of phases, details of any proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be submitted to and approved in writing by the Local Planning Authority. The phase or combination of phases shall be implemented in accordance with the approved details.
- 13) No development hereby permitted shall commence on any phase or combination of phases until the following information in relation to that phase or those phases has been submitted to and approved in writing by the Local Planning Authority:
 - (a) soakaway test results in accordance with BRE 365;
 - (b) measured ground water levels to demonstrate that throughout the year the soakaway system would be in accordance with CIRIA SuDS Manual C753;
 - (c) evidence that there is a low risk of infiltrated water from soakaways re-emerging downslope from the site;
 - (d) a detailed drainage design based upon the approved Flood Risk Assessment and Drainage Strategy by Clive Onions Ltd dated 4 March 2019 (Version 4), and the results of the information submitted in relation to (a), (b) and (c) above;
 - (e) detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted; and
 - (f) proposals for the adoption and maintenance of the permanent surface water drainage system.

No building hereby permitted within each phase or combination of phases shall be occupied until the works approved under (a) - (f) above have been

implemented for that specific phase or phases in accordance with the approved details under (a) - (f).

- 14) Construction works shall not take place other than between 0700 and 1900hrs on Mondays to Fridays, Saturdays between 0800 and 1300hrs and at no time on Sundays and Bank Holidays.

PRE-OCCUPANCY CONDITIONS

- 15) The occupation of any dwelling in a phase or combination of phases shall not take place until the following works have been completed:
- (a) the spine road and any cul-de-sac carriageways serving the dwelling (including any vehicle turning heads, kerbing and highway drainage) constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - (b) the spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense constructed up to and including base course level;
 - (c) any cul-de-sac visibility splays have been laid out to their final level;
 - (d) the street lighting for the spine road, any cul-de-sac and footpaths serving the dwelling has been erected and is operational;
 - (e) the car parking and vehicular access to serve the dwelling; and
 - (f) the verge and service margin and vehicle crossing on the road frontage of the dwelling.
- 16) No more than eighty dwellings shall be occupied with access from Hoopers Way until the spine road through the site links to Caddywell Lane and no more than eighty dwellings shall be occupied with access from Caddywell Lane until the spine road through the site links to Hoopers Way.

POST OCCUPANCY MONITORING AND MANAGEMENT

- 17) Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Peter Wadsley (of Counsel) Instructed by the Solicitor to TDC

He called

Peter Radmall MA BPhil CMLI Chartered Landscape Architect

Mike Muston BA (Hons) MPhil
MRTPI Director, Muston Planning

Helen Smith BA MTP MRTPI Development Manager Team Leader TDC

Beth Sachs MA (Hons) MRTPI Planning Policy Officer TDC

FOR THE APPELLANT

Satnam Choongh (of Counsel) Instructed by Beechcroft Land Ltd

He called

Corinna Demmar BA (Hons)
Dip LA (Hons) CMLI Senior Director (Landscape) RPS

Nigel Jacobs BA (Hons) MRTPI Operations Director, Intelligent Land

Christopher Simkins BA (Hons)
MRTPI Director, Planning and Strategy, RPS

Andrew Kenyon BEng FCHIT Director, Peter Evans Partnership

Clive Onions BSc, CEng, FICE,
FCIWEM, MStructE, MCIHT Director Clive Onions Ltd

FOR DEVON COUNTY COUNCIL

Helen Montgomery MA (Hons) Flood and Coastal Risk Engineer
C.WEM, MCIWEM

FOR NORTH DEVON COUNCIL

Andrew Austen BA (Hons), Planning Policy Team Leader
MPhil, MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ1 Notification Letter

INQ2 Letters of representations

ADDITIONAL DOCUMENTS SUBMITTED BY THE APPELLANT

APP1 Letter to Ian Thomas at Beechcroft Land Ltd 10.01.2020

- APP2 Email from DCC Landscape Officer re AGLV Supplementary Paper 29.11.2019
- APP3 Email from Stephen Reed to Helen Smith 22.05.2019
- APP4 Email exchange Helen Smith and Chris Simkins 09.12.2019
- APP5 Extract from Northern Devon Housing and Employment Study 2014
- APP6 Appeal and costs decision APP/G2815/W/19/3232099
- APP7 North Devon & Torridge Infrastructure Delivery Plan 2016
- APP8 Paul Newman New Homes Ltd v Secretary of State EWHC 2367 (Admin), 2019 WL 04259661
- APP9 NPPG Planning Obligations para 004 extract
- APP10 Housing Land Supply SoCG 30.01.2020
- APP11 Closing Submissions on behalf of the Appellant

ADDITIONAL DOCUMENTS SUBMITTED BY THE LPA

- LPA1 CIL Compliance Schedule 13.2.2020
- LPA2 s.106 Agreement 13.2.2020
- LPA3 Proposed site visit and vehicular route
- LPA4 Draft Conditions (as revised) 31.01.2020
- LPA5 **North Devon and Torridge District Councils' Core Strategy Issue and Options** November 2007
- LPA6 Great Torrington Commons Management Plan 2019 -2024
- LPA7 Numbers of dwelling completions in Torrington
- LPA8 Homes for Sale in Barnstaple Devon – Tawcroft (Persimmon)
- LPA9 Homes for Sale in Barnstaple Devon – Larkbear (Pickards)
- LPA10 Homes England Funding Contract, Ilfracombe
- LPA11 Babergh appeal re deliverability definition 2019 EWCA Civ 2200 Case No. C1/2019/0140
- LPA12 Beech Grove (Chichester Development)
- LPA13 Daddon Hill Farm Northam (Linden)
- LPA14 Email re Land west of Parklands, South Molton (SoCG site 18) 27.01.2020
- LPA15 Email re Clovelly Road and Tadworthy Road, Northam (SoCG site 11 and 50) 28.01.2020
- LPA16 Email re South Molton Strategic Western Extension (SoCG site 52) 17.12.2019
- LPA17 DCC LLFA Drainage Statement 29.01.2020
- LPA18 **Torridge and North Devon Councils' Housing and Economic Needs Assessment** Torridge and North Devon Councils May 2016
- LPA19 Closing submissions on behalf of the Council

INTERESTED PERSONS' DOCUMENTS

- IP1 Statement by Alan G Crawley, Torridge Commons Conservator
- IP2 Statement by Cheryl Cottle-Hunkin, District and Town Councillor for Great Torrington
- IP3 Statement by John Insull, Town Councillor
- IP4 Statement by James Shuttleworth, Local Resident
- IP5 Statement by Adrian Freeland, Local Resident
- IP6 Statement by Jill Hewell, Local Resident

EP11

Appeal Decision

Inquiry Held on 27-30 April, 4-7, 11 and 12 May 2021

Site visit made on 10 May 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/Q3115/W/20/3265861

Little Sparrows, Sonning Common, Oxfordshire RG4 9NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Senior Living (Sonning Common) Limited and Investfront Ltd against the decision of South Oxfordshire District Council.
 - The application Ref P19/S4576/O, dated 12 December 2019, was refused by notice dated 30 June 2020.
 - The development proposed is a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas.
-

Decision

1. The appeal is allowed and planning permission is granted for a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas at Little Sparrows, Sonning Common, in accordance with the terms of the application, Ref P19/S4576/O, dated 12 December 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. At the Inquiry an application for a partial award of costs was made by South Oxfordshire District Council (the Council) against the Appellant. This is the subject of a separate Decision.
3. The appeal follows the refusal of the Council to grant planning permission to a hybrid planning application for development at Blounts Court Road, Sonning Common. The planning application was determined under delegated powers

on 30 June 2020 and there were seven reasons for refusal (RfR) set out in the decision notice.¹

4. The application was supported by a number of plans, reports, and technical information. A full list of the plans on which the appeal is to be determined is set out at Appendix 4 of SoCG 4 Planning² which was agreed by the main parties. A full list of all documents forming part of the consideration of this appeal is set out at Appendix 3 of SoCG 4 which was agreed by the parties.³
5. I held a Case Management Conference (CMC) on 4 March 2021. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. In the weeks following the CMC the main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters was minimised at the Inquiry. The following Statements of Common Ground were submitted: SoCG 1 Landscape; SoCG 2 Transport; SoCG 3 Viability; SoCG 4 Planning and SoCG 5 Five Year Land Supply.
6. At the Inquiry a Planning Obligation was submitted.⁴ The Planning Obligation is made by an Agreement between Investfront Limited, Lloyds Bank PLC, Senior Living (Sonning Common) Limited, South Oxfordshire District Council and Oxfordshire County Council under s106 of the TCPA 1990. The Planning Obligation secures, amongst other matters, an off-site financial contribution in lieu of on-site affordable housing provision of £7,510,350. The s106 Agreement is signed and dated 26 May 2021 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement⁵ and an Addendum to the CIL Statement⁶ were also submitted in support of the Planning Obligation. I return to the Planning Obligation later in this decision.
7. In relation to RfR7 (affordable housing), following discussions on viability, the Appellant reached agreement with the Council on the payment of an off-site financial contribution towards affordable housing that is secured through a s106 Agreement. Therefore, it is agreed that having regard to development viability, the appeal proposal would provide an adequate level of affordable housing provision and this matter is no longer in dispute.
8. The application was screened for Environmental Impact Assessment (EIA) prior to submission of the application and the Council determined that EIA was not required on 6 November 2019. I agree with the negative screening that was undertaken by the Council.

Main Issues

9. In the light of the above I consider the main issues are:

(i) *Whether the proposed development would be in accordance with the Council's strategy for the delivery of older persons accommodation throughout the district as set out in the development plan;*

¹ See Appendix A in CD H.1

² CD H.5

³ Ibid

⁴ INQ APP11

⁵ INQ LPA7

⁶ INQ LPA8

- (ii) *The impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common;*
- (iii) *The effect of the design of the proposed development on the character and appearance of the village;*
- (iv) *Whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.*
- (v) *Whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB.*

Reasons

Planning Policy context

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:
 - The South Oxfordshire Local Plan 2035 (Adopted 2020) (SOLP); and
 - The Sonning Common Neighbourhood Plan (2016) (SCNP).
11. The determination of the planning application, the subject of this appeal, took place against the background of a different development plan framework to that now in place. Although the SOLP has been subsequently adopted, the SCNP was based upon the Core Strategy which has been withdrawn, including the out of date housing requirements derived from the old Regional Strategy, significantly reducing the weight that can be afforded to it.
12. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in SoCG 4⁷ and INQ LPA6 provides an agreed schedule of the replacement policies for those cited in the decision notice.
13. The SCNP is currently under review. An initial public consultation was held between 29 February - 23 March 2020 but the Plan has not at this stage progressed further and there is as yet no agreed timetable. No weight can be given to that review.
14. SoCG 4 sets out the sections of the NPPF which are relevant in this case.⁸ It also sets out a list of Supplementary Planning Documents and Guidance⁹ which should be considered in this appeal and specific parts of the National Planning Practice Guidance (PPG)¹⁰ which are considered relevant.
15. The appeal site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). The Chilterns AONB is a 'valued landscape' in respect of paragraph 170 of the NPPF. AONBs, along with National Parks and the Broads, benefit from the highest status of protection in relation to conserving and

⁷ Paragraph 3.3

⁸ Paragraph 3.5

⁹ Paragraph 3.6

¹⁰ Paragraph 3.7

enhancing landscape and scenic beauty. Section 85 of the Countryside and Rights of Way Act 2000 (CROW) places a duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB. Paragraph 172 of the NPPF **requires "great weight" to be given to those matters in decision making.** It is common ground that the appeal proposal involves major development within the AONB and as such should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

16. Paragraph 172 of the NPPF requires particular consideration to be given to: (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and (c) any detrimental effects on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. I deal with these matters under the main issues but at the outset it is important to address whether or not the Council has a five year supply of housing.

Five Year Housing Land Supply

17. Paragraph 73 of the NPPF sets the requirement for Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient **to provide a minimum of five years' worth of housing against their housing requirement** set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.
18. Since 2018, Oxfordshire only needed to demonstrate a three-year supply of housing. However, on 25 March 2021 the Minister of State for Housing confirmed that a five-year housing land supply was again required. The Council produced a Housing Land Supply Interim Statement (IHLS)¹¹ setting out their initial position for the period 1 April 2020 to the 1 April 2025 which asserts a 5.35-year supply. However, at the Inquiry, the Council conceded that the supply had fallen on its own case to 5.08 years. The five-year supply requirement is a minimum requirement and it needs to be deliverable. The definition of deliverable is contained in Annex 2 to the NPPF.
19. The most up-to-date position as regards the difference between the main parties is summarised in the agreed SoCG 5. There is no disagreement as to the housing need (900 dpa) or the time period for the assessment (2020/21 to 2024/25). The five-year requirement including an agreed shortfall of 922 dwellings and 5% buffer is 5,693. The difference between the main parties comes down to **the Council's position that there is a 5.08 year supply of deliverable housing sites and the Appellant's assertion that it is instead a 4.21-year supply.** Table 3 of SoCG 5 contains a schedule of 15 disputed sites. I have assessed these disputed sites in the context of the test of deliverability set out in Annex 2 of the NPPF. This specific guidance indicates which sites should be included within the five-year supply.
20. I have also had regard to the PPG advice published on 22 July 2019 on **'Housing supply and delivery' including the section that provides guidance on**

¹¹ CD: K.32 South Oxfordshire Local Plan Housing Land Supply Interim Statement 2021

‘What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking.’ The PPG is clear on what is required:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions.”

This advice indicates to me the **expectation that ‘clear evidence’ must be** something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not **in itself constitute ‘clear evidence’**. **Developers are financially incentivised** to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.
22. It is not necessary for me to go through all of the disputed sites in Table 3 of SoCG 5. In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position. For example, the Council suggests that 100 dwellings would be delivered at Site 1561: Land to the south of Newham Manor, Crowmarsh Gifford whereas the Appellant says 100 dwellings should be deducted. The comments set out by the Appellant for this site in Table 3 are compelling. Similarly, at Site 1009: Land to the north east of Didcot, the Council suggests 152 dwellings would be delivered whereas the Appellant says 152 dwellings should be deducted. The Appellant provides cogent evidence to support its case. Furthermore, at Site 1418: Land at Wheatley Campus, the Council agrees a deduction but only of 62 dwellings whereas the Appellant says the deduction should be 230. There is no clear evidence before me that would suggest that these sites or indeed most of the disputed sites would deliver the completions suggested by the Council in the next five years.
23. **Overall, I consider that the Appellant’s assessment of supply** set out in Table 2 of SoCG 5 is more realistic taking into account the test of deliverability set out in Appendix 2 to the NPPF and the PPG advice published on 22 July 2019. **I am satisfied that the Appellant’s approach is consistent with national policy**, case law, appeal decisions and informed by current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times.
24. My conclusion on housing land supply is that there are a number of sites that **together significantly reduce the Council’s five-year housing land supply**. Many of the sites that the Council includes within the supply cannot be justified applying the current definition of deliverable. Following discussions between the main parties, deductions from the IHLS figure of 6,093 dwellings, have been identified and summarised at Table 1 of SoCG 5 and the impact which this has on the five year housing land supply is summarised at Table 2.

25. I consider that the **Council's** supply figure should be reduced to reflect the **Appellant's position set out** in Table 2 of SoCG 5. The **Council's** supply figure of 5,785 dwellings in Table 2 should be reduced to give a more robust total supply figure of 4,789 dwellings for the five year period. Although the Council maintains there is a 5.08 year supply, the evidence that is before me indicates a housing land supply equivalent to 4.21 years. The implications of not having a five-year housing land supply are significant. Not only is there a shortfall, but it also means most important policies for determining the application are automatically out-of-date. The Council accepts that means all the policies in the SOLP and the SCNP are out-of-date. It also means if the paragraph 172 tests in the NPPF are satisfied then the tilted balance applies.

First Issue - whether the proposed development would be in accordance with the Council's strategy for the delivery of older persons accommodation throughout the district as set out in the development plan;

The Need for Extra Care

26. The Council argues that the appeal proposal would be contrary to Policies H1 and H13 of the SOLP and due to its location in the AONB, outside but next to Sonning Common, brings into play Policies ENV1 and Policy H4 of the SOLP, and Policies ENV1, ENV2, H1, H2 and H2a of the SCNP. It is also claimed that the provision of 133 units of specialist housing for the elderly would be inconsistent with the proportionate growth in general housing planned for Sonning Common at both levels of the development plan.
27. Clearly the need for specialist accommodation for older people is recognised in the SOLP, which promotes the identification of suitable sites in the neighbourhood planning process and the inclusion of specialist accommodation on strategic sites,¹² and favours specialist housing for the elderly over conventional housing on unallocated sites.¹³ Although extra care housing is referred to in the supporting text,¹⁴ the SOLP does not prescribe particular levels of provision by type of accommodation, which allows flexibility in provision, adapting to what is an evolving sector. I note that no attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. No quantum for extra care accommodation is set out in the SOLP. Although Table 4f of the SOLP shows an outstanding requirement for 96 units over the plan period for Sonning Common it makes no reference to the needs arising from within existing households arising from their ageing.
28. Quantification of the need for open market extra care housing is not straightforward, in part because whether an owner-occupier moves to extra care housing is ultimately a matter of choice, in part because there is no prescribed or generally accepted methodology. The Government very clearly supports the identification and provision of extra care accommodation as a recognised form of specialist accommodation for the elderly.¹⁵ Moreover, it is important to bear in mind that the NPPF definition¹⁶ of '**older people**' does not

¹² See CD: C.4 Policy H13(2), (3)

¹³ See CD: C.4 Policy H1(3)(ii)

¹⁴ See CD: C.4 paragraph 4.70

¹⁵ See paragraphs 59 and 61 of the NPPF

¹⁶ See Annex 2

exclusively mean the very frail elderly rather it embraces a wide range of people in that category both in terms of a very wide age range and significant variation in issues surrounding matters like mobility and general health.

29. Within the PPG on 'Housing for older and disabled people' it states that:¹⁷

"The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6 million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Therefore, an understanding of how the ageing population affects housing needs is something to be considered from the early stages of plan-making through to decision-taking"

30. The Government plainly recognises that the need is 'critical' and the importance of 'choice' and addressing 'changing needs'. Offering greater choice means a greater range of options being offered to people in later life and that the range of options should at the very least include the categories the Government recognises in its guidance. This includes extra care. The PPG also advises what 'range of needs should be addressed'. It recognises the diverse range of needs that exists and states that:¹⁸

"For plan-making purposes, strategic policy-making authorities will need to determine the needs of people who will be approaching or reaching retirement over the plan period, as well as the existing population of older people".

31. Plainly, when compared with Government guidance, the development plan is left wanting in terms of addressing a need for extra care. There is no reference in Policy STRAT 1 to the PPG insofar as assessing the needs of older people. There is no reference in Policy STRAT 2 to the accommodation needs of those local residents who will make up more than a quarter of the total population of South Oxfordshire by 2035. Policy H13 in the SOLP expressly deals with specialist housing for older people. It covers all forms of specialist housing for older people, but it is completely generic as to provision. No attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. The needs of all older people are simply lumped together. Nor is there any engagement with the market constraints and viability considerations relating to specialist accommodation for older people evidenced by Mr Garside during the Inquiry.
32. Paragraph 3 of Policy H13 suggests that provision be made within strategic allocations. The strategic sites are mostly focused around Oxford or in the more northern part of the District. Only one such strategic site has planning permission – Wheatley Campus but no extra care is proposed. The Council want to see it on Ladygrove East. That is not a strategic allocation in the SOLP. But in any event the Council is seeking affordable extra care there and the developer (Bloor Homes) is resisting it. The Council conceded that the strategic sites do not really feature at all in its five-year housing land supply calculations. The Council also accepted that landowners and developers would achieve a better return if they build market houses.

¹⁷ See paragraph 001 Reference ID: 63-001-20190626

¹⁸ See paragraph 003 Reference ID: 63-003-20190626

33. Reference is made to encouraging provision through the neighbourhood planning process.¹⁹ However, without a more definitive district wide requirement it would be difficult for neighbourhood plan groups to assess the levels of provision required, which will vary; and neighbourhood plan groups generally lack the expertise to fully appreciate the requirements and the different housing models available and their viability and practicality.²⁰
34. **The Appellant's primary evidence on need is given by** Mr Appleton, the principal author of two key publications in this area: *More Choice: Greater Voice (2008)*²¹ and *Housing in Later Life (2012)*.²² Both of these publications seek to address how best to quantify the need for specialist housing for the elderly. They advocate a method which is based on the population and other nationally available data to look at the characteristics of an LPA area.
35. The PPG highlights the need to begin with the age profile of the population. I note that the proportions of people aged 65 and over within South Oxfordshire District currently sits above the national average.²³ Furthermore, there is presently a population of 15,000 in South Oxfordshire District, who are aged 75 years or older which is forecast to increase to 21,100 by 2035.²⁴
36. In terms of care needs, 4,019 people in this population have difficulty managing at least one mobility activity on their own at present, set to rise to 6,046 by 2035.²⁵ They are overwhelmingly owner occupiers, with 81.23% of people aged 75-84 and 75.25% aged 85 and over owning their own home compared with 13.74% and 17.42% respectively Council or social rented.²⁶ Importantly, South Oxfordshire sits significantly above the national trend toward owner occupation as the dominant tenure for older people.
37. For the Appellant it is argued that there is a significant under-supply of retirement housing for leasehold sale to respond to the levels of owner-occupation among older people in the District.²⁷ There is a total of approximately 1,641 units of specialist accommodation for older people. However, there is a very marked disparity in the availability of specialised housing for older homeowners compared with the supply available to older people in other tenures.²⁸ The current rate of provision favours those in tenures other than home ownership with nearly four times as many units available to them in sheltered, retirement and extra care housing than are currently available for their peers who are homeowners.²⁹ At present, it is submitted that there are 120 units of affordable extra care housing and 113 units of market extra care housing.³⁰
38. Mr Appleton sets out a provision rate for private extra care of 30 per 1,000 of the 75 and over population in the District based on a total provision of 45 extra care units per 1,000 (4.5%) across both the affordable and private sectors, but split on a ratio of one third for social rented and two thirds for

¹⁹ See CD: C.4 Policy H13 paragraph 2

²⁰ POE of Simon James paragraph 5.1.11

²¹ CD: K.44

²² CD: K.45

²³ See APP 2.3 Nigel Appleton Section 6

²⁴ See APP 2.3 Nigel Appleton Table One

²⁵ See APP 2.3 Nigel Appleton Table Five

²⁶ See APP 2.3 Nigel Appleton Table Twelve

²⁷ See APP 2.3 Nigel Appleton paragraph 9.2

²⁸ See APP 2.3 Nigel Appleton Table Fourteen

²⁹ See APP 2.3 Nigel Appleton paragraphs 9.7-9.9

³⁰ See APP 2.3 Nigel Appleton Table Fourteen

sale. This takes into consideration the research in "**More Choice: Greater Voice**" and revisions in "*Housing in Later Life*". I note that the 45 units per 1,000 is to be divided as suggested in order to bring supply into closer alignment with tenure choice among older people.³¹ That is 450 units now. Projecting forward, an indicative provision of 633 units of market extra care would be required by 2035.³² The Council refers to the **Oxfordshire's Market Position Statement**³³ which assumes a lower need figure for extra care housing but the focus there appears to be on social rented extra care housing. The Council also suggests that the SHMA³⁴ evidence is to be preferred. However, I note that it does not identify figures for extra care, nor does it relate to the present PPG.³⁵ In my view, **Mr Appleton's** provision rate is preferred and the need for more private extra care is overwhelming.

39. At present even a very modest level of provision of 30 units per 1,000 in the 75 and over population seems unlikely in South Oxfordshire District, especially as the SOLP now requires affordable housing to be provided, when previously it was not required. No other extra care market proposals are coming forward. The Rectory Homes proposal at Thame, refused on appeal for not providing an affordable contribution has been resubmitted but the s106 Agreement is not signed. Nor is Rectory Homes Ltd a provider of care.
40. In my view, there is a strong case that **Mr Appleton's** 45 per 1,000 overall, with 30 per 1,000 to market extra care, should be far more ambitious given not only the true tenure split in the District but also what it could mean for the ability to contribute towards addressing the housing crisis. Mrs Smith conceded that the figure of 30 per 1,000 was hardly ambitious and, if anything, was underplaying the scale of the potential need.
41. Turning to supply, with only 113 units of market extra care units of extra care housing existing in South Oxfordshire and a current need of 450 units this leaves a shortfall of 337. As to the existing pipeline, Mr Appleton analysed the same at Figure Two of his Needs Report, which was updated at INQ APP12. The total 'pipeline' supply of extra care not already included in **Mr Appleton's** tabulation of current supply are the proposed 110 units in Didcot and Wallingford, and the 65 units proposed at Lower Shiplake. This gives a total gain of 175 units. However, both Wallingford and Didcot sites have been confirmed as affordable extra care. The Council did not dispute the 175 figure and Mrs Smith accepted that she did not know if the 110 units in Didcot and Wallingford would be affordable or market. I consider that only 65 units can reasonably be considered as pipeline.
42. The pipeline needs to be set against the current shortfall of 337 which still leaves 162 units even if Didcot and Wallingford are included and 272 if they are not. That is a substantial unmet need now which will only further climb and in respect of which there is nothing in the pipeline and no prospect of any strategic allocated site delivering in the five year housing land supply.
43. There is plainly a very limited supply of extra care housing for market sale (leasehold) in South Oxfordshire. Adding further concern, it is of note that

³¹ See APP 2.3 Nigel Appleton paragraph 11.6

³² See APP 2.3 Nigel Appleton Table Seventeen

³³ See CD: K.27 Market Position Statement for Oxfordshire in relation to Care Provision and Extra Care Housing Supplement assumes a need for 25 units of extra care housing for every 1,000 of the population aged 75+ page 9

³⁴ See CD: 14 HOUS5 Oxfordshire Strategic Housing Market Assessment April 2014

³⁵ Ibid

from 2012 to date just 133 units have been delivered despite there being in the same period permissions for a net gain of 447 additional Care Home beds. This runs completely contrary to the policy set out in the Market Position Statement of reducing reliance on Care Home beds and increasing capacity in extra care. The case for more market extra care provision now is very clear. Furthermore, the need is set only to grow.

44. **The Council sought to undermine the Appellant's need case with reference to** earlier data from Housing LIN and the @SHOP tool. This on-line tool is highlighted in the PPG as a basis for calculating need. But the fact is it only provides a figure based on existing prevalence and then seeks to project that forward with a proportion increase based on the increase in the 75+ age group in the District. This is not a measure of need.
45. The Council provided a list of specialist accommodation for older people³⁶ most of which is not market extra care, but mostly affordable extra care. Oxfordshire County Council has two sites with market extra care, but those schemes are in Banbury and Witney and not in the District.³⁷ In short, the pipeline adds up to very little. I consider there is hardly any market extra care housing in the District. The stark fact is that choice is largely unavailable.

Policy Compliance

46. Plainly the proposed development would make a substantial contribution toward the provision of a more adequate level of provision for older homeowners looking for an environment in which their changing needs could be met. The fact that the need is proposed to be met at Sonning Common seems entirely appropriate. Sonning Common is one of just 12 larger villages where a need for extra care provision has been identified in the SCNP, and where there is the oldest 65 and over population in the County. The SCNP expresses support for a small scale development of extra care housing in Policy H2a but no site is allocated for such use. The Sonning Common Parish Council (SCPC) accepted that SCNP policies referred to in the RFR are out of date due to a lack of five year housing land supply. That includes Policies ENV1, ENV2 and H1, which is only expressed as a minimum.
47. Policy H13 (1) in the SOLP gives support to extra care on unallocated sites. This adds to the weight that can be given to the need case. Policy H13 is the key policy in respect of specialist accommodation for older people. Though the appeal site is not a strategic site, nor allocated in the SCNP, Policy H13 does not itself require it to be. I have already discussed the difficulties associated with any of the strategic sites coming forward with market extra care either within the five year housing land supply period or at all.
48. Policy H13 (1) is clear that encouragement will be given to developments in **locations "with good access to public transport and local facilities."** The Council accepted that public transport for staff on the site would be more likely to take the form of bus services and they would perhaps have no difficulty walking. For residents there is a choice and it depends on their mobility. I saw that most of the site is flat. It does have a gradual gradient to the west then a steeper gradient close to Widmore Lane. The presence of a hairpin in the proposed design is to deal with the gradient which requires a

³⁶ See Nicola Smith's Appendix 1

³⁷ CD: K.27 page 5

longer path to accommodate people with disabilities. I note that a minibus service is proposed which would take residents to the local supermarket. With regard to other trips, for example to the post office or to other facilities, residents could walk or take the minibus. Importantly, the core building has all facilities centrally. Residents could cook in their premises and meals would be provided on site. There would also be a small convenience shop on site and staff would be on hand to not only care for but also to assist people. Garden maintenance would be provided and there would be a wellbeing centre to help **people's health and fitness**. Overall, the facilities would take care of a considerable amount of day-to-day needs. In my view all of this would comprise **"good access to public transport and local facilities."**

49. With regard to matters of principle I accept that Policies ENV1 and STRAT 1 (ix) of the SOLP affords protection to the AONB and in the case of major development, it will only be permitted in exceptional circumstances and where it can be demonstrated to be in the public interest. I give these matters detailed consideration in other issues. The proposal fully accords with Policy H1 3ii) of the SOLP. With regard to Policy H4 of the SOLP, although the timeframe for review of the SCNP does not run out until December 2021 that does not bring the SCNP back into date. Whilst the review of the SCNP has commenced, it is at its earliest stage and no weight can be given to it. I conclude on the first issue that the appeal proposal would conflict with some but would comply with other elements of **the Council's strategy for the delivery of older persons accommodation** throughout the district.

Second issue - the impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common

50. SoCG 1 Landscape has been agreed between the parties and addresses landscape and visual matters. The appeal site is within the Chilterns AONB which is a **'valued landscape'** in respect of **paragraph 170 of the NPPF**. The Chilterns AONB Management Plan 2019-2024³⁸ defines the 'special qualities' of the AONB and the most relevant to the appeal site and its context are summarised at paragraph 3.5 of SoCG 1.
51. In essence, the Council, supported by the SCPC, the Chilterns Conservation Board and others, consider that the proposed development would create a prominent and incongruous intrusion **into Sonning Common's valued rural** setting, relate poorly to the village, and cause material harm to the landscape character of the AONB. It is also claimed that the proposal would not conserve or enhance the landscape and scenic beauty of the AONB and would fail to protect its special qualities.³⁹ The policy context at the time of the decision notice referenced policies in the South Oxfordshire Local Plan 2011 which is now superseded by the adopted policies in the SOLP.⁴⁰ Policies ENV1 and ENV2 of the SCNP are also relevant. I note the illustrative Masterplan,⁴¹ the LVIA and the Landscape Appendix⁴² submitted by the Appellant.

³⁸ CD: F4 pages 10 and 11

³⁹ See RfR 2

⁴⁰ See LPA INQ6 which sets out the relevant SOLP policies including STRAT1 (ix), ENV1 and ENV5 and Design policies DES1, DES2, DES3 and DES5

⁴¹ See Appendix 4.3.1 of James Atkin Drawing reference 1618_L_01_01 Rev3

⁴² CD: A.9 and CD A.10 **Landscape and Visual Impact Assessment and Landscape Appendix**

52. To address these points, it is necessary to understand what the special qualities of the Chilterns AONB are and the extent to which those special qualities relate to the appeal site and its context. From the evidence that is before me and from my site visit, I do not consider the appeal site or its local landscape context to be representative of the special qualities as set out in the Chilterns AONB Management Plan. Where the appeal site does exhibit some such qualities, they are generic. In all other respects, they are entirely absent.
53. Planning policy and statute give equal protection to all parts of the AONB. However, it would be unrealistic to expect the appeal site and its immediate context to share all or even most of these special qualities. It is important to have a balanced interpretation of how such special qualities relate. To that **end, Mr Atkin's Table 1**⁴³ summarises that relationship, drawing together judgements on the landscape and the extent to which the appeal site is characteristic, or otherwise, of the AONB. **In summary, Mr Atkin's analysis** demonstrates that the appeal site does not reflect the majority of the special qualities and, where there is a connection, the association is limited. It seems to me that the appeal site is more typical of an agricultural landscape that is commonplace around many settlement fringes. Plainly the appeal site and its local landscape context is less sensitive than other parts of the AONB.
54. The core characteristic of the appeal site and its context, and the most relevant of the special qualities to it, is the extensive mosaic of farmland with tree and woodland cover. However, this is probably the broadest and most **generic of the special qualities acting as a 'catch all' for the extensive areas of farmland** across the area. Other parts of the AONB are more distinct. The ancient woodland of Slade's Wood is located off site, outside of the AONB designation, though it does form part of its setting. As to extensive common land, this is not representative of the appeal site. In its local landscape context, Widmore Pond is designated as common land but is not an **'extensive' area contrasting with other parts of the AONB.**
55. At my site visit I saw that the appeal site, being directly adjacent to the relatively modern settlement fringe of Sonning Common, detracts from any potential tranquillity. This is particularly so due to the neighbouring JMTC complex and associated car parking. It is common ground that the JMTC is 'institutional in scale'. In terms of ancient routes, there is no formal access to the appeal site. In the local landscape context, the closest rights of way are the public footpaths to the north-west and east both of which give access to the wider landscape to the north and east of Sonning Common where the characteristics of the AONB are more readily apparent.
56. The Council agreed that new development can be accommodated in the AONB and as a matter of principle can be an integral component. Indeed, the SCNP allocates development within its boundaries. I saw that the AONB in this location already contains a significant amount of built development. That contrasts significantly with the deep, rural area of countryside within the AONB some of which is located to the north east of the appeal site where the road turns east down the valley bottom heading to Henley-on-Thames. There, there is no settlement or village, no industrial buildings or surface car parks

⁴³ See James Atkin's Appendix 4.1 pages 18-20

with 100 plus spaces. It is simply deep countryside with very limited urban development and is very attractive. That cannot be said about the appeal site.

57. Having considered how the special qualities of the AONB relate to the appeal site, I now consider the landscape character of it. The appeal site is partly located on an area of plateau between two valleys, within a landscape identified in the South Oxfordshire Landscape Character Assessment (2017)⁴⁴ as semi-enclosed dip slope, which in turn forms part of the broader Chilterns Plateau with Valleys Landscape Character Area (LCA10). The eastern part of the site is located above the 95m contour on the plateau area.⁴⁵ The southern and western parts of the site fall towards a shallow valley which contains neighbouring parts of Sonning Common. At a further distance to the north is a deeper valley which separates Sonning Common from Rotherfield Peppard.
58. The Landscape Assessment for the Local Plan 2033 for the semi enclosed dip slope LCT states:

"...this part of the Chilterns dip slope has a surprisingly uniform character, despite its irregular pattern of plateaux and valleys and its mosaic of farmland and woodland. This complexity is a consistent and distinctive feature of the area, and the most obvious differences in landscape character are between the very intimate, enclosed wooded landscapes and those which have a more open structure and character."

It is clear to me that there is a difference between the parts of the AONB in the dry valley and those on the plateaus.

59. What is distinctive about this part of the landscape and relevant to the landscape of the appeal site and its context is the uniformity across a larger scale area of the landscape characterised by a complex mosaic of farmland and woodland. It is this complex mosaic at the larger scale which is more closely aligned with the special qualities of the Chilterns AONB and not the **appeal site itself. It isn't the loss of a part of this mosaic that is important**, which in the case of the appeal site would be a relatively small agricultural piece of the mosaic; rather, it is the implications for the wider mosaic and whether that would be disrupted in terms of a reduction of its scale, or would result in the creation of a disbalance between particular parts of the mosaic.
60. SCPC referred to the Sonning Common Character Assessment and Design Statement 2013.⁴⁶ I accept that this formed part of the evidence base to the SCNP, but it appears to still be in draft form only many years later. Its main purpose was to provide comparative comment on sites identified for potential future development limited to only the shortlisted sites. It does not address the wider appeal site. I have also taken into account the Oxfordshire Historic Landscape Characterisation Project⁴⁷ and the various landscape capacity assessments cited by Mr Jeffcock that have looked at the appeal site.
61. As I perceive it, Sonning Common is very much part of the local landscape context, just as much as the adjacent agricultural land and the wider mosaic of the AONB. The appeal site performs a role of a brief transition and gateway between the suburban and rural environments. In its local context, the settlement fringes of Sonning Common, including the residential areas across the valley and on the plateau to the west and south are influential in terms of

⁴⁴ CD: D.23, section 15.

⁴⁵ See John Jeffcock's Appendix 1, Figs 2, 7, 8

⁴⁶ CD: C.7

⁴⁷ CD: I.5

the local landscape character, as is the prominent built form of the JMTC to the north. Adjacent to the appeal site is the JMTC car park which further erodes **the sense of more 'remote' or rural countryside. To the south the** settlement extends some distance along Peppard Road and there is a clear experience of entering the suburban character of the village, long before the appeal site is perceptible. There are specific locations where the settlement edge is less apparent notably along Blounts Court Road from the east and in this direction the more rural aspect of the site is more dominant.

62. **The Council's LCA draws a very clear distinction between the character of** development on the plateau and the character found in the dry valleys.⁴⁸ The landscape strategy set out there suggests that development on the plateau is in keeping whereas into the valley is a negative thing. It seems clear to me that Sonning Common has grown up developmentally on two plateaus either side of the dry valley.
63. It is common ground that, like any development anywhere, physical impacts on the landscape fabric will be limited to those which occur within the appeal site itself. However, landscape character impacts and the consequent effects would not be limited to the appeal site. It is agreed that there are not likely to be significant effects on the wider landscape or visual effects further afield than a localised area set out in the SoCG 1.⁴⁹
64. Although there would be localised losses of vegetation due to the access off Blounts Court Road and the proposed pedestrian connection to Widmore Lane, the proposed development would largely involve the loss of open agricultural land and the construction in its place the built development of the appeal proposals. On the most elevated part of the site, there would be a substantial, cruciform core building, 2.5 storeys (about 11.2m)⁵⁰ in height, with a footprint of approximately 3,900m², and four apartment blocks with ridge heights of between 10.3m and 11.2m, the largest two of which would have footprints of about 550m² each. However, the recent application submitted for the JMTC shows that the present buildings making up the complex are between 8.7m and 10.6m depending on ground levels with block 4 up to nearly 11m in height. I accept that there would be a physical loss to the mosaic, but in character terms, the appeal site is not essential to its character and the built elements of the scheme would be consistent with the settlement fringe.
65. There would be potential impacts arising from the 15m woodland belt along the southern and eastern edges of the appeal site. This would be beneficial in terms of moderating the effect of the development. It would also provide a green infrastructure link between Slade's Wood and the green infrastructure network in the surrounding landscape. This would have a positive impact on the 'wooded' aspects of the mosaic. The woodland belt would create a further **'layer' in the landscape which** would physically and visually contain the site.
66. The overall consequence of this is that there will be a highly localised impact **on the 'mosaic' in terms of agricultural** land use, but not to a point where, given the scale of what makes this distinct, the mosaic is disrupted or undermined. At a local and wider scale, this would not constitute 'harm' to the Chilterns AONB. Only a small part of the mosaic would be impacted, and this

⁴⁸ CD: D18 page 572 which deals with Sonning Common at 9.10

⁴⁹ CD: H.02 SoCG 1 Landscape paragraphs 3.21-3.22

⁵⁰ See John Jeffcock's POE paragraph 4.3.3.

would not alter the overall character of the wider mosaic or the LCT. Plainly such limited impacts would **not cause 'material harm' to the landscape** character of the AONB, nor would it conflict with the aims of protecting its special qualities. The appeal site would, in being development on a plateau, be in keeping with the landscape character.

67. I accept that the appeal site and the immediate landscape context within the Chilterns AONB form part of a valued landscape⁵¹ this is primarily on the basis of the landscape designation and related less to the demonstrable physical attributes of the appeal site.⁵² **Although the Appellant's LVIA determines landscape value to be 'high' with some localised variations, I consider that the appeal site in its local landscape context is of 'medium to high' value taking into consideration that it is in the AONB but also the site's own merits.** There is, frankly, a considerable difference between this area and more typical, characteristic parts of the AONB.
68. As to landscape susceptibility, this can be appropriately described as 'low to **medium' in the appeal site's local landscape.** This is a medium scale enclosure that has capacity to accommodate some form of development across the majority of the site. The settlement of Sonning Common provides some reference and context for development and the presence of the JMTC in this part of the AONB reduces landscape susceptibility to new development. The **landscape sensitivity is appropriately judged as 'medium' with the AONB** designation having a high sensitivity. Mr Jeffcock considers that the appeal site has a high landscape value and high sensitivity to change. However, his assessment is overstated. In my view the appeal site has a medium to high value, and low to medium susceptibility with medium sensitivity overall.
69. The appeal site is located on the very fringe of the AONB, and Sonning Common is excluded from it. This is not a core part of the Chilterns AONB and its special qualities are largely absent. Of relevance is the mosaic of wooded farmland that characterises much of the plateau and dip slope. The appeal proposals would result in a change to this characteristic at a very localised level, with the loss of an open agricultural field to built development but balanced with the introduction of further woodland and green infrastructure. This would not disrupt, or unduly influence, the mosaic. I agree that the **'slight to moderate adverse' effect on landscape character** would not represent a significant impact in respect of the Chilterns AONB.⁵³
70. As for visual effects, these would differ depending on the viewer and the viewpoint. The landscape witnesses provided a number of example viewpoints and I carried out an extensive site visit with the parties to see these and other views for myself. I have also taken into account the ZTV⁵⁴ and LVIA information provided by the Appellant.
71. SoCG 1 Landscape records that the physical impacts of the proposed development would be limited to the appeal site, and that consequent impacts on landscape character would be limited to a relatively small number of areas including viewpoints to the south (the route of the B481 Peppard Road); to the south west (Sonning Common village e.g. Grove Road); to the north

⁵¹ Within the meaning of paragraph 170(a) of the NPPF

⁵² See James Atkin's Table 2 POE pages 27-28

⁵³ See James Atkin's POE page 33 paragraph 6.48

⁵⁴ Zone of theoretical visibility

(footpath 331/16/20) close to the southern edge of Rotherfield Peppard); to the west (the settlement edge of Sonning Common) and to the east and north east (the routes of public right of way 350/11/20 and 350/10/10). Outside of these areas it was agreed there would not likely be any significant effects on the wider landscape or on visual receptors further afield.⁵⁵

72. In terms of visual amenity, the evidence demonstrates that potential views of the appeal proposals would be limited to a small envelope, largely related to the immediate context of the appeal site and not extending further into the Chilterns AONB landscape. This limited visibility reduces the perception of change to landscape character. The ZTV demonstrates that, aside from some locations very close to, or immediately adjacent to the appeal site, potential visibility from the wider landscape (and AONB) is limited. In my view this accords with **the landscape character guidance which refers to the 'semi-enclosed dip slope' as having a 'strong structure of woods and hedgerows' which provide 'visual containment and results in moderate to low intervisibility'**. This strong structure of woods and hedgerows provides containment in the landscape.
73. What is clear, is that only a small number of nearby locations would have direct views of the appeal proposals. This includes a very short section of Peppard Road, short sections of public footpaths to the east (350/11/20 and 350/11/40) and the approach to the settlement along Blounts Court Road. In each of these instances, impacts could be moderated by appropriate landscape works and particularly the inclusion of the woodland belt. The contained nature of the appeal site and the limited extent of landscape effects mean that the overall character of the semi-enclosed dip slope LCT would not be fundamentally altered and the effects on landscape character at this scale would not be significant. Plainly, the appeal proposals would not give rise to significant visual effects overall; either in the local landscape context of Sonning Common or in respect of the scenic quality of the Chilterns AONB.
74. **The most relevant assessment is that of 'Year 15' once the tree planting proposals have had the opportunity to thrive.** Those proposals are a specific and positive part of the proposed development which would deliver additional environmental functions to that of visual screening. It is common ground that the planting would be significant. It is reasonable to expect that the growth of native species would reach good heights in the medium term and mature heights that are comparable to the existing trees and woodland in the area. There would be glimpses of the built development through the perimeter planting. However, it would provide a substantial screen in the long term and help to integrate the appeal proposals into the landscape particularly when viewed from the east and from the south.
75. For the above reasons I conclude on this issue that the proposed development would have some localised landscape and visual effects, but these would not result in unacceptable impacts on the AONB or the landscape setting of Sonning Common. As such, in respect of this issue I consider the appeal proposal would conflict with Policies STRAT 1 (ix) and ENV1 of the SOLP together with Policy ENV1 of the SCNP. However, for the reasons set out above those adverse effects would be limited. I shall consider this further in the planning balance.

⁵⁵ CD: H.2 SoCG 1 Landscape paragraphs 3.21-3.22

Third Issue - the effect of the design of the proposed development on the character and appearance of the village

76. **The Council's concerns about the** design of the proposed development are based on RfR4 and are supported by the SCPC. In summary these are: (i) the development would not integrate with the village by reason of scale, massing, layout and character; (ii) it would result in a dominant and intrusive form of development having a significant urbanising effect on the settlement edge; and (iii) the layout and design would result in poor amenity for residents by virtue of the lack of access to private amenity space and publicly accessible green space, an overdominance of car parking and limited space for tree planting. I address each of these concerns in turn.
77. The main parties agreed a section on design within SoCG 4 Planning.⁵⁶ Amongst other matters it is agreed that: the detailed layout (Phase 1) is the proposed layout for that part of the site; the proposed masterplan is provided to demonstrate how the development could be laid out to respond to the physical and technical constraints and opportunities of the site; the layout for Phase 2 will be subject to future reserved matters (appearance, landscaping, **layout and scale**) and remain in the Council's control; the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed; and the extent of existing tree retention and the selection of proposed plant species, grass, hedge and shrub planting is agreed.
78. It is also noteworthy that policies within RfR4 relate in the main to the previous South Oxfordshire Core Strategy 2012 and South Oxfordshire Local Plan 2011. The corresponding policies are set out at INQ LPA6. Policy D1 of the SCNP 2016, the South Oxfordshire Design Guide⁵⁷ and the NPPF (in particular paragraphs 127, 130 and 131) also apply.
79. I turn first to integration with the village in terms of scale, massing, layout and character. The Council and the SCPC are concerned that the scale and layout of the proposed development are being driven by operational requirements and the business model of the Appellant. Reference is made to the large apartment blocks and the village core which it is claimed are at odds with the more modest scale of development in Sonning Common. However, I consider it is important at the outset to understand the existing context and character of Sonning Common. At my site visit I saw that Sonning Common is not the archetypal Chilterns Village, and it clearly lies outside the AONB. It **was developed in a more planned manner with the character being 'plotlands' and later infill housing termed 'estates'**.
80. The local vernacular consists of a mix of building types, but the immediate neighbouring existing development is comprised of the estates typology - Churchill Crescent, Pond End Road and the northern edge of Widmore Lane. The existing context has a range of design components that help create its character. In particular, I note that Sonning Common: is primarily 2 storeys but with elements of 2.5 storeys; is primarily domestic in scale; has predominantly traditional architecture; is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape; and has occasional larger built form such as the school or JMTC. Furthermore,

⁵⁶ CD: H.5 SoCG 4 Planning Section 6

⁵⁷ CD: C.8

Sonning Common has: brick walls; painted rendering on walls; clay roof tiles; chimneys; and a mix of gables, hipped roofs and porches.

81. The Design and Access Statement (DAS)⁵⁸ describes the appeal proposals as domestic in scale and character. I accept that the scheme is largely domestic in form and with detailing consistent with residential houses in the area.
82. In terms of *height*, the proposed buildings would reflect the heights of buildings within Sonning Common. Both plotlands and estate buildings include two storey buildings and two storey buildings with roof rooms. The proposed apartment buildings would be two storeys with the Village Core rising to two and a half storeys in places. The Village Core has accommodation in the roof space to keep the overall ridge height low. The height to the ridgeline from ground level of the Village Core Centre building is up to 2.5 storeys dropping to single storey on the eastern side. This must be seen in the context of the height of the adjacent JMTC, typically equivalent to 3 storeys, and groups of 2.5 storey dwellings on the northern side of Blounts Court Road to the west of the site. Most of the proposed development would be two storeys in height as is the overwhelming majority of built development in Sonning Common.
83. As to *massing*, the initial indicative sketch elevation demonstrates that the apartments and the Village Core would have the appearance of semi-detached buildings or groups of buildings combined into short terraces with a varying roofline which are reflective of the existing residential buildings in Sonning Common.⁵⁹ The massing of the apartments is derived from a variety of footprint depths which, when formed into larger blocks, allows for the scale and mass to be broken down into roof elements with simple breaks in the roofline. Appropriate equal roof pitches would give each apartment building an elegant scale. There would be elements of hipped roofs, and chimneys incorporated into the roof plane. The apartment buildings would have balconies, single and double gables further breaking down the overall mass. The Village Core would have accommodation in the roof space and the roof planes would be broken down with larger single gables, smaller double gables with a central gutter and small dormer windows.
84. In my view the *layout* of the proposed development would reflect the way **existing 'plotlands' and 'estates' buildings in Sonning Common are** orientated, with the arrangement of buildings fronting the main vehicular route with active frontages. A number of apartments would be arranged around the Village Core. Buildings fronting Blounts Court Road would be positioned so that they would replicate the linear street scenes typical of development within Sonning Common.⁶⁰ I note that the proposed building line would be setback some 15m-20m from the road edge to retain an element of openness along the streetscape allowing boundaries to be defined by planting and hard landscaping. This would reflect the layout of the 'plotlands' buildings within Sonning Common. Buildings along the main access route and internal streets would similarly front the street with setbacks from 6m-15m allowing boundaries to be defined by planting and hard landscaping. The setback for 'estate' residential buildings ranges from about 4m-14m. In my view, the proposals would be in a similar range.

⁵⁸ CD: A.31

⁵⁹ See Mr Carr's Appendix UD4

⁶⁰ See CD: C7 Sonning Common Character Assessment and Design Statement

85. The Council and SCPC argued that the appeal proposal could be smaller in scale. However, it was accepted that greater economies in scale could be achieved with larger retirement village developments with extensive communal facilities. It is noteworthy that the Appellant is proposing a development which is half the size of the optimum.⁶¹
86. With regard to *character* it is clear that the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed, as recorded in the SoCG 4. In any event, the proposed development would accord with the local vernacular which consists of a mix of building types found within the key character areas. In summary, Sonning Common has predominantly traditional architecture and the proposed development would have traditional architectural detailing; it is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape and the proposed development would have similarly substantial planting in the streetscape as well as proposed and existing large scale tree planting creating a tree lined backdrop. Sonning Common has also occasional larger built form such as the school or JMTC and the proposed development has a Village Core.
87. It is fair to say that Sonning Common has an eclectic architecture which is quite conventionally suburban. There is a significant amount of 1970s housing. It has a fairly bland architecture, evidenced by the images in the Sonning Common Character Assessment and Design Statement.⁶² Given that the site is within the Chilterns AONB, the design should not just duplicate Sonning Common, but use materials such as flint panels and dark stained boarding and design components that respond to the AONB setting.
88. In my view, the architecture would reflect a varied composition with gables, projections and porches. The proposed elevations would respect the traditional patterns, style and scale of buildings and the fenestration would be inspired by traditional Chiltern building with a solid wall area balanced with the window and door openings, relatively pitched roofs with a ridgeline, use of 'L' and 'T' building shapes, chimneys and prominent flint panels.
89. It is clear to me that the proposed new buildings would plainly add to the sense of place and local character **and would 'belong' to the Chilterns**. The proposed development would also create a soft edge to the countryside⁶³ and would not 'turn its back' on it; particularly given the lack of any rear garden fences defining the edge of the settlement.
90. I recognise that this is a hybrid application and there is therefore an outline element to the proposals. However, to demonstrate their commitment to provide the same level of detailing and materials as presently indicated, the Appellant has produced a Design Commitment Statement.⁶⁴ Importantly, this could be conditioned to provide reassurance and an additional way of ensuring that the future reserved matters keep to the quality required in this setting.
91. The Council contended that the proposal would be a dominant and intrusive form of development and it would have an urbanising effect on the settlement edge. I disagree. The apartments and cottages proposed as part of the appeal scheme would be largely consistent with a domestic form and would be very

⁶¹ See INQ LPA 2 page 13.

⁶² See CD: C7 page 16

⁶³ See CD: K4 Chilterns Building Design Guide principle item 3.16 page 25

⁶⁴ See Mr Carr's Appendix UD7

similar in size and form to houses in Sonning Common and the wider AONB. It is logical to site the Village Core building where it is, on a predominately level area, avoiding any large man-made cuttings and embankments to facilitate it. Plainly having the core building on a level area is appropriate for residents in their later years of life who would want facilities to be very easy to access.

92. The NPPF emphasises the importance of making efficient use of land.⁶⁵ Clearly where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. I accept that it is imperative that sites such as the appeal site are optimised when developed. However, optimising does not mean fitting in as much as you can regardless, but it does mean using land efficiently. As this would be an apartment based development then I accept that it would have a greater density than a conventional residential scheme.
93. The Council argued that the proposal would have an urbanising effect. However, the proposed development would be very different to an urban character. There would be a significant landscape setting breaking up the built form and the countryside edge, when read in the context of the proposed planting, would be assimilated in townscape terms. Much has been made of the AONB designation in which the appeal site falls; but this does not mean preservation without any change. The proposed development would in many **ways be read as part of the evolution of the area's character.**⁶⁶ In my view the proposed development would create an appropriate designed edge to the settlement and an appropriate robust transition with a managed landscape that is a better edge than the back gardens adjoining the settlement boundary that can be found at the settlement edge around parts of Sonning Common.
94. **I turn now to the Council's concerns that the layout and design would result in** poor amenity for residents by virtue of a lack of access to private amenity space. It is common ground that in policy terms, there is no private amenity requirement prescribed for a retirement community care village. Nonetheless, the proposed development would provide a total of 1,300 msq of private amenity space⁶⁷ comprising: private balconies totalling 0.03 hectare; and directly accessible private landscape and terraces totalling 0.1 hectare.
95. Over and above the private amenity space there would be an extensive amount of publicly accessible green space provided. Again, I note that there is no policy requirement for a retirement community care village yet there would be: landscaped space amongst and between the built form (including foot and cycleways) totalling 1.7 hectares; and a native tree belt and woodland buffer totalling 1 hectare. Combined with the private amenity space there would be 2.83 hectares of amenity land which would be ample given that the site totals 4.5 hectares. That is 62.8% of the appeal site and equivalent to 212.78 msq for each of the 133 units.
96. All of the above is in the context of extra care developments being very different to general housing. I accept that residents do not want the work of managing their own garden. In my view, the layout of the development would

⁶⁵ NPPF paragraph 123.

⁶⁶ See Michael Carr's POE paragraph 7.20

⁶⁷ See Appendix UD5 of Michael Carr's POE

be safe, attractive and inclusive with plenty of natural surveillance of the landscaped spaces which is important given the age restriction of the development and why people would choose to live there.

97. The appeal proposals include access to landscaped spaces and woodland opening up an area that would otherwise be inaccessible private land. This maximises the public benefit of the scheme and would positively contribute to the health and well-being of both residents and the community, to which weight is given in the NPPF as part of the social objective. The Council agreed that there may well be community integration and intergenerational activity through the facilities on site.
98. With regard to car parking, the appeal proposals have been designed to avoid what would otherwise be unplanned **'ad hoc' parking through a formal** provision. This is not in one place, rather the design would disperse the necessary parking across the proposed development in a series of clusters. These would be set back and visibly screened from the main routes through the development and would avoid harsh urban parking courts. The proposed 15m woodland belt is a relevant consideration. The proposed planting would buffer and screen views of parked cars and both soften and integrate the parking areas so that they are read as designed landscaped courts. The Council raised concerns about the space available for tree planting. However, in my view there would be ample space on site to accommodate the tree **planting the final details of which would be under the Council's control.**
99. Overall, I consider the proposal would be in broad accordance with the SOLP policies including DES1, DES2, DES3, DES4 and DES5, SCNP policies D1 and D1a and other design guidance and the NPPF. I conclude on the third issue there would be no reason to dismiss the appeal due to the effect of the design of the proposed development on the character and appearance of the village.

Fourth Issue - whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development

100. This issue relates to the absence of a completed s106 Agreement to secure infrastructure to meet the needs of the development. At the time of the decision, agreement could not be reached with the Council on the requirements for a planning obligation. Since then, agreement has been reached and a s106 Agreement was submitted at the Inquiry. I have considered the s106 Agreement in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.
101. The NPPF indicates that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.⁶⁸ Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.

⁶⁸ NPPF paragraph 54

102. The **Council's need for additional infrastructure and services is set out in** relevant SOLP policies which include H9 Affordable housing; INF1 Infrastructure; DES 1 Delivering High Quality Development; TRANS2 Promoting Sustainable Transport and Accessibility; TRANS4: Transport Assessments, Transport Statements and Travel Plans; and TRANS5: Consideration of Development Proposals. The Council's **SPD (2016) is also** relevant. Based on the SPD and the relevant policies, the appeal proposal should provide: (i) a financial contribution towards local primary health care (£73,735); (ii) a recycling and waste contribution (£24,738); (iii) a street naming contribution (£2,977); (iv) a District S106 monitoring fee (£2,686); (v) an affordable housing contribution (£7,510,350); (vi) a public transport services contribution (£117,000); (vii) a travel plan monitoring contribution (£2,040); and (viii) a County S106 monitoring fee (£1,500).
103. The primary care contribution is directly related to the development because it results from the additional pressure on local health services as a result of the future residents. It is fair and reasonable as the amount has been calculated based on the number of future residents. The recycling and waste contribution is necessary for the development to be served by waste infrastructure and the calculation is directly related to the bins needed for this development. It is necessary for the development to be served by street naming plates and the calculation is directly related to the name plates needed for this development. The completion of a planning obligation requires the Council to administer and monitor those obligations. The monitoring fee contribution is necessary to **cover the Council's costs and is directly related to the nature of the obligation.**
104. The proposal will deliver affordable housing which is required under Policy H9 of the SOLP. It will do so via a contribution in lieu of on-site provision. The s106 Agreement secures the payment of £7,510,350 to be paid by the owners. A financial contribution towards off-site affordable housing is necessary to equate with a 40% affordable housing provision under Policy H9. It is directly related to the development and fairly and reasonably related in scale and kind. The financial contribution has been calculated based on the open market value of a unit to be delivered on the site.⁶⁹ The s106 Agreement requires the total affordable housing contribution to be used towards the provision of off-site affordable housing within the District.
105. The relevant policies which support the transport contributions are set out in the CIL Compliance Statement.⁷⁰ A contribution is required to provide an improved bus service (service 25) for residents, visitors and staff associated with the proposed development as an appropriate and viable alternative to the use of private cars and to promote travel by public transport. The contribution required would be used towards increasing the frequency of the existing service operating between Sonning Common and Reading to every 30 minutes between 0600 - 2030, Monday to Saturday and an hourly service in the evenings (up to 2300) and on Sundays (0800-1800). The contribution is directly related to the number of residential units but excludes the proposed 16 high care units, as these residents are unlikely to use public transport. A

⁶⁹ INQ LPA7 provides the methodology for the calculation of the commuted sums based on the open market value of a unit to be delivered on the site.

⁷⁰ INQ LPA7 NPPF paragraphs 102, 103, 108 and 111; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 1 Policy and Overall Strategy Updated 2016 Policy 3 and Policy 34; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 2 Bus & Rapid Transit Strategy (2016) paragraphs 91, 93-95.

travel plan monitoring fee is required to monitor the implementation of the travel plan and an administration and monitoring fee is required to monitor the planning obligation.

106. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision. I conclude on the fourth issue that the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.

Fifth Issue - whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB

107. There is no dispute that the appeal scheme would be a major development in the AONB. The tests relating to allowing such development are set out clearly in paragraph 172 of the NPPF. The relevant factors which must be considered are then listed in paragraph 172 a) to c) but it is not an exhaustive list. Great weight must be given to conserving and enhancing landscape and scenic beauty in AONBs and planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

The need for the development and the impact on the local economy

108. I have already discussed the need for the development in detail under the first issue. That discussion is not repeated in detail here, but it is plainly relevant to paragraph 172 a) of the NPPF. There is an immediate unmet need for extra care market housing. This arises not from some ambitious target for extra care. The target for need suggested by Mr Appleton is in fact very modest. It is just 4.5% of the **District's population of people 75 years of age and over**. It arises because there is hardly any of it available. There are only two schemes which have been built offering 113 units. The only future supply which is available is the market extra care that would be provided at Lower Shiplake for 65 units. Retirement Villages has now sold that site and want a larger site. Whether the Lower Shiplake scheme gets built is therefore uncertain. But even with it the supply of extra care that is available is only 178 units.
109. This against a need, based on a modest aspiration of 4.5% - that is 450 units across the whole District for an overall population of 15,000 in this age category, gives rise to an immediate shortfall of 272. The figure is 337 if the Lower Shiplake proposal is excluded. The stark fact is there is hardly any choice or to put it another way choice is largely unavailable.
110. I am in no doubt that the development of 133 units is needed. Firstly, it is needed to address the immediate shortfall in the five year housing land supply in the District which is only equivalent to some 4.21 years. Secondly, it is needed in this District where at present a population of 15,000 who are aged 75 years or older is forecast to increase to 21,100 by 2035. The demographic evidence indicates a 'critical' need for extra care housing in the District. In this case, the proposed development should be of sufficient size to support the communal facilities that are necessary to ensure an effective operation.

111. Thirdly, it is important to recognise the fact that extra care accommodation, together with all other forms of specialist housing for older people can assist in 'freeing up' existing family and other housing by allowing them to 'right size' by moving to more appropriate accommodation. This type of specialist housing could significantly contribute towards the easing of the present housing crisis in this District where under occupancy amongst older households is greater than for England as a whole. The sale of the 133 units in the appeal proposals would release 133 family houses of three bedrooms or more.⁷¹ The appeal scheme would be likely to free up 39 family dwellings locally but it could be as high as 64.⁷² Significant weight can be given to this.
112. Fourthly, the health and well-being benefits of the appeal proposal should also be recognised and given significant weight. Such benefits to elderly people are entirely obvious. I accept that such health and care benefits apply and also that they are separate from housing delivery. The benefits specialist housing for older people can bring include addressing concerns about suitable supervision, frailty, care, assistance, recreation, loneliness and isolation.
113. I do not consider the impact of refusing the proposed development would be seriously damaging to the local economy, there is no clear evidence to that effect. There is no requirement that has to be demonstrated. However, I do accept that the proposal would deliver economic benefits to the local economy and jobs as well.⁷³ The Appellant has also proposed a local employment and procurement condition which I accept is plainly relevant.⁷⁴ I am satisfied that there is a need for the development and that it is in the public interest.

The cost and scope of developing elsewhere or meeting the need in another way

114. With regard to paragraph 172 b) of the NPPF, **the Council's case is that with** Policy H1 and H13 the need for specialised housing for the elderly can be met outside of the AONB. The Council **refers to the Oxford County Council's Market** Position Statement Extra Care Housing Supplement 2019-2022 and to the SHMA. However, the Council does not quantify a need for extra care, albeit the SHMA does recognize it as a category of need and distinguishes between market and affordable extra care housing.⁷⁵ The Council also suggests that **the need can be met in people's homes** and that needs can be met by 2035. In my view, there is a specific need for extra care provision and market extra care housing. The needs which have been identified are modest and the idea that they be met at home is misplaced. The most relevant need is the immediate need and **Mr Appleton's** evidence demonstrates what this is.
115. I note that at both the application and appeal stages the Appellant relied upon a sequential assessment of alternative sites to show a lack of suitable sites. The Council questioned this assessment but never really suggested any alternative sites. At the Inquiry reference was made to 8 extra care sites in **Mrs Smith's Appendix 1. However,** all of those sites have been addressed by Mr Appleton and that information was updated during the Inquiry to reveal that there were no sites with planning permission in the pipeline other than

⁷¹ Paragraph 6.24 of Roland Bolton's POE

⁷² Paragraph 6.27 of Roland Bolton's POE

⁷³ See CD: A.6 Economic Benefits Assessment Report, it is calculated that operation of the site would provide up to circa 70 jobs (FTE). This does not include construction jobs, which are assessed to be of the order of 108 over a period of 4 years, although in practice this maybe higher dependent upon individual project needs.

⁷⁴ See *Verdin v SSCLG* [2016] EWHC

⁷⁵ See CD: D.14 Table 6 page 25

Lower Shiplake which is now uncertain. Therefore, it seems to me that the **Council's own evidence supports the Appellant on the lack of alternatives.**

116. Moreover, when the Appellant persuaded the landowner to agree to pay the full affordable housing contribution, that significantly strengthened the **Appellant's case** in respect of paragraph 172 b). That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP now requires for C2 uses. Mrs Smith accepted that there are no other sites in the District with planning permission for extra care market housing. The problem is a combination of land economics and SOLP Policy H9 which requires affordable housing on extra care housing schemes. Given this context the appeal proposal does connote rarity and uniqueness.
117. Extra care housing undoubtedly operates in a very different market. Mr Garside provided detailed evidence to the Inquiry how the market for land operates to the detriment of extra care operators. Extra care housing providers cannot compete with house builders or with other providers of specialist housing for older people because of the build costs, the level of the communal facilities and the additional sale costs including vacant property costs. The communal facilities must be provided before any units can be sold and sales tend to be slower.⁷⁶ However, I accept that extra care schemes can charge a premium for the specialist accommodation provided and also benefit from an income from deferred management fees.
118. It seems to me that these factors, all mean that age restricted developments and in particular extra care communities are less viable than traditional housing schemes. Ultimately, age restricted developers are less able to pay the same price for land as residential developers and it is much harder for age restricted developers, and in particular those seeking to deliver extra care, to secure sites for development and meet the housing needs they aim to supply.⁷⁷ Viability is clearly a relevant factor which supports the case under paragraph 172 b) of the NPPF. There is also a strong case for the appeal scheme given the lack of alternative sites in the light of Policy H9 of the SOLP.
119. I note that the SOLP does not allocate any sites for extra care housing, unlike for example in Central Bedfordshire. I also note that the need for extra care housing is recognised in the SCNP, which supports, as was agreed, extra care housing on unallocated sites due to Policy H2a. I am satisfied that the **Appellant's need could not be met elsewhere or in any other way and that it would be in the public interest for this to happen on the appeal site.**

Detrimental effect on Environmental, Landscape and Recreation opportunities, and the extent to which they could be moderated.

120. This factor has been considered in the second issue above. That discussion is not repeated here but it is plainly relevant to paragraph 172 c). Suffice it to say that I have concluded that there would only be localised landscape and visual effects on the AONB. These limited impacts would not cause material harm to the landscape character of the AONB, nor would they conflict with the aims of protecting its special qualities. I have concluded there would be localised landscape and visual effects on the AONB that could be moderated.

⁷⁶ See section 4 of Richard Garside's POE

⁷⁷ See paragraph 4.65 of Richard Garside's POE

Other Benefits

121. The scheme would deliver other benefits. In my view, these can also form part of the exceptional circumstances and public interest. It is the collective benefits and harms which are relevant to paragraph 172 of the NPPF. Both Mr James and Mr Garnett gave evidence as to numerous other significant benefits, individually and cumulatively, which should be weighed in favour of the proposals. These include contributing to the overall supply of housing which is under five-years; savings in public expenditure (NHS and adult care);⁷⁸ creating new employment and other economic investment (construction and operation);⁷⁹ providing new facilities and services further reinforcing the role and function of Sonning Common; and additional net revenues from Council tax and new homes bonus receipt. Mrs Smith accepted the economic benefits and that bringing facilities to the area, particularly for the older population would be a benefit. It was also accepted that there could be benefits in supporting existing facilities in that residents of Inspired Village sites having the option to support those businesses if they wanted to. No good reason was provided by the Council for discounting the benefits evidence by Mr James or Mr Garnett. The social and economic benefits are matters to which I attribute significant weight. There is a very strong case on exceptional circumstances and public benefits here.

Conclusion

122. Section 85 of the CROW Act 2000 seeks to conserve and enhance the natural beauty of an AONB and paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB. This is not the same as requiring that every development proposal engenders enhancement. Indeed, if that were the case it is difficult to see how major development in an AONB could ever be permitted. It is clearly a matter of balance, but in undertaking that exercise the NPPF makes clear that conserving and enhancing the designated resource is a matter of great weight. In this case I have given great weight to conserving and enhancing landscape and natural beauty of the AONB. The need for the development and the conclusion that there are presently no alternatives outside the designated area are also matters of substantial importance in the public interest. The social and economic benefits attract significant weight. Overall, the benefits would outweigh the localised landscape and visual effects to the AONB. For these reasons I conclude on this issue that exceptional circumstances are demonstrated and that the development would be in the public interest.

Other Matters

123. I have taken into account all other matters raised including the concerns raised by the SCPC, the Rotherfield Peppard Parish Council, the representations made by interested persons including those who gave evidence at the Inquiry and those who provided written submissions. I have already dealt with many of the points raised in the main issues.

124. The SCPC and others objected to the proposed development in the context of the neighbourhood planning process. However, the review of the SCNP has

⁷⁸ See paragraphs 6.16 to 6.33, PoE of Stuart Garnett. See also CD: K7, CD: K8 (Appendix 1 at page 20 onwards), CD: K12 (pages 2-3), and CD: K30 (pages 6, 12, 13, 20 and 24-26 in particular).

⁷⁹ See paragraphs 6.10 to 6.15, PoE of Stuart Garnett

been ongoing since around 2018 but there are no concrete proposals. It is suggested that the proposal is not small scale. However, site SON2 is in fact 3.3 hectares and broadly of the same scale.⁸⁰ The SCNP expressly supports extra care housing at Policy H2a albeit no site is allocated. The SCNP policies are now out of date because of the lack of a five year housing land supply to which I attach significant weight. The concerns about the neighbouring planning process are not sufficient to warrant dismissing this appeal.

125. A number of interested persons cited concerns over impacts on local services **in particular the doctor's surgery and parking capacity within the centre of Sonning Common**. With respect to impacts on local health services, Mr **Garnett's evidence provides details of both operational efficiencies and** associated social benefits of extra care, which includes the financial benefits arising from savings to the NHS and social care. I consider that extra care housing benefits elderly people in terms of health and wellbeing. The secure community environment and sense of independence can reduce social isolation and encourage greater fitness and healthy lifestyles. It is reasonable to assume that these factors would likely result in a lower number of visits to the GP, reduced hospital admissions and overall savings to the NHS. This is borne out in the research submitted to the Inquiry.
126. A number of objectors raised concerns over parking capacity within the centre of Sonning Common. However, the appeal site lies within an acceptable walking distance of a number of the facilities within the village centre. Trip generation associated with the proposals would not have a materially negative impact on the road network. I note also that a Travel Plan has been submitted in relation to the proposals.⁸¹ I consider that this matter is capable of being secured by means of an appropriately worded planning condition. In addition **to the 'supported transport provision' that would be provided for residents, it** would be reasonable to expect that a number of residents would use the existing footpath links to access the village centre.
127. A number of objectors also raised concerns over transport safety and the sufficiency of parking on the appeal site. I note that a number of matters are agreed between the Council and the highway authority in SoCG2 Transport. A new vehicular access would be constructed to the east of the existing access on Blounts Court Road. The proposed scheme would provide for off-site highway improvements comprising works associated with the proposed site access, proposed works to pedestrian facilities along the site frontage either side of the site access, widening of the carriageway and a gateway feature along Blounts Court Road, and provision of a zebra crossing on Widmore Lane. Provision would also be made within the scheme for 93 car and 58 cycle parking spaces (12 visitor, 10 staff and 36 resident) that would be provided in relation to the full aspect of the development. Notwithstanding the original RfR5 the highway authority raises no objection to the proposal subject to the agreed conditions and the contributions contained within the s106 Agreement. In my view the concerns raised about transport issues would not provide a reason for rejection of this appeal.
128. A number of objections relate to the impact on local ecology. The appeal site contains habitats of a lower biodiversity value, which are common and

⁸⁰ See CD: K.18 page 580

⁸¹ See CD: A.8

widespread throughout the District. The appeal scheme provides for a net increase in biodiversity across the site, specifically an increase of 51% for the detailed element. The Ecological Impact Assessment⁸² was accepted by the Council as demonstrating net benefit⁸³ and I attach significant weight to this.

129. At the Inquiry reference was made to numerous appeal decisions. I have taken these into account as appropriate in coming to my decision in this case.

Planning Balance

130. I have concluded that the appeal proposals would be a major development in the AONB where exceptional circumstances apply, and which would be in the public interest. I have given great weight to conserving and enhancing landscape and scenic beauty in the AONB. In terms of paragraph 172 a) of the NPPF I am in no doubt that there is a need this development of 133 units to address the immediate shortfall in the five year housing land supply; to address the critical need for extra care housing in the District; to assist in the freeing up of family housing within South Oxfordshire and to provide the health and well-being benefits to elderly people.

131. The Council argued that with Policy H1 and Policy H13 the need for specialist housing for older people could be met outside the AONB; could be met in **people's homes and that needs could be met by 2035. However, I** have concluded that there is a specific and immediate need for extra care provision and market extra care housing. From the up-to-date evidence provided at the Inquiry it is clear to me that there are no sites with planning permission in the pipeline other than the Lower Shiplake site which is now uncertain. The case under paragraph 172 b) has been met. That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP Policy H9 now requires for C2 uses. In my view extra care housing cannot compete with housebuilders or even other forms of specialist housing for older people because of the build cost, the level of communal facilities and additional sale costs including vacant property costs.

132. In terms of paragraph 172 c) I have concluded there would be localised landscape and visual effects, but these would be relatively small. Only a limited part of the mosaic would be impacted, and this would not alter the overall character of the wider mosaic of the LCT. Plainly such limited impacts would not cause material harm to the landscape character of the AONB, nor would it conflict with the aims of protecting its special qualities. In terms of visual impact, only a small number of nearby locations would have direct views of the appeal proposals where glimpses of the development would be filtered and moderated by perimeter planting and particularly by the woodland belt. Overall, I have concluded under paragraph 172 of the NPPF that the circumstances in this case are exceptional and that the grant of planning permission would be in the public interest.

133. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case where the test in paragraph 172 of the NPPF

⁸² See CD: A32

⁸³ See PoE of Simon James Appendix 11

has been met it is difficult to see how a decision maker could nonetheless refuse to grant planning permission applying paragraph 11 of the NPPF. However, in terms of the development plan I accept that the proposal conflicts with some elements of the development plan, but it also complies with others. Policies in the SOLP are up-to-date and can be given full weight. The appeal proposal conflicts in part with the SOLP, in particular in terms of the overall strategy (STRAT1) and with relevant policies relating to the AONB (ENV1) However, there is partial accord with Policy H13 and full accordance with Policies H1 3ii, H4, H9, H11, DES1, DES2, DES3, DES4 and DES5.

134. With regard to the SCNP, this was made in 2016, against a different housing requirement albeit it is still within the grace period allowed by Policy H4(2) of the SOLP. The SCNP policies can only be given limited weight in the context of the NPPF as it was based on a Core Strategy which is now withdrawn, and it is out of date for that reason. Its policies reliant on the AONB are also out of date given the lack of a five year housing land supply. The proposal would conflict with Policy H1 in so far as the limitation of development is concerned but the policy is expressed as a minimum and the base target has been increased through the SOLP quantum of housing so the appeal scheme would contribute to that. There would be conflict with Policy ENV1 which aims to protect the AONB but there are exceptional circumstances here. There would be broad accordance with Policy H2a, D1 and D1a and ENV2 albeit that three storey development is an exception and must be justified. I conclude that the appeal proposal is in overall accordance with the development plan and there are no material considerations which indicate otherwise.
135. Even if I had decided that the proposal was in overall conflict with the development plan this is a case where there is no five year housing land supply and therefore the most important policies for determining the appeal are out of date.⁸⁴ As to which policies are out of date, it is agreed that the most important for determining the appeal are set out in the RfR. Thus, the tilted balance would be triggered by way of footnote 7 of the NPPF unless paragraph 11 d) i. is satisfied. In this case under paragraph 11 d) i. the adverse effects would not provide a clear reason for refusing the proposed development. It follows therefore that even if the appeal proposal was contrary to the development plan and the tilted balance under paragraph 11 d) ii. of the NPPF applied then the many and varied benefits of the proposals set out above would significantly and demonstrably outweigh any adverse effects. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

Planning Conditions

136. The Council submitted a list of conditions which I have considered in the light **of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG** on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions except for Condition 27 which relates to a Procurement and Employment Strategy. The Appellant has also given consent in writing that Conditions 7-27 may be applied as pre-commencement conditions.⁸⁵ Conditions 1, 4 and 5 relate to required time limits and Conditions 2 and 3 are necessary to determine the scope of the application and for the avoidance of

⁸⁴ NPPF paragraph 11 d) footnote 7

⁸⁵ See INQ APP14

doubt. Conditions 6, 7 and 29 are necessary to secure net gains for biodiversity and Condition 8 is required to minimise the impacts of the development on biodiversity. Condition 9 is necessary to limit the local impact of construction work and Condition 10 is required to ensure that electric vehicle charging is provided. Condition 11 is required in the interests of highway safety and Condition 12 is necessary to ensure adequate car parking.

137. Condition 13 is required in the interests of sustainability and to encourage the use of cycling. Condition 14 on sample materials and Condition 15 on ground levels are required in the interests of visual amenity. Condition 16 is required to ensure adequate provision for the management of waste. Condition 17 is necessary to ensure high standards of sustainable design and construction. Condition 18 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Conditions 19 and 20 are necessary to ensure that the development is assimilated into its surroundings. Condition 21 is necessary to safeguard the trees which are visually important on the site. Condition 22 is required to safeguard heritage assets of archaeological interest. Condition 23 is necessary to prevent pollution and flooding. Condition 24 is required to ensure the proper provision of foul water drainage. Condition 25 is required to prevent pollution and flooding. Condition 26 is necessary to ensure that the development is not unneighbourly.
138. Condition 27 relates to a procurement and employment strategy. The Council considers that the condition would fail the test of necessity as there is no policy support for this requirement and there would be problems about enforcement. However, it seems to me that a local employment and procurement condition is plainly relevant following the Verdin judgment.⁸⁶ Employing local people and using local produce, to save miles travelled seems to epitomize the principle of sustainable development. Moreover, the strategy would put in place arrangements to ensure that the information was regularly provided to the Council to demonstrate the performance and effectiveness of the initiatives. The condition would not impose unreasonable or unjustified demands on the Council. The condition would meet the tests in the NPPF.
139. Condition 28 is required to ensure the provision of adequate pedestrian and cycle access to the site in the interests of highway safety. Condition 30 is necessary to ensure that sustainable transport modes are taken up. Condition 31 is necessary to avoid sewage flooding and potential pollution incidents. Condition 32 is necessary to ensure that the development is not unneighbourly or detrimental to highway safety. Condition 33 is required to protect the occupants of nearby residential properties from noise disturbance. Condition 34 is required to mitigate any impacts on air pollution.

Overall conclusion

140. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

⁸⁶ See INQ APP15 Verdin v SSCLG [2016] EWHC

SCHEDULE OF PLANNING CONDITIONS (1-34)

Time limit and approved plans relating to the full planning permission

Commencement – Full

- 1) The development subject to full planning permission, comprising the areas shown as shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] must be begun not later than the expiration of three years beginning with the date of this permission.

Approved Plans

- 2) That the element of the development hereby approved full planning permission, as shown within the areas shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] shall be carried out in accordance with the details shown on the following approved plans, except as controlled or modified by conditions of this permission:

URB SC [08] 00 01 Rev D02 (Site Location Plan)
URB SC [08] 00 03 Rev D04 (Proposed Block Plan)
02 Rev 03 (Landscape Plan)
03 Rev 03 (Hard Landscaping)
04 Rev 03 (Soft Landscaping)
URB VC [08] 70 01 Rev D02 (Village Core Elevations)
URB VC [08] 70 02 Rev D01 (Village Core Elevations)
URB VC [08] 70 03 Rev D01 (Village Core Elevations)
URB VC [08] 70 04 Rev D01 (Village Core Elevations)
URB VC [08] 00 01 Rev D02 (Village Core Ground Floor Plan)
URB B01 [08] 70 01 Rev D01 (Block 1 Elevations)
URB B02 [08] 70 01 Rev D01 (Block 2 Elevations)
URB B03 [08] 70 01 Rev D01 (Block 3 Elevations)
URB B04 [08] 70 01 Rev D01 (Block 4 Elevations)
URB B01 [08] 00 01 Rev D00 (Block 1 Floor Plans)
URB B01 [08] 20 01 Rev D00 (Block 1 Roof Plan)
URB B02 [08] 00 01 Rev D00 (Block 2 Floor Plans and Roof Plan)
URB B03 [08] 10 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 00 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 20 01 Rev D00 (Block 3 Roof Plan)
URB B04 [08] 00 01 Rev D00 (block 4 Floor Plans)
URB B04 [08] 20 01 Rev D00 (block 4 Roof Plan)
URB SS [08] 00 01 Rev D00 (Substation)
OX5025-11PD-004 Rev H – Road Carriageway Widening
OX5025-16PD-006 Rev A - Cross Sections of Proposed Widening along Blounts Court Road
OX5025-16PD-004 Rev C - Proposed Off-Site Improvements
OX5025-16PD-002 Rev C - Proposed Site Access Arrangements
OX5025-16PD-003 Rev D - Proposed Internal Layout
OX5025-11PD-007 Rev F - Review of Revised Masterplan (6 Metres Internal Carriageway)
OX5025-11PD-009 Rev F Proposed Zebra Crossing at Widmore Lane

Outline Plans

- 3) That the element of the development hereby approved outline planning permission, as shown within the areas shaded blue on Drawing No. URB SC [08] 00 01 D02 (Site Location Plan) shall be carried out in general accordance with the details shown on the following documents:

Illustrative Masterplan PW.1618.L.01 Rev 03
Design and Access Statement May 2020
Design Commitment Statement URB-SC A3 90 02-D00 April 21

Reserved matters and time limit relating to the outline planning permission

Reserved Matters

- 4) Within a period of three years from the date of this permission all of the reserved matters shall have been submitted for approval in writing by the Local Planning Authority. The reserved matters shall comprise: details of the layout, scale, appearance and landscaping of the development. All reserved matters for any one phase shall be submitted concurrently. No development shall commence within any one phase until there is written approval of all of the reserved matters for that phase and the development shall be carried out in accordance with all of the approved reserved matters.

Commencement – Outline

- 5) The site subject to outline planning permission, comprising the area shown as shaded blue on Drawing No. URB SC [08]00 01 D02 (Site Location Plan) [Phase 2], shall be begun not later than whichever is the later of the following dates:
- (i) 3 years from the date of this permission: or
 - (ii) 2 years from the approval of the final reserved matters application.

Biodiversity Enhancement Plan – Outline

- 6) Concurrent with the submission of any reserved matters application related to this outline planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the outline details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:
- (a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
 - (b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
 - (c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.

- (d) Selection of specific techniques and practices for establishing vegetation.
- (e) Sources of habitat materials (e.g. plant stock) or species individuals.
- (f) Method statement for site preparation and establishment of target features.
- (g) Extent and location of proposed works.
- (h) Details of a biodiversity metric assessment

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Pre-commencement conditions

Biodiversity Enhancement Plan – Full

- 7) Prior to the commencement of the development subject of full planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:
- (a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
 - (b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
 - (c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.
 - (d) Selection of specific techniques and practices for establishing vegetation.
 - (e) Sources of habitat materials (e.g. plant stock) or species individuals.
 - (f) Method statement for site preparation and establishment of target features.
 - (g) Extent and location of proposed works.

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Construction Environmental Management Plan for Biodiversity

- 8) Prior to the commencement of any development (including vegetation clearance) a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
- (a) Update ecological surveys for relevant habitats and species, update surveys shall follow national good practice guidelines (badgers surveys shall be no older than 6 months).
 - (b) Risk assessment of potentially damaging construction activities.

- (c) Identification of biodiversity protection zones.
- (d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction.
- (e) The location and timing of sensitive works to avoid harm to biodiversity features.
- (f) The times during construction when specialist ecologists need to be present on site to oversee works.
- (g) Responsible persons and lines of communication.
- (h) Use of protective fences, exclusion barriers and warning signs.

Thereafter the approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Phasing

- 9) Prior to the commencement of any development subject to full planning permission or submission of the first Reserved Matters for the development subject to outline planning permission, a phasing plan shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved phasing plan.

Electric Vehicle Charging

- 10) Prior to the commencement of each phase of development a scheme to provide that phase with Electric Vehicle Charging Points shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Electric Vehicle Charging Points shall be implemented prior to the first occupation of that phase.

Estate Roads and Footpaths

- 11) Prior to the commencement of each phase of development, details of the estate roads and footpaths within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before first occupation of any unit within that phase, the whole of the estate roads and footpaths (except for the final surfacing thereof) shall be laid out, constructed, lit and drained.

Car Parking Plan

- 12) Prior to the commencement of the reserved matters phase of the development plans showing car parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the agreed car parking provision shall be provided before first occupation of that part of the site and be retained as such thereafter.

Cycle Parking

- 13) Prior to the commencement of each phase of development, details of cycle storage, for that phase shall be submitted to and approved in writing by the

Local Planning Authority. The agreed cycle parking shall be provided before first occupation of that part of the site and be retained as such thereafter.

Materials

- 14) Prior to the commencement of each phase of development, details of all materials, including samples where required, to be used in the external construction and finishes of the development within that phase shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved details.

Site Levels

- 15) Prior to the commencement of any development, detailed plans showing the existing and proposed ground levels of that phase, together with the slab and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Refuse and Recycling

- 16) Prior to the commencement of each phase of development, details of refuse and recycling storage for that phase shall be submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage shall be implemented in accordance with the approved details prior to the occupation of the development in each phase and retained thereafter.

Energy Statement

- 17) Prior to the commencement of each phase of development, an Energy Statement demonstrating how the development within that phase will achieve at least a 40% reduction in carbon emissions compared with code 2013 Building Regulations, and details of how this will be monitored, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

External Lighting

- 18) Prior to the commencement of each phase of the development approved in full, and accompanying the first Reserved Matters application for the development approved in outline, a detailed lighting scheme (including street and pathway lighting) for that phase, including a programme for its delivery, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme.

Landscaping

- 19) Prior to the commencement of each phase of development, a scheme for the landscaping of that phase including the planting of trees and shrubs, the

treatment of the access road and hard standings, and the provision of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority.

The details shall include schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme.

The scheme shall be implemented prior to the first occupation or use of that phase of development and thereafter be maintained in accordance with the approved scheme.

In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Landscape Management Plan

- 20) Prior to the commencement of the first phase of development, a maintenance schedule and a long term management plan for the soft landscaping works for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include those areas of the site which are to be available for communal use as open space. The schedule and plan shall be implemented in accordance with the agreed programme.

Tree Protection

- 21) Prior to the commencement of any site works or operations (including the removal of any vegetation or trees) required in relation with the full or outline planning permission, an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period shall be submitted to and approved in writing by the Local Planning Authority. The matters to be encompassed within the arboricultural method statement shall include the following:
- (a) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities.
 - (b) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection.
 - (c) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage.
 - (d) The means of demolition of any existing site structures, and of the re-instatement of the area currently occupied thereby.

- (e) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees.
- (f) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels.
- (g) The details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the root protection area, which is to be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage.
- (h) Provision for the supervision of any works within the root protection areas of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.
- (i) The details of the materials and method of construction of the pedestrian and cycle access to Widmore Lane, which is to in part be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of surface required in relation to its usage.
- (j) A specification of the foundation design for the pedestrian and cycle access to Widmore Lane demonstrating absolute minimal soil excavation, soil compaction or soil contamination within the root protection area of the adjacent trees.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

Implementation of Archaeological work

- 22) Prior to any earth works forming part of the development or the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a programme of archaeological mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Ground Investigation

- 23) Prior to the commencement of each phase of development the results of an intrusive ground investigation, analysing the potential for dissolution features and mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The results shall then be implemented in accordance

with the approved programme and used to inform the surface water drainage design.

Foul Drainage

- 24) Prior to the commencement of each phase of development, a detailed foul water drainage scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the foul water drainage works to serve that phase have been completed.

Surface Water Drainage

- 25) Prior to the commencement of each phase of development, a detailed surface water drainage scheme relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. This should be based on the principles contained within Flood Risk Assessment and Drainage Strategy reference 3424 Dec 2019 by Scott Hughes Design, sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

The scheme shall include:

- (a) Discharge rates.
- (b) Discharge volumes.
- (c) Catchment plans.
- (d) Maintenance and management of SUDS features.
- (e) Sizing of features – attenuation volume.
- (f) Site wide infiltration tests to be undertaken in accordance with BRE365.
- (g) Ground Investigation Report.
- (h) Detailed drainage layout with pipe/chamber/soakaway numbers & sizes.
- (i) Proposed site levels, floor levels and an exceedance plan.
- (j) Detailed network calculations to include the worst case 1:100 + 40% event.
- (k) SUDS features and sections.
- (l) Details of proposed Primary, Secondary and Tertiary treatment stages to ensure sufficient treatment of surface water prior to discharge.
- (m) Drainage construction details.
- (n) A compliance report to demonstrate how the scheme complies with the **“Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire.”**
- (o) A range of SuDS techniques throughout the site to manage water quantity and maintain water quality.

The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the surface water drainage works to serve that phase have been completed.

Construction Method Statement

- 26) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
- (a) the parking of vehicles of site operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials used in constructing the development;
 - (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (e) wheel washing facilities;
 - (f) measures to control the emission of dust and dirt during construction;
 - (g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (h) details of measures for the control of noise during construction works;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction methods.

Procurement and Employment Strategy

- 27) Prior to the commencement of development, a Local Employment and Procurement Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. The Strategy shall include:
- (i) Details of recruitment within the development to achieve a minimum of 25% of village staff from within a 5 mile radius of Sonning Common;
 - (ii) Details of the use of local businesses, including purchase of food, beverage and other items to achieve a minimum of 50% of fresh produce (meat, bakery, dairy, fruit and vegetables) from within a 5 mile radius of Sonning Common;
 - (iii) The timing and arrangements for the implementation of these initiatives; and
 - (iv) Suitable mechanisms for monitoring the effectiveness of these initiatives.

All parts of the approved Local Employment and Procurement Strategy shall be implemented in full and retained thereafter.

Pre-occupancy conditions

Pedestrian and Cycle Access

- 28) Prior to occupation of any development subject to full or outline planning permission, details of the pedestrian/cycle access to the site from Widmore Lane, including a 3.5m wide combined pedestrian/cycle path through the site, associated street lighting facilities and a zebra crossing along Widmore Lane shall be submitted to and approved in writing by the Local Planning Authority. The details shall be based on those shown on plan OX5025-11PD-009 Rev F, subject to the tree protection measure shown in condition 21. The works shall

be carried out and completed in accordance with the approved details before occupation of any part of the site, and permanently retained as such thereafter.

Landscape and Ecology Management Plan

- 29) Prior to the first occupation of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:
- (a) Description and evaluation of features to be managed.
 - (b) Ecological trends and constraints on site that might influence management.
 - (c) Proposals for ecological enhancements for habitats and species as agreed in the Biodiversity Enhancement Plan.
 - (d) Aims and objectives of management.
 - (e) Appropriate management options for achieving aims and objectives.
 - (f) Prescriptions for management actions.
 - (g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
 - (h) Details of the body or organization responsible for implementation of the plan.
 - (i) Ongoing monitoring and remedial measures.

The LEMP shall include details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall be implemented in accordance with the approved details and management prescriptions implemented across the site for a timeframe to be agreed within the LEMP.

Green Travel Plans

- 30) Prior to the occupation of the first phase of the development hereby approved a full and detailed Travel Plan and Travel Information Packs shall be submitted to and approved in writing by the Local Planning Authority. These documents will be updated upon the submission of subsequent phases of the development. Thereafter, that part of the development shall be implemented in accordance with the approved documents and the associated Travel Information Packs issued to each resident upon first occupation.

Wastewater

- 31) No properties shall be occupied in any phase until confirmation has been provided that either:

- (i) All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or-
- (ii) A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied.

Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Service and Delivery Management Plan

- 32) No building shall be occupied until details of a comprehensive servicing and delivery management plan has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Deliveries and service areas shall be managed in accordance with the agreed scheme.

Compliance conditions

Construction Hours

- 33) The hours of operation for construction and demolition works shall be restricted to 08:00-18:00 Monday to Friday and 08:00-13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written permission of the Local Planning Authority.

Air Quality

- 34) The air quality mitigation measures outlined in the Air Quality Assessment (Ref REP-10111755A-20191212) shall be carried out in accordance with the recommendations and specifications in the report and implemented prior to occupation of each unit. Thereafter, the mitigation measures shall be retained **as approved and in accordance with manufacturer's instructions.**

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of Counsel

Instructed by the Solicitor to South
Oxfordshire District Council

He called:

Mr John Jeffcock
BA (Hons) MA CMLI NZILA

Associate of Michelle Bolger Expert
Landscape Consultancy

Mr Julian Kashdan-Brown
B Arch (Hons) Dip Arch MSc MA RIBA

Architect and Urban Designer

Mrs Nicola Smith BSc (Hons) MSc

Principal Major Applications Officer

Mrs Emma Bowerman BA (Hons) MSc

Principal Major Applications Officer

FOR THE APPELLANT:

Mr Christopher Young QC
Ms Leanne Buckley Thompson of Counsel

Both instructed by the Appellant

They called

Mr Nigel Appleton MA (Cantab)

Executive Chairman of Contact
Consulting (Oxford) Ltd

Mr Stuart Garnett BSc Dip TP MRTPI

Planning Director Inspired Villages

Mr James Atkin BSc (Hons) Dip LM CMLI

Director (Landscape) Pegasus Group

Mr Michael Carr BA (Hons) Dip LA Dip UD
RUDP

Director (Design and Master
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Mr Roland Bolton BSc (Hons) MRTPI

Senior Director, DLP Planning Ltd

Mr Richard Garside RICS

Director and Head of Development
Consultancy at Newsteer

Mr Simon James BA Dip TP MRTPI MIEMA

Managing Director DLP Planning Ltd

FOR SONNING COMMON PARISH COUNCIL:

Mr Ben Du Feu of Counsel

Instructed by the Parish Council

He called

Mrs Emily Temple BSc (Hons) MSc MRTPI

Director ET Planning Ltd

FOR OXFORDSHIRE COUNTY COUNCIL:

Mr Dave Harrison BSc (Hons) MSc CMILT M Inst TA	Senior Public Transport Planner
Ms Judith Coats LLB	Infrastructure Funding Team Leader
Interested Persons	
Mr Tom Fort	Chairman of Sonning Common Parish Council
Ms Julia Whitelaw	Local Resident
Dr Kim Emmerson	General Practitioner
Ms Georgina Forbes	Local Resident
Mr Jonathan Berger	Acting Chair of the Rotherfield Peppard Parish Council
Mrs Joanne Shanagher	Local Resident
Dr Michael Stubbs PhD MSc MRICS MRTPI	Planning Adviser, The Chilterns Conservation Board

DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority Documents

INQ LPA1	Opening Statement
INQ LPA2	Factsheet 6 Design Principles for Extra Care Housing (3 rd edition)
INQ LPA3	Proof of evidence Erratum sheet, Nicola Smith
INQ LPA4	Appendix 1 update, Nicola Smith
INQ LPA5	Five-year Housing Land Supply Erratum, Nicola Smith
INQ LPA6	Replacement Policies Schedule
INQ LPA7	CIL Compliance Statement
INQ LPA8	CIL Compliance Statement Addendum
INQ LPA9	Costs application
INQ LPA10	Conditions
INQ LPA11	Closing Submissions

Appellant Documents

INQ APP1	Opening Statement
INQ APP2	Summary and comparison of landscape and visual effects
INQ APP3	Correction sheet to JWA06
INQ APP4	Open letter to Boris Johnson
INQ APP5	Briefing Note Errata to Contextual Study of James Atkin
INQ APP6	Service Charges Note of Stuart Garnett
INQ APP7	References to height Johnson Matthey Planning Statement

INQ APP8 NPPF consultation document
INQ APP9 Mr Doyle email
INQ APP10 Extracts from Village News by Tom Fort
INQ APP11 s106 Agreement
INQ APP12 Nigel Appleton's Note
INQ APP13 Central Bedfordshire Policy H3 Main Modifications
INQ APP14 Pre commencement note
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R6 Party Documents

INQ PC1 Opening Statement
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Interested Persons Documents

IP1 Statement by Mr Tom Fort
IP2 Statement by Ms Julia Whitelaw
IP3 Statement by Dr Kim Emmerson
IP4 Statement by Ms Georgina Forbes
IP5 Statement by Mr Jonathan Berger
IP6 Statement by Mrs Joanne Shanagher
IP7 Statement by Dr Michael Stubbs

EP1J



Appeal Decision

Inquiry Held on 1st - 10th December 2020

Site visit made on 8th March 2021

by A Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 March 2021

Appeal Ref: APP/H2265/W/20/3256877

Land West of Winterfield Lane, East Malling

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Wates Developments Ltd against Tonbridge & Malling Borough Council.
 - The application Ref: TM19/01814/OA, is dated 18th July 2019.
 - The development proposed is the erection of up to 250 new homes (40% affordable), new community building, provision of a new country park and other areas of public open spaces, areas of play, upgrade of existing footpaths, together with new vehicular accesses onto London Road and Winterfield Lane creating a new link road and associated parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 250 new homes (40% affordable), new community building, provision of a new country park and other areas of public open spaces, areas of play, upgrade of existing footpaths, together with new vehicular accesses onto London Road and Winterfield Lane creating a new link road and associated parking and landscaping at land west of Winterfield Lane, East Malling in accordance with application TM19/01814/OA and the plans submitted with it and subject to the conditions in the attached Schedule.

Procedural Matters

2. The application is accompanied by a legal agreement dated 15 December 2020 which makes provision for affordable housing, off site highways works, including the transfer of safeguarded land, a contribution towards further off-site highways works, a public transport contribution and provision of a travel plan. The agreement also makes provision for contributions towards primary and secondary education including contributions towards land acquisition costs, a community learning contribution, a libraries contribution, a youth services contribution, a social services contribution, a healthcare contribution, an outdoor sport contribution and a contribution towards parks and gardens.
3. Following the submission of the appeal the Council initially indicated four putative reasons for refusal: the impact of the proposal on the spatial character of the area, the effect on the landscape character and appearance of the area, the effect of the loss of agricultural land and

whether the appeal proposal would prejudice the outcome of the plan making process. However, prior to the Inquiry the Council indicated that they did not wish to defend the matter of prematurity. Furthermore, the matter of agricultural land was not considered determinative in itself.

4. West Malling Parish Council and East Malling & Larkfield Parish Council as a Rule 6 party chose to pursue all four **of the Council's putative reasons for refusal**.
5. The Council does not dispute that a five-year supply of housing land cannot at present be demonstrated in the Borough. However, the main parties dispute the extent of the identified shortfall. The following main issues are therefore to be considered in the context of any shortfall, taking account of any identified harms and benefits.

Main Issues

6. Accordingly, the main issues for the appeal are:
 - Whether the appeal proposal would cause harm to the spatial character of the area as a result of development taking place on land currently designated as countryside.
 - Whether the appeal proposal would have an unacceptable impact on the landscape character and appearance of the area.
 - Whether the appeal proposal would result in the unacceptable loss of the best and most versatile agricultural land.
 - Whether the appeal proposal would prejudice the outcome of the plan making process.

Reasons

Housing Land Supply

7. The Council put forward the case that they have 4.3 years Housing Land Supply (HLS). The appellant considers that only 2.08 years can be demonstrated. The parties agree on the housing requirement of 888 dwellings per annum (dpa) derived from 846dpa with 5% buffer. Disagreement comes from the sites included in the supply. At the base date of 1st April 2019, the Council contended a 2.6 year supply of housing land with 2,297 dwellings within the supply. **The Council's figure of 4.3** years is derived from including sites they consider have become deliverable since the base date. These include sites in the emerging Local Plan that do not fall within green belt, along with sites that had been granted consent since the base date.
8. The 2019 revision to the National Planning Policy Framework (the Framework) **definition of deliverable retains reference to "a realistic prospect that housing will be delivered on the site within five years"**. The Court of Appeal judgment in *St Modwen* found that realistic prospect did **not mean a site's deliverability must necessarily be certain or probable**. The Council cite support for the inclusion of new sites from a recent decision for *Woburn Sands*⁷ where the Inspector considered that information that

⁷ APP/Y0435/W/17/3169314

became available after the base date could be taken into account to determining whether or not a site was deliverable.

9. Whilst I see merit in using information that becomes available after the base date to inform deliverability, I note that the Inspector in Woburn Sands was referring solely to sites that were already identified in the housing supply at the base date, in line with the approach taken in Woolpit². Indeed, he noted that to do otherwise would skew the housing supply. I share this view. An assessment of housing supply which introduces new sites would only be accurate if it also took account of lapsed sites, completions and other factors which might reduce sites at that point in time. The Council have not been in a position to supply all of this information and have not reviewed the phasing of extant permissions or indeed all of the permissions granted subsequent to the base date. I **therefore have no confidence that the Council's approach would provide an accurate assessment of the actual state of supply in the district and I must therefore rely instead on the Council's previous position as of 1st April 2019 as a starting point.**
10. The Housing Land Supply (HLS) as at the 1st of April 2019 was put forward by the Council as being 2.6 years. The Council have included 220 units within the HLS to account for windfalls at 44dpa. The appellant contends that windfalls within the first 3 years would already be accounted for within the housing supply, they should only be counted for years 4 and 5. Whilst I broadly agree with this contention I note that the Council only account for 50% of past rates within their windfall calculation. If the average past rate of windfalls³ for the past 5 years were applied to only the last 2 years this would amount to around 176 dwellings. Forty-four (44) dwellings should therefore be removed from the supply. The Council have also since accepted that a further 53 dwellings should be removed to account for demolitions that were erroneously included in the supply.
11. The appellant has also raised doubts over the **Council's assumption of delivery at Peters Pit**. Part of the site is still awaiting a reserved matters application at the time of writing, having originally been anticipated for March 2020. **I accept that the developer's plans for the site⁴** are to complete it before they move on to another site at Bushey Wood and so I see no reason to doubt **the developer's commitment to the site** and so have some confidence that a further reserved matters application will come forward in the near future. As such there is a realistic prospect that the remaining part of the site will begin to come forward.
12. However, I find nothing in the evidence submitted which directs me to the conclusion that the site will be developed out at the rate put forward by the Council. **The Council's submission to the Examination in Public puts the likely rate at around 160 dpa, based on 2 providers.** This does not reflect past delivery rates on the site⁵, the highest rate previously achieved being 139 dwellings per annum with rates dropping significantly below that in the last available year of figures. In the absence of up to date evidence of actual delivery rates on site I am therefore persuaded that a rate of 122

² APP/W3520/W/18/3194926

³ CD5.19 para 3.22

⁴ Appendix 2 CD4.7 and the oral evidence of Mr Bailey

⁵ Para 9.7 of CD5.6 based on an extract from the SLAA

dpa⁶, as cited by the appellant is a more realistic estimate for future delivery at the present time. This would amount to 610 dwellings, a **reduction of 230 from the Council's assumptions.**

13. Removing the above reductions from the identified supply in the 2018/19 HLS Position Statement would leave the supply at around 1970 dwellings or around 2.2 years.
14. The Council and the Appellant agree⁷ that 25 units should be removed from the supply as they have expired. The evidence put to me⁸ shows only a very small number of these permissions expired before the base date, with some expiring since April 2019. To remove sites that have expired since the base date without also adding in all permissions subsequently granted would give an inaccurate picture of housing supply. Furthermore, whilst it is proper that sites expired before the base date should be removed, as this would appear to impact on only a small number of dwellings within the supply, it would not materially alter the above supply figure⁹.
15. To recognise that some consents may not be implemented, the appellant argues that a 10 % non-completion rate on minor developments should also be removed from the supply. Whilst it is clear that some permissions on small sites within the supply will not be built out, in terms of small sites I have no reason to conclude that this occurs at an unduly high rate within the Borough. I therefore see no reason to apply a non-completion rate in this case.
16. I am conscious that notwithstanding my conclusions below regarding the status of the emerging Local Plan, the Council have identified a number of recent approvals, which they contend indicates some prospect of an improvement in supply when the 2019/2020 Assessment is completed. However, the Council also relies heavily on other sites within the plan without providing any evidence of their likely delivery other than their proposed allocation. Most of these sites are without full approval, and many may be subject to unresolved objections. In the absence of any cogent evidence as to the delivery of these sites I see no basis for the Council's assumptions on when these will deliver homes, at least within 5 years. As such, on the basis of the information presented to me, I cannot be assured **that the Council's figure of 4.3 years**¹⁰ will be achieved imminently, or that the current substantial shortfall is transient and likely to soon be remedied.
17. The National Planning Policy Framework (the Framework) directs in paragraph 11(d) that where a five year supply of housing land cannot be demonstrated, the presumption in favour of sustainable development **requires the application of the "tilted balance"**¹¹ in decision making. I return to this below.

⁶ CD5.6 para 9.10

⁷ CD5.18 Housing Land Supply Statement of Common Ground

⁸ CD 5.6 para 8.4

⁹ Removing the 10 dwellings which are not clearly shown as expiring after the base date would alter the supply figure from around 2.21 years to 2.20

¹⁰ CD3.1 para 6.2.12

¹¹ Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole.

Spatial Character

18. East Malling, Larkfield and Leybourne now form a contiguous urban area, and parts of the Parishes of Leybourne and East Malling & Larkfield lie adjacent to the appeal site. The site lies outside the settlement boundaries identified on the Local Plan Proposals Map - the boundary for Leybourne is along the north side of the A20, and the boundary for East Malling is along the eastern side of Winterfield Lane. Each was originally a separate community but development over time has brought them together to form **part of what is known as "The Medway Gap"**. **West Malling is a separate settlement** located on the other side of the A288. The A288 is bounded on both sides by open countryside, part of which is made up of the appeal site. The Council and Parish Council consider that the proposal would cause unacceptable coalescence, as the loss of greenfield land on the edge of the existing settlements would diminish the separation between West Malling and the adjoining built form of East Malling, Larkfield and Leybourne.
19. The parties are in broad agreement¹² that the existing narrowest gap between the built form of West Malling and the built-up area of East Malling, Larkfield and Leybourne would remain at around 430m and would not be reduced. The gap to the south west between Chapman Way and West Malling is around 1150m and this would be reduced to around 730m. In purely quantitative terms then, the settlements would still retain clear separation and whilst I note the site is within West Malling Parish and would therefore bring development in West Malling closer to East Malling, the difference in administrative areas would make no difference to the physical form of development on the ground.
20. The Council and appellant agree that an effective gap between settlements should provide a perception of leaving one place, travelling through an intermediate space and then arriving somewhere else. The extent and nature of that gap will influence the perception of separation. I have therefore considered whether the increase in built form would lead to a perception of reduced separation, which in turn would harm the spatial character of the area.
21. I noted on site that the agricultural appearance of the site provides a marked contrast to the suburban form of development on the opposite site of London Road. The settlement of West Malling cannot be clearly seen from within the site, although the road noise from both the A20 and the A288 gives the perception that built form and human activity **isn't far away**. The heavily engineered form of the A288 had a notably intrusive effect and formed a watershed between the west, which comprised the leafier environs on the outskirts approaching West Malling and the open fields to the east, across which views of the urban form of The Medway Gap were seen in panorama. The development would clearly encroach on the open fields but given the extent to which the A288 forms a physical and perceptual barrier, I am not convinced that the erosion of the rural setting of The Medway Gap to the east would reduce the degree to which West Malling is perceived as a separate entity to the west.
22. When travelling by car the short stretch of open fieldscape seen when travelling along the A20 would be lost. Similarly, it is likely that the

¹² Paragraph 15 Landscape Statement of Common Ground.

development would be apparent in occasional views through vegetation from Winterfield Lane. The loss of these views would have a suburbanising effect which would alter the character of this part of the Medway gap. Nevertheless, the site lies alongside existing built form. Provided the scale, form and layout of the development was sensitively handled, and appropriate landscaping was integrated into the scheme in keeping with its edge of settlement location, in views towards the site from open countryside it would integrate into the existing urban area without harm to the established character of the wider settlement. In this regard, and taking into account the degree of physical separation that would remain with West Malling, the loss of open countryside would not result in a coalescence of built form or impinge upon the separate identity of West Malling and the Medway Gap.

23. The Development Plan for the area comprises the *Tonbridge & Malling Core Strategy 2007* (CS); *The Development Land Allocation DPD 2008* and *The Managing Development & Environment DPD 2010* (DPD). CP6 of the CS seeks to protect both the individual identity of settlements and to ensure that new development does not harm the setting or character of a settlement when viewed from the countryside or adjoining settlements. The proposal would not unduly alter the existing spatial character of the area and would not harm the character of The Medway Gap. Accordingly, I find no conflict with this policy.
24. Policy CP11 of the CS provides a list of the urban areas in the Borough, including Leybourne, East Malling and Larkfield, where development will be concentrated. The policy states that development adjoining these urban areas can be permitted where there is an identified need and no suitable sites are available within urban areas. In such cases priority is given to the use of previously developed land. It is common ground between the parties that the emerging plan puts forward sites within both open countryside and green belt in order to meet the need for housing within the plan period. I am therefore satisfied that at the present time there is an identified need for housing and that this cannot be met within the urban areas identified in the plan. Neither have I been presented with any compelling evidence that there are brownfield sites available to meet that need.
25. CP14 of the CS seeks to concentrate most development in and around urban settlements including extensions to existing settlements in accordance with policy CP11. I therefore find no conflict with policies CP14 or CP11 of the CS.

The Impact of the Proposal on Landscape Character and the Appearance of the Site

26. Policy CP24 of the CS seeks to achieve a high-quality environment by ensuring new development is well designed and amongst other things makes a positive contribution to the appearance of the area. Policy SQ1 of the DPD seeks to secure new development which protects, conserves and, where possible, enhances the character and local distinctiveness of the area.
27. The site and its surroundings do not lie within any national or local designations and views of the adjoining conservation area are very limited. The main parties agreed that the landscape and visual effects of the

proposals would be mainly focused upon the site and its immediate locality and would not result in significant landscape or visual effects on the Kent Downs Area of Outstanding Natural Beauty (AONB), although views of the AONB from the site would be affected¹³. The proposed development would also result in no significant landscape or visual effects for either Clare Park and Blacklands or West Malling Conservation Areas. A Zone of Theoretical Visibility diagram submitted with the proposal¹⁴ also shows that the site is not prominently visible in the wider landscape. I see no reason to dispute these views.

28. **Both the Council and the Appellant's assessment of the landscape and** visual impacts of the proposal have had regard to the methodology set out in GLVIA3¹⁵. This sets out that the landscape and visual effects of development can be quantified by identifying the magnitude of change a development will bring about over time (or nature of the effect) in relation to the value and quality of the receiving landscape and its sensitivity to change. By quantifying these variables, which will require some value judgements, a picture of the likely landscape and visual effects of development can be arrived at. Landscape effects can be defined as the effects of the proposal on the landscape as a resource in itself, and visual effects are the effects of a development on views and visual amenity as experienced by people. I deal with these separately below.

Landscape Character

29. The site forms part of a broad wedge of undeveloped land to the south of the built envelope of Leybourne and Larkfield. East Malling lies to the east of this open area and West Malling lies on the other side of the A228, further to the west. Land to the east of the A228, including the appeal site is largely in agricultural use, with open fields separated by hedgerows. Land to the west is more enclosed, with more mature tree cover.
30. The appeal site is not within an area covered by a protected landscape designation and the main parties agree that the site is not a valued landscape in the sense of that defined in paragraph 170 of the Framework. The site lies on the northern edge of the Greensand Fruit Belt - Malling Landscape Character Area, as identified within the Kent Landscape Character Assessment. This covers a relatively wide area and at a local level the landscape character in and around the site varies significantly.
31. I noted during my site visit that the area north of the site made up of the urban edge and the area to the east, which includes the Clare Park and Blacklands Conservation Area was enclosed parkland. The site itself, and land to the south is made up of agricultural land which is more open in character. The rolling fields were punctuated with small groups of trees and intermittent field boundaries. Due to the proximity of the site to the urban edge in views to the north the fieldscape provided a stark contrast with the urban form of the adjoining settlement and moving traffic along the A20 and beyond. Views to the south, east and west were also punctuated with glimpses of built form.

¹³ Landscape Statement of Common Ground

¹⁴ Zone of Theoretical Visibility Diagram drawing LE003 in CD1.2 p 73

¹⁵ Guidelines for Landscape and Visual Impact Assessment 3rd Edition 2013 by the Institute of Environmental Management and Assessment and the Landscape Institute.

32. The area in and around the site is attractive due to the available views of an open rolling fieldscape interspaced with mature hedgerows and clusters **of trees. However, it's value in terms of landscape** is not elevated by its rarity of the possession of any special features or associations. **The Council's view that the landscape is of high value is primarily derived from** the extent to which they attribute emphasis on the role of the landscape as a buffer between existing settlements. Furthermore, in terms of landscape **quality, the Council's assessment downplays the extent to which detracting** visual elements around the site, and noise from the A20 and the A228, particularly towards the north and west, intrude on rural character.
33. Some elements of the landscape have a high sensitivity to change. The contrast the open fields currently provide with the adjoining settlement is to my mind the key attribute which provides the site with much of its character and is highly valued by the local community and these will be lost. Some longer-range views of the AONB would also be lost as a result of the development. Nevertheless, the location of the site on the edge of the settlement and the extent to which this influences the character of land **towards the north also leads me to the view that the Council's assessment** of the sensitivity of the landscape to change is overstated.
34. In relation to the extent of change the proposal would bring about to the landscape, the introduction of housing onto the site would lead to a high level of change in immediate views. Having regard to the value and quality of the landscape and its sensitivity to change this would lead to significant landscape effects at a localised level. However, due to the proximity to existing housing and the lack of visibility of the site in longer range views, the level of perceived change at a wider landscape level would be relatively low. In this regard the proposal would have a limited effect on the character of the Greensand Fruit Belt - Malling Landscape Character Area.

Visual Effects

35. Visual effects are normally taken to mean the effects of a proposal on those who would see the development, such as local residents in their homes, walkers, or those driving in the area. The scheme is submitted in outline form but is accompanied by indicative drawings¹⁶ showing the likely extent of development on site. Supporting information also shows that the visual assessments undertaken by both the Council and the appellant assume development that is generally 2 to 2.5 storeys¹⁷ in height. If the development were to be allowed, the main parties agree that a condition could be imposed requiring that the proposal be in general accordance with the extent of development shown on these plans. I have therefore used these plans as a guide to how development is likely to take place on site.
36. Footpaths MR119 and MR120 run through the length of the site from north-east to south-west and from east to west. For users of these footpaths the experience of using the route would change completely, from that of walking through rolling arable fields to that of walking through a suburban housing estate for a significant part of the route. This effect would not be diminished by the setting back of development from these pedestrian routes through the site. Even for the part of the route to the south where

¹⁶ CD1.5 Drawing LE20 and CD 1.6 6273-01G

¹⁷ Design and Access Statement Section 4.8

the site is intended to be retained as undeveloped open space, it is likely that the current experience of being within an unmanaged natural environment would be lost. I noted on site that the footpaths were well used by casual walkers and by those accessing the nearby railway station on foot. The proposal would result in very significant adverse visual effects for these users.

37. Some of the properties along London Road which currently enjoy a clear and open view of the appeal site from within their dwellings would have their view replaced with views of the proposed development. These views would be framed by the traffic on the A20 in the foreground. Nevertheless, for a small number the existing rural outlook would be lost and taking into consideration that residents' homes would have a high sensitivity to such changes, this would result in a significant adverse visual impact for these users. For other properties, further to the west, due to the presence of existing vegetation, the development would be seen in indirect views and so the impact on these properties would be less severe, but nonetheless significant.
38. To the south the properties of Winterfield Barn and Winterfield Farm would view the development from an elevated position above the site and would lose the open fieldscape that currently separates these properties from those on London Road. Due to the extent of change in the view, and the residential nature of these properties, the development would lead to very significant adverse visual effects for these residents. Distant views would also be available from Broadwater Hall, although the intervening distance would lessen the impact of the visual change and result in only a moderate adverse visual effect. No. 41 London Road sits to the east of the appeal site but is separated by an open field which lies outside the development. The likely elevation of parts of the site would mean that parts of the development would be visible from the property, despite the intervening field and hedgerows. This would have a moderate adverse visual impact. To the east of Winterfield Lane some views of the site are likely to be available from the upper floor of some of the properties on Dickens Lane, although these would be partially screened by existing vegetation. As such, these residents would be likely to a slight adverse visual impact.
39. There would also be visual effects for road users in and around the site. Those passing the site along the A20 to the north would have clear views of the development at the eastern end of the site and potentially some filtered views through vegetation towards the western end of the site, particularly in winter. In these views the loss of the existing open and attractive farmland would be clearly apparent. Some views of the development would also be available to users of Winterfield Lane and Lucks Hill, although these would be filtered by the roadside hedgerows. Views from the A228 would be likely to be available only in winter, in glimpses through established roadside planting. Taken together, and taking into account the extent to which such views are likely to be transient, I consider the proposal would result in a moderate adverse visual effect for these users.
40. My attention has also been drawn to the effects of lighting from the proposal at night. The site does not lie in an area which is protected for its dark skies. I acknowledge that the extent of development would be apparent outside daylight hours due to lighting on site. However, this

effect would not be marked, due to the proximity of the development to existing light sources along the A20. Furthermore, whilst I note that many residents value the quieter quality of the landscape, and I acknowledge that this would be lost, the site could not accurately be described as tranquil, given the continuous presence of noise from the A20 and A228 which I noted during my site visit.

41. The visual impact of the proposal would lessen over time as the proposed landscaping became established. Nevertheless, due to the fact that the site rises towards the south a significant portion of the site would remain visible in most, if not all of the views identified above. Taken together, and considering the collective visual and landscape impacts of the scheme, I find that the impact on local landscape and the character of the area would therefore be limited in the long term but would nonetheless have significant short term localised impacts for residents and road users. The impact for footpath users would be very significant and this would not be materially diminished over time.

Conclusion on Landscape Character and the Appearance of the Site

42. **Policy SQ1 of the DPD states that "proposals for development will be required to reflect the local distinctiveness, condition and sensitivity to change of the local character areas as defined in the Character Area Appraisals SPD".** The Medway Gap Character Area Appraisal SPD includes an assessment of the area around the site, referred to as London Road Leybourne. Within this the appraisal notes¹⁸ that the long panoramic views over the site create a spacious character and this is identified as a locally distinctive positive feature.
43. As I have identified above, the proposed development would lead to a loss of open countryside and the panoramic views that this provides, particularly when viewed from the north. This would diminish the spacious character of the area. These effects would be localised and would lessen over time as landscaping around the site became established. Nevertheless, the loss of open views would have a significantly harmful effect on the character of the area around the site. As a result, the proposal would be contrary to Policy SQ1 of the DPD. It would also conflict with guidance in the Framework which seeks to recognise the intrinsic character and beauty of the countryside.
44. The Council consider that the proposal is also contrary to Policy CP24 of the CS, which seeks to achieve a high-quality environment. At the Inquiry it was also put to me that as policy CP24 of the CS was a detailed design policy and the scheme was presented in outline form, it was not relevant to this proposal.
45. I accept that the terms of the policy relate to how development should take place on site, rather than matters of principle. Any built development would alter the appearance of a site and development of a greenfield site would bring with it some element of harm arising from the loss of countryside to built form. To apply CP24 in such a broad sense would therefore almost always lead to conflict in this regard and would not be in line with the broad intentions of the policy, which is to seek high quality

¹⁸ Page 20 Medway Gap Character Appraisal Supplementary Planning Document (SPD)

development, rather than to direct development to particular locations or to protect others.

46. Nevertheless, I do not accept that the policy is of no relevance in this case. The proposal is in outline form but specifies the number of dwellings to be provided within the site. I am therefore required to consider whether the extent of development proposed, in terms of the number of dwellings, would be able to be provided within the site confines whilst providing a high-quality environment.
47. The application is accompanied by 2 indicative plans¹⁹. These show 250 dwellings comfortably accommodated towards the north of the site, with large areas of open space to the south of the development providing a soft buffer between the built-up area and open countryside. Whilst I am mindful that the plans are indicative, they demonstrate that subject to appropriate details of appearance, layout and landscaping, a form of development could take place on site which would, over time, assimilate comfortably with the existing urban fabric and which would not be detrimental to the built environment.
48. Therefore notwithstanding the harm the loss of countryside would cause to the character of the area, which is explicit in the conflict with policy SQ1 of the DPD, the proposal would nonetheless be capable of providing a high quality environment, and would not conflict with policy CP24 of the CS.

Agricultural Land

49. The parties agree that the proposal would lead to the loss of at least 17.5 hectares²⁰ of Best and Most Versatile (BVM) agricultural land, the majority of which is classified as Grade II. Furthermore, the adjoining land to the north west comprises a field of around 2.9 hectares which is accessed via the appeal site. Even if appropriate access arrangements were made, the size of the adjoining land and the fact that it could no longer be farmed alongside the appeal site is likely to reduce its attractiveness as a prospect for agricultural use should the appeal site be developed. This field has not been surveyed, but is understood to also be grade II agricultural land. Taken together, this would lead to the loss of at least 20.4 hectares of the best and most versatile agricultural land.
50. Policy CP9 of the Core Strategy relates to the allocation of sites rather than decision making. The Framework directs that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality but again this relates to plan making not to decision taking. The appellant has not done a comparative assessment in this regard to indicate that no lower grade land is suitable and available, but the Framework does not require such a sequential test for planning applications and to my mind it would be unreasonable to require it.
51. Neither does the Framework define **what "significant"** development might comprise. In this case the amount of land in question would go beyond the threshold for consultation²¹ and is predominantly Grade II land. The site

¹⁹ 6273-01 Rev G and indicative landscape layout referenced LE-20

²⁰ The site area of 18.2 hectares minus 0.7 hectares of land not suitable for agricultural production

²¹ Schedule II of the General Development Procedure Order

and adjoining field are currently in cultivation and I have no reason to believe that it would not remain so if planning permission were not granted. Notwithstanding the absence of an objection from Natural England, having regard to the amount and quality of the land in question and the relative scarcity of such land as a national resource, I consider that the loss of land from agricultural production as a result of the proposal would be significant. The Framework recognises the economic and other benefits of maintaining a supply of such land. I therefore conclude that the loss of agricultural land which would arise in this case is an adverse impact which must weigh against the proposal in the planning balance.

Prematurity

52. Paragraph 49 of the Framework is clear that an argument that an application is premature is unlikely to justify a refusal of planning permission other than where the emerging plan is considered to be at an advanced stage. The Council have chosen not to pursue prematurity as a ground of appeal, but the matter is one of concern for the Parish Council.
53. The emerging Local Plan designates the site as Green Belt. On the 15 December the Inspectors examining the Local Plan wrote to the Council advising them that they considered that the plan had failed the Duty to Cooperate. This was later confirmed in a further letter on the 2nd of March. It is therefore clear that **the Council's** assumptions in relation to when the Plan might be adopted, of late 2021, is no longer based in fact. Furthermore, it is unclear in what form, if any, the currently submitted plan will be taken forward.
54. I am therefore of the view that the plan cannot be considered to be at an advanced stage and I cannot be assured that proposals to designate the site and the land around the site as Green Belt, or any of the other aspects of the plan, will come forward in their current form. I also note that the Council, as the plan making body, make no argument that the proposal is premature.
55. Accordingly, given the great deal of uncertainty as to how, if at all, the plan will progress, **I cannot accept the Parish Council's view, advanced at the Inquiry**, that the proposal would undermine the plan-making process by predetermining decisions about the location and scale of development. It follows that I find no conflict with the Framework in this regard and whilst I accept that the evidence base for the emerging plan is a relevant consideration, I give no weight to the policies in the emerging local plan.

Other Matters

Heritage Assets

56. The effect of the proposal on heritage assets is a matter of concern for some. Clare House, a grade I listed building, is located around 200m south-east of the appeal site. It sits within the Clare Park and Blacklands Conservation Area.
57. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. S72(1) of the Act requires special attention to

be had to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

58. Clare House is a grand Palladian residence set in extensive grounds. Its significance lies primarily in its architectural interest. It is a good surviving example of a building of this style executed at a domestic scale. A reduction over time in the size of the grounds, which would originally would have been extensive, and the enclosure of the site by extensive planting has reduced the extent to which the building is appreciated within an open planned setting. The property is now heavily enclosed, and the wider setting of the asset does not contribute to its significance.
59. The north western boundary of the Conservation Area extends to Winterfield Lane, which forms the south-eastern boundary of the site. The Conservation Area comprises the remains of the landscaped park originally constructed around Clare House. Its significance is derived from the historic association of the parkland with Clare House and in the architectural interest of the listed buildings within it. The extensive planting along both sides of Winterfield Lane largely obscures views of the site from the Conservation Area and so the wider setting of the Conservation Area does not make a marked contribution to the significance of the asset. As such, whilst there may be some limited perception of the development when within the Conservation Area, this would not detract from its significance.
60. The Church of St Mary the Virgin in West Malling lies around a kilometre from the site. It contains Norman remnants with 13th, 14th, 15th, and 18th Century additions. Its significance lies in its historic and architectural interest and in its value as a community building. Glimpsed views of the spire are available from parts of the site and the proposed development would be likely to obscure some of these views. However, having regard to the extent of the wider setting of the asset and the extent to which that setting already comprises substantial elements of built form the proposal would have no discernible impact of the significance of the asset.
61. I am therefore satisfied that the development would not harm the significance of nearby heritage assets and find no conflict with the Framework, which seeks to sustain and enhance such assets.

Other Matters

62. The effect of the proposal on local services, was also a concern for some residents. The application is accompanied by a legal agreement which includes provision for education, public transport, healthcare and a number of aspects of community provision and I am satisfied that these contributions would mitigate the effects of the additional population from the development on local services.
63. With regard to the effects of the proposal on air pollution, I am satisfied with the findings of the air quality assessment²² which shows that the likely changes in traffic flows arising from the development are not anticipated to have a significant effect on local air quality, including within the Larkfield Air Quality Management Area (AQMA). Furthermore, subject to mitigation measures, which can be secured by condition, the proposal would not have

²² Wates Development Air Quality Assessment by ARUP 5th July 2019

a significant effect upon air quality as a result of activity during construction.

64. In relation to highway safety, I share the view of Kent County Council Highways that the proposed access arrangements, including the offsite works, are sufficient to ensure that site can be safely accessed without an adverse effect on the flow of traffic on the A20 or the wider highway network.
65. I also note that the development of the site provides the opportunity to provide a bridleway through the site. The application is made in outline form, and so how access through the site is achieved is not a matter before me. However, based on the information put to me I am satisfied that should the Local Authority consider it appropriate, such measures could be achieved on site as part of a detailed scheme.
66. I have considered the effects of the proposal on local wildlife. The application was accompanied by an ecological assessment²³ which found that the effects of the proposal on local wildlife were likely to be minimal. This is largely due to the fact that the parts of the site proposed for development are predominantly arable land. Those parts of the site of greater value, the woodland, hedgerows, and scattered trees are of greater value as a habitat and could be largely retained, subject to being included within an appropriate landscape scheme for the site. Therefore whilst I accept that the introduction of housing onto the site would be likely to have some effect on the value of these areas as a habitat, I am satisfied that on balance, and subject to mitigation measures outlined within the ecological report, the effects on local wildlife would not be significant.
67. A number of residents have questioned whether there is a need for a community facility within the development. Although I note that the community facility is also supported by some local residents and the local police, I also find no evidence that there is a deficit of such facilities in the local area. Nevertheless, this is not a matter which weighs against the proposal. Furthermore, I find no evidence to support the view that the development, and the open space within it, would lead to an increase in crime in the area, including anti-social behaviour.
68. I note comments from some local residents who dispute that the proposed affordable housing is genuinely affordable. The legal agreement which accompanies the application uses a definition of affordable housing, including affordable housing for rent which is in line with the definition of that in the National Planning Policy Framework. I am therefore satisfied that this would ensure that such housing is genuinely provided at rent levels significantly below the market rent for the area.

The Planning Balance

69. The proposal would provide 250 homes. Furthermore, 100 of the 250 dwellings would be affordable housing units. Having regard to the impetus to increase the supply of housing of all types which is explicit in the Framework, and the identified need for such housing in the Borough, I

²³ Land South of London Road Leybourne, Kent Ecological Impact Assessment July 2019

attribute the provision of housing, including affordable housing, very substantial weight.

70. The proposal includes enhancements to the public footpaths through the site and the provision of publicly accessible open space towards the west of the development. These aspects of the development represent an improvement for users in the wider local area and is a benefit to which I attribute moderate weight. The development also includes a community hall. I have no convincing evidence that there is a deficit of such provision in the local area and so I attribute this matter no weight as a benefit.
71. The proposal would bring some economic benefits through construction and through the additional spend generated by new residents, who would also help to sustain local services and I attribute these benefits moderate weight.
72. Highway improvements around the site are broadly necessary to offset the impacts of the scheme and so carry no weight in favour of the proposal. Similarly, the biodiversity improvements put to me are in effect mitigation measures to be set against the ecological impacts of the development and so carry no weight as a benefit.
73. Having regard to the quantity and quality of the agricultural land on and adjoining the site, I attribute moderate weight to the harm that would arise from its loss from agricultural production.
74. The impact on local landscape and the character of the area would be limited in the long term but would have significant short-term localised impacts and would be contrary to Policy SQ1 of the DPD. Notwithstanding the fact that the visual harm identified would lessen over time, taking into account the significant change that would occur, and the extent to which the site is used by local residents for informal recreation, I attribute significant weight to this harm.
75. Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that applications should be determined in accordance with the provisions of the Development Plan unless other material considerations indicate otherwise.
76. The Framework indicates that where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites the policies in the development plan are to be considered out of date. In such cases planning permission should be approved without delay unless any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme.
77. The harm that would arise to landscape and the character of the area, taken together with the loss of agricultural land would not significantly and demonstrably outweigh the very substantial benefits the scheme would provide in relation to housing provision and other identified benefits.
78. The proposal would therefore amount to sustainable development when assessed against the Framework, taken as a whole. This is a material consideration which would outweigh the identified conflict with policy SQ1. Planning permission should therefore be granted.

Conditions

79. The conditions set out in the accompanying schedule are based on those agreed by the Council and the appellant. Where necessary I have amended the wording of these in the interests of precision and clarity, in order to comply with advice in the Planning Practice Guidance.
80. For clarity I have imposed conditions to define the reserved matters, to identify the approved plans and to set the timescale for submission of reserved matters and implementation. I am satisfied that the reduced timescale for submission of reserved matters of eighteen months is necessary to ensure that the housing is delivered quickly to meet identified need.
81. The approval of details of external materials, landscaping and of levels on site are necessary to ensure the finished development has a satisfactory appearance and conditions in this regard is reasonable. A condition requiring details for waste storage and screening is also necessary to ensure such facilities are provided to an appropriate standard.
82. In order to meet the needs of future residents in relation to open space and play provision and in the interests of health and wellbeing, it is reasonable and necessary to require that appropriate provision is made for this within the proposed development along with a timetable for implementation. I am satisfied that the requirement, as set out within the condition, meets the provisions set out in **the Council's adopted** Policy OS3 of the Tonbridge and Malling Managing Development and the Environment Document 2010 (DPD) and is reasonable and necessary.
83. A number of conditions relating to highways matters have been imposed. These require details of parking and turning areas, provision of the access from the A20, details of roads and other highways infrastructure within the site and enhancements to the Public Rights of Way MR119 and MR120 along with details of linkages to the surrounding highways network. These details are necessary in the interests of highway and pedestrian safety to ensure appropriate access and circulation within the site. The requirement of vehicular charging points is necessary to secure measures to mitigate the impact of climate change.
84. A construction management plan is necessary to minimise disruption from construction, both in the interest of residential amenity and wider highway safety. Similarly, in the interests of protecting air quality during construction I have also imposed a condition requiring that the necessary mitigation measures outlined in the Air Quality Assessment are adhered to.
85. To ensure the site is appropriately serviced and drained, and to reduce the risk of off-site flooding I have imposed conditions relating to foul and surface water drainage. To protect human health, ground water and the wider environment it is also necessary to impose a condition requiring a site investigation for contamination, and if required all necessary remediation.
86. In the interests of protecting any archaeological interest that may exist on site, it is necessary to impose a condition requiring a field evaluation and if relevant the preservation of remains and further investigation if relevant.

In order to mitigate against any harm to ecological interests on site a condition is also necessary to require mitigation measure as outlined in the submitted ecological assessment.

The Legal Obligation

87. The application is accompanied by a planning agreement made under Section 106 of the Town and Country Planning Act 1990 (as amended). The agreement makes provision for a number of matters which I deal with below in turn.
88. Having regard to the DPD and the submissions at the Inquiry²⁴ I am satisfied that the provisions of the undertaking in respect of affordable housing, education, healthcare, parks and gardens and sports provision are necessary to make the development acceptable in planning terms. The sum for highway improvements is in addition to the works required at the access and is necessary to mitigate the effects of the proposal on the wider highway network. Similarly, the public transport contribution and the travel plan also serve to mitigate the effects of the proposal on the wider higher network.
89. The evidence submitted shows that the youth services contribution, libraries contribution and community learning contribution are all required to meet a need directly arising from the development, and are all related to services that are reasonably close to the development and therefore able to serve future residents.
90. A social services contribution is also sought. In seeking the contribution reference is made to the provision of assistive technology systems, adapting community facilities, the provision of sensory facilities and the provision of accessible facilities and the contribution is calculated using an element for each of these measures. However, the agreement refers instead to the provision of extra care accommodation. Whilst I have no reason to consider that such accommodation is not needed in the borough, the evidence submitted does not relate to the provision of such accommodation. As such I cannot conclude that the sum involved is reasonably related to the measures proposed. Furthermore, the distance of 10 miles provides me with no surety that if such facilities were provided, they would be directly related to the development in question. I therefore do not consider that this element of the obligation is necessary.
91. I am satisfied that the obligations which I have set out above as being justified are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. However, as they simply fulfil policy expectations, they attract no positive weight in support of the scheme. In accord with the Community Infrastructure Regulations I have not taken account of the social services contribution part of the undertaking.

²⁴ Inquiry Documents 23,24,25 and 37

Conclusion

92. Accordingly, having regard to all other matters raised, the appeal is allowed.

Anne Jordan

INSPECTOR

SCHEDULE OF CONDITIONS

1. Approval of details of the layout and appearance of the development, the landscaping of the site, and the scale of the development (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of eighteen months from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Applications for the approval of the reserved matters shall broadly accord with the design principles shown in the indicative layout referenced 6273-01 Rev G and indicative landscape layout referenced LE-20 received 10 December 2019.
5. The details submitted in pursuance to Condition 1 shall be accompanied by a contoured site plan and full details of the slab levels and ridge levels at which the dwellings are to be constructed and development shall be carried out in accordance with the approved details.
6. The details submitted in pursuance of Condition 1 shall be accompanied by a scheme of landscaping and boundary treatment. The scheme shall broadly accord with the design and landscaping principles shown indicatively on Drawing LE20 received 10 December 2019 and follow the recommendations set out in the Arboricultural Implications Report received 1 August 2019. The scheme shall be approved in writing by the Local Planning Authority and shall be implemented by the approved date. Any trees or plants which within 10 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
7. The details submitted in pursuance of Condition 1 shall show land reserved for the parking and turning of vehicles. None of the dwellings hereby approved shall be occupied until these areas have been provided, surfaced, and drained in accordance with the approved details. Thereafter no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access to reserved vehicle parking areas.
8. The details submitted pursuant to condition 1 shall show details of vehicle charging points. The charging points shall be approved by the Local Planning Authority and be installed prior to the first occupation of any dwelling, and thereafter maintained and retained in accordance with the approved details.

9. The details submitted in pursuance of Condition 1 shall show the proposed enhancements to the Public Rights of Way MR119 and MR120 through the site and in broad conformity with the indicative layout referenced 6273-01 Rev G received 10 December 2019. None of the dwellings hereby approved shall be occupied until these routes have been provided, surfaced, and drained in accordance with the approved details and shall be retained and maintained at all times thereafter.
10. None of the dwellings hereby approved shall be occupied until the linkages of the Public Rights of Way MR119 and MR120 to the surrounding highway network have been substantially completed.
11. None of the dwellings hereby approved shall be occupied until the access from A20 London Road as shown in principle on drawing numbers ITL11317-GA-014 Rev D or ITL11317-GA-014- Rev H has been substantially completed.
12. The proposed road, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicles overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.
13. No dwelling shall be occupied until details of a scheme for the storage and screening of refuse has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented before the development is occupied and shall be retained at all times thereafter.
14. The details submitted in pursuance of Condition 1 shall show the proposed areas of amenity, natural and formal open space, Neighbourhood Equipped Area of Play, a centrally located Local Equipped Area of Play and Local Areas of Play, along with a timetable for their implementation. The details shall be approved by the Local Planning Authority and be installed in accordance with the approved plan(s)/scheme and maintained and retained at all times thereafter.
15. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of: i. archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and ii. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.
16. The details submitted in pursuance to Condition 1 shall provide details and samples of all materials to be used externally. These details shall be submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

17. The details submitted in pursuance of Condition 1 shall incorporate the mitigation and enhancement measures detailed in chapter 5 of the Ecological Assessment received 1 August 2019. The measures shall be submitted to and approved by the Local Planning Authority, and implemented in accordance with an agreed timetable and retained thereafter.
18. The details submitted in pursuance of Condition 1 shall incorporate the mitigation measures detailed in the Air Quality Assessment received 1 August 2019. The measures shall be submitted to and approved by the Local Planning Authority, and implemented in accordance with an agreed timetable and retained thereafter.
19. No above ground works, other than ground investigations work or site survey works, shall commence until a scheme to connect all plots to mains foul drainage has been submitted to, and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved scheme to provide all plots with mains foul drainage has been implemented.
20. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the Local Planning Authority:
 - (a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended). The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.
 - (b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.
21. Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary,

details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

22. Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the DRAINAGE ASSESSMENT, ref C85673-R400A and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):
- **that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.**
 - **appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker. The drainage scheme shall be implemented in accordance with the approved details.**
23. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
24. No development hereby permitted shall commence until a Construction Management Plan, to include details of:
- (a) parking for vehicles of site personnel, operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials;
 - (d) programme of works (including measures for traffic management);
 - (e) measures to prevent the deposit of materials on the highway;
 - (f) on-site turning for construction vehicles;
 - (g) measures to ensure protection of protected species and habitats during construction;
 - (h) access arrangements; and APP/H2265/W/20/3256877 Land West of Winterfield Lane East Malling ME19 5EY

(i) the days of the week and hours of the day when the demolition and construction works will be limited to and measures to ensure these are adhered to, has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be implemented in accordance with the approved Construction Management Plan.

End of Schedule

APPEARANCES

FOR THE APPELLANT:

Sasha White QC of Landmark Chambers

He called:

Mr Alastair Field Reading Agricultural Consultants

Mr Jeremy Smith SLR Consulting Ltd

Mr Asher Ross Jones Lang LaSalle

Mr Towell of for the Conditions Round Table

FOR THE LOCAL PLANNING AUTHORITY:

Tom Cosgrove QC of Cornerstone Barristers

He called:

Mr Matthew Berryman CLM Ltd

Mr Jon Etchells Jon Etchells Consulting

Mr John Escott Robinson Escott Planning LLP

Mr Ian Bailey of TMDC for the Housing Land Supply Round Table

Mr K Toogood for the Conditions Round Table

FOR THE PARISH COUNCIL AS RULE 6:

Clare Parry of Counsel

She called:

Mr Kevin Goodwin KG Creative Consultancy

INTERESTED PERSONS

Mr Gibbons Local Resident

Mrs Simpson Local Resident

Mr Markham Local Resident

Mr Mansell Local Resident

Mrs Langston Local Resident

Mr Johnson Local Resident

Rev Mark Hayton Local Resident

Mr Archer Local Resident

Mr Dean	Local Resident
Mrs Woodger	Local Resident
Mr Brooks	Local Resident
Mr Walker	Local Resident
Mr Shire	Local Resident
Ms Dobson	Local Resident
Mr Arnold	Local Resident

DOCUMENTS RECEIVED AT THE INQUIRY

1. Brampton Field Committee Report ref: TM/18/02966/OA
2. 2018 Annual Monitoring Report (issued to PINS earlier for the HLS round table – see attached)
3. ED19 – Bailey Letter
4. 2020 **Visualisations for Mr Smith’s** Submission
5. Appellant Opening Statement
6. LPA Opening Statement
7. Rule 6 Opening Statement
8. **Mr Gibbon’s** Submission
9. CIL Statement
10. Agreed Conditions
11. Section 106 Agreement
12. **Mrs Simpson’s** Submission
13. Late Submission from the British Horse Society
14. Statement from Mr Dean
15. KCC Consultation Letter Response dated 4th October 2019
16. KCC CIL Compliance Statement with Appendices
17. Email from KCC to Wates Developments Regarding Education Provision
18. Submission from Mr Field – Aerial view of land farmed in the vicinity of the appeal site.
19. KCC Economic Development Comments
20. KCC Highways and Transport Comments
21. Statement of Mr R Brooks
22. Natural England Consultation Letter and Response
23. Comments from Clinical Commissioning Group regarding CIL requirements
24. KCC Local Transport Plan 4

25. LDF Managing Development and the Environment DPD – Policy Annex OS3, Open Space Standards and Open Space Calculator
26. Agreed List of Plans, dated 3rd December - to accompany the Statement of Common Ground
27. Comments from Mrs Woodger
28. Schedule of Conditions V4 3rd Dec 2020
29. Further Comments of Mrs Liz Simpson
30. KCC Rights of Way Improvement Plan 2018-2028
31. Village Design Statement
32. Strategic Commissioning Statistical Bulletin – 2019 Mid-year Population Estimates: Ward Level Population in Kent
33. Woolpit Appeal Decision ref: APP/W3520/W/18/3194926
34. Email from Rev Hayton to the Inspectorate Received: 09 December 2020 12:10
35. MHCLG Affordable Housing Figures
36. Update agreed Conditions V6
37. Winterfield Lane, East Malling - Appeal ref: 3256877 TM/19/01814 KCC Contributions – Additional Information
38. Email for Tonbridge and Malling Inspector dated 9 December 2020 13:10 Regarding Population Estimates for the Borough.
39. Closing Statement for the Council
40. Closing Statement for the Parish Council as R6
41. Closing Statement for the Appellant
42. Inspectors' Letter to the Council dated 15 December 2020
43. **Council's** Comments on the Inspectors' Letter in Relation to the Appeal
44. **Parish Councils'** Comments on **the Inspectors'** Letter
45. **Appellant's** Comments on **the Inspectors'** Letter

EP1K

Appeal Decision

Inquiry opened on 20 January 2015

Site visit made on 28 January 2015

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 May 2015

Appeal Ref: APP/Y3940/A/14/2222641

Land North of Bath Road, Corsham, Wiltshire SN13 0QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Wiltshire Council.
 - The application Ref 13/05188/OUT, dated 18 October 2013, was refused by notice dated 30 May 2014.
 - The development proposed is erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping.
-

Decision

1. The appeal is allowed and outline planning permission is granted for erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping at Land North of Bath Road, Corsham, Wiltshire SN13 0QL in accordance with the terms of the application, Ref 13/05188/OUT, dated 18 October 2013, and the plans submitted with it subject to the conditions set out in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Wiltshire Council against Gladman Developments Ltd. This application is the subject of a separate decision.

Preliminary matters

3. The Inquiry sat for 7 days from 20 to 23 January, on 27 January and on 12 and 13 March 2015. There was an accompanied site visit on 28 January 2015 and I carried out various unaccompanied visits to the locality of the appeal site prior to and during the course of the Inquiry.
4. The Wiltshire Core Strategy (CS) was adopted by the Council on 20 January 2015, the opening day of the Inquiry. As a result various policies of the **North Wiltshire Local Plan referred to in the Council's decision notice have now been superseded by the policies of the CS.**
5. On 27 January 2015 the Council and the appellant made a joint request for an adjournment to allow for additional work to be done in relation to the

requirements of the Habitats Regulations¹. This included discussions between the Council and the appellant, the preparation of a further draft appropriate assessment and consultation with Natural England. Natural England responded to this additional work in a letter to the Council dated 2 March 2015². I comment further on these matters below in the section dealing with ecology and designated sites.

6. The application was submitted in outline with all matters reserved except for access. Illustrative drawings were submitted with the application. These included a development framework, a landscape framework and a masterplan.
7. A revised version of the masterplan (5468-L-03 rev L) was submitted with the **appellant's proofs of evidence. This revision introduced a landscape** corridor along the eastern site boundary which was intended to mitigate ecological impacts of the proposed development. Proposed houses close to the boundary were shown facing a private drive alongside the buffer whereas before they were shown backing onto the boundary. The Council objected to this plan being considered on the basis that it would determine the orientation of dwellings in the vicinity of the boundary. It was suggested that this could be prejudicial to the interests of adjoining residents who may not have expected this form of layout to be promoted.
8. However, I did not regard this as an amendment to the appeal scheme because the application was made in outline. Revision L of the masterplan was accepted on the basis that it would be a further illustrative plan which would sit alongside any other illustrative plans before the Inquiry. I did not consider that any party would be prejudiced because, if outline planning permission were to be granted, the Council would have control over the layout at the reserved matters stage.
9. During the adjournment the appellant submitted an Ecological Parameters Plan and illustrative landscape cross sections. These plans showed proposed ecological mitigation measures and were relied on in relation to the draft appropriate assessment referred to above. The Council carried out some neighbour consultations on these plans. In closing, the Pickwick Association stated that a wider consultation should have been carried out. However, I do not think that these plans were an amendment to the outline application. Like revision L of the masterplan, they were submitted as illustrative plans during the course of a properly publicised Inquiry. There was no requirement for the Council to carry out consultation at all so there can be no criticism that the consultation it did was not wide enough. That said, the Council submitted copies of the consultation responses received and I have taken these into account.
10. The appellants sought a screening opinion from the Council in relation to the need for Environmental Impact Assessment (EIA). The proposed development fell **within the category of 'urban development projects' where the area of works exceeds 0.5ha**³. On 28 October 2013 the Council confirmed that EIA would not be required. At the Inquiry the Council asked to be provided with documents relating to the EIA screening carried out in relation to the appeal on

¹ Regulation 61 of The Conservation of Habitats and Species Regulations 2010

² Document GLD/LPA/07

³ Schedule 2, paragraph 10(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as it then was. The threshold was increased by the Town and Country Planning (Environmental Impact) (Amendment) Regulations 2015 on 12 March 2015.

behalf of the Secretary of State. This information was duly provided⁴. In closing the Council confirmed that it was satisfied that there had been no error of law in this regard. I have kept this matter under review and have found no reason to differ from **the Council's screening opinion**.

11. An Agreement under s106 of the Town and Country Planning Act was submitted at the Inquiry. The Agreement would secure the delivery of 30% of the dwellings as affordable housing. It would also make provision for highway works, for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. In addition there would be financial contributions to sport and recreation, cemeteries and secondary education. This Agreement resolved the matters **referred to in the Council's 5th** reason for refusal.
12. The transitional period relating to Regulation 123 of the Community Infrastructure Levy Regulations ended after the close of the Inquiry. Accordingly, I sought further comments from the parties in relation to the five obligation limit referred to in Regulation 123. The Council and the appellant agree that the circumstances of this case are such that Regulation 123 is complied with. Moreover, the Agreement anticipates the adoption of the **Council's** Community Infrastructure Levy charging schedule and contains provisions which would avoid any double payment of infrastructure contributions.
13. I consider that the obligations contained in the Agreement would be necessary and reasonable. They would accord with the relevant statutory provisions⁵ and with the National Planning Policy Framework (the Framework) and I have taken them into account accordingly. I comment further below on the individual obligations.
14. After the close of the Inquiry there was a revision to Planning Practice Guidance (the Guidance) relating to updating evidence on the supply of housing sites. In addition, my attention was drawn to recent appeal decisions at Cricklade and Oaksey dealing with housing land supply in Wiltshire⁶ and to two planning permissions for housing which have been granted in or near Corsham⁷. The parties were invited to make further comments in the light of these matters and I have taken account of the responses received.

Main issues

15. I consider that the main issues in this case are:
 - whether the Council can demonstrate that there is a 5 year housing land supply,
 - the effect of the proposal on ecology, including any effects on designated sites and protected species,
 - the effect of the proposal on the character and appearance of the area,
 - the effect of the proposal on heritage assets,
 - whether allowing the appeal would be prejudicial to a plan-led planning process, and
 - whether the proposal would amount to a sustainable form of development.

⁴ Document GLD/20

⁵ Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010

⁶ Cricklade – APP/Y3940/A/14/2223354; Oaksey – APP/Y3940/A/14/2225214

⁷ Email from Derek Burt of 8 April 2015

Reasons

The policy context

16. The CS comprises the development plan for the purposes of the appeal. Core Policy 1 sets out the settlement strategy which identifies four tiers of settlements. Principal settlements are to be the primary focus for development with market towns also having the potential for significant development and local service centres seen as providing for more modest levels of growth. Corsham is identified as a market town. Core Policy 1 states:

Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

17. The delivery strategy for the CS is contained in Core Policy 2. It seeks to deliver at least 42,000 homes in Wiltshire between 2006 and 2026. Three housing market areas (HMA) are identified. Corsham is in the North and West Wiltshire HMA (NWWHMA) where the minimum housing requirement is 24,740. Table 1 in the CS sets out indicative housing requirements for settlements and community areas, the indicative requirement for Corsham Town being 1,220. However, this disaggregation to community areas is not intended to be so prescriptive as to be inflexible in terms of delivering the housing requirement for each HMA. Table 1 is intended to provide a strategic context for the preparation of a Housing Sites Allocation DPD and in order to plan for infrastructure provision. Core Policy 11 sets out the spatial strategy for the Corsham Community Area. Consistent with Table 1, it states that approximately 1,395 homes will be provided of which about 1,220 will be at Corsham. The CS notes that new growth at Corsham will be balanced, with housing delivery alongside employment.

18. Core Policy 2 also states that development outside the defined limits to development will not be permitted except in specific circumstances which do not apply to the housing element of the appeal scheme. As the appeal site is outside the defined limits the proposal is contrary to Core Policy 2.

19. Core Policy 34 is generally supportive of proposals for employment development within the principal settlements, market towns and local service centres. Where proposals are outside these settlements the policy sets out criteria which will be applied. Core Policy 50 states that development proposals must demonstrate how they protect features of nature conservation value as part of the design rationale. Measures to avoid and reduce disturbance of sensitive wildlife species are to be incorporated and all development should seek opportunities to enhance biodiversity.

20. Core Policy 51 seeks to protect, conserve and where possible enhance landscape character. The aspects of landscape character to be taken into account include landscape features of cultural, historic and heritage value. Core Policy 58 seeks to protect the historic environment, including the settings of designated heritage assets such as conservation areas. Core Policy 61 states that new development should be located and designed to reduce the need to travel particularly by private car and to encourage the use of sustainable transport alternatives.

Housing land supply

21. The Council and the appellant agreed that the relevant assessment period for both the housing requirement and the supply is 1 April 2014 to 31 March 2019. It was also agreed that the CS provides the housing requirement against which supply should be assessed and that the area to be assessed should be the NWWHMA. The Council and the appellant did not agree about the housing requirement or about some elements of supply.
22. The Inspector who conducted the examination of the CS (the CS Inspector) concluded that the Council could demonstrate a 5 year housing land supply (HLS)⁸. Planning Practice Guidance (the Guidance) states that:

The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a 5 year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position⁹.

In this case I consider that the **CS Inspector's report and the CS evidence base** form an important part of the evidence before me on HLS. However, the Guidance does not preclude a decision maker considering a planning appeal such as this from taking account of evidence which emerges subsequent to the consideration of HLS in a development plan examination.

The housing requirement and the supply needed

23. **The Council's figure for** the housing requirement in the NWWHMA is 24,740 in accordance with Core Policy 2. Allowing for completions in the period 2006 – 2014, the 5 year supply needed would be 6,160. In accordance with paragraph 47 of the Framework, it was agreed that a buffer of 5% would be appropriate¹⁰. On this basis the supply needed to accord with the Framework would be 6,468. The appellant argued that the requirement should be increased to take account of an allowance for 900 dwellings west of Swindon (the Swindon allowance).
24. The Swindon allowance relates to an existing commitment for 900 dwellings to the west of Swindon. Although located within Wiltshire, these dwellings are regarded as meeting the needs of Swindon. At paragraph 4.29 the CS states that **'As part of the planned early review of the CS, the Council will clarify that its housing requirement will be met without relying upon the delivery of homes to the west of Swindon'**. These words were added by way of a modification recommended by the CS Inspector. He did not think that the housing requirement within Wiltshire should be partially met by relying on delivery west of Swindon. However, he concluded that **'This matter can be dealt with most expeditiously through the planned early review of the CS which will include the new joint SHMA, without prejudice to the overall soundness of the CS'**¹¹.
25. **The appellant argued that the CS Inspector's finding of soundness in relation to the CS as a whole was predicated on a commitment to a planned early review. However, the Council's Local Development Scheme 2015 (LDS), which was**

⁸ See paragraph 96 of the report at CD11

⁹ Reference ID: 3-033-20150327

¹⁰ See Statement of Common Ground on housing supply matters – document GLD/LPA/08

¹¹ See paragraph 87 of the CS Inspector's report. The SHMA referred to is a joint Strategic Housing Market Assessment to be carried out by Wiltshire Council and Swindon Borough Council.

adopted on the same day as the CS, makes no such commitment. Furthermore, the LDS only states that the new joint SHMA will **'inform the need for a further review of Core Strategy policies'**¹². The appellant considers that the Council has reneged on its commitment to a planned early review. In these circumstances, it was suggested that the full housing requirement for Wiltshire will not be delivered in a timely way unless the Swindon allowance is added to the requirements for the 3 HMAs. On this approach the 900 units would be distributed proportionately, adding 225 to the requirement for the NWWHMA.

26. I agree with the appellant to the extent that the LDS is not consistent with **paragraph 4.29 of the CS or with paragraph 87 of the CS Inspector's report**. Bearing in mind the statutory nature of the document¹³ this is not a minor matter. On the other hand, the CS Inspector has recently considered how the Swindon allowance should be dealt with. In particular, he considered whether the Swindon allowance ought to be added to the requirements for the HMAs. That is not what he recommended. Instead, he concluded that this matter ought to be dealt with through a planned early review of the CS. His modification includes the commitment to an early review within the wording of the CS itself.
27. On balance, having regard to all the circumstances, I do not think that the lack of reference to the review in the LDS amounts to a sufficient change in circumstances to warrant adopting a housing requirement for the NWWHMA other than that set out in the CS. For the purposes of this appeal I agree with **the Council's position which is that** the supply needed in the NWWHMA to accord with the Framework is 6,468 dwellings.

The supply of housing sites

28. The respective positions of the Council and the appellant in relation to the supply of housing sites are summarised in the updated Statement of Common Ground (SoCG) on housing supply matters. The SoCG records changes made by the Council and the appellant during the course of the Inquiry. References **to the Council's figures in the following sections of this report are references to** the position as set out in the updated SoCG. I turn next to those sites where the contribution to HLS was in dispute at the end of the Inquiry. Some of these were discussed at an Inquiry which took place in April 2014 relating to proposed residential development at Park Road, Malmesbury¹⁴. I have taken account of the findings of the Inspector in that case¹⁵ (the Park Road Inspector) together with the other evidence before me on HLS matters.

Westinghouse Recreation Ground

29. The site has planning permission for 74 houses. Based on a telephone conversation, the appellant argued that the developer is considering a change to the design which would result in a reduction of 10 units. The Framework states that sites with planning permission should be considered deliverable unless there is clear evidence that they will not be delivered within 5 years. There was no suggestion that this site is not deliverable. In my view there is

¹² See paragraph 2.10 of the LDS

¹³ Section 15, Planning and Compulsory Purchase Act 2004

¹⁴ APP/Y3940/A/13/2200503

¹⁵ **This was a case where the Secretary of State did not agree with the Inspector's recommendation. However, the Secretary of State accepted the Inspector's findings in relation to HLS.**

insufficient evidence to warrant adopting a figure lower than the extant **permission. I accept the Council's figure for this site.**

Hunters Moon

30. The Council resolved to grant outline planning permission for up to 450 dwellings in January 2014 subject to the completion of a s106 agreement. The **developer's trajectory envisaged first delivery of dwellings 18 months after the grant of planning permission.** The Council adopted the findings of the Park Road Inspector. He considered that delivery in 2014/15 was unlikely but that, thereafter, the site could produce at the rate assumed by the Council. This conclusion was based on the absence of a planning permission at the time of the Park Road Inquiry. The position at this Inquiry was that the outline planning permission had still not been issued. Consequently, it now seems unlikely that there will be delivery in 2015/16. I therefore agree with the appellant's position which is a reduction of **the Council's figure by 56 units.**

Westbury North Junction

31. The site has full permission for 102 dwellings granted in October 2013. It is a former quarry, in-filled with waste materials, subsequently used for HGV parking and now vacant. The appellant queried the delivery trajectory on the basis that there has been no discharge of pre-commencement conditions. In particular, it was suggested that a condition relating to contaminated land was onerous and would be time-consuming to deal with. However, whilst the wording of the condition in question is quite detailed, in substance it is little different to many such conditions. **I consider that the Council's trajectory allows a reasonable period for the discharge of conditions and see no reason to make any adjustment for this site.**

Foundry Lane

32. The site is an industrial estate which has been identified for regeneration for some time. A mixed use redevelopment is being promoted which would include up to 115 residential units. There was a resolution to grant outline planning permission in December 2013 subject to the completion of a s106 agreement although as yet no permission has been issued. The Park Road Inspector found that an allowance of 75 completions within the 5 year period was reasonable, having been informed that the agreement was in the process of being finalised. In August 2014 the Council indicated that 4 years should be allowed for site remediation prior to commencement¹⁶. Even if that figure is unduly cautious, given the complexity of the site and the continued absence of a planning permission, delivery within the 5 year period now seems unlikely. I agree with **the appellant that 25 units should be deducted from the Council's figure.**

Burton Hill

33. The site is allocated in the draft Malmesbury Neighbourhood Plan (MNP) for approximately 50 dwellings. The MNP was subject to examination in September 2014 and there was a referendum in December 2014. At the time of the Inquiry the Council was in the process of drafting the document which would complete the process of making the plan. The MNP is therefore at an advanced stage and significant weight may be given to it. The appellant argued that an earlier strategic housing land assessment suggested that delivery from this site

¹⁶ Email from Neil Tiley dated 26 August 2014 at Appendix 11 of Ms Mulliner's proof of evidence

would be outside the 5 year period because of the need to co-ordinate separate land ownerships. Moreover, it was said that there was no evidence of a forthcoming planning application and that any assessment by the MNP examiner of deliverability would not have needed to consider the 5 year period.

34. In my view matters have moved on since the strategic housing land assessment. It is important to note the site has been considered recently in the context of the MNP examination process. Had the examiner found that there were significant obstacles to delivery no doubt he would have said so. As to **delivery within 5 years, I accept the Council's evidence that** an application is being worked up by a delivery task group with the involvement of the landowners. **The evidence supports the Council's delivery trajectory and no adjustment is required for this site.**

Backbridge Farm

35. The site is allocated in the MNP for 170 dwellings. The appellant argued that the MNP requires the provision of pedestrian and cycle routes which would involve the use of 3rd party land. In the absence of a formal agreement with the owners concerned there was effectively a ransom strip. In response, the Council commented that the access problems had been overstated. One of the 3rd party owners concerned was the Council and one of the routes would be within an extension to a primary school site. A delivery task group had been established including representatives of the developer, the school and the education authority to bring forward proposals for the site.
36. As with the previous site, it is important to note that this site has recently been considered in the context of the examination of the MNP. The report of the MNP examiner emphasises the importance of the pedestrian and cycle links. It also records that representatives of the school attended the examination. The examiner concludes that ***'From the evidence given on these matters I am satisfied that there is every possibility that the required pedestrian and cycle links would be secured through development'***¹⁷. The Guidance states that where potential ownership problems, such as ransom strips, are identified an assessment will have to be made as to how and when they can realistically be overcome¹⁸. In making that assessment I attach significant weight to the MNP **examiner's** report. I conclude that there is a realistic prospect that housing will be delivered at this site within the 5 year period. No adjustment to the **Council's figure is needed.**

North Chippenham

37. The Council resolved to grant outline planning permission for up to 750 dwellings together with employment uses and a local centre in April 2014, subject to a s106 Agreement. Permission has yet to be issued. The developer provided a revised trajectory in March 2014 indicating delivery of 360 units within the 5 year period. This figure was accepted by the Park Road Inspector **and is relied on by the Council. The developer's trajectory assumed that the** outline planning permission would be in place by April 2015. Consequently, the absence of such permission at the time of the Inquiry was not evidence of slippage and **no adjustment to the Council's figure is needed.**

¹⁷ Paragraph 3.34 of the examiner's report at Appendix 13 of Ms Mulliner's proof of evidence

¹⁸ Reference ID: 3-020-20140306

Patterdown and Rowden (South West Chippenham)

38. The site had previously been identified in the draft CS as a strategic allocation for 800 dwellings plus employment uses. The adopted version of the CS does not include strategic allocations at Chippenham. Instead, the Council intends to bring forward a Chippenham Sites Development Plan Document¹⁹. **The Council's trajectory for this site includes delivery in 2016/17. As an outline application for 1000 houses was only submitted in December 2014 the appellant suggested that it was unlikely that there would be delivery before 2017/18.**
39. **The Park Road Inspector accepted the Council's trajectory which assumed a two year period between submission of an outline application and delivery. On that basis, given that the application was only actually made in December 2014, the site would start to produce completed units in the 4th quarter of 2016/17. Making a proportionate allowance for that quarter, and assuming that delivery would thereafter follow the Council's trajectory (slipped by one year), it is reasonable to allow for 190 units within the 5 year period²⁰. This is a reduction of 85 from the Council's figure.**

Ashton Park, Trowbridge

40. The site is a strategic allocation in the CS for 2,600 homes together with employment land. Much of the site is controlled by Persimmon Homes, currently the developer of a nearby site at Castle Mead producing around 100 units per year. The Council and the appellant agreed that the site should produce completed dwellings from 2017/18. However, the appellant argued that Persimmon is unlikely to develop significant numbers of houses at Ashton Park until it has completed Castle Mead. Consequently the appellant suggested that only a few houses would be delivered in 2017/18 and that the build up in delivery thereafter would be slower than in **the Council's trajectory**.
41. A Statement of Common Ground between the Council and Persimmon Homes produced in May 2013 noted that there would be at least 4 outlets at Ashton Park, plus affordable housing. Although there would be limited overlap with Castle Mead competition between the two sites was not seen as a major issue. The Park Road Inspector noted that there had been some slippage in the submission of an outline application and reduced the projected delivery within the 5 year period from 600 to 350 accordingly. This is the figure now relied on by the Council. I consider that the scale of Ashton Park is such that it is likely there would be multiple outlets, as stated in the Statement of Common Ground. In my opinion there is insufficient **evidence to support the appellant's suggestion that the build rates should be reduced. No adjustment to the Council's figure is therefore justified.**

West of Warminster

42. The site is a strategic allocation in the CS for 900 dwellings together with **employment land. The Council's trajectory assumes delivery from 2016/17. Given that no application has yet been submitted this now seems unlikely. The appellant suggests that the Council's trajectory should slip by one year. I agree. This results in a reduction of 140 from the Council's figure.**

¹⁹ The Statement of Common Ground records that the CS Inspector found that the Sustainability Appraisal did not support the strategic allocations at Chippenham.

²⁰ The calculation is 15 units in the 4th quarter of 2016/17, 75 units in 2017/18 and 100 units in 2018/19.

Station Road, Westbury

43. The site was previously allocated in the West Wiltshire Local Plan and is now a strategic allocation for 250 dwellings in the CS. The Council adopts the **developer's trajectory which shows 50 units in 2018/19. There would be a need** for a link road to cross a railway line as part of the development. The appellant argued that no planning application has been submitted and questioned the viability of the site.
44. I understand that the site has been allocated for some time without development being brought forward. However, it has recently been reviewed in **the context of the CS examination. The CS Inspector's report addressed the** issue of viability, noting that the evidence presents **'a degree of ambivalence as to the viability of the site'**. Even so, the Inspector went on to say that the Council's revised viability evidence led to a reduction in affordable housing aspirations which will enhance the likelihood of viable delivery. He concluded that **'the Station Road site is justified as a strategic allocation'**. I attach **significant weight to the CS Inspector's findings** and conclude that there is a realistic prospect of delivery at this site. **In terms of timing, the Council's trajectory indicates delivery in the final year of the 5 year period.** This allows sufficient time for an application to be submitted and determined. No adjustment **to the Council's figure** is required.

Victoria Road, Warminster

45. The site has planning permission for 18 dwellings. However, a further planning application has been submitted for 8 dwellings and 3 retail units. On balance it seems more likely that this site will deliver 8 houses and it is therefore **appropriate to make a reduction of 10 units from the Council's figure.**

Conclusions on housing land supply

46. The supply needed in the NWWHMA, derived from the CS, is 6,468. This figure includes **a 5% buffer in accordance with the Framework. The Council's figure** for supply is 6,530. For the reasons given above I consider that this figure should be reduced by 316. The resulting figure is 6,214 which is below the supply needed to accord with the Framework. I acknowledge that the shortfall is not great. Indeed, the available supply exceeds the 6,160 that would be needed if it were not necessary to add a buffer. However, the Framework makes clear at paragraph 47 that a buffer should be added to ensure choice and competition in the housing market.
47. It follows that, in the NWWHMA, the Council cannot demonstrate a 5 year supply of deliverable housing sites with the buffer required by the Framework. In these circumstances the Framework states that relevant policies for the supply of housing should not be considered up-to-date.
48. The Council did not dispute that, insofar as Core Policy 2 seeks to restrict housing outside the limits of development, it is a relevant policy for the supply of housing which would be deemed to be out-of-date if there were found not to be a 5 year HLS. The appeal scheme also includes B1 office development. Core Policy 34 of the CS deals with employment land and is not a relevant policy for the supply of housing. I return to the application of development plan policy to the B1 element of the scheme later in this decision.

49. Paragraph 14 of the Framework states that where relevant policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or where specific policies in the Framework indicate that development should be restricted. This is a case where paragraph 14 is not engaged, for reasons discussed in the concluding section of this decision.
50. I have referred above to two recent appeal decisions relating to sites at Oaksey and Cricklade which were drawn to my attention after the close of the Inquiry. Both sites are within the NWWHMA and in each case the Inspector accepted the conclusion of the CS Inspector in relation to the existence of a 5 year HLS. It can be seen from the Oaksey decision that the appellant in that case did not **contest the CS Inspector's conclusion on HLS. Whilst there was some** discussion of the allowance for windfall sites, it appears that the delivery trajectories for individual HLS sites were not discussed at the hearing.
51. It can be seen from the Cricklade decision that both the housing requirement and the HLS were disputed. I agree with the Cricklade Inspector that the CS requirement, disaggregated to the 3 HMA, provides the correct basis for establishing the requirement. The Inspector does not comment on individual supply sites and I do not know what detailed information was before him on this matter. It is clear that he attached very significant weight to the findings of the CS Inspector.
52. In common with the Cricklade Inspector I have afforded substantial weight to the report and conclusions of the CS Inspector. However, at the Inquiry evidence was put before me which demonstrates that, for some sites, the position now is materially different to the evidence that was before him. Neither the Framework nor PPG suggest that such evidence should be disregarded. Case law stresses the importance of an evidence based approach to the consideration of HLS²¹. On the basis of that evidence I have reached a different conclusion to the Oaksey and Cricklade Inspectors.
53. Finally, I note that since the Inquiry the Council has permitted housing development on two sites at or near Corsham, amounting to 152 dwellings. However, it would not be appropriate simply to add that figure to the supply – that would be tantamount to changing the base date of the HLS exercise. Moreover, some of these units are already accounted for in the HLS figures. The Council and the appellant have agreed that the correct base date for this appeal is 1 April 2014. If any later base date were used it would be necessary to review all the elements of the HLS exercise.

Effect on ecology, including designated sites and protected species

54. The appeal site comprises an arable field, within which there are some free-standing trees, and an area of grassland. There are corridors of trees and vegetation adjoining the northern and eastern site boundaries. These are associated with the grounds of Guyers House and open farmland to the north and with the back gardens of houses in Academy Drive to the east. The site is bounded by Bath Road to the south, beyond which is the urban area of Corsham. To the west it is bounded by Guyers Lane, beyond which there is a

²¹ *Wainhomes v Secretary of State for Communities and Local Government* [2013] EWHC 597 (Admin) – see for example paragraph 35 of the judgement

group of houses fronting Bath Road and open farmland. In the south west part of the site there is an airshaft leading to a disused underground quarry.

55. The site is not subject to any nature conservation designations. However, it is used by protected species, notably bats. All UK bats are protected species. An ecological appraisal and a bat survey were submitted with the application in 2013. This work identified several species of bats using the site. In response to matters raised by the Council and Natural England (NE) further bat surveys were undertaken during 2014.

Designated sites

56. The ecological appraisal identified one Special Area of Conservation (SAC) and 3 Sites of Special Scientific Interest (SSSI) in the area around the appeal site together with some non-statutory wildlife sites. The Box Mine SSSI is about 1.6km to the south west of the appeal site. This SSSI also forms part of the Bath and Bradford on Avon Bats SAC. The SAC is made up of various separate areas, the next nearest being respectively 7.5km and 9.6km from the site. The ecological appraisal did not identify any significant impacts on designated sites other than the Box Mine component of the SAC. This conclusion was not disputed by the Council and I see no reason to disagree.

57. The SAC is a European site and Regulation 61 of the Habitats Regulations therefore applies. The Council and the appellant agreed that the application is likely to have a significant effect on the SAC. Consequently, in accordance with Regulation 61, an appropriate assessment of the implications for that site must be made. To assist the Inquiry a draft appropriate assessment was prepared and agreed between the Council and the appellant²². The draft appropriate assessment concluded that the project was not likely to affect the integrity of the SAC, either alone or in combination with other plans and projects. NE was consulted and advised that it concurred with the assessment conclusions, provided that all mitigation measures are appropriately secured in any permission given²³. I have taken account of the draft appropriate assessment, together with the views of NE and all other evidence before the Inquiry in order to make my own appropriate assessment.

58. The interest features of the SAC are greater horseshoe bat (GHB), **Bechstein's bat (Bechstein's) and lesser horseshoe bat (LHB)**. There are relatively large populations of GHB and LHB and a small population of Bechstein's which is estimated to be just 20 individuals. Unless bats are trapped or identified in the hand Bechstein's cannot be distinguished from other bats of the *Myotis* family. **Due to the rarity of Bechstein's considerable survey effort is needed to confirm their presence or absence in circumstances where *Myotis* bats are detected.**

59. Box Mine is the most important roosting, hibernation and swarming site for the qualifying species in the locality although other underground sites are used. The conservation objectives for Box Mine include avoiding the disturbance of the qualifying species, ensuring that the integrity of the site is maintained and that the site makes a full contribution to achieving favourable conservation status for each of the qualifying features.

60. Box Mine is not understood to be physically connected with the underground quarry at the appeal site by any underground route. To confirm whether or not

²² GLD/LPA/06

²³ NE letter of 2 March 2015 – GLD/LPA/07

the qualifying species are hibernating below ground, bat trapping was **undertaken at the airshaft in March/April 2014. Natterer's and Daubenton's bats were trapped but no Bechstein's, GHB or LHB.** The airshaft is used by *Myotis* bats as a swarming site in late summer. The difficulty of confirming the **presence or absence of Bechstein's had been an outstanding matter of concern** to the Council. However, following the 2014 surveys both the Council and NE are now satisfied with the level of survey work and agree that the airshaft is **not used significantly by Bechstein's or by the other qualifying species.**

61. Bat activity surveys identified modest numbers of GHB and LHB using the northern boundary of the site as a commuting route. *Myotis* bats, which could **include Bechstein's, were also recorded using the northern and eastern** boundaries for much of the summer with large increases in activity during September. Foraging activity was also recorded.
62. The survey evidence shows that the 3 qualifying species are not using the underground quarry or the trees within the site as roosts. However, the commuting routes may well be used to reach foraging areas and roosts in the locality so the proposed development may have indirect effects. It is likely to require external lighting associated with roads, footpaths and buildings. As the qualifying species are known to be light sensitive, increased lighting close to the commuting routes is likely to disturb bats, potentially impacting on the conservation objectives for the SAC.
63. Mitigation measures have been proposed to avoid or reduce the potential impacts. The key features, as shown on the ecological parameters plan, would be landscape buffers of at least 15m width containing species-rich grassland and tree/shrub planting along the western, northern and eastern boundaries. These buffers would be designed and managed to protect the commuting routes. In addition there would be a 10m offset to the closest elevation of any buildings. To my mind the key issues to be addressed are whether this mitigation would be effective and whether it could be adequately secured, bearing in mind the outline nature of the appeal scheme.
64. The indicative design of the buffers is shown on the illustrative landscape cross sections. These show that the buffers would be of sufficient width to include hedgerow and tree planting on either side of a central grassland strip. A close boarded fence would be contained within the planting closest to the proposed development in order to cut down light spill into the buffer zone. A lighting report has been submitted which includes modelled lighting levels across the site. This shows that light levels within the buffers could be kept below 1.0 lux, the level which is generally regarded as the threshold for bat disturbance. The survey information has identified how the site is used by commuting and foraging bats and I consider that there is sufficient knowledge about the behaviour of the qualifying species to be confident that the mitigation measures would be effective in protecting the commuting routes.
65. The Council and the appellant suggested a condition which would require the submission of reserved matters to accord with the ecological parameters plan including the dimensions and lighting levels referred to above. Further conditions could be imposed requiring the approval of a Landscape and Ecological Management Plan, to ensure that the future maintenance of the buffers was appropriate to their mitigation function, and the approval of an external lighting scheme. I am satisfied that these conditions would secure the

implementation of the proposed mitigation measures without prejudicing the **Council's ability to consider** the planning merits of any reserved matters submissions.

66. In conclusion, my assessment is that the commuting routes could be adequately protected from the proposed development subject to the imposition of appropriate planning conditions. On this basis the project would not be likely to affect the integrity of the SAC either alone or in combination with other plans or projects. For the same reasons, the project would not be likely to harm the Box Mine SSSI.

Protected species - bats

67. The surveys have identified several bat species at the site, including the 3 referred to above. Insofar as these species are using the site for commuting and foraging the mitigation measures described above would be of value to all **of the bat species. The Council's main concern was the effect of the proposal on the use of the airshaft and underground quarry by bats. The surveys show that it is likely that Natterer's bats and Daubenton's bats are using the quarry for hibernating.** In addition, swarming activity has been observed at the airshaft in the late summer and autumn. The surveys indicated a maximum of 10 bats swarming at any one time. The ecological function of swarming is closely related to breeding which normally takes place underground. Studies have shown that individual bats travel from a wide area to reach swarming sites. Such sites are comparatively rare and the Council is aware of only 3 in Wiltshire.
68. Mitigation proposals are shown on the ecological parameters plan. A buffer zone would be formed around the airshaft with a minimum of 15m between the shaft and the office development to the south west and a minimum of 25m between the shaft and the residential development to the north east. The buffer zone would have trees towards the edge and an open area for swarming around the shaft. Wildlife corridors, similar to the landscape corridors described above, would link this area to the western and southern boundaries.
69. **The Council's concern was that the introduction of urban development in proximity to the airshaft would result in the deterioration of a breeding site of a European protected species, potentially in breach of Article 12 of the Habitats Directive.** The Council considers that there is an unacceptable degree of uncertainty with regard to both the significance of the swarming site and the nature and significance of the impacts of development on the swarming arena. Moreover, it was argued that the effectiveness of the proposed mitigation cannot be sufficiently understood because there is no precedent for developing close to a swarming site. For all these reasons the Council considered that it was unlikely that NE would be able to provide the necessary licence for the scheme and planning permission should therefore be refused.
70. The appellant agreed that that a licence from NE would be sought. However, it was argued that the existing habitat is sub-optimal for bats because it is open **and exposed arable land. Natterer's and Daubenton's are woodland bats** adapted to cluttered woodland environments. The mitigation would provide optimal habitat around the airshaft and connectivity with the wider area.
71. The EC Guidance on the application of Article 12 states that:

*'Breeding sites and resting places are to be strictly protected because they are crucial to the life cycle of animals and are vital parts of a species' entire habitat. Article 12(1)(d) should therefore be understood as aiming to safeguard the continued ecological functionality of such sites and places, ensuring that they continue to provide all the elements needed by a specific animal to rest or to breed successfully. The protection applies all year round if these sites are used on a regular basis.'*²⁴

72. The emphasis in the EC Guidance is on the continued ecological functionality of the breeding or resting site. The evidence before me indicates that the key aspects of functionality here are the underground quarry, where breeding is thought to take place, the swarming arena and the connectivity to the wider area.
73. **I accept the evidence of the appellant's bat expert that there has been** sufficient survey work. The species using the airshaft have been identified, the maximum numbers using it for swarming at any one time have been established and there have been direct observations of swarming activity on a number of occasions. The Council argued that the total numbers of bats using the site over a season is not known. Whilst that may be so, I am satisfied that there is sufficient information to properly understand the significance of the swarming site and to inform the design of the mitigation measures.
74. It is important to bear in mind that the swarming site is not in a remote rural location. It is around 50m from the busy A4 which has tall lighting columns. It is also close to urban development to the south of the A4. No survey information has been provided regarding current light levels at the airshaft. **However, the appellant's bat expert suggested that these are likely to be above the 1.0 lux level which is the threshold for affecting the behaviour of bats**²⁵. Having viewed the site at night I share that view. I agree with the appellant that the current conditions are sub-optimal for bats.
75. The appellant submitted information about other swarming sites in the Corsham area and also in Derbyshire and Yorkshire. This evidence shows that sheltered and relatively cluttered woodland environments provide suitable **habitat for Natterer's and Daubenton's bats. Consequently there is no reason to** think that planting trees around the perimeter of the buffer zone, leaving the area around the shaft clear, would create conditions unsuited to these species.
76. The numbers of bats observed swarming were relatively low, with a maximum of 10 on one occasion and generally fewer than 5. The majority of the swarming activity observed was above the airshaft. Whilst there was an instance of swarming behaviour to the south of the airshaft this was just 2 individuals on a single occasion. The lighting conditions which could be achieved in the buffer zone, and the corridors connecting it to the southern and western boundaries, have been modelled in some detail. The modelling showed that light levels could be maintained below the 1.0 lux threshold. For much of the buffer zone levels would be below 0.1 lux. This would certainly be no worse than existing conditions and may well be a material improvement.

²⁴ Page 45 of the Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive 92/43/EEC, included at Appendix I to GLD/23.

²⁵ Mr Goodman, in answer to my questions

77. Taking the survey data together with the information about other swarming sites and the modelled lighting conditions, I consider that there can be a high degree of confidence that the ecological functionality of the airshaft breeding site would be adequately protected by the proposed mitigation.
78. It is also necessary to consider potential physical impacts on underground breeding sites by construction works and potential disturbance to hibernating bats from noise and vibration. The extent of the underground quarry linked to **the airshaft has been surveyed. The appellant's engineering consultants have** submitted a technical note which states that the likelihood of piled foundations being needed on this site is negligible. There remains a possibility of unmapped shallow workings which might potentially be used by bats. This potential risk could be addressed by way of a condition requiring a land stability risk assessment to be submitted for approval alongside the submission of reserved matters. The possible need for any seasonal restrictions on building works in parts of the site, to avoid disturbance during hibernation, could be addressed within a Construction Method Statement. Such statements are commonly secured by planning conditions to mitigate impacts during construction.
79. In conclusion, I consider that the impact of the proposal on bats is not a matter which weighs against the grant of planning permission. In these circumstances case law indicates that:

If a proposed development is found acceptable when judged on its planning merits, planning permission for it should normally be granted unless in the planning authority's view the proposed development would be likely to offend article 12(1) and unlikely to be licensed under the derogation powers²⁶.

80. My conclusion is that, with the proposed mitigation, the proposed development would be unlikely to result in the deterioration of a breeding site of a European protected species. On that basis a licence may not be required. However, it is not for me to determine whether or not a licence would be required as that would be the duty of NE. Moreover, in this case it is common ground that a licence would be applied for²⁷. **Questioned on this point, the appellant's bat expert stated that a licence would be applied for to ensure that the developer would be protected against any potential offence²⁸.**
81. If such an application were made NE would have regard to the 3 licensing tests set out in Regulation 53 of the Habitats Regulations. The need for housing is capable of amounting to an imperative reason of overriding public importance, particularly in circumstances such as these where the supply of housing sites falls short of that required by the Framework. The shortfall in housing supply also indicates a lack of satisfactory alternative sites.
82. The Council suggested that there could be an alternative layout, perhaps omitting the proposed roundabout junction in the vicinity of the airshaft. There was little specific evidence before me on potential alternative layouts. However, I saw that opportunities for forming satisfactory vehicular accesses to the A4 Bath Road are constrained by existing buildings and the need to take account of the existing junction with the B3109 Bradford Road. From what I saw on site

²⁶ Paragraph 96, R (on the application of Christopher Prideaux) and Buckinghamshire County Council and FCC Environment UK Ltd [2013] EWHC 1054 (Admin)

²⁷ Paragraph 3.7, Statement of Common Ground on Bats – GLD/LPA/11

²⁸ Mr Goodman, during cross-examination by Mr Richards

it seems unlikely that there would be a satisfactory alternative to forming a roundabout junction at this point.

83. For the reasons given above, I do not consider that the proposal would be detrimental to the maintenance of the population of the species in question at a favourable conservation status. Consequently, the evidence before me does not indicate that that this is a case where NE would be unlikely to grant a licence.

Other protected species

84. There is no aquatic habitat for great crested newt or common toad on the site although there is some terrestrial habitat for both species. Any impacts on terrestrial habitat would be outweighed by habitat created within the scheme. The Council and appellant agreed that impacts on great crested newt, common toad, badger and birds would be low and could be mitigated by standard approaches secured through conditions²⁹.

Loss of parkland habitat

85. The Council and the appellant did not agree on the value that should be attached to the existing habitat. The Council argued that, as parkland, the appeal site represents a priority habitat whereas the appellant characterised it as being dominated by arable land with low ecological value overall. These differences narrowed somewhat during the Inquiry with the parties agreeing that the site does not meet the criteria for a parkland County Wildlife Site because it has only 2 veteran trees rather than the required 3. On the other hand it was agreed that the site does meet the UKBAP criteria for parkland habitat³⁰. **It is therefore a site 'of value' in the terms of the CS.**
86. Whilst the site meets the criteria for parkland habitat there are a number of factors which bear on my assessment of its ecological value. First, the Council accepted that arable farming over an extended period will have reduced the value of the habitat normally associated with parkland. There are only 2 veteran trees and one of these had collapsed at the time of my site visit. As it stands, the remaining veteran tree is not part of a mosaic of parkland habitats. The surveys of invertebrates, bryophytes and lichen which have been carried out identified the presence of common and widespread species. Consequently, whilst the site is a priority habitat in a technical sense, the evidence before me indicates that its actual ecological value is relatively low.
87. The Council suggested that there is potential for some restoration of the ecological value of the site. Whilst that may be so, there was little evidence before the Inquiry that this is a likely prospect.
88. The illustrative layouts and the ecological parameters plan show how the remaining veteran tree, and other free-standing mature trees, would be retained within the proposed development. Dry stone walls contribute to the range of habitats within the site. Although around half of the total length of such walls would be removed, this would be replaced by an equivalent length of new dry stone wall. The illustrative landscape proposals include features designed to enhance biodiversity, including new grassland, extensive tree and hedge planting, swales and ponds. There would be 2.8ha of terrestrial habitat suitable for great crested newt and common toad. Full details of all these

²⁹ Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

³⁰ Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

measures could be secured at reserved matters stage and by the imposition of conditions.

Conclusions on ecology

89. Core Policy 50 of the CS states that development proposals must demonstrate how they protect features of nature conservation value. Where such features cannot be retained, removal shall only be acceptable where the ecological impacts have been mitigated as far as possible and compensatory measures have been secured to ensure that there is no net loss of the local biodiversity resource. All proposals should avoid and reduce disturbance of sensitive wildlife species and seek opportunities to enhance biodiversity.
90. The most important features of the appeal site are the airshaft, which is a breeding site for bats, and the commuting routes used by several bat species including those associated with the SAC. These features would be retained and protected by the proposed mitigation measures. Other features, including mature trees and dry stone walls, would be retained as far as practicable and compensatory features would be provided. I have concluded that the project would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site.
91. **There would be a loss of parkland habitat which is regarded as being 'of value'** in the CS. However, the actual ecological value of the site is relatively low. Specific features associated with parkland would be retained and in my view any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. I consider that, overall, there would be no net loss of the local biodiversity resource and that the scheme as a whole would accord with Core Policy 50.

Effect on the character and appearance of the area

92. The relationship between the appeal site, the adjoining countryside and the urban area of Corsham has been described at the beginning of the preceding section. The Wiltshire Landscape Character Assessment identifies the site as being within the Malmesbury – Corsham Limestone Lowland character area. The characteristics of this area are said to include gently undulating lowland farmland, a pattern of large geometric fields and dry stone walls marking field boundaries. I consider that the appeal site shares these characteristics.
93. The site is crossed by a public footpath leading from Bath Road. The path passes through the grounds of Guyers House and then leads north towards the Cotswolds Area of Outstanding Natural Beauty (AONB). The edge of the AONB is around 650m from the appeal site.

Landscape and visual effects

94. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA). The LVIA assessed the landscape of the appeal site as having low/medium susceptibility to change. The effect on the landscape of the site and immediate context was assessed as minor adverse. The main visual impacts identified were moderate adverse effects on a relatively small number of residential receptors and on users of the public footpath and minor adverse effects on users of Bath Road and Guyers Lane.

95. The Council and the Pickwick Association argued that the LVIA had generally understated both the susceptibility of the site to change and the degree of the landscape impacts. It was suggested that the proposals would be harmful to the landscape setting of Corsham, in that the site forms a green gateway into the town, and that Bath Road has formed a distinct boundary to the northern extent of the town.
96. With regard to the susceptibility of the site to change, it is relevant to note that its existing character is subject to urban influences. The busy Bath Road bounds the southern side of the site and houses are visible to the east and south. Whilst the site is identified as parkland for the purposes of the ecological assessment, its visual character is essentially that of an agricultural field. It does have dry stone walls, which are a feature of parkland, and there are some free-standing trees. However, there is no sense of a coherent or consciously designed landscape structure.
97. The site is adjacent to part of the Pickwick Conservation Area. I will return to its contribution to the setting of the conservation area in the following section. The key point to note here is that there is limited inter-visibility between the appeal site and the conservation area. I do not consider that the proximity of the conservation area materially increases the landscape sensitivity of the appeal site. In summary, I agree with the findings of the LVIA that this is a site with low/medium susceptibility to change.
98. There would be an adverse change in the character of the site itself in that an open arable landscape, characteristic of the locality, would be replaced by urban development. I consider that this would be a harmful impact of the proposed development, although the degree of harm would be tempered by the low/medium susceptibility of the landscape. Layout and design is a reserved matter. However, the illustrative masterplan shows how mitigation could be embedded in the design and layout of the scheme. This could be achieved by creating a central public open space, related to the line of the footpath, and by setting new development within a strong landscape structure. These features of the illustrative layout could be secured at the reserved matters stage.
99. The Council and the Pickwick Association agreed with the appellant in relation to the general extent of visual effects. These would not be widespread due to the effects of landform and vegetation. They would be confined, in the main, to views from Bath Road, Guyers Lane, nearby houses and the public footpath.
100. Turning to the landscape setting of Corsham, I note that the open nature of the site is readily apparent from the approach to the town along Bath Road. However, I do not consider that the site has a gateway function. The approach to Corsham from the west is characterised by a mix of urban development and open countryside. The southern side of the road is fairly consistently developed. The northern side is less so but there is extensive development at the Copenacre site³¹ **and there are houses at Traveller's Rest, Guyers Cottages** and Academy Drive. As seen on a map or aerial photograph Bath Road does indeed define the northern edge of part of the urban area of Corsham. However, as seen on the ground there is no strong visual edge at this point.
101. The greatest visual effects would be on nearby residential occupiers and on users of the footpath. In both cases the illustrative layout offers a degree of

³¹ A vacant MoD site which is to be redeveloped for housing

mitigation. Substantial landscape buffers are proposed around the site boundaries. At present the footpath passes through an open field, albeit with views of housing nearby. It would become part of an urban extension. However, the illustrative masterplan shows that it need not be closely confined by housing, passing instead through a broad public open space for about half its length and then along a green corridor. In conclusion, I accept the assessment of the LVIA that these would be moderate adverse visual effects.

Effects on designated landscapes

102. The Council and the Pickwick Association accepted that there is no inter-visibility between the site and the AONB. No party identified viewpoints within the AONB from which the proposed development would be seen. On my site visits I saw that the character of the footpath changes to the north of Guyers House. Urban influences are much reduced and there are views northwards to higher ground within the AONB. The nearest boundary of the AONB is on the other side of a low ridge and from this point there are no views southwards towards Corsham and the appeal site.
103. Nevertheless, it was argued by the Council that the experience of approaching the AONB via the footpath would be adversely affected by the appeal scheme. Whilst that may be so, as noted above any impact on users of the path would be no more than moderate adverse. Moreover, any such effect would be confined to that section of the path which is within the appeal site. In any event, this would not be an impact on the landscape of the AONB itself.
104. I conclude that the evidence before me does not identify any material impact on the landscape of the AONB. In relation to national policy³², the landscape and scenic beauty of the AONB would be conserved.
105. The Council's **reasons for refusal include** reference to the Corsham Special Landscape Area. This was a local landscape designation found in previous local plans. It was not carried forward into the CS. At the Inquiry, the Council did not seek to argue that it should be regarded as a significant factor in this appeal.

Conclusions on character and appearance

106. The loss of a greenfield site would result in some harm to the character and appearance of the area. There would be adverse visual effects, particularly for nearby residents and users of the public footpath. To this extent the appeal scheme would not accord with Core Policy 51 which seeks to protect and conserve landscape character. On the other hand the negative impacts would be mitigated as far as possible, as required by the policy, through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the landscape and scenic beauty of the AONB.

Effect on heritage assets

107. There are no designated heritage assets within the appeal site. This section of my decision discusses effects on the settings of designated heritage assets, the adequacy of survey information in relation to archaeology and whether

³² Paragraph 115 of the Framework

there are any non-designated heritage assets which merit consideration in the context of this appeal. The Built Heritage Assessment submitted with the application identified a number of listed buildings in the locality. However, at the Inquiry the designated heritage assets of concern to the Council and the Pickwick Association were the Pickwick Conservation Area and Guyers House, a Grade II listed building. I agree that the other listed buildings identified in the assessment are either too far from the appeal site, or have an insufficiently direct relationship with it, for there to be any material impact on their settings or their significance.

Effect on the setting of the Pickwick Conservation Area

108. Pickwick developed as a separate village which became linked to Corsham by 20th century development. There was no conservation area appraisal or character statement before the Inquiry. There was however a brief description of the conservation area which notes that Pickwick was a staging post on the London coach route, referred to by Charles Dickens in *Pickwick Papers*. The village has developed in a linear fashion along Bath Road. The fabric is substantially stone, which results in a high degree of unity in the street scene. At the western end of the conservation area there are two large houses set in grounds, enclosed with high stone walls, at Pickwick Manor and Beechfield House. In my view all of these features contribute to the character and appearance of the conservation area and to its significance as a designated heritage asset.
109. The Framework defines setting as the surroundings in which a heritage asset is experienced. The Pickwick Conservation Area is primarily experienced from viewpoints within the designated area. No external viewpoints which are of importance to understanding or experiencing the conservation area have been identified in the evidence. There is limited inter-visibility between the conservation area and the appeal site although there is some, for example views to and from houses in Academy Drive.
110. The properties at Academy Drive, which are within the conservation area, back on to the appeal site. These houses are within the grounds of Beechfield House. They are part of a modern residential development which replaced previous development within the grounds. The Academy Drive development has been attractively designed and is sympathetic to its sensitive location within the landscaped grounds of Beechfield House. However, the relationship of these modern houses to the conservation area would not be materially affected by development behind them, at the appeal site. No doubt there would be views of new housing, partially screened by the proposed landscape buffer, from the back of the Academy Drive houses. That would not however have any material impact on the significance of the conservation area as a designated heritage asset.
111. There are views eastwards along Bath Road which encompass the appeal site together with elements of the conservation area. These views are dominated by highway infrastructure and predominantly modern development. There are also glimpses of buildings, such as No 51 Bath Road, which make a positive contribution to the conservation area. However, to my mind any such views cannot be characterised as important in the sense of contributing to an experience or understanding of the conservation area.

112. The appeal site forms part of the setting of the conservation area. However, setting is not a heritage designation in its own right. Whilst the proposed development would change the character of the appeal site it does not follow that this would harm the significance of the conservation area. Although there would be changes to views into and out of the conservation area, these changes would not affect important views. There would be no harm to the character and appearance of the conservation area. Nor would there be harm to its significance as a designated heritage asset.

Effect on the setting of Guyers House

113. Guyers House is a Grade II listed building set in landscaped grounds adjoining the northern boundary of the appeal site. The house is approached by a tree-lined drive from Guyers Lane which passes alongside the appeal site boundary. The list description notes that the house dates from the 17th century with 19th century additions. It has both historic and architectural interest due to its age and the quality of its architecture. The principal elevation faces south east onto a lawn, pond and landscaped grounds. There are substantial planting belts to the south and east of the grounds. From first floor windows it is possible to gain some filtered views, through the boundary planting, over parts of the appeal site to Bath Road.

114. Guyers House was formerly a farmhouse and is now a hotel. From 1921 the appeal site was farmed, together with other land, by the occupiers of Guyers House. The family planted two beech trees within the appeal site as a memorial to a son who was killed in World War II. The appeal site was sold away from the house in the 1950s. The present owners acquired the property in 1989. They restored the house and grounds and began planting trees and hedges on the boundary to screen the effects of street lighting along Bath Road³³.

115. In assessing the importance of the appeal site to the significance of Guyers House as a designated heritage asset I take account of visual, functional and historic connections. The visual links are now very limited due to the planting along the drive and the southern and eastern edges of the grounds. The house is barely visible in winter views from the appeal site and Bath Road. Views out are restricted, as described above. Moreover there is no evidence that this is a recent or transient change – the ordnance survey map of 1886 shows planting belts to the south and east of the house. It appears that the planting that has taken place since 1989 has reinforced a landscape structure established in the 19th century.

116. Guyers House was a farmhouse and, whilst there is only direct evidence relating to the period from 1921, it seems likely that the appeal site was farmland associated with the house long before that time. Consequently there was a functional link which came to an end in the 1950s.

117. The issue of parkland has been discussed above in relation to ecology and landscape. In terms of the historic environment, the tithe map of 1838 shows Guyers House surrounded by fields. There is no evidence of parkland at this stage. The ordnance survey map of 1886 shows the drive to the house on an alignment to the north of the present drive. There are free-standing trees and clumps within the appeal site, suggestive of a parkland character. However,

³³ Mr Hungerford, one of the owners of Guyers House, gave this information in his written statement and in answer to my questions

there is no evidence of any designed landscape linking the house to the appeal site. On the contrary, as noted above, planting belts to the south and east of the site were already in place.

118. Having regard to all the above factors, I consider that the appeal site should be regarded as part of the setting of Guyers House notwithstanding the limited visual connectivity between the two. The functional link has gone and there is no link resulting from a designed landscape. The continued presence of farmland does however contribute something to the understanding of Guyers House as a former farmhouse. In my view the contribution that the appeal site makes to the overall significance of Guyers House is a small one.

119. The effect of the appeal scheme would be to bring urban development much closer to the southern edge of the grounds of Guyers House. There would be little impact on views to and from the house because the existing planting at Guyers House would be supplemented by extensive new planting along the landscape corridors within the appeal site. Given the predominantly residential nature of the appeal scheme there is no reason to think that there would be significant harm from noise and disturbance. On the other hand there would be an erosion of the rural setting of the farmhouse which would result in some harm to the significance of the designated heritage asset.

120. In the terms of the Framework³⁴, I consider that the degree of harm would be less than substantial. Moreover, for the reasons given above I would characterise it as minor. In these circumstances the Framework requires any harm to be balanced against the public benefits of the proposal. I return to that balance in the conclusions to my decision. Having regard to the relevant statutory duty,³⁵ I conclude that the setting of Guyers House would not be preserved.

Archaeology

121. The application was supported by an Archaeological Desk-Based Assessment. This concluded that there are no known archaeological heritage assets within the site and that there is a low potential for the presence of unknown buried heritage assets. The Pickwick Association argued that a field evaluation ought to be carried out before any planning permission is granted. However, the County Archaeologist was satisfied that appropriate site investigations, including trial trenching, could be secured by a condition. I share that view.

Non-designated heritage assets

122. The Pickwick Association suggested that Guyers Cottages, which front Bath Road and back onto the appeal site, should be regarded as non-designated heritage assets. However there is no evidence that these cottages have been identified by the local planning authority as heritage assets, whether in a local list or in any other document. In my view they do not fall within the definition of a heritage asset as set out in the Framework. The cottages should of course be taken into consideration as part of the existing townscape. That is something that the Council would no doubt take into account at the reserved matters stage.

³⁴ Paragraph 134

³⁵ Section 66 – Planning (Listed Buildings and Conservation Areas) Act 1990

Conclusions on heritage assets

123. In conclusion, I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. In these respects the appeal proposals would accord with Core Policy 58. I have concluded that there would be minor harm to the significance of Guyers House, a matter I comment on further below.

Whether there would be prejudice to a plan-led planning process

124. The central role of development plans in the planning system is made clear in primary legislation and the Framework. The Framework states that local plans should as far as possible reflect a collective vision and a set of agreed priorities for the sustainable development of the area. However, both the legislation and the Framework require other material considerations to be taken into account. In relation to housing, the Framework states that relevant policies for the supply of housing should not be considered up-to-date in cases, such as this, where there is not a 5 year HLS with the required buffer. Even so, it is appropriate to consider the implications of allowing the appeal scheme for the planning process in Wiltshire as part of the overall balance of planning considerations.

125. The Core Strategy was adopted in January 2015. Whilst it includes some strategic allocations it is not intended to include all of the allocations that will be needed to deliver the housing requirement for Wiltshire. The CS is to be followed by site allocation Development Plan Documents (DPD) and Neighbourhood Plans (NP). Allocations in Corsham are expected to be made through the Corsham NP but could also be made through a site allocation DPD.

126. Work is in progress on the issues and options stage of the NP. The position at the close of the Inquiry was that the consultation period on the application to designate the area for the NP was due to end on 18 March 2015. The NP steering group anticipates that consultation on a draft plan would take place in **January/March 2016. The Council's Local Development Scheme indicates that** the examination of the Wiltshire Housing Site Allocations DPD will begin in late 2015 with adoption in 2016. Both plans are at an early stage of preparation and have yet to emerge even as draft documents.

127. It is important to recall that Core Policy 1 identifies Corsham as a Market Town with the potential for significant development. At the Inquiry the Council accepted³⁶ that the scale of development proposed in the appeal scheme would not be inconsistent with the settlement strategy set out in Core Policy 1. I therefore conclude that allowing the appeal would not prejudice the overall spatial strategy of the adopted CS. I turn next to the effect on the planning process at the level of the Corsham community area.

128. Core Policy 11 states that approximately 1,220 houses will be provided at the town of Corsham during the plan period. The CS Inspector agreed with the Council that it was not necessary to make a strategic allocation at Corsham. There have been significant numbers of completions and permitted sites, such that the CS states that sites for only another 330 houses are needed. Community representatives drew attention to further recent permissions and current applications which would do much to meet this total. The appellants did

³⁶ Ms Gibson, in cross examination by Mr Tucker

not disagree that it seems likely that 330 will be exceeded, perhaps well before the end of the plan period.

129. If the appeal were dismissed the merits of the appeal site could then be considered alongside other candidate sites through either the NP or the DPD process. The Council argued that, having participated in the CS process, the expectation of the community is that is what should happen. Evidence was produced to show that there are a number of potential development sites, generally to the south west of Corsham. On the other hand, the figures set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes.
130. Turning to the employment element of the scheme, Core Policy 34 sets out 4 criteria for employment development outside the development limits of market towns. Criterion (i) is that the site is adjacent to the settlement and seeks to retain businesses currently within it and criterion (iv) is that the development is essential to the wider strategic interests of the economic development of Wiltshire³⁷. Whilst the proposed B1 office units would be available to existing businesses in Corsham there is no evidence of any need or demand for the units from such businesses. Nor is there any evidence that the development is essential for wider strategic interests. Consequently, it has not been shown that the criteria have been met and the proposed B1 units would conflict with Core Policy 34.
131. In conclusion, allowing the appeal would not prejudice the broad spatial strategy of the adopted CS. Nevertheless, there would be some prejudice to a plan-led planning process within the Corsham community area. There would also be a conflict with the CS in relation to the employment element.

Whether the proposal would amount to a sustainable form of development

132. The settlement strategy of the CS, together with the delivery strategy, seeks **to define where development will be most sustainable across Wiltshire's** settlements. As noted above, Corsham is identified as a market town and the scale of development proposed is consistent with the settlement strategy.
133. Corsham contains community facilities including schools, primary healthcare, pharmacies, supermarkets and a range of shops and leisure facilities. The transport assessment submitted with the application states that these facilities are generally within both walking and cycling distance of the appeal site. There are bus services within Corsham and there are also services to Bath and Chippenham. The assessment concluded that the site is well located to allow for travel by sustainable modes. That conclusion was not disputed by the Council and I see no reason to take a different view. The s106 Agreement would secure the provision of bus stops and a pedestrian crossing island on Bath Road. I consider that the proposal would therefore accord with Core Policy 61 which states that new development should be located and designed to reduce the need to travel, particularly by private car, and to encourage the use of sustainable transport alternatives.
134. As noted above, the employment element of the scheme would not accord with Core Policy 34. However, the CS states that new growth in Corsham will be balanced with housing delivery alongside employment. This does not mean

³⁷ Criteria (ii) and (iii) are not relevant to this case

that it will be appropriate for every housing site to include employment uses. However, to my mind the scale of the appeal scheme is such that the inclusion of an employment element in a housing-led development would be consistent with the aim of achieving balanced growth.

135. The Framework sets out three dimensions to sustainable development – the economic role, the social role and the environmental role. The definition of sustainable development includes all of the policies in paragraphs 18 to 219 of the Framework³⁸. In this part of my appeal decision I describe the main factors that inform my judgement as to whether the proposal would be a sustainable form of development. In reaching that view I take account of all the matters referred to in this decision, **including the 'other matters' referred to below.**

The economic role

136. The appeal proposal would bring a number of economic benefits. The B1 element of the scheme could accommodate additional jobs. In addition, the scheme would generate employment during construction and spending by the new households would support jobs and services in the local economy.
137. The Framework states that the economic and other benefits of the best and most versatile (BMV) agricultural land are to be taken into account. In this case around 80% of the site is categorised as BMV land. However, the **officer's** report noted that there was no probable economic disadvantage to any agricultural operation. The Council did not argue that loss of BMV land ought to be regarded as a key issue in this appeal. Even so it is a disadvantage of the scheme to which some weight should be attached.
138. A matter raised by the owner of Guyers House was a concern that the appeal scheme would undermine the economic viability of the hotel business, thereby threatening employment. In fact there was very little evidence in support of this suggestion. The hotel is, and would remain, an attractive historic building set in landscaped grounds close to the AONB. I attach little weight to this factor.

The social role

139. The Council and the appellant agreed that the appeal site would make a positive contribution to the supply and delivery of housing and that the scheme would be substantially completed within the current 5 year period. This is an important matter, having regard to the objective of the Framework to boost the supply of housing. Moreover, it is of particular importance given the HLS position referred to above.
140. In addition, 30% of the units would be delivered as affordable housing. Delivery would be secured through the s106 Agreement. This would help to meet housing needs in the locality and contribute to reducing the shortfall in affordable housing.

The environmental role

141. The site is well located to allow for travel by sustainable modes. The needs of walking, cycling and public transport have been taken into account through

³⁸ Paragraph 6 of the Framework

the layout and the terms of the s106 Agreement. This contributes to the environmental role.

142. Whilst there would be some landscape harm, the extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the AONB. Significant mitigation for landscape impacts would be embedded in the design of the scheme.

143. There would be no harm to any designated nature conservation site or to the conservation status of any protected species. Whilst there would be some loss of parkland, the ecological value of the appeal site is low. Significant biodiversity enhancement is proposed and there would be no net loss of the local biodiversity resource.

144. In relation to the historic environment, I have identified minor harm to the significance of Guyers House, as a result of development within its setting.

Conclusion on sustainable development

145. Taking all the above factors into account, I conclude that on balance the appeal scheme would be a sustainable form of development.

Other matters

146. The s106 Agreement would secure the highway works needed to provide vehicular access to the site and to take account of other transport modes. It would provide for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. These provisions would be needed to meet the requirements for open space generated by the scheme. In addition, there would be financial contributions to sport and recreation, cemeteries and secondary education. The Council provided evidence about how these sums had been calculated and how they would be used in ways which would be properly related to the appeal scheme. I consider that the obligations contained within the s106 Agreement would mitigate impacts resulting from the proposal. They are therefore neutral factors in the overall balance of planning considerations.

147. **The Council's 4th** reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site³⁹. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions⁴⁰. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition would establish criteria for noise and vibration. The Pickwick Association expressed doubts that these measures would be effective. However, the suggested conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site.

³⁹ There are currently no active workings but there is an extant permission

⁴⁰ Statement of common ground on noise and vibration – GLD/LPA/09

148. Some local residents are concerned about traffic conditions in the locality, particularly in relation to Bath Road. The application was accompanied by a transport assessment which included modelling of the relevant junctions. The Council agreed that the proposed junctions would be acceptable in terms of layout and visibility and that there would be no detriment to the local road network or to highway safety. I agree.

149. I conclude that these other matters do not add significantly either to the case in favour of the appeal or to the case against it.

Conclusions

150. The Council cannot demonstrate that it has the supply of housing sites needed to accord with the Framework. Consequently, the Framework states that relevant policies for the supply of housing should not be considered up-to-date. However, this is a case where it is common ground between the Council and the appellant that appropriate assessment under the Habitats Regulations is required. I agree and have carried out such an assessment. Paragraph 119 of the Framework states that the presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Habitats Regulations is being determined. Accordingly, I have considered the balance of issues without any such presumption.

151. With regard to effects on ecology, I have concluded that the proposal would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site for bats. Although there would be a loss of parkland habitat the actual ecological value of the site is relatively low. Any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. Overall, I consider that there would be no net loss of the local biodiversity resource. Consequently ecology is not a matter which weighs significantly in the planning balance.

152. I have concluded that there would be some harm to the significance of Guyers House, a designated heritage asset. The harm would be **'less than substantial'**, in the terms of the Framework, and I consider that it would be minor. Paragraph 134 requires this harm to be balanced against the public benefits of the proposal. In this case I have identified economic and social benefits which are described above. I consider that these benefits are sufficient to outweigh the harm to the significance of the heritage asset. I therefore find that the appeal scheme would not conflict with policies of the Framework relating to the historic environment.

153. Notwithstanding my conclusion that the harm to significance would be minor, I have found that the setting of Guyers House (a Grade II listed building) would not be preserved. Mindful of s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that is a matter to which I must have special regard.

154. I turn to the factors weighing in favour of the appeal. It would make a significant contribution to the delivery of housing. This is an important factor given the general imperative to boost the supply of housing set out in the Framework. It is of particular importance here due to the HLS position in the NWWHMA. Moreover, the scheme would deliver a significant number of affordable houses. It would also bring economic benefits. All of these social and

economic benefits would be realised in the context of a sustainable form of development in a location which is consistent with the broad spatial strategy of the CS. I note that the amount of the shortfall in HLS is not great. Nevertheless, having regard to the overall objectives of the CS and the Framework to deliver housing in sustainable locations I attach substantial weight to these factors.

155. The factors weighing against are conflicts with the CS in relation to defined limits of development, effects on landscape and the historic environment, loss of BMV agricultural land and potential prejudice to a plan-led planning process. Core Policy 2, insofar as it restricts housing development outside settlement boundaries, is deemed to be not up-to-date due to the HLS position. I therefore attach limited weight to this conflict. The employment element of the scheme would not accord with Core Policy 34. That said, I have concluded that the scale of the proposal is such that the inclusion of an employment element in a housing-led development would be consistent with the CS aim of achieving balanced growth at Corsham. Given that the housing element is needed, I consider that the inclusion of some employment supports the general intentions of the CS as a whole.
156. There would be some harm to the character and appearance of the area. However, the impacts would be mitigated as far as possible through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be no harm to the landscape of the AONB.
157. I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. I have concluded that there would be minor harm to the significance of Guyers House, the setting of which would not be preserved. Although the harm would be minor, this is nevertheless a matter to which I attach considerable importance and weight.
158. As discussed above, loss of BMV agricultural land is a disadvantage of the scheme to which some weight should be attached but is not a key issue in this case.
159. Allowing the appeal would result in some prejudice to a plan-led planning process within the Corsham community area because the merits of the site could not be considered alongside other candidates in the context of the NP or site allocation DPD. On the other hand, the housing figures for Corsham set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes. Moreover, it is important to note that both the NP and DPD processes are at a very early stage of preparation. This limits the amount of weight to be attached to this factor.
160. My overall assessment is that the factors weighing against the appeal are not sufficient to outweigh the factors weighing in favour. The appeal should therefore be allowed.

Conditions

161. The Council and the appellant suggested conditions which were discussed at the Inquiry. There was no significant dispute between the Council and the appellant in relation to the substance of the conditions. I have considered the

suggested conditions in the light of advice set out in the Guidance. In some cases I have combined conditions and/or adjusted detailed wording for clarity and to avoid duplication.

162. Conditions 1-3 are standard conditions for outline planning permissions setting timescales for the submission of reserved matters and commencement. However, I have reduced the standard time limits because the ability of the site to deliver housing within the 5 year period is an important consideration in this case.
163. Condition 4 requires the reserved matters to accord with the Ecological Parameters Plan and condition 5 requires the submission of a Landscape and Ecology Management Plan. Condition 7 requires a Land Stability Risk Assessment to be carried out to mitigate the risk of damage to underground workings which may be used by bats. These conditions are needed to secure the ecological mitigation relied on in the appropriate assessment and, more generally, to protect wildlife and secure enhancements to biodiversity.
164. Condition 6 deals with phasing and is needed to ensure that affordable housing and public open space are brought forward at appropriate stages of the development. Conditions 8, 10, 11 and 12 deal with implementation of the site access works, highway and footway works in the vicinity of the site and the stopping up of an existing access. These conditions are needed to ensure that there would be satisfactory pedestrian and vehicular access to the site, in the interests of highway safety and to avoid any detriment to the local highway network.
165. Condition 9 provides for a Travel Plan to encourage the use of sustainable modes of transport. Conditions 13 and 14 require details of foul and surface water drainage in the interests of managing risks of flooding and pollution.
166. Condition 15 is needed to protect the archaeological potential of the site. Condition 16 requires details of hard and soft landscaping and condition 17 deals with replanting of any trees which fail. These conditions are needed to protect the character and appearance of the area. I have not included details of play equipment in condition 16 because this matter is covered in the s106 Agreement.
167. Condition 18 provides for a Construction Method Statement in the interests of highway safety and the living conditions of nearby residents during the construction phase. Any restrictions on construction work to avoid disturbance to hibernating bats would also be covered by this condition.
168. Condition 19 requires investigation and, if necessary, remediation works in respect of potential contamination of land in the interests of managing risks of pollution. Condition 20 required a scheme of external lighting. This forms one element of the ecological mitigation measures and is also needed in the interests of the character and appearance of the area. Condition 21, which deals with public art, supports the design quality of the scheme.
169. Condition 22 requires the submission of a Foundation Investigation Plan and condition 23 sets the noise and vibration criteria that the design of foundations would have to achieve. These conditions are needed to protect the living conditions of future residents of the appeal site in the event that an extant

consent for underground mineral working were to be implemented in the future.

David Prentis

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards	of Counsel, instructed by the Head of Legal Services for Wiltshire Council
He called	
Carolyn Gibson	Spatial Planning Team Leader, Wiltshire Council
BA(Hons)	
Mark Henderson	Interim Manager, Monitoring and Evidence Team, Wiltshire Council
BSc(Hons) MA MRTPI	
John Burgess	Director, Swan Paul Partnership Ltd
BA(Hons) DipLA CMLI	
Chris Marsh	Senior Planning Officer, Wiltshire Council
BA(Hons) MPlan MRTPI	
Jon Taylor	Landscape and Design Team Manager, Wiltshire Council
MCIEEM MSc PgDip BSc	

FOR THE APPELLANT:

Paul Tucker	Queen's Counsel, instructed by Tim Dean of Gladman Developments Ltd
He called	
Jacqueline Mulliner	Director, Terence O'Rourke Ltd
BA(Hons) BTP(Dist)	
MRTPI	
Tim Dean	Planning Director, Gladman Developments Ltd
BA(Hons) DipTP MRTPI	
David Beardmore	Director, Beardmore Associates
MSc MA DipLD(Dist)	
DipLArch(Dist) DipUD	
Dip Bldg Cons FRTPI	
CMLI IHBC	
Timothy Jackson	Director, FPCR Environment and Design Ltd
BA(Hons) DipLA CMLI	
Robert Barnes	Director, Planning Prospects Ltd
MA BA(Hons) MRTPI	
Kate Hollins	Director, FPCR Environment and Design Ltd
BA MSc CMIEEM CEnv	
Kurt Goodman	Associate Director, FPCR Environment and Design Ltd
MSc BSc(Hons) MCIEEM	

FOR THE PICKWICK ASSOCIATION:

Jane McDermott	Chairman of the Pickwick Association and member of Corsham Town Council's Neighbourhood Plan Steering Group
BArch PGDipUD	Landscape Architect
Angela Bence-Wilkins	
CMLI	
Peter Cox	Director, AC Archaeology Ltd
Cert Archaeology MCIA	

David Taylor

On behalf of the Pickwick Association

INTERESTED PERSONS:

Cllr Philip Whalley

Member of Wiltshire Council and Corsham Town Council

Cllr Peter Pearson

Vice Chairman of Corsham Town Council and Chairman of the Neighbourhood Plan Steering Group

Guy Hungerford

Guyers House Hotel

Tony Clark

Trustee of the Beechfield Trust

Derek Burt

Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

Submitted by the appellant

GLD/07	List of appearances
GLD/08	Extract from the Town and Country Planning (Environmental Impact Assessment) Regulations
GLD/09	Proof of evidence of Mr Goodman
GLD/10	Judgement in the Gregory case [2013] EWHC 63 (Admin)
GLD/11	Extract from Planning Policy Guidance ID ref 4-031-20140306
GLD/12	Opening submissions
GLD/13	Wiltshire Local Development Scheme January 2015
GLD/14	Appendices to proof of evidence of Mr Beardmore
GLD/15	Table submitted by Mr Jackson
GLD/16	Table submitted by Ms Mulliner
GLD/17	Exchange of emails between Natural England and the Planning Inspectorate
GLD/18	Document list
GLD/19	Draft s106 Agreement
GLD/20	Bundle relating to EIA screening on behalf of the Secretary of State
GLD/21	Tree Lower Plant Survey - FPCR
GLD/22	Ecological parameters plan and illustrative landscape cross sections
GLD/23	Additional inquiry documents from FPCR – February 2015
GLD/24	Letter from Stirling Maynard dated 17 February 2015 with associated highways plans
GLD/25	Corsham Community Plan
GLD/26	Contested HLS trajectory positions
GLD/27	Judgement in Stroud District Council case [2015] EWHC 488 (Admin)
GLD/28	Additional inquiry documents from FPCR – March 2015
GLD/29	Updated list of suggested conditions
GLD/30	Counsel's opinion on appeal decision at Ashflats Lane, Stafford
GLD/31	Closing submissions
GLD/32	Annex to closing submissions – housing land supply
GLD/33	Response to costs application
GLD/34	Closing submissions – clean copy ⁴¹
GLD/35	Annex to closing submissions – housing land supply – clean copy

⁴¹ The versions of GLD/31 and GLD/32 handed in at the Inquiry had some missing text due to printing problems. Clean copies were provided shortly after the Inquiry – there was no change to the content.

Submitted by the Council

LPA/01	Plan of Special Area for Conservation
LPA/02	Opening submissions
LPA/03	Revised Plan of Special Area for Conservation
LPA/04	Invertebrates and ecological assessment – Colin Plant Associates
LPA/05	Surveying terrestrial and freshwater invertebrates for conservation evaluation – Natural England research report
LPA/06	Consultation responses to ecological parameters plan and illustrative landscape cross sections
LPA/07	Judgement in <i>Crane</i> case [2015] EWHC 425 (Admin)
LPA/08	Judgement in <i>Prideaux</i> case [2013] EWHC 1054 (Admin)
LPA/09	Note identifying superseded sections of Mr Taylor’s proof of evidence
LPA/10	Additional conditions suggested by Mr Marsh
LPA/11	Closing submissions
LPA/12	Costs application

Agreed between the appellant and the Council

GLD/LPA/01	Statement of Common Ground (SoCG) – Housing supply matters
GLD/LPA/02	Ecology – joint position statement
GLD/LPA/03	SoCG – Parkland and veteran trees
GLD/LPA/04	Suggested phasing condition
GLD/LPA/05	SoCG – Noise (unsigned)
GLD/LPA/06	Draft Appropriate Assessment regarding Bath and Bradford Bats SAC
GLD/LPA/07	Letter from Natural England to the Council dated 2 March 2015
GLD/LPA/08	Updated SoCG – Housing supply matters
GLD/LPA/09	SoCG – Amenity (noise and vibration)
GLD/LPA/10	Letter from TVS dated 4 February 2015
GLD/LPA/11	SoCG – Bats
GLD/LPA/12	S106 Agreement dated 12 March 2015

Submitted by the Pickwick Association

PA/01	Summary by Ms McDermott
PA/02	Summary by Mr Cox
PA/03	Summary by Ms Bence-Wilkins
PA/04	Closing submissions by Mr Taylor
PA/05	Judgement in <i>Gerber</i> case [2015] EWHC 524 (Admin)

Statements submitted by other parties

Cllr Whalley
Cllr Pearson
Tony Clark
Guy Hungerford
Derek Burt

Inspector’s documents

IN/01	Draft conditions relating to ecological mitigation
IN/02	Letter from Natural England of 27 January 2015

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of this permission or one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The reserved matters submitted pursuant to Condition 1 shall accord with the principles for the development of the site as shown on the Ecological Parameters Plan 5468-E-08 revision H. In particular the reserved matters shall include the provision of:
 - i) a landscape/ecological corridor at least 15m in width to the west, north and east boundaries of the site plus a further offset of at least 10m to the closest elevation of any buildings, in accordance with the principles shown on the Ecological Parameters Plan
 - ii) a buffer zone around the airshaft in the south west corner of the site in accordance with the principles shown on the Ecological Parameters Plan
 - iii) measures to provide dark areas within the landscape/ecological corridors to the west, north and east boundaries of the site which shall have an illuminance of no more than 1.0 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
 - iv) measures to provide dark areas within the buffer zone around the airshaft in the south west corner of the site which shall have an illuminance of no more than 0.1 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
- 5) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include long term design objectives, management arrangements and maintenance schedules for all landscape and open space areas. The LEMP shall include measures to provide and maintain a suitable habitat for bats and other wildlife species and shall be generally in accordance with the recommendations set out in section 4 of the Ecological Appraisal by FPCR dated 14 October 2013. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6) No development shall take place until details of the phasing of the development have been submitted to and approved in writing by the local planning authority. The details shall include the phasing of market and affordable housing units, public open spaces and equipped play areas. Development shall be carried out in accordance with the approved phasing details.

- 7) The reserved matters submitted pursuant to Condition 1 shall be accompanied by a Land Stability Risk Assessment which shall be submitted to and approved in writing by the local planning authority. The Land Stability Risk Assessment shall include details of intrusive site investigations, an assessment of land stability risks and mitigation measures to protect any underground workings from damage during the construction and operational phases of the development hereby approved.
- 8) No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 hereby approved have been implemented in accordance with that drawing and in accordance with further details of surface treatment, lighting and drainage which shall first have been submitted to and approved in writing by the local planning authority.
- 9) No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the framework travel plan (Stirling Maynard July 2013). The travel plan shall be implemented as approved and permanently maintained in operation thereafter.
- 10) No building hereby approved shall be occupied before a minor improvement scheme for the Hare and Hounds roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall include adjustments to road markings and traffic islands.
- 11) No building hereby approved shall be occupied before a scheme for the widening to 2m of the southern footway of the A4 Bath Road between No 5 Bath Road and the Bath Road/Academy Drive roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the relocation of any lighting columns and electricity or telephone poles within the footway.
- 12) No building hereby approved shall be occupied before the field gate access to the site from Guyers Lane has been permanently stopped up in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 13) No building hereby approved shall be occupied before works for the disposal of sewage from the development have been carried out in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 14) No building hereby approved shall be occupied before surface water drainage works have been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be provided to the local planning authority. Where a sustainable drainage system is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving groundwater and/or surface waters;
 - ii) include a timetable for implementation; and
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 15) No development shall take place until a written programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The programme shall include on-site work and off-site work such as the analysis, publishing and archiving of the results. The programme shall be implemented as approved before the commencement of the development.
- 16) No development shall take place until full details of both hard and soft landscape works, including a programme for implementation, have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structures such as street furniture, refuse or other storage units. The details shall also include the location, size and condition of existing trees and hedgerows, shall identify those to be retained together with measures for their protection during construction and shall show details of new planting areas, tree and plant species, numbers and planting sizes. The works shall be carried out as approved in accordance with the approved programme.
- 17) If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season unless the local planning authority gives its written approval to any variation.
- 18) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities

- vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - viii) measures to avoid the risk of noise and vibration impacting upon bats roosting within underground workings
- 19) No development shall take place until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with:
- i) A written report has been submitted to and approved in writing by the local planning authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.
 - ii) If the above report indicates that contamination may be present on, under or potentially affecting the site from adjacent land a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment **Agency's 'Model Procedures for the Management of Land Contamination CLR11'**. A report detailing the site investigation shall be submitted to and approved in writing by the local planning authority.
 - iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details must be submitted to and approved in writing by the local planning authority. The remedial works shall be carried out as approved prior to the commencement of development or in accordance with a timetable that has been agreed in writing by the local planning authority. On completion of the remedial works the applicant shall provide written confirmation to the local planning authority that the works have been completed in accordance with the approved details.
- 20) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include lighting columns, light fittings, measures to reduce light spill and illuminance plots. Development shall be carried out in accordance with the approved details and thereafter permanently retained as such.
- 21) No development shall take place until details of public art to be incorporated within the scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

- i) A foundation zoning plan which will identify the type and depth of foundations across the site.
- ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.
- iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

- 23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed 0.1 to $0.2 \text{ ms}^{-1.75}$ in accordance with the methodology in BS 6472-1-2008.

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EP1L

Appeal Decision

Inquiry held on 9,10 & 11 September 2014

Site visit made on 11 September 2014

by Lesley Coffey BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 October 2014

Appeal Ref: APP/Y1110/A/14/2215771

Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Waddeton Park Ltd & The R B Nelder Trust against the decision of Exeter City Council.
 - The application Ref 13/4802/01, dated 6 November 2013, was refused by notice dated 24 January 2014.
 - The development proposed is outline planning permission for about 120 residential dwellings (C3) along with associated infrastructure and openspace (means of access only to be determined).
-

Decision

1. The appeal is allowed and planning permission is granted for 120 residential dwellings (C3) along with associated infrastructure and openspace at Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY in accordance with the terms of the application, Ref 13/4802/01, dated 6 November 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Waddeton Park Ltd & The R B Nelder Trust against Exeter City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal is an outline application for 120 dwellings with all matters except the access reserved for subsequent approval. The Appellant submitted a plan showing how the development might be accommodated, but the plan is for illustrative purposes only and there could be alternative layouts for the site. It nevertheless provides a useful guide when considering the proposal before me.
4. The Appellant submitted an agreement under s106 of the Act which covenants to provide 35% of the proposed dwellings as affordable housing in accordance with policy CP7 of the Core Strategy. The Council is satisfied that this would overcome its second reason for refusal. I have no reason to take a different view and I have taken this obligation into account in reaching my decision.
5. The Appellant also submitted a Unilateral Undertaking which covenants to provide mitigation works as agreed with the Highway Authority. These works

are set out in a Statement of Common Ground between the Highway Authority and the Appellant. Whilst the Unilateral Undertaking addresses the concerns of the Highway Authority, local residents remain concerned that the proposal could have an adverse effect on traffic and highway safety. I will address this matter below.

6. Following the close of the inquiry the Appellant submitted a further Unilateral Undertaking. This covenants to provide and maintain an equipped play area in accordance with a scheme to be approved by the Council. It also covenants to provide a scheme for the specification and maintenance of the informal openspace. I am satisfied that the undertaking would deliver the intended benefits and I have taken it into account in reaching my decision.
7. Prior to the exchange of Proofs of Evidence, the parties agreed a Statement of Common Ground which addressed a number of matters. These included an agreement that the most up-to-date housing supply and delivery information was set out within the Revised 2013 Strategic Housing Land Availability Assessment (2013 SHLAA). In July 2014 the Council produced the Draft 2014 SHLAA, and its Proof of Evidence relies upon the information within it. The 2014 SHLAA has not been published by the Council. The Appellant subsequently submitted a Draft Addendum Statement of Common Ground identifying the differences between the Draft 2014 SHLAA and the 2013 SHLAA. Although this was not signed by the Council it provides a useful explanation of the differences between the 2013 and 2014 SHLAA.

Main Issues

8. Taking the above matters into account and the matters raised by local residents, I consider the main issues to be:
 - The effect of the proposal on the landscaped setting of Exeter;
 - The effect of the proposal on highway safety and traffic;
 - Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development; and
 - Whether the proposal would set a precedent for other development which could harm the character of Exeter City.

Reasons

9. The appeal site is located adjacent to the existing residential area of Pinhoe. It extends to about 7.7 hectares and comprises two areas of land, one either side of Church Hill. The larger part of the site is located to the north-east of Church Hill and falls from about 92m AOD to around 50m AOD towards the south-east. The southern part of this area is bound by the rear of the properties at Church Hill, Broadparks Avenue, Bindon Road and Danesway. It wraps around Home Farm which is a Grade II listed building. The development on this part of the site would be served by a single vehicular access from Church Hill.
10. The smaller part of the site is situated to the south-west of Church Hill, to the rear of Bickleigh Close, Harringcourt Road and Harrington Drive. Access to this part of the scheme would be from Bickleigh Close

- Undertaking. No persuasive evidence has been submitted to convince me that this would not be the case.
32. Notwithstanding this, local residents raised a number of concerns in relation to traffic and highway safety. In places Church Hill is very narrow (about 3.3 metres wide), meaning that there is insufficient room for cars to pass each other, and that cars pass very close to pedestrians. Due to the hedges on either side of the road there are few places where pedestrians can safely wait for cars to pass. Church Hill is subject to a constant flow of traffic throughout the day. Local residents suggest that it is used by about 330 cars a day during morning peak hour and are concerned that the appeal proposal could exacerbate the existing situation.
33. The appeal proposal would be likely to give rise to some increase in the number of vehicles using Church Hill. However, when considered in the context of the existing traffic flows the increase would not be significant. Due to the proposed pedestrian links with the other areas of Pinhoe, and the information provided as part of the travel plan, it could be that the number of vehicle movements emanating from the appeal site would be lower than anticipated within the Transport Assessment.
34. The appeal proposal would provide a formalised priority system. This would involve narrowing part of Church Hill to a single lane, and widening part of it to allow vehicles to wait for those with priority to pass. There was concern that there was insufficient visibility along the length of the priority scheme, but it was confirmed at the site visit that this was not the case. These changes would also provide some benefits for pedestrians in terms of footpaths close to the appeal site, and adjacent to the area where the road would be narrowed. The priority scheme, together with the proposed traffic calming measures close to the site, and those that comprise scheme C, would be likely to reduce traffic speeds on this part of Church Hill. Overall, when considered together with the pedestrian links which form part of the appeal proposal, the scheme would be beneficial for pedestrians.
35. Some residents living towards the southern end of Church Lane advise that cars use their private access to wait for other vehicles to pass. There is no evidence to suggest that the appeal proposal would exacerbate this situation and the proposed priority scheme may help to alleviate this problem.
36. I therefore conclude that subject to the implementation of the measures within the Unilateral Undertaking and the provision of a priority scheme, the proposal would not have an adverse effect on highway safety or traffic.

Housing Land Supply and Sustainability

37. The parties differ as to the level of previous housing completions and the extent of the housing land supply within Exeter. The essential difference between the parties is their approach to the inclusion of student housing. The number of students within Exeter has increased from about 13,369 in 2006/2007 to about 19,325 in 2013/2014 and students currently comprise about 16.5% of the population.
38. Core Strategy policy CP1 requires the delivery of at least 12,000 dwellings over the plan period 2006 - 2026. This figure was derived from the evidence base of the Draft Regional Spatial Strategy for the South West (2006) (RSS).

Although the RSS did not progress to adoption, following an Examination in Public (EIP) the panel proposed a figure of 12,000 dwellings for Exeter City. The parties agree that the housing requirement within the Core Strategy did not include provision for the accommodation needs arising from the growing number of university students within Exeter.

39. At the time of the RSS there were about 1,184 homes within Exeter City entirely occupied by students. The Council explained that although the housing requirement did not include specific provision for student housing, it projected the future housing needs of those students within market housing based on the household formation rate for their age demographic. Due to the majority of students falling within the 18-22 age group there would be a relatively high household formation rate throughout the plan period. As such, the adopted housing requirement includes an element of growth in relation to those students resident within general market housing in 2006.

Student Accommodation

40. The NPPF sets out the national planning policy context in relation to housing. Amongst other matters it seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Paragraph 47 is clear that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. The intention is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
41. Paragraph 50 of the NPPF requires local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. In particular, they should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Thus there is a qualitative as well as a quantitative requirement for housing.
42. The Council submits that the figures within the Draft 2014 SHLAA provide the most accurate assessment of housing supply and delivery in that they are based on the most recent and up-to-date information available. The principle difference between the 2014 SHLAA and previous SHLAAs is that it includes all student accommodation schemes within the housing delivery and housing land supply figures. It therefore shows 914 additional historic completions over the period 2009/2010 and 2013/2014. As a consequence it demonstrates an oversupply of 169 dwellings for the period up to 2013/2014, whereas the 2013 SHLAA showed a shortfall of 749 dwellings over the same period. These additional dwellings primarily comprise student schemes previously excluded from the housing supply. The Council's decision to include these dwellings (and to adjust the housing supply retrospectively) was prompted by the publication of the Planning Practice Guidance (PPG) in March 2014. It considers that the approach within the 2014 SHLAA is consistent with the advice within the PPG and that within the Core Strategy Inspector's Report.
43. Paragraph 3/38 of the PPG advises that all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market.

44. The Council submit that the provision of student accommodation releases housing that would otherwise be occupied by students and thereby indirectly releases accommodation within the housing market. For this reason it believes that all student accommodation should be included within the housing delivery and housing land supply figures. This view is not consistent with the PPG because it is not based on any assessment of the extent to which the provision of student accommodation has released general market housing.
45. The number of fulltime students within Exeter has increased substantially in recent years. Based on the figures within *SPD Houses in Multiple Occupation* (amended January 2014) the number of general market dwellings identified as exempt from Council Tax (predominantly student housing) increased by about 1527 in the period between 2006 and May 2013. The SPD explains that this figure includes about 750 private student cluster flats and studios. The Council state that the more recent evidence indicates that purpose-built student accommodation only comprises about 637 of these dwellings. By May 2014 the number of Council Tax exempt dwellings had increased to 2984, and the Council suggest that 1096 of these comprise purpose-built student accommodation.
46. Whilst it would seem that there has been a reduction in the number of general market dwellings occupied by students between May 2013 and May 2014, the growth in the number of students in recent years has significantly exceeded the provision of student accommodation. As a consequence there are at least 700 additional general market dwellings occupied by students by comparison with the commencement of the plan period.
47. Where the student population is relatively stable, and the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation, I consider the inclusion of such accommodation as part of the housing supply would be consistent with the guidance within the PPG. However, within Exeter, due to the considerable increase in the number of students relative to the provision of purpose-built student accommodation, there has not been a reduction in the number of general market dwellings occupied by students. On the contrary, there has been a significant increase. I acknowledge that this situation may change in the future should the delivery of student accommodation significantly exceed the increase in the size of the student population. However, that is not the case at present and there is no evidence to show that the provision of student accommodation has released general market housing within Exeter. Therefore the inclusion of purpose-built student accommodation as part of the housing supply is not consistent with the advice at paragraph 3/38 of the PPG.
48. The Council refer to paragraph 21 of the Core Strategy Inspector's Report. This states that it was debateable whether or not the new privately developed student units should be counted towards the City's housing land supply. The Inspector concluded that clusters of self-contained student accommodation should be counted towards housing supply, whereas communal accommodation should not. It is however, apparent that the Inspector understood that the University intended to meet most of its future student housing needs on University owned land on and off campus. She also anticipated that the Council's approach to student accommodation would be refined within the emerging Development Management DPD.

49. On the basis of the submitted evidence the reason for the Core Strategy inspector's view in relation to the inclusion of student housing is unclear. Based on the Council's approach 4969 dwellings have been delivered to date and of these 1510 comprise student accommodation. The Council submitted no evidence to show how this high proportion of student accommodation would reflect local demand for housing in accordance with paragraph 50 of the NPPF. Furthermore, the Inspector's Report pre-dates the publication of the NPPF and the PPG. The NPPF represents up-to-date Government planning policy and must be taken into account where it is relevant to a planning application or appeal. Paragraph 47 of the NPPF requires local plans to meet the full, objectively assessed needs for market and affordable housing in the housing market area. Since student accommodation requirements did not form part of the objectively assessed need, the provision of such accommodation would not contribute towards meeting the identified housing requirement. Therefore to rely upon student accommodation as a component of housing supply would not be consistent with paragraph 47 of the NPPF.
50. I therefore conclude that student accommodation should not be included as part of the housing land supply.

Housing Land Supply

51. The 2013 SHLAA identified 4051 completions for the period up to 2013/14 against a target of 4800. This includes about 596 purpose-built student dwellings. The higher figure within the 2014 SHLAA in relation to completions is due to the inclusion of additional student accommodation. If student completions are removed from the 2013 SHLAA the number of dwellings delivered falls to 3455 and there is a residual requirement for 8545 dwellings for the remainder of the plan period.
52. The Council's housing land supply comprises sites where construction has commenced; sites with planning permission where construction has not yet commenced and sites subject to a resolution to grant planning permission; sites without planning permission identified within the 2014 SHLAA, and an allowance for windfall sites.
53. Based on the figures within the 2013 SHLAA, sites with planning permission, or a resolution to grant planning permission, would deliver 2281 dwellings (excluding student accommodation) within the next five years. The more recent evidence within the 2014 SHLAA provides a figure of 2436. The Appellant considers that not all of these sites are likely to be viable and that no allowance has been made for non-implementation of these permissions, or for resolutions that may not be converted into planning permissions. He therefore suggests that a lapse rate of 10% should be applied to such sites.
54. In arriving at the figures within the 2014 SHLAA the Council contacted the applicants/agents in relation to each of the sites for 5 or more dwellings to obtain information on the first and final dwelling completions. On smaller sites about 50% of applicants/owners were contacted. On the basis of this information a number of sites with planning permission were excluded from the five year housing land supply.
55. Although there is no certainty that all of the sites identified by the Council will be delivered, I consider that its approach to the assessment of these sites to be reasonably robust. Footnote 11 to paragraph 47 of the NPPF states that sites

Details of the proposed traffic calming measures to Church Hill should be submitted for approval.

97. I agree that the proposal should meet the Code For Sustainable Homes in accordance with policy CP15 of the Core Strategy. In order to avoid increasing the risk of flooding, it is necessary to limit the rate of surface water run-off from the development to no more than that which occurs at present. Although the Appellant proposes the use of a sustainable drainage scheme, further details are necessary and should be submitted for approval.
98. Insufficient justification was provided for a condition requiring the the provision of public art as part of the proposal.

Conclusion

99. I have found above that the proposal would not harm the landscaped setting of Exeter and subject to the provisions of the Unilateral Undertaking would be acceptable in terms of its effect on highway safety and traffic. The proposal would deliver much needed housing within Exeter and would represent sustainable development.
100. For the reasons given above I conclude that the appeal should be allowed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Corsellis	Stevens Scown Solicitors
He called	
Chris Britton	Landscape Consultant
David Seaton	Planning Consultant
Karl Von Webber	Highway Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Langham	Of Counsel
	Instructed by Corporate Manager of Legal Services Exeter City Council
He called	
Roger Clotworthy	Planning Officer
Richard Short	Planning Officer (Presenting Katherine Smith's Proof of Evidence)

INTERESTED PERSONS:

Councillor Megan Williams
Moirra MacDonald
Elizabeth Escott
Helen Radway
Linda Marchant

DOCUMENTS SUBMITTED AT INQUIRY

- 1 Location of suggested viewpoints submitted by the Appellant
- 2 Roger Clotworthy summary of proof of evidence
- 3 Core Strategy Key Diagram submitted by the Local Planning Authority
- 4 DCLG Household projections update (April 2013) submitted by the Appellant
- 5 Neighbourhood population statistics submitted by the Appellant
- 6 E mail from local resident submitted by Moira MacDonald
- 7 Submissions in relation to flooding submitted by Moira MacDonald
- 8 Submissions in relation to highways matters submitted by Moira MacDonald
- 9 Statement of Common Ground in relation to heritage matters
- 10 Secretary of State's proposed changes to RSS dwelling numbers submitted by the Appellant
- 11 Core Strategy policy CP15 submitted by The Local Planning Authority

PHOTOGRAPHS

View of appeal site from Tithebarn Lane submitted by Moira MacDonald

Neutral Citation Number: [2015] EWHC 1663 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT IN BRISTOL

Bristol Civil Justice Centre,
2 Redcliff Street, Bristol, BS1 6GR

Date: 12/06/15

Before :

MR JUSTICE HICKINBOTTOM

Between :

EXETER CITY COUNCIL

Claimant

- and -

**(1) SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT
(2) WADDETON PARK LIMITED
(3) THE R B NELDER TRUST**

Defendants

Stephen Whale (instructed by **Exeter City Council Legal Services**) for the **Claimant**
Sasha Blackmore (instructed by the **Government Legal Department**)
for the **First Defendant**
Charles Banner (instructed by **Stephens Scown LLP**) for the **Second and Third Defendants**

Hearing date: 8 June 2015

Judgment

Mr Justice Hickinbottom :

Introduction

1. This claim concerns the proposed construction of dwellings on Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon (“the Site”). An application for planning permission by the Second and Third Defendants (“the Developers”) was refused by the Claimant planning authority (“the Council”); but, on appeal, after a three-day inquiry, on 29 October 2014 an inspector appointed by the Secretary of State, Ms Lesley Coffey BA Hons, BTP, MRTPI (“the Inspector”), allowed the appeal and granted planning permission for 120 residential dwellings, and associated infrastructure and open space.
2. In this application under Section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), the Council seeks to quash that decision.
3. Before me, Stephen Whale appeared for the Council, Miss Sasha Blackmore for the Secretary of State and Charles Banner for the Developers. At the outset, I thank them all for their helpful contributions.

The Legal Background

4. The relevant legal background is largely uncontroversial. In relation to planning determinations generally, whether made by a local planning authority or by an Inspector on behalf of the Secretary of State on appeal, the following propositions, relevant to this claim, are well-established.
 - i) Section 70(2) of the 1990 Act provides that, in dealing with an application for planning permission, a decision-maker (i.e. a local planning authority, or an inspector who conducts an appeal on behalf of the Secretary of State) must have regard to the provisions of “the development plan”, as well as “any other material considerations”.
 - ii) Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

That requires the proposed development to be in accordance with the development plan looked at as a whole, rather than with every policy in the plan, which may well pull in different directions and some of which may be more relevant to a particular application than others (R v Rochdale Metropolitan Borough Council (2001) 81 P&CR 27 at [44]-[50] per Sullivan J (as he then was), and R (Hampton Bishop Parish Council) v Herefordshire Council [2014] EWCA Civ 878 at [33] per Richards LJ). Section 38(6) thus raises a presumption that planning decisions will be taken in accordance with

the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations.

- iii) “Material considerations” in this context include statements of central government policy which, since 27 March 2012, has been largely set out in the National Planning Policy Framework (“the NPPF”). On 6 March 2014, the Secretary of State launched a web-based Planning Practice Guidance (“the PPG”), which replaced a plethora of earlier guidance documents and which is regularly updated. That too is a material consideration.
- iv) Whilst he must take into account all material considerations, the weight to be given to such considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he considers appropriate, subject only to his decision not being irrational in the sense of Wednesbury unreasonable (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780F-G). The courts have consequently left such decisions to be taken by the appointed decision-maker on the basis of guidance promulgated by the Secretary of State (see, e.g., R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23 at [60] per Lord Nolan, [129] per Lord Hoffman and [159] per Lord Clyde).
- v) A decision-maker must interpret policy properly. The true interpretation of such policy, including the NPPF, is a matter of law for the court (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13, and Europa Oil & Gas Limited v Secretary of State for Communities and Local Government [2014] EWCA Civ 825 at [13] per Richards LJ). Where a decision-maker has misunderstood or misapplied a plan or other policy, that may found a challenge to his decision, if it is material, i.e. if his decision would or might have been different if he had properly understood and applied the policy. If it is immaterial – because the decision would inevitably have been the same absent the identified error(s), then the court has a discretion not to quash the decision (Simplex GE (Holdings Limited) v Secretary of State for the Environment (1989) P&CR 306 at pages 324-7 per Purchas LJ). Whether the interpretation of the PPG is the subject of the same objective assessment by the court is moot before this court: Mr Banner for the Developers contends that the guidance is akin to the supporting text of a development plan, which falls short of policy so that it is not to be the subject of objective interpretation by the court and its application can only be challenged on grounds of rationality (R (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567 at [16] per Richards LJ). Mr Whale for the Council and Miss Blackmore for the Secretary of State submit that the PPG is subject to the Tesco v Dundee principles, and it is for this court to construe it as a matter of law. I deal with that issue below (see paragraph 43).
- vi) An inspector’s decision letter cannot be subjected to the same exegesis that might be appropriate for a statute or a deed. It must be read as a whole, and in a practical, flexible and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector’s inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues (see

Seddon Properties v Secretary of State for the Environment (1981) 42 P&CR 26 at page 28 per Forbes J; South Somerset District Council v Secretary of State for the Environment [1993] 1 PLR 80 at pages 82H, 83F-G per Hoffman LJ); and South Bucks District Council v Porter (No 2) [2004] UKHL 33 at [36] per Lord Brown).

- vii) Although an application under section 288 is by way of statutory appeal, it is determined on traditional judicial review grounds.
- viii) It is only in limited circumstances in which it can be contended that a decision-maker has erred in law by reference to a point not raised before him: an argument that an inspector failed to take into account a consideration not raised at the inquiry will only be allowed if the interests of justice require it (South Oxfordshire District Council v Secretary of State for the Environment, Transport and the Regions [2000] 2 All ER 667 at pages 677g-678d per George Bartlett QC sitting as a Deputy High Court Judge, and Humphris v Secretary of State for Communities and Local Government [2012] EWHC 1237 (Admin) at [23] per Ouseley J).
- ix) Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, “The court must be astute to ensure that such challenges are not used for what is, in truth, a rerun of the arguments on the planning merits”: anyone who challenges a planning decision on Wednesbury grounds faces “a particularly daunting task” (Newsmith v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 75 (Admin) at [6]-[8] per Sullivan J, as he then was).

The Issues before the Inspector

- 5. In paragraph 5 of her decision letter, the Inspector identified four main issues for her determination, as follows.
 - i) The effect of the proposal on the landscape setting of Exeter. She considered this issue in paragraphs 12-29 of her decision letter. The Site falls within an area designated as a Landscape Setting Area within Policy LS1 of the Exeter Local Plan First Review (2005) and Policy CP16 of the Exeter City Council Core Strategy (2012). The Inspector found that the proposed development (a) was not in accordance with Policy LS1 (a blanket policy that effectively limits development to existing urban areas), but that that policy was not a criteria-based policy in terms of the NPPF and was out-of-date, so that it could be accorded little weight (paragraph 13); and (b) would not in fact harm the landscape setting of Exeter and would comply with Policy CP16 of the current Core Strategy (paragraph 29). Those findings are not challenged by the Council.
 - ii) The effect of the proposal on highway safety and traffic. The Inspector concluded that the proposal would not have an adverse impact on highway safety and traffic (paragraph 36).

- iii) Whether in the light of the development plan, national guidance and other material considerations, the proposal would be a sustainable form of development. Within that issue, there were the following two sub-issues: (a) whether the Council could demonstrate a five year supply of deliverable housing land (which turned exclusively upon how new student accommodation was taken into account), and (b) irrespective of whether the Council could demonstrate a five year supply of housing, whether, in the light of the relevant policies – and benefits and harm of the proposal, as the Inspector found them to be – planning permission should be granted. The Claimant’s grounds of challenge now focus on these issues. Briefly, the Inspector found that (a) on the evidence before her, student accommodation should not be included as part of the housing supply (paragraph 50), and the Council had not demonstrated a five year supply of housing; and (b) the proposal would be socially, environmentally and economically sustainable (paragraph 76).
- iv) Whether the proposal would set a precedent for other development which could harm the character of Exeter City. The Inspector found that the proposal would not conflict with any national or local policy (except the out-of-date Policy LS1 which was of little weight), and was sustainable (paragraph 77). She concluded that the proposal should be approved “in accordance with the guidance at paragraph 14 of the NPPF”; and would not set an undesirable precedent for other development that did conflict with relevant policies (also paragraph 77).

The Grounds of Challenge

- 6. Mr Whale seeks to challenge the Inspector’s decision to grant planning permission, on two grounds.
- 7. First, he submits that the Inspector erred in three, related respects in relation to housing requirement/supply, which Mr Whale rolls up in Ground 1:
 - i) The Inspector proceeded on the basis that paragraph 47 of the NPPF “requires local plans to meet the full, objectively assessed needs and affordable housing in the housing market area”. It does not. It requires those needs to be met only “as far as is consistent with the policies set out in the [NPPF]...”.
 - ii) Whilst it was common ground that the housing requirement in the Core Strategy – of “at least 12,000” – did not include the need to provide housing for students, the Inspector failed to take into account the fact that the adopted housing requirement did include “an element of growth in relation to those students resident within general market housing in 2006” (paragraph 27(b) of the Claimant’s Statement of Facts and Grounds).
 - iii) The Inspector erred in not taking into account student accommodation as part of the housing *supply*. Whether or not student accommodation needs form part of the housing *requirement*, “new” student accommodation can be included as part of the housing *supply* in satisfaction of the identified requirement. Nothing in either the NPPF or the PPG requires or even suggests otherwise.

8. Second, as Ground 2, Mr Whale submits that the Inspector erred in adopting tests for inclusion of student accommodation in the housing supply assessed as fulfilling the identified requirement – not satisfied in this case – namely such accommodation can be included if (i) the student population is stable, and (ii) the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation. There are no such tests in paragraph 3.38 of the PPG or elsewhere.
9. The Secretary of State and Developers deny that there is any merit in any of these grounds and sub-grounds – but, even if the grounds were to be made good, the errors by the Inspector would be immaterial, in the sense that her decision would inevitably have been the same even if she had acted as the Council contend she ought to have done. In those circumstances, they submit that, even if I am persuaded that the Inspector acted unlawfully, I should exercise my discretion and not quash her decision.

Housing Requirements

10. Before I turn to the grounds of challenge, it might assist to refer briefly to different concepts that each plays a part in consideration of housing requirements. I recently considered three concepts – household projections, policy off objective assessment of need for housing, and policy on housing requirement – in R (Gallagher Homes Limited and Lioncourt Homes Limited) v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) at [37]:

“(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. They provide useful long-term trajectories, in terms of growth averages throughout the projection period. However, they are not reliable as household growth estimates for particular years: they are subject to the uncertainties inherent in demographic behaviour, and sensitive to factors (such as changing economic and social circumstances) that may affect that behaviour. Those limitations on household projections are made clear in the projections published by the Department of Communities and Local Government from time-to-time (notably, in the section headed ‘Accuracy’).

(ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics if, e.g., the assessor considers that the household projection fails properly to take into account the effects of a major downturn (or upturn) in the economy that will affect future housing needs in an area. Nevertheless, where there are no such factors,

objective assessment of need may be – and sometimes is – taken as being the same as the relevant household projection.

(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a ‘policy on’ figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured.”

Ground 1: The Housing Requirement Ground

11. “Sustainable development” is at the heart of the NPPF. There is no specific definition of “sustainable development”, but it is to be defined in terms of development which meets the needs of the present without compromising the ability of future generations to meet their own needs. That is reflected in the first words of the Ministerial Foreword to the NPPF, which state:

“The purpose of planning is sustainable growth.

Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations.

Development means growth. We must accommodate the new ways in which we will earn our living in a competitive world. We must house a rising population...”.

12. It is said in paragraph 6 of the NPPF that the policies set out in paragraphs 18-219, taken as a whole, constitute the Government’s view of what sustainable development means in practice for the planning system. “Sustainability” therefore inherently requires a balance to be made of the factors that favour any proposed development, and those that favour refusing it, in accordance with the relevant national and local policies. However, the NPPF provides for a number of presumptions as to where the balance might lie.

13. Paragraph 14 provides:

“At the heart of the [NPPF] is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **decision-taking** this means [unless material considerations indicate otherwise]:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted...”.

14. Part 6 of the NPPF deals with, “Delivering a wide choice of high quality homes”. The identification of sites for future housing provision is dealt with in paragraphs 47-50 of the NPPF, which provide as follows:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

48. Local planning authorities may make allowance for windfall sites in the five-year supply
 49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
 50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:
 - plan for a mix of housing based on current and future demographic trends, Market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, serviced families and people wishing to build their own homes;
 - identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand...”
15. This guidance informs the relevant housing requirement to be used for both the strategic plan-making function of a local planning authority when (e.g.) preparing a Local Plan Review, and the function of decision-making in respect of a particular planning application when it informs the approach of the decision-maker. In the latter case, it is particularly relevant in the absence of a demonstration of a particular level of supply of deliverable housing sites. If the authority cannot demonstrate a five year plus buffer supply of housing land at the time of a planning application for housing development, then that weighs in favour of a grant of permission. In particular, in those circumstances, (i) relevant housing policies are to be regarded as out-of-date, and hence of potentially restricted weight; and (ii) there is a presumption of granting permission unless the adverse impacts of granting permission “significantly and demonstrably” outweigh the benefits, or other NPPF policies indicate that development should be restricted in any event, sometimes referred to as a “tilted balance”. However, that presumption is, again, not irrebuttable: it may be rebutted by other material considerations.
 16. Turning to local policy (the development plan), Core Strategy Policy CP1 requires delivery of at least 12,000 dwellings in the plan period 2006-26. As a housing requirement, that figure was not in issue before the Inspector.
 17. Exeter is a thriving university city, with a planned substantial increase in numbers of students (over 19,300 in 2013-14, compared with just over 13,300 in 2006-07). Students, of course, require accommodation, either communal (usually halls of residence restricted to student occupation) or private non-communal (usually in the form of self-contained flats with a cluster of bedrooms which, if not used as student accommodation, could and would be used as general private housing stock). Students are of generally narrow age range and, in accommodation terms, have a rapid and self-replacing turnover. However, the Council has always recognised that, in the light of the expansionist plans of the university, despite university plans for additional communal accommodation, the number of students living in private housing would

increase so that the Council need to approve and increase the stock of houses of multiple occupation (see, e.g., paragraph 3.5 of the Council Planning Member Working Group Minutes 9 February 2010).

18. Before the Inspector, it was uncontroversial as to how student accommodation had been treated in arriving at the housing requirement figure of at least 12,000. As recorded by the Inspector (in paragraph 38 of her decision letter), the parties agreed that the housing requirement figure “did not include provision for student accommodation needs arising from the growing number of university students within Exeter”. That is made clear from the Council’s Urban Capacity Study 2006-26 (September 2006), which said that the Regional Spatial Strategy target (from which the 12,000 figure was derived) “does not take into account the need to provide housing for students”. The fact that future demand for student housing was not taken into account in that figure was expressly referred to in paragraph 20 of the Report on the Examination of the Council’s Core Strategy Development Plan Document (November 2011) (“the CS Inspector’s Report”), prepared of course by a different inspector appointed by the Secretary of State.
19. Nevertheless, the housing requirement figure was informed by demographic trends, in the form of (South West) regional household formation rate projections for the relevant period. Although pan-regional, an element of the increase as a result of these projections is attributable to increased student population, at least so far as non-communal accommodation is concerned (communal accommodation not featuring in the projections). This too was properly recorded by the Inspector in paragraph 39 of her decision letter:

“... The Council explained that although the housing requirement did not include specific provision for student housing, it projected the future housing needs of those students within market housing based on the household formation rate for their age demographic. Due to the majority of students falling within the 18-22 age group there would be relatively high household formation rate throughout the plan period. As such, the adopted housing requirement includes an element of growth in relation to those students resident within general market housing in 2006.”

20. However:
 - i) The household formation projected rate is a background rate, which does not reflect any particular increase in student population in a university city such as Exeter; and, especially, does not reflect the increase in student population in such a city as a result of known expansionist plans of the university. The objective assessment of need for housing (and thus the housing requirement) in this case did not therefore take into account the fact that, for Exeter, the unmodified housing projection figure would be inappropriate as it would not reflect the peculiar circumstances of the student population in Exeter.
 - ii) Before the Inspector, the Council did not attempt to calculate how that demographic trend was reflected in the housing requirement figure in quantitative terms, i.e. it did not rely upon a specific proportion of the housing

requirement being attributable to student accommodation because of the demographic input.

21. Before the Inspector, the parties' respective positions with regard to the inclusion of student accommodation units within the housing supply figure (as contributing towards satisfaction of the housing requirement figure of at least 12,000) were as follows.
22. The Council submitted that all non-communal student accommodation schemes for the relevant period should be included: it accepted that communal accommodation ought not to be included both on principle and because (as I understand it) there was in fact no new communal student accommodation in the period. This was a change in approach by the Council, which had not included any student accommodation in the supply figures prior to 2012-13, with the result that the 2013 Strategic Housing Land Availability Assessment ("SHLAA") showed a shortfall of supply against requirements of 749 dwellings. By retrospectively including 914 historic completions of private student accommodation units, the 2014 Draft SHLAA before the Inspector showed a surplus of 169 dwellings.
23. It made this accounting change because it considered the inclusion of student accommodation in this manner was in line with the PPG, which had been first published in March 2014. Paragraph 3.38 of the PPG, alongside the side note "Related policy [NPPF] Paragraph 47", and under the heading "How should local planning authorities deal with student housing?", provides:

"All student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double counting."
24. The Council also relied upon the CS Inspector's Report which, having expressed support for the requirement figure of at least 12,000, said (at paragraph 21):

"... It is debateable whether or not the new privately developed student units should be counted towards Exeter's 5 year housing land supply. Clusters of self-contained accommodation, perhaps with individual studio units and a shared kitchen, should be counted in the housing supply, whereas communal accommodation (e.g. traditional halls of residence) should not. More certainly, growing student numbers add to arguments for the plan to provide sufficient new land for housing for the 5 years and secure the maximum housebuilding for the full plan period."
25. Thus, the Council submitted that all non-communal student accommodation should be included in the supply figure.
26. On the contrary, the Developers submitted that none should, or indeed, could be included, because there was no specific provision for student accommodation in the

housing requirement figure – and to include any such accommodation in the supply figure would undermine the whole purpose of the requirement of the NPPF that housing needs are generally met, and would mask the need for general housing in Exeter. It would be irrational to exclude student housing for requirement purposes, but to include it in the figures used for housing supply in satisfaction of that requirement.

27. The Inspector dealt with this issue in paragraphs 37-50 of her decision letter. She did not agree fully with the contentions of either party.
28. She clearly understood that the adopted housing requirement reflected an element of growth in relation to student accommodation because of the demographic projections used, as explained above – she expressly makes that point at paragraph 39 of her decision letter – but it was agreed that student accommodation requirements did not form part of the objectively assessed need for housing; and, in the absence of any evidence as to the proportion of the adopted requirement that reflected student accommodation simply because of the demographic trends that had been taken into account, the Inspector was not satisfied that the provision of student accommodation in itself contributed to any specific extent to meeting the identified housing requirement (paragraph 49).
29. However, nor was she convinced by the Developers’ submission that that was the end of the matter.
30. Consistent with paragraph 3.38 of the PPG, she went on to consider whether, on the evidence in this particular case, it was appropriate to count any part of the supplied student accommodation as housing supply against the adopted housing requirement, because the provision of student accommodation had (e.g.) released housing that had been used by students into the general housing market. She found that there was no evidence of such release; and, indeed, since the commencement of the plan period, 700 additional general market dwellings were now occupied by students (paragraph 46 and 47). There appeared to be no other justification for the inclusion of any of the student accommodation. She therefore considered the inclusion of student accommodation as part of housing supply in this case would not be consistent with paragraph 3.38 of the PPG.
31. Furthermore, she was not persuaded by reliance on the CS Inspector’s Report, because (i) the basis for that inspector’s view in relation to the inclusion of student accommodation was unclear, although that inspector had understood that the university intended to meet most of its future student housing needs in communal accommodation on university-owned land; and (ii) it pre-dated the NPPF (paragraph 47 of which, she said, “required local plans to meet the full, objectively assessed need...”) and the PPG (paragraphs 48-49).
32. For those reasons, the Inspector concluded that “student accommodation should not be included as part of housing land supply” (paragraph 50).
33. As I have indicated, Mr Whale submits that the Inspector erred in three respects.
34. First, he says that the Inspector erred in proceeding on the basis that paragraph 47 of the NPPF “requires local plans to meet the full, objectively assessed needs and

affordable housing in the housing market area” (paragraph 49 of her decision letter, referred to in paragraph 31 above), whereas paragraph 47 requires a plan to meet those full, objectively assessed needs for market only “as far as is consistent with the policies set out in this Framework...”.

35. There is nothing in this complaint. Paragraph 47 reflects two different concepts, namely the “policy off” objectively assessed housing need and the “policy on” housing requirement, which I have explained above (see paragraph 10). It is clear that the policy off need and policy on requirement will be the same if there are no policies that impact upon the policy off figure. In this case, none was suggested. The words in paragraph 47 omitted by the Inspector – about which Mr Whale makes complaint – therefore had no relevance in this case. The Inspector did not arguably err by omitting (and/or not taking into account the import of) words in the NPPF that were immaterial to the issues before her.
36. Second, Mr Whale complains that, whilst it was common ground that the housing requirement in the Core Strategy – of “at least 12,000” – did not include the need to provide housing for students, the Inspector erred in failing to take into account the fact that the adopted housing requirement did include “an element of growth in relation to those students resident within general market housing in 2006”.
37. However, as I have described, it is clear that the Inspector was well-aware that, by taking account of the projection inherent in the regional demographic trend, the adopted housing requirement figure did reflect, to an extent, an increase in student accommodation during the plan period: she expressly set out that point at paragraph 39 of her decision letter (see paragraph 19 above). But, there was no evidence as to the extent that it did so: and, indeed, the Council did not rely upon any specific extent that it did so. It simply relied upon paragraph 3.38 of the PPG in support of its proposition that, irrespective of the extent (if any) that student accommodation was included in the housing requirement figure adopted, all non-communal student accommodation was properly included in the housing supply figure. In the circumstances, the Inspector was entitled to proceed on the basis that she was not satisfied that any specific proportion of the adopted housing requirement figure could be properly attributable to student accommodation.
38. Before me, the Council seek to repair this evidential deficit before the Inspector, by requesting permission to rely upon a further statement of Richard Short (a Planning Officer with the Council) dated 19 February 2015 in which he seeks to identify the proportion of the Council’s identified housing requirement of at least 12,000 attributable to student population by using more recent projections for the period 2013-33. He accepts that the proportion cannot be identified from the earlier projections.
39. However:
 - i) The new evidence of Mr Short is controversial. If it is admitted, the Developers seek to rely upon further evidence of David Seaton (a planning consultant instructed in their behalf), in the form of a statement dated 19 May 2015.

- ii) In any event, it is much too late for this evidence to be deployed. Before the Inspector, as I have described, the Council did not rely upon a particular proportion of the housing requirement being attributable to student accommodation, and there was no evidence before the Inspector from which she could have assessed that attribution. It cannot be said that she erred in law in not making the attribution; and it is not arguably in the interests of justice to allow the Council to take this new point now.
 - iii) In any event, even if the Council were able to show that a specific proportion of the adopted housing requirement figure was attributable to student accommodation, for the reasons given below, that would not be determinative of this application.
40. For those reasons, I formally refuse the Council's application of 6 May 2015 to admit this further evidence, and also the Developers' application of 21 May 2015 to adduce evidence in response.
41. That leads to Mr Whale's third and final subground. He submits that, whether or not student accommodation needs form part of the housing requirement, the Inspector erred in not taking into account student accommodation as part of the housing supply. Paragraph 3.38 of the PPG requires (or, at least, permits) it to be counted.
42. That argument appears to be counterintuitive, particularly in the light of the principles set out in the NPPF. It would mean, for example, that if the adopted housing requirement excluded student accommodation altogether, despite the terms of paragraph 50 of the NPPF, that requirement could be satisfied by student accommodation alone. I accept Mr Banner's submission that it would be irrational to include student accommodation in housing supply as meeting an adopted housing requirement, where such accommodation does not feature in that requirement.
43. But the foundation of the argument is in any event false. Paragraph 3.38 does not allow – let alone require – all new student accommodation simply to be included towards the housing requirement, as Mr Whale suggests: rather, it allows an authority to reflect the release of accommodation units onto the general housing market as a result of new student accommodation (although, of course, in the unlikely event that the provision of student accommodation releases unit for unit to the general market, then the whole of the accommodation may effectively go to satisfy the requirement). That is clear from the words used; but also from the reference to communal student accommodation, which is not included in the housing requirement figure and (Mr Whale accepts) was in this case properly not included within the housing supply figure either. The moot point as to the proper approach to interpretation of the PPG (see paragraph 4(v) above) does not arise, because the words of paragraph 3.38 are unambiguously clear and the Secretary of State does not suggest otherwise. Leaving aside the argument on discretion below (paragraphs 50-53), whatever approach to construction is adopted, the result is consequently the same.
44. Far from the Inspector's approach to student accommodation and housing supply in this case being wrong in law, in my view it was eminently correct. She was correct not to accede to the Council's submission that all student accommodation supplied should or could be set off against the housing requirement. She was correct not to be persuaded by the Developers' contention that she could not under any circumstances

take into account student accommodation. She was correct to look at the facts of this case and determine whether, on the evidence before her, there was any basis for taking any of the new student accommodation into account. Given the evidence that a substantial number of additional general market dwellings had been occupied by students, she was clearly entitled to find that there was not. She properly accepted (in paragraph 47) that, although there was currently no evidence to show that the provision of student accommodation has released housing into the general market in Exeter, the situation may in the future change if (e.g.) the delivery of student accommodation significantly exceeded the increase in student population.

45. For those reasons, none of the separate strands of Ground 1 succeeds.

Ground 2: The Unlawful Adoption of Tests for Inclusion of Student Accommodation in the Housing Supply

46. Having said that student accommodation could be taken into account in the supply figure to the extent that that accommodation released housing to the general market (paragraph 44 of her decision letter), in paragraph 47 of her decision letter, the Inspector continued:

“Where student population is relatively stable, and the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation, I consider the inclusion of such accommodation as part of the housing supply would be consistent with the guidance within the PPG. However, within Exeter, due to the considerable increase in the number of students relative to the provision of purpose-built student accommodation, there has not been a reduction in the number of general market dwellings occupied by students. On the contrary, there has been a significant increase...”.

47. Mr Whale submits that the Inspector proceeded on the basis that the inclusion of student accommodation as part of the housing supply would be consistent with paragraph 3.38 of the PPG if (and only if) (i) the student population is relatively stable and (ii) the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation. He submits that the Inspector erred in law in positing these tests, which are not posited in paragraph 3.38 of the PPG or elsewhere.
48. I consider this ground misconceived. If the Inspector’s decision letter is read fairly and as whole – as it must be – paragraph 47 does not set out tests which must be satisfied if student accommodation is to be included with the supply figure; rather, the Inspector is considering how it might be appropriate to include student accommodation in the supply figure. The passage relied upon does not seek to establish a “test”, but rather exemplifies ways in which it might be established that student accommodation releases dwellings into the general housing market and thus, in line with paragraph 3.38 of the PPG, might properly be included in the housing supply figure. However, that possible example was not this case. The Inspector found that, however one might consider the evidence, there was no way of appropriately including any of the student accommodation in housing supply in this

case. That finding is unimpeachable; and, on the evidence, I would have thought all but inevitable.

49. In his skeleton argument, for the first time Mr Whale seeks to rely upon paragraph 27 of the Secretary of State's Consultation Paper, "Section 106 Planning Obligations – Speeding up Negotiations: Student accommodation and affordable housing contributions" (February 2015). Paragraphs 27 and 28 read as follows:

"27. Many of our university towns and cities purpose built accommodation provides affordable housing for students. Local authorities are rewarded through the New Homes Bonus for the provision of such accommodation, and planning guidance already allows them to count the provision of all student accommodation towards meeting their local housing requirement.

28. Student housing provided by individual private landlords is a low-cost form of housing. Therefore encouraging more dedicated student accommodation will help free up low-cost properties in the private rented sector and help address problems associated with the cheaper end of the private housing market and with homes in multiple occupation...".

Mr Whale submits that paragraph 27 supports his view that paragraph 3.38 of the PPG permits all student accommodation to be counted as against an adopted housing requirement.

50. However:
- i) The Consultation document was not before the Inspector: indeed, it post-dates her decision.
 - ii) It also post-dates the NPPF and PPG, and so cannot be used in interpreting those documents, in particular paragraph 3.38 of the PPG.
 - iii) But in any event the passage relied upon is consistent with the interpretation of paragraph 3.38 I prefer: paragraph 3.38 does allow authorities to include student accommodation towards meeting their housing requirement, e.g. by releasing accommodation into the private sector, where that is justified on the evidence. Indeed paragraph 28 of the consultation document strongly suggests that that is what is being referred to in paragraph 27.

51. Ground 2 therefore also fails.

Discretion

52. Therefore, both grounds fail on their merits, and I must dismiss this application.
53. However, although now not determinative, it is only right that I refer to another ground of opposition relied upon by Miss Blackmore and Mr Banner. They each submitted that, even if I were to find that the Inspector had acted unlawfully as Mr Whale contended, I ought to exercise my discretion and not quash the decision

because the errors were immaterial, i.e. even if the Inspector had not erred as suggested, she would inevitably have come to the same conclusion and allowed the appeal.

54. That submission is based on the following propositions:

- i) The proposed development undoubtedly had planning benefits: as the Inspector said (at paragraph 75 of her decision letter), whatever the position with regard to land supply, it created “much needed” housing including 35% social housing and supported growth generally; it benefited the local community by providing pedestrian links through the site, a linear park, a playground and a surface water mitigation scheme; and it provided the short-term economic benefits of construction.
- ii) The Inspector found that the proposal was in accordance with all relevant policies, except Policy LS1. Furthermore, it caused no landscape setting, highway safety and traffic, or other harm. The only planning detriment was therefore the breach of Policy LS1. However, that policy was out-of-date, and not criteria-based; and could therefore only be given little weight. The policy concerned landscape setting, and the Inspector expressly found that (a) the proposal would in fact cause no harm to landscape setting, and (b) the proposal complied with the current Core Strategy Policy CS16 on landscape setting (paragraph 29).
- iii) The Inspector found that there was no five year supply of housing, and thus the relevant policies for supply were deemed out-of-date by paragraph 49 of the NPPF, with the result that the presumption in favour of development in the second bullet point in paragraph 14 of the NPPF applied.
- iv) However, if she had not found an absence of five year supply, she would nevertheless have had to have balanced the benefits of the proposal against the harm. The only harm was the breach of Policy LS1, but
 - a) Policy LS1 was out-of-date, thus arguably triggering the presumption in the second bullet point of paragraph 14 in any event.
 - b) If she had considered the issue, she could only have concluded that that breach of Policy LS1 did not mean that there had not been compliance with the development plan as a whole. She would therefore have been required by the first bullet point of paragraph 14 to have approved the proposal.
 - c) In any event, even if neither a) nor b) applied, the Inspector found the proposed development to be sustainable, so that there would be a presumption in favour of development. On the basis of her uncontested findings, the Inspector could not have concluded that the harm (of the technical breach of Policy LS1) outweighed the benefits of the development. Indeed, those benefits patently outweighed that “harm” by a very considerable margin.

- v) Therefore, even if the Inspector did err in law as the Claimant contends, it was immaterial: had she have not have so erred, she would in any event have been bound to have come to the same conclusion, and granted the appeal by granting the planning permission sought.
55. In my judgment, whilst my conclusions in favour of the Defendants on Grounds 1 and 2 are very firm, this argument on discretion would be overwhelming. Given the Inspector's findings on harm (which the Council does not, and could not, dispute), whichever way the Inspector had proceeded, she would inevitably have come to the conclusion to which she did in fact come, i.e. that planning permission should be granted.

Conclusion

56. However, in my judgment, the Council does not get as far as that. For the reasons I have given, I do not find any ground pursued made good; and I dismiss this application.

EP2

Deliverability Statement

Site Location:	Application Number	RLAS Code
Parcelss RO3 and RO4 - Former Filton Airfield YTL	PT18/5892/RM	0134ca

As outlined in Annex 2 of the 2019 [Nation Planning Policy Framework](#), all sites that have detailed planning permission should be considered deliverable until permission expires. As there are no known constraints impacting delivery on this site it is considered to be deliverable within the next five year period.

Date: *8 December 2021*

EP3

Deliverability Statement

Site Location:	Application Number:	RLAS Code:
Cribbs/Patchway - Former Filton Airfield YTL (PT14/3867/O)	PT14/3867/O	0134c

As outlined in Paragraph 7, Reference ID: 68-007-20190722 of the 2019 [National Planning Policy Guidance](#) major sites which have made clear progress towards or gained outline, full, or reserved matters planning status, can be considered as having evidence to demonstrate deliverability.

Date: 16th December 2021

Environment and Community Services,
South Gloucestershire Council, PO Box 1954, Bristol BS37 0DD
www.southglos.gov.uk

EP4

Briefing Note



To	South Gloucestershire Council
From	Ben Pycroft
Date	11/02/2022
Site	Land to the west of Park Farm, Butt Lane, Thornbury
Project	Appeal for mixed use including 595 no. dwellings
Client	Barwood Development Securities Limited

Re: List of Disputed Sites

Ref:	Planning ref:	Site
0251	P20/21983/F	UoWE – Phase 1
0252	P20/10080F	Block B Cheswick Village
0021b	17/5810/RM	Land at Harry Stoke, Stoke Gifford – Crest & Sovereign & Linden
0021c	06/1001/O	Land at Harry Stoke
0135a	PT16/4782/O	New Neighbourhood – East of Harry Stoke – Crest (South of railway)
0135b	PT16/4928/O	New Neighbourhood - East of Harry Stoke - Council Land [North of railway]
0135d	PT17/5873/O	New Neighbourhood - East of Harry Stoke [Land off Old Gloucester Road, Hambrook]
0135da	No reference	New Neighbourhood - East of Harry Stoke [Residual Land]
0256	21/05128/F	The Hoodlands, Hambrook Lane
0133	PK12/1913/O	Land at North Yate (PK12/1913/O) Barratt/DWH
0133ab	PK17/5388/RM	Land at North Yate - Barratt PL23a, PL23c
0133ac	PK17/5389/RM	Land at North Yate - DWH PL14d, PL22
0133ae	PK18/1723/RM	Land at North Yate - Barratt PL12b, PL13b
0133af	PK18/3185/RM	Land at North Yate - DWH PL15a, 16a, 16b
0133ah	P19/2525/RM	Land at North Yate, PL17a, 17b, 18a, 18b & 21
0133ai	P19/14361/RM	Land at North Yate - Barratt PL14e
0133aj	P19/12246/RM	Land at North Yate - PL12a, PL13a
0133ak	P20/16804/RM	Land at North Yate - PL7, 8, 9 & 11
0133al	P21/02473/RM	Land at North Yate - PL15c and PL16
0133b	P19/11377/RM	Land at North Yate - Bellway PL24, 25, 26 & 27
0133am	P21/04892/RM	North Yate - Land at Ladden Garden Village
0133an	P21/03161/RM	North Yate - PL19, 20, 28 and 29
0134b	PT12/1930/O	Cribbs/Patchway NN - Wyke Beck Rd/Fishpool Hill
0134c	PT14/3867/O	Cribbs/Patchway - Former Filton Airfield YTL (PT14/3867/O)
0134ca	PT18/5892/RM	Parcels RO3 and RO4 - Former Filton Airfield YTL
0134aa	P21/04349/RM	Land At Cribbs Causeway (Berwick Green / Haw Wood)

Ref:	Planning ref:	Site
0134ab	P21/04748/RM	Parcels 14-19 Land At Cribbs Causeway (Berwick Green / Haw Wood)
0134ba	P21/05421/RM	Land At Wyck Beck Road And Fishpool Hill
0226	18/0930/R30 19/13690/RM	Watermore Junior School, Lower Stone Close
0227	16/3565/O	Cleve Park, Thornbury – Care Home
0234	19/15643/O	Land east of Cedar Lodge
0247a	19/8659/O 21/06953/RM	Land at Crossways, Morton Way, Thornbury
0248	20/12395/F	Land west of Trinity Lane
0250a	21/04070/RM	Land east of North Road, Yate
0036c	19/1275/F	Land at Lyde Green Farm
0036az	21/06187/RM	Parcel 30 Emersons Green

EP5

NOVEMBER 2021

Feeding the Pipeline

Assessing how many permissions are needed for housebuilders to increase the supply of homes



LICHFIELDS



Executive summary

The relationship between the scale of planning permissions for housing and the number of homes built is regularly debated, but not always well understood.

This report – commissioned by the Land Promoters and Developers Federation and the Home Builders Federation – is one of three linked research studies exploring the topic. It looks at how many additional implementable planning permissions on sites are needed to achieve ambitions of delivering 300,000 net additional homes per annum across England from the current base of 243,770 net additional homes achieved in 2019/20. In doing this it looks at reported statistics from ten of the UK's largest housebuilders, including on their land pipelines (and what stock of sites is being drawn on to deliver new homes) and how that compares and correlates with the rates at which those engaged in housebuilding deliver new homes. These are then used to identify at a national level the scale of activity needed in ensuring there are sufficient implementable planning permissions for the housebuilding industry to scale-up delivery.

Based on our analysis we conclude:

1. The housebuilding sector and 'housebuilders' – companies, large or small, whose primary activity is the building and selling of new homes – are responsible for more than two-thirds of national housing output (c.36% from the 50 largest housebuilders alongside a circa one-third contribution from smaller builders). Significantly boosting housing delivery will require a substantial contribution from these companies who rely on a supply of timely and implementable planning permissions on sites in order for them to continually build.
2. Whilst housebuilders have pipelines of sites with planning permissions which represent their housebuilding activity for the immediate future, these pipelines are generally short (given building timescales) and on average only represent 3.3 years' output. This compares to Local Planning Authorities needing to demonstrate five years' worth of deliverable supply and an estimate that housebuilders would need to hold 5.7 year pipelines to secure annual growth in their housing output.
3. Increasing the number of 'outlets' – the active sites from which homes are completed – and doing so with a wide variety of different sites, is key to increasing output, with each housebuilder outlet delivering on average 45 homes each year. Increasing the pace of build-out would only be achievable with a faster top-up of development pipelines that are already short; over the medium to long term the same amount of land is required, whether built at a slower pace in parallel or at a more rapid pace in tandem.
4. To meet ambitions for 300,000 net additional homes per annum, the country will need to increase delivery by 59,200 homes per annum. This in turn illustratively necessitates between **474 to 1,385 additional implementable planning permissions on medium to large sites** (50-250+ homes) making their way into the housebuilding sector, albeit precise numbers will depend on ensuring a good mixture of size types and sizes come forward (e.g. more would be needed if delivered on smaller sites). This represents each **district** in England granting planning permission for the following, over and above what they usually would:

- a Between 4-5 additional and new medium size sites each year **or** 4-5 additional and new large size sites which will deliver over the next five or more years, if the whole 'scale up' is on sites delivered by the housebuilding sector; or
- b One or two additional and new medium size sites each year **or** one or two additional and new large size sites which will deliver over the next five or more years **and** 12 or 13 new smaller sites each year (or equivalent types of smaller permissions), if the housebuilding sector only delivers a proportion of the increase.

Each of these sites would need to be in addition to the usual flow of permissions granted (i.e. be alongside and in addition to maintaining the usual rate of activity) and this is likely to be a minimum estimate but would provide sufficient uptick in planning permissions to introduce the additional housebuilding outlets to hit 300,000 per annum. Self-evidently, at a district level, this is not an insurmountable task.

- 5. The distribution and locations of those permissions needed will not be uniformly spread across the country. Some areas – where there are particular imbalances between the permissions that exist and are coming through the system and the number of homes needed in that area - will need to do more than others. This will include many constrained areas, such as areas affected by Green Belt, where Local Plan progress has been slow and implementable sites are not yet coming forward.
- 6. Even if housebuilders were to build from their pipelines more quickly, additional permissions would still be needed as faster build-out would not realistically bridge the whole gap. Such a scenario would still necessitate more implementable planning permissions coming through the system to both increase outlets (alongside those existing outlets delivering more quickly) as well as to top-up pipelines more quickly and maintain them at a length which mitigates business risks (and without which housebuilders would not be incentivised at all to build-out pipelines more quickly). And of course, faster build out would simply increase the rate at which the pipeline needed to be replenished for when those sites were completed. Over the medium to long term, the same amount of land would be needed.

This analysis is based on a range of assumptions, and does not seek to determine either who should be building those sites (e.g. local builders or national brands) nor what types of sites could come forward (brownfield/greenfield, cities/towns/villages, allocations/new sites etc.) but provides an estimate of how many additional implementable permissions would be needed to be for the housebuilding sector to scale up delivery to meet the 300,000 homes per annum ambition. The precise quantification of the action needed is inherently difficult to identify, because the geographical dimension to this is important; but in simple terms, any increase in housing delivery would need to run commensurate with an increase in implementable planning permissions – and the estimates in this report provide some indicator of scale associated with achieving that. The scale of challenge highlights the need to resource the system appropriately to bring through those implementable planning permissions, as well as the need for planning decisions in areas where there are the greatest mismatches between output, permissions and need, to adequately reflect the imperative need to bring forward those additional housing permissions.

01 Introduction

Lichfields has been commissioned by the Land Promoters & Developers Federation (“LPDF”) and Home Builders Federation (“HBF”) to undertake research into how the pipeline of sites for housing development compares with what might be needed to meet the government’s ambitions for 300,000 net additional homes per annum across England. There are three parts to the research:

1. **Analysis of how the number of homes with planning permission relates to housing need and delivery in different parts of the country** through a comparison of housing need (either as per the standard method or recently adopted local plans), planning permissions and completions at a regional and housing market area level. This was reported in *Taking Stock: The geography of housing need, permissions and completions* which was published in May 2021¹;
2. **Assessing how the stock of permissions relates to housebuilder pipelines**, rates of build out and the number of extra sites required to meet the government’s ambition – this paper; and
3. **An analysis of what happens to the stock of permissions** for a number of local authority case studies. This is a more in-depth ‘deep dive’ exploration on how the stock of permissions granted is linked to the number of homes completed within a given timescale by monitoring the land supply positions across the authorities over a five-year period. It was reported in *Tracking Progress: Monitoring the build-out of housing planning permissions in five local planning authority areas* which was published in September 2021²

This report presents the output of the second part. It should be read in conjunction with the other strands of research which are already published.



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¹ Taking Stock available [here](#)

² Tracking Progress available [here](#)

Research Context

The '300,000 homes per year by the mid-2020s' ambition is one which first appeared in the Autumn 2017 Budget, and has been reiterated by the Government numerous times since, such as in the Planning for the Future White Paper (August 2020), the May 2021 Queen's Speech and by housing secretary Michael Gove in updates to the Housing, Communities and Local Government select committee in November 2021. Although a 'soft' target, in that it is not currently captured in a formal way through national planning policy and has a blurred genesis, it is a figure which would undoubtedly contribute to addressing the housing challenge, is achievable as a target and falls within the range of national output figures which various research reports have concluded as needed³.

In order for this ambition to be met there needs to be sufficient land with planning permission for housing which has a realistic prospect of being built within the relevant time period. At its most simple level, if the Government wants 300,000 net additional homes built each year, over a five year period there would need to be sufficient permissions that would enable 1.5m homes to be built, plus whatever is needed to replace the number of existing homes demolished (averaging just over 10,000 per year since 2010/11), taking into account the number of conversions and homes that secure approval via permitted development (PD).

The past ten years has seen periodic commentary about how the number of planning permissions for housing has exceeded the number of homes built. Often drawing upon an annual research piece by the Local Government Association (LGA), the most recent being in May 2021 which purported to show 1.1m homes with unimplemented permission, the commentary has been associated with the allegation that developers 'hoard' land with the intention of benefitting from a rising market, generating a 'backlog' of permissions waiting to be built. This argument leads to the hypothesis that sufficient permissions exist for all the homes that are needed nationally, but that these are simply not being built out and that "planning is not the problem".

We explored these themes in our previous stages of research. In the first part entitled Taking Stock we looked at the national and sub-national picture on planning permissions, concluding that the 1.1m figure was not credible whilst also highlighting that planning permissions are not matched to areas of greatest housing need; many parts of the country – where affordability pressures are greatest – have the biggest gap between homes with planning permissions and the number needed. In Tracking Progress we did a deep-dive into what is actually happening to planning permissions in five case study localities, concluding that the vast majority of sites with permission are progressed expediently – with less than 5% lapsing – but that the build out of larger schemes is often phased, with many homes on those permissions coming later than five years from the initial, typically outline, consent.

The commentary on unimplemented planning permissions is often accompanied by ire directed at 'housebuilders' and particularly the major national builders, who are accused of holding on to land with planning permission and restricting supply, in order to drive up prices of homes or the land⁴. This accusation persists despite many a study and investigation concluding that this does not occur; from Kate Barker's seminal research in 2004⁵ and the Office of Fair Trading in 2008⁶ to the Letwin Review in 2018⁷.

Often, what such accusations fail to consider is what housebuilder pipelines are, how they relate to output, and the degree to which housebuilders, and land promoters who source, secure and feed those housebuilders land with planning permissions, have an important (albeit far from the sole) role in driving housebuilding rates to meet Government targets.

This paper considers housebuilder pipelines, analyses how their annual output relates to the number of sites with permission on which they are building at any given point (often termed 'outlets') and seeks to estimate how many additional implementable permissions would be needed for the housebuilding sector to scale up delivery to meet the 300,000 homes per annum target.

³ As helpfully summarised in the House of Commons Research Briefing Paper 'Tackling the under-supply of housing in England' (January 2021)

⁴ For example see <https://www.thetimes.co.uk/article/use-it-or-lose-it-rule-for-housebuilders-amid-crackdown-on-land-banking-7wfdk7nh>

⁵ The Barker Review of Housing Supply 'Delivering Stability: Securing our Future Housing Needs' March 2004

⁶ OFT 'Homebuilding in the UK: A market study' September 2008 https://webarchive.nationalarchives.gov.uk/ukgwa/20140402160708/http://oft.gov.uk/shared_oft/reports/comp_policy/oft1020.pdf

⁷ Sir Oliver Letwin 'Independent review of build out: draft analysis' June 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718878/Build_Out_Review_Draft_Analysis.pdf

O2

Housebuilder Pipelines and Output

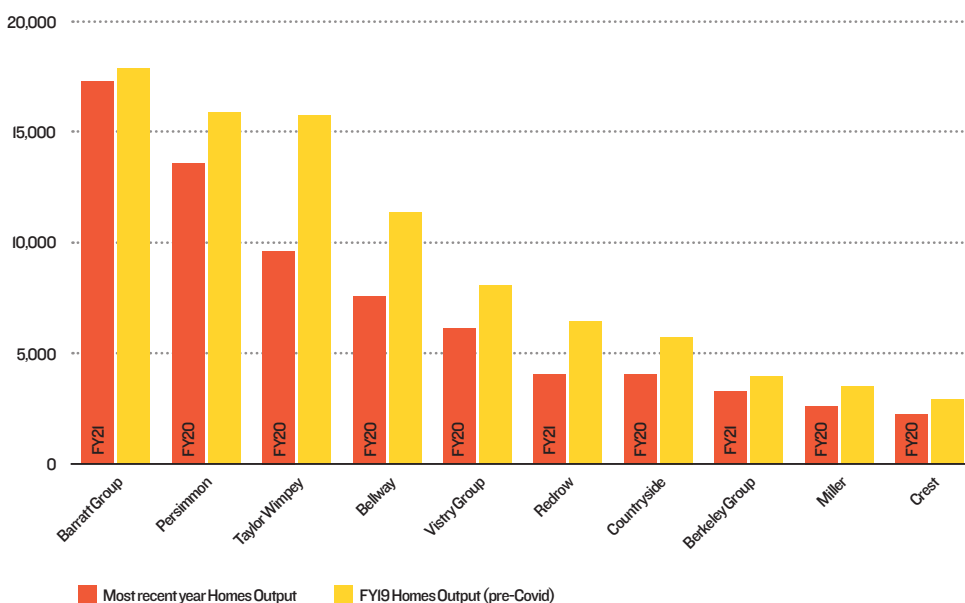
In England 243,770 net additional homes were delivered in 2019/20 (252,800 gross completions). To hit 300,000 net additional homes by the mid-2020's around 312,000 new homes (gross) would need to be built each year, accounting for demolitions which run at around 4% of gross supply on average⁸. This leaves an increase in gross output of around 59,200 additional homes per annum needed to hit 300,000 by the mid-2020's.

Housebuilders – broadly defined for the purpose of this research as those companies whose primary activity is the building and selling of new homes – deliver a large proportion of those new homes every year. Of the national housing output, the top 50 housebuilders accounted for c.36% of all additional homes (c.24% for the top 10), whilst a similar proportion were delivered by smaller housebuilders (the remainder being split relatively evenly between delivery by housing associations/public bodies and private individuals/other developers via conversions or changes of use). The scaling up of housing delivery will inevitably need housebuilders to contribute significantly to increasing output.

To consider this and understand how many additional sites, outlets and implementable planning permissions would be necessary to bridge the gap to 300,000 homes per year, we have reviewed publicly available data from several of the major housebuilders to explore how their output compares to the national delivery needed. We have focussed on 10 of the largest housebuilders (based on recent years' number of homes completed) for which annual reporting data is made available. These 10 housebuilders are looked at not because we assume that they will be the businesses responsible for increasing output (though they will clearly play a role), but because their published information provides a reasonable benchmark for our purposes of the way the wider housebuilding sector, small and large, builds out new homes from its land pipeline.

These 'Top 10' housebuilders are illustrated in Figure 1 by the number of homes they completed in their most recent (as at September 2021) reported year and the equivalent for the 2019 financial year (FY19) which reflects output pre-pandemic. In total, this group delivered over 69,000 new homes in their most recent years' trading, down from over 88,000 within FY19.

Figure 1 'Top 10' housebuilder output



⁸ MHCLG Live Table I20, Components of net housing supply, England – average demolitions as % of gross supply for five years 2015-16 to 2019-20.

⁹ England, Scotland, and Wales to be consistent with housebuilder reporting

¹⁰ This is not a definitive 'top 10' but is a selected group for the purposes of this research. For example, this does not include Bloor Homes which is privately owned and does not report all its activity. It does not include CALA Homes whose acquisition by Legal & General and subsequent changes to accounting periods, meant their information was not readily comparable for research purposes.

We have collated further data and metrics from housebuilder annual reports including:

- **Pipelines** – The number of homes within each housebuilders' pipeline, split where possible by different type.
- **Site sizes** – Where available, any information on the average size of site being delivered by these larger housebuilders.
- **Output** – The number of homes completed within each year over the last five years, including those built for market sale, those built for transfer to a registered housing provider and including any built as part of joint ventures.
- **Outlets** – The average number of active sales outlets – or sites – where homes were being completed each year over the last five years.

This has then enabled us to consider how many new sites, outlets and permissions will be needed if housebuilders are to increase output to help meet the target of delivering 300,000 homes each year in England by the mid-2020's.

Pipelines

A land pipeline, sometimes called a landbank, is the inventory of land which a housebuilder has at any given point on which it is going to build homes in the future. Housebuilders obtain this land in different ways, including:

1. land they purchase with an existing (typically 'outline') planning permission where another company, such as a land promoter, has brought forward the land;
2. land where the housebuilder agrees an option with the landowner to purchase the site, if they achieve an allocation or planning permission on it later; and
3. where a housebuilder enters a joint venture, for example with a Council or public body who own land, to build homes and deliver regeneration.

These are all equally important sources of land for housebuilding activity, and housebuilders, particularly the largest housebuilders, will source land from all three routes. Indeed, for the largest housebuilders, much of the stock of their immediate building land will be supplied by land promoters who take on the risk and costs of achieving an outline planning permission, sometimes also putting in place key infrastructure, before selling it on to a housebuilder to build the homes.

Research by ChamberlainWalker Economics for Barratt Developments¹¹ explored the role of housebuilder pipelines, explaining how they are necessary to provide housebuilders certainty and continuity on land as a 'raw material' input to building new homes. Holding a conveyor belt of sites moving towards delivery is an important part of any building business, and the faster the conveyor belt runs to increase output, the quicker additional new sites need to be added to it. ChamberlainWalker estimated that housebuilders would need to hold pipelines of at least 5.7 years to secure annual growth in completions whilst ensuring business security – if a housebuilder increased output without increasing its pipeline, it would speed towards the cliff edge of exhausting its supply of implementable sites.

We have looked at the number of homes (often referred to as 'plots') within each housebuilders' pipeline, split where possible by those defined or described as 'immediate' or 'implementable' – often tallying with those where detailed planning permission exists and construction can commence imminently or is already underway – and those in the pipeline where work is progressing towards delivery but they are not yet implementable – often including sites which are shortly proceeding to planning, or only benefit from an outline permission¹².

¹¹ ChamberlainWalker, 'The Role of Land Pipelines in the UK Housebuilding Process', September 2017 - https://cweconomics.co.uk/wp-content/uploads/2017/10/CWEconomicsReport_Land_Banking.pdf

¹² Not all housebuilders delineate or divide their pipelines in the same way. As such we have sought to divide the pipeline into the two groupings of 'immediate' and 'proceeding' based on information available from each individual housebuilder and a best fit of their own definitions/descriptions. Generally immediate sites are ones where detailed planning permission exists and can either be implemented now and construction commence, or have actually already been implemented, with construction coming forward (often on a phased basis).

This excludes 'strategic land' which is that typically controlled by housebuilders under option agreements (but not owned by the housebuilder), or controlled by land promoters under promotion agreements, where there is no current planning status and therefore no certainty on successfully seeking planning permission. For example, these will often be sites that have been and/or will be promoted for allocation within Local Plans. Some commentators make the allegation these strategic sites are deliberately hoarded and withheld from the planning system, but no evidence has ever been presented for that. In reality – in order for the landowner to realise its value – an option or promotion agreement will normally require the housebuilder or promoter to promote the site through the planning system when there is the opportunity to do so; the delay in such sites coming forward generally arises because there is no progress with a local plan that would allocate the site, or the plan in question chooses to allocate a different site. In these circumstances, there is no basis for the housebuilder to advance a speculative planning application unless there are particular reasons to believe a permission would be forthcoming in the context of the NPPF.

Figure 2 Housebuilder 'immediate'/'implementable' pipeline size and equivalent years supply it represents



Figure 2 illustrates the housebuilders' 'immediate' or 'implementable' pipeline and how many years output it represents at recent annual completion rates. It shows some significant variability across the biggest housebuilders in terms of their land pipelines. The three largest housebuilders, Barratt, Persimmon and Taylor Wimpey hold implementable pipelines of 3.0, 2.8 and 2.6 years respectively (at FY19 output levels¹³), whilst Vistry, Countryside and Berkeley hold much larger pipelines. This is explained by the different and distinct operating models that exist within and across housebuilders, with the latter businesses engaged in more large regeneration type activity via joint ventures, which will be phased over many years, involving land assembly, decanting tenants to new accommodation, demolition and replacement. Whilst any housebuilder might be engaged in both types of activity to different degrees – 'traditional' housebuilding activity tends to rely on a quicker churn of sites to achieve faster returns on capital expenditure and hence pipelines are shorter than those engaged in regeneration activity where costs and risk might be spread amongst partners.

¹³ Utilised as a Covid-unaffected estimate with the equivalent being 4.9 years against the most recent years' output, where for some housebuilders this figure includes a time-period where lockdowns had hit construction.

By way of example, in the case of Berkeley Group - an outlier among the ten - they report 'plots' (homes) on all land holdings where a 'backstop planning position' exists, itself not necessarily consistent with the 'immediate' pipeline definition used by others. Their pipeline also includes long-term complex regeneration developments, many already under construction but where activity is expected to continue over many years and decades, such as at their Woodberry Down (5,500 homes) or Kidbrooke Village (5,000 homes) regeneration projects in London. Berkeley's average site size was 659 homes, more than triple the median of 216 homes we recorded across the other nine housebuilders' site sizes.

Such large, and multi-phased, developments also highlight why it is not just a case of housebuilders simply drawing on existing pipelines to increase output; the largest schemes in housebuilder pipelines will often already be under construction but will be delivered over many years (as we found for schemes in our previous research Tracking Progress). What will be important is how many outlets can be achieved from a pipeline, taking into account all the wider factors that influence practical build out.

Across the housebuilders examined, and excluding Berkeley as a clear outlier, those businesses hold a pipeline equivalent to 3.3 years' output against their FY19 figures. This is both less than ChamberlainWalker estimated was necessary to grow output, and is also less than the five year supply of 'deliverable' sites Local Planning Authorities are required to demonstrate within the NPPF, highlighting the importance of new implementable planning permissions consistently coming into housebuilding businesses to maintain output.



Output and outlets

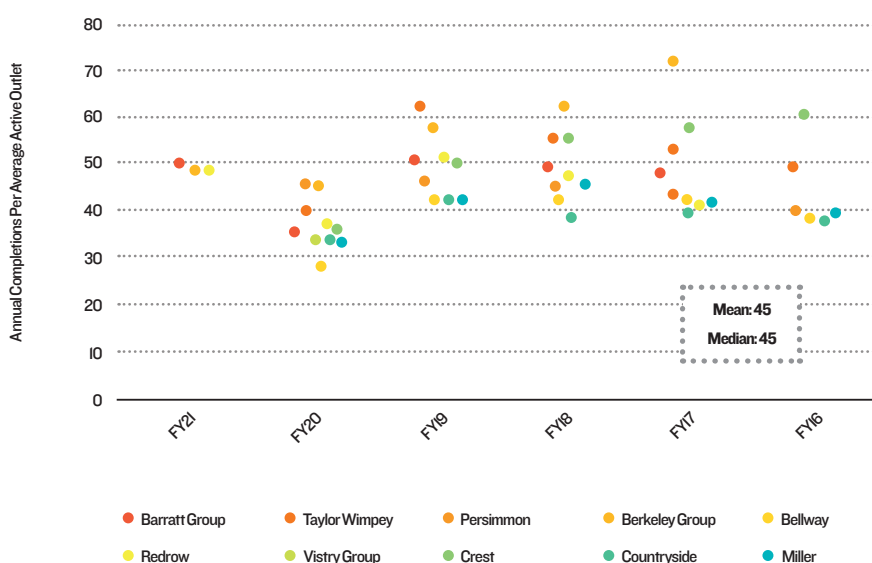
Outlets are the sites from which a housebuilder is actively completing homes for sale, either to the market or to other entities (e.g. to registered housing providers for affordable homes). A single site might represent an outlet for housebuilder, although on very large sites (e.g. of several hundred or thousands of homes) there may be two or more outlets with homes being built by different housebuilders or under different brands.

Housebuilders typically report how many active outlets on average they were selling homes from across the year. Dividing the total number of completions by the average number of active outlets, we get an estimate of how many homes are completed per outlet each year for each housebuilder. Again, there is variation between housebuilder and by year. Figure 3 shows a range between 30-60 completions per outlet per year, although completions by outlet in FY20 were down among all housebuilders. Over the last five years trading there has been an average among the 'top 10' housebuilders of 45 completions per outlet per year. However, this fluctuates with many housebuilders reporting for 2021 increased volumes of output from fewer sales outlets, reflecting a strong demand but slower pull-through of new sites with planning permission into their pipelines.

Comparing the average annual completions per outlet (45 per year) with the broad average size of site reported by housebuilders (216 homes site size) suggests an average size site at average completion rates would deliver homes for a phased period of approximately five years. Again, this illustrates why housebuilders hold pipelines; they are often the build-out on sites for their forthcoming years' operation, with a constant need to replenish sites as they finish.

All but one of the housebuilders we looked at refer to specific aspirations to grow output volume and/or outlets within their corporate reporting¹⁴. To be able to do this, and for the housebuilding sector as a whole to contribute to achieving the national target, it will inevitably mean ensuring more implementable planning permissions come through the system such that it can increase the number of outlets, and in turn the overall output, achieved by the sector.

Figure 3 Housebuilder housing completions each year per average active outlet in that year



¹⁴ Berkeley, perhaps due to their business focus and long-term regeneration focus, were the only housebuilder whose reporting did not appear to explicitly identify growth in output volume as a target/aspiration.

03 Additional Permissions to Meet Targeted Supply

With an estimated 59,200 growth in gross housing output needed for England to achieve 300,000 net additional homes per annum by the mid-2020's, we have looked at how many additional outlets with planning permission will be needed to bridge the gap to that target.

To model the additional implementable permissions needed to increase outlets and outputs we have used metrics from our review of housebuilder activity, to estimate the scale of the challenge under two key scenarios:

1. **Scenario 1: the whole 'scale up' is on mid-sized sites delivered by the housebuilding sector.** This assumes that other sectors, such as housing associations, Local Councils, private individuals and small developers undertaking conversions or changes of use continue to contribute to national output at the same rate, but that the increase to achieve 300,000 is delivered by the housebuilding sector increasing output bringing forward additional sites and outlets.
2. **Scenario 2: the housebuilding sector maintains a market share as output is scaled up.** This assumes that the 'top 50' maintain their market share at 36% and the remaining housebuilding sector, including SMEs, also maintain their share of around a third. This means other sectors also proportionately increase their output alongside the housebuilding sector, with output from the public sector and/or other sources (e.g. recent changes to permitted development rights) rising alongside housebuilder activity.

The above scenarios represent some reasonable bookend ranges for how the scale-up might manifest, particularly given the housebuilding sector's appetite to increase output (as signposted in their corporate reporting). Fundamentally both scenarios require more homes being built on more outlets (sites), which means ensuring more implementable planning permissions come through the system over and above the current run rate of permissions (i.e. it achieves genuine net additionality to what would have been permitted in any case). Whilst other levers of supply (e.g. permitted development) could help boost output, new planning permissions will be a necessity if Government is to hit the 300,000 homes a year ambition; the housebuilding sector is generally not holding long land pipelines which would enable it to increase production over the short-to-medium term, without those land pipelines also being topped-up more quickly to ensure their businesses remain a going concern.

In considering this, we make the following assumptions and hypotheses which we consider would likely hold true:

1. The underlying level of planning permissions and planning activity over recent years which has enabled England to achieve 243,770 net completions in 2019/20 would be sustained as a baseline, but that increasing new completions will necessitate proportional additional implementable planning permissions over and above that baseline. That would include additional full planning permissions as well as additional outline with reserve matters permissions being permitted through the system, with both housebuilders and land promoters playing their part.
2. An average housebuilder outlet will deliver 45 homes over a full year. This is considered a middling estimate and is drawn from an average over five years, encompassing a range of market conditions. We have also sensitivity tested this to consider what would happen, and what it would mean, if this rate were to increase. For the purposes of this research, we are agnostic about the mix of tenure of those homes, focussing instead on the planning permissions that would be necessary to build new homes irrespective of tenure.
3. An outlet could theoretically be on a site of any size, but the size and nature of site which is granted an implementable planning permission directly influences the number of those permissions needed to be granted and over what period. For example, a single planning permission for 225 homes (i.e. on a "large" site) might provide a single outlet with five years of output at 45 homes per annum, or alternatively planning permissions for 45 homes (i.e.

on “medium” size sites) granted each year over five years (totalling 225 homes and an outlet delivering in each year, albeit different ones) would result in the same overall output. What is key is maintaining a sufficient supply of planning permissions to keep more outlets delivering at any given time.

4. A housebuilder could be any company engaged in delivering homes at any scale. It is not assumed that any and all permissions should go to a specific part of the market (e.g. to the major volume housebuilders), they could equally represent increased output by local housebuilders. Indeed, it is desirable that in any local market there may be many different housebuilders building and providing competition, different products from different outlets and increasing supply through increased absorption rates¹⁵. We only use the Top 10 housebuilders as indicative of the capacity in the industry that can be used to increase output.
5. A 5% buffer should be applied when relating homes output (i.e. homes being built and completed) to the planning permissions which would be needed to achieve that level of output. This reflects both our findings from Tracking Progress, where we concluded between 3% and 5% of planning permissions might be expected to lapse, and the requirement within national policy¹⁶ for Local Planning Authorities to hold a minimum 5% buffer on their deliverable housing supply to ensure choice and competition in the market.

It is further worth noting that we do not make any presumption about the type of sites that could come forward to meet the objectives of increasing output. They could be brownfield sites or greenfield sites, in cities, towns or villages and might be existing Local Plan allocations or might be newly identified. The types of sites will be different for different areas, but what we do assume is that planning permissions need to be ‘implementable’; that is, ready to start building within a reasonably immediate time-horizon.

How many additional permissions do we need?

Our analysis – summarised in Table 1 – suggests that to increase output to 300,000 homes for a single year by mid-2020’s in England, we would need to deliver between 474 and 1,385 additional implementable planning permissions for medium to large sites (50-250+ homes) into the hands of homebuilders. To then replicate this on an annual basis (i.e. achieve 300,000 homes per annum), this scale of additional permissions would need to be repeated year-on-year alongside sustaining ‘normal’ or ‘usual’ levels of activity granting permissions on sites, particularly if a sustained increase in output is to be achieved on many small sites (e.g. five sites of 50) rather than a larger site (e.g. one site of 250).

This is equivalent to each of England’s districts approving implementable planning permissions for:

- 4-5 additional and new medium size sites each year or 4-5 additional and new large size sites which will deliver over the next five or more years (our Scenario 1); **or**
- One or two additional and new medium size sites each year or one or two additional and new large size sites which will deliver over the next five or more years and 12 or 13 new smaller sites each year or a significant uptick in, for example, conversions or single dwellings (our Scenario 2).

These would be in addition to the Council’s normal level of activity and highlights the scale of collective challenge that is faced. Whilst these scenarios are illustrative, it is true to say that in different locations different types of sites will need to be granted permission to enable the scaling up of output on a wide portfolio of local sites and opportunities. Achieving additionality will need a varied profile of sites at the district level and may mean one district permitting more larger sites where several housebuilders can deliver at scale, whilst another might have that already and need to focus on smaller sites to enable many local builders or regional SMEs to enter the market. We have used notional site sizes only to highlight what scale of activity the challenge might equate to at a district level.

¹⁵ For example, as concluded in the Letwin Review

¹⁶ NPPF paragraph 74

Table I Additional Permissions to Meet Targeted Supply

	Scenario 1: Whole 'scale up' is on medium size sites/delivered by housebuilding sector.	Scenario 2: Housebuilding sector 'top 50' maintains market share at 36%.
Additional p.a. gross output needed (England)	+59,200	+59,200
Additional p.a. gross output on larger/housebuilder type sites	+59,200	+21,312
<u>Additional</u> outlets at 45 homes p.a. output	1,316	474
<u>Additional</u> implementable permissions required over and above current run-rate (with 5% buffer)	1,385 additional planning permissions each year on sites of 45 homes size – equivalent to 4 or 5 new sites in each district each year (or 20-25 over five years); OR 1,385 additional planning in one year on sites of 225 homes (close to the average housebuilder site size) – equivalent to 4 or 5 new larger sites per district to deliver over the next five years.	499 additional planning permissions each year on sites of 45 homes size – equivalent to 1 or 2 new sites in each district each year (or 5-10 over five years); OR 499 additional planning permissions in one year on sites of 225 homes (1 or 2 per district) AND A multitude of smaller sites and permissions to service the SME housebuilder market and the remainder of the non-housebuilder market (e.g. c.3,800 permissions for sites of 10 home capacity)

This is likely to be the smallest number of total additional implementable planning permissions needed to increase output to meet the national target. In reality more will be needed for many reasons:

1. If the increase in delivery is focused on smaller sites and/or towards different size builders to maintain a good mix of different types of sites this might mean LPAs needing to permit many more sites.
2. Similarly, the imperative to bring through implementable planning permissions may include bringing through re-plans, amendments or new reserved matters applications promptly such that builders can build, with our research in Tracking Progress indicating 10-15% of schemes require fresh planning permissions to address amendments after their initial consent.
3. Housebuilders (for business and supply certainty reasons) and LPAs (to comply with national policy) need to have pipelines of permissions looking ahead several years. With the overall stock of permissions starting from low base in comparison to the scale of growth targeted, there is a need to not just increase permissions for immediate delivery (as estimated in the above analysis) but also increase pipeline lengths so the stock being held more closely matches what is needed.
4. It is also the case that the planning system will need to continue to look ahead far beyond the mid-2020's. Delivering a strategic vision for growth over the coming decades will mean many urban extensions and Garden Villages in different areas will need to be granted planning permission alongside smaller and more immediate sites, providing a backbone of delivery long into the future. A varied portfolio of different sites all delivering simultaneously will be important.

These factors will all combine to mean there is a need to increase the total stock of planning permissions held at any given time. This is consistent with our research in Taking Stock which estimated that between 1.7m and 2.4m homes would need to be held as a bank of homes with permission taking account the various factors (including lapse rates, overlapping permissions, and large phased sites). Ensuring the planning system and Local Planning Authorities are adequately resourced to address this required uptick in activity will be a key challenge.

The distribution and location of the needed permissions

The distribution and locations of those permissions needed will not be uniformly spread across the country. As we concluded in Taking Stock, housing permissions are not evenly spread or matched to where the evidence and planning system says they are most needed. This means that those Local Planning Authorities that are not doing enough to bring forward the permissions to meet their needs (for example, by bringing forward sound local plans) will have to do proportionately more, whilst LPAs meeting or exceeding targets may need just to maintain a flow of permissions to keep housing delivery on track. This is also seen in the results of Government's Housing Delivery Test¹⁷, whereby on an LPA-by-LPA basis, outturn has ranged from less than 1/3rd of required delivery to more than three times required delivery.

However, this geographical imbalance presents challenges. Many of the areas where there is the greatest imbalance between permissions and homes needed are in the most constrained areas of the country, including many areas affected by Green Belt. In such areas the release of land for housing is controlled by progress on Local Plans, with associated Green Belt reviews and allocations, which are often proceeding at a slow pace and not kept up-to-date. In such areas, particularly where Green Belt is a factor, it means there are real barriers for bringing forward implementable planning permissions to deliver much needed new homes in a timely manner¹⁸.

At a local level, there also needs to be a balance as to the optimum number of active outlets at any given point a local market can support. This is often referred to as market absorption; the rate at which any local market can sustain a given level of housing delivery, relative to the different types demand that exists. This was a focus of the Letwin Review which recommended that it is desirable to create local choice and competition, with different housebuilders (growing their market share and in competition with each other, putting downward pressure on prices) and different types of housing being delivered. Nevertheless, in any local area there will also be natural limits to market absorption, meaning the more outlets/sites in a given area, the lower the build-out rate from each additional outlet added¹⁹. Ultimately, at a national level and to ensure strong delivery which meets targets, this means adding implementable planning permissions where demand is strongest and in areas already underserved by planning permissions in the pipeline. Permissions in a much wider variety of locations are likely to be needed.

This focus on geography highlights an important principle. It would be a mistake to look at the picture only at a national level and then use it to make sweeping assertions about the supposed limits on the capacity of housebuilders to grow their output. National volume housebuilders sustain their current volumes with very uneven levels of housing market penetration, being much more active in some areas than others, subject to the barriers to house building in each location.

Volume housebuilder output is not a national zero-sum game where volume is subject to some arbitrary national limit on capacity; most of the ten largest housebuilders have a business objective to grow volume. Put another way, homes are not built and sold – profitably – in Sheffield by a national volume housebuilder at the expense of houses they would otherwise build in Sevenoaks or St Albans; it is the absence of an up-to-date plan releasing sites for development that is fettering new homes being built in the latter. And of course, if Local Plans in those districts did release land and homes were built there, there is no evidence the volume housebuilder would take them forward at the expense of profitable development in Sheffield. Geography matters.

¹⁷ Housing Delivery Test: 2020 measurement, available [here](#)

¹⁸ This is reinforced by the Lichfields research on the Housing Delivery Test – Effective or Defective – which found that in four out of five cases, the authorities that fail the most punitive threshold are those that cannot demonstrate an up to date Five Year Housing Land Supply, meaning the tilted balance has already been triggered. In addition, around half of the authorities that fail this threshold are significantly constrained by Green Belt and/or other NPPF Footnote 7 designations, meaning that 'very special circumstances' (or similar stringent tests) are required to justify new housing development, which is not always possible. The report is available [here](#).

¹⁹ Lichfields observed this in our research 'Start to Finish: What factors affect the build-out rates of large scale housing sites' (2nd Edition): <https://lichfields.uk/content/insights/start-to-finish>

Increasing absorption or build out from the current stock of permissions

Some commentary focusses on the existing pipeline of permissions and points to this as indicating that an increase in output to 300,000 units per annum could just be achieved by building these out more quickly, with the inference being that there is no need for additional planning permissions to come through the system.

The analysis above highlights how the current stock of permissions and housebuilder pipelines do not indicate any sense that there is a surfeit of planning permissions (and of course, there is an active shortage of permissions where housing need is greatest), but even if build-out from outlets were successfully increased by the housebuilding sector, there would still be a need to deliver more permissions.

By way of a sensitivity test to our above scenarios, if the whole housebuilding sector (large and small builders of all types) had increased its output from its existing permissioned land pipelines by 10%, in 2019/20 it would have delivered approximately 200,000 homes contributing to a total of 271,000 gross additional dwellings (instead of c.182,000 contributing to a total of 253,000 gross additional dwellings). This would still leave a significant uplift of c.41,000 gross output to bridge combined with a commensurately shortened pipeline, which would need topping up with extra sites in order for housebuilders to maintain a pipeline that averages just 3.3 years across the 'top ten' and is three years or less for the three largest builders. And looking ahead, if that was to be achieved on outlets with a, say, 50% increase in their absorption/build rate (i.e. 67.5 homes completed per year per outlet on average – well above what's been achieved on average in the last five years and broadly reflective of the highest single year rate achieved by just one of the 'top 10' housebuilders) this would still necessitate between 230 and 640 additional implementable planning permissions on medium to large sites.

Increasing the speed of output from the existing stock of permissions may be one lever available to help to boost output, and there is some reporting very recently from housebuilders that this is happening with increased sales rates (around 50 p.a.) above the five year average (45 p.a.). The pace of build out sustained at a specific outlet is a product of many different factors, from the physical speed of construction achievable to local market absorption, the number of different 'flags' and mix of dwelling types. There are obvious merits in a faster rate of delivery. However, it is neither a silver bullet to achieving Government's housebuilding ambitions nor a solution that would negate the need for an increased rate of planning permissions being approved as a whole across the country. In fact, faster build out would only be achievable and incentivised with faster top-up of development pipelines that are already short for most of the builders given the planning risks²⁰, which would mean more permissions coming through to either replace those homes being completed within the stock of permissions and/or to add further outlets alongside existing ones. Underlying all of this is the simple point that, over the medium to long term, in order to achieve a given number of homes built, the same amount of land is required, whether built at a slower pace in parallel or at a more rapid pace in tandem.

²⁰ Of note, whereas the rate of approval for all planning applications is 9 in 10, for major residential schemes it is 8 in 10 and for minor residential projects it is 7 in 10 (Source: DLUCH planning application statistics). Excluded from these figures are schemes that are not even submitted for application because the prospects of securing a permission are not sufficient to justify the investment in the planning application.

04 Conclusions

It is undeniable that if we are to increase housing output at a national level, some form of planning permission (or approval/consent) will be needed for those homes to be built. It is also true that those planning permissions will need to be granted by the planning system, with LPAs in the driving seat. It is LPAs that are responsible for preparing local plans and then demonstrating a deliverable supply of land for homes. This means actively aiming for an ongoing flow of permissions at a rate that can boost housing supply, particularly in the parts of the country where supply falls short of local need. Once granted, often through the work of a specialist land promoter who takes on the cost and risk of achieving an initial outline planning permission, it is primarily housebuilders – from the very large to the small local builder – who will build these new homes. Our analysis looks at housebuilder activity to estimate what the planning system would need to do in order to support a scale up to deliver 300,000 new homes per annum. It finds:

1. **The housebuilding sector and ‘housebuilders’ – companies whose primary activity is the building and selling of new homes – are responsible for more than two-thirds of national housing output.** Around 36% of all additional homes across the country are built by the top 50 largest housebuilders (c.24% for the top 10), whilst a similar proportion is delivered by smaller builders (the remainder being delivered by housing associations/public bodies and private individuals/other developers via conversions or changes of use). Significantly boosting housing delivery will require a substantial contribution from the housebuilding sector who rely on a continued supply of timely and implementable planning permissions on sites in order for them to continually build. The presence of ‘strategic land’ – via option – that is controlled by housebuilders (or equally – via promotion agreement – controlled by land promoters who deliver consented land into housebuilders) is not developable land in the sense that, usually, it is not yet allocated for development, and is subject to it being selected by local authorities for allocation in local plans (or speculated on via application, which carries planning risk). Option or promotion agreements will typically require housebuilders or land promoters to actively promote such sites (as it is only that which generates any value for the landowner), so it is the planning system that impacts how much of this strategic land is pulled through for development into the active pipeline.
2. **Whilst housebuilders have pipelines of sites with planning permissions, these pipelines are generally short and on average only represent 3.3 years’ output, with the largest three operating with a pipeline of three years or less.** These immediate sites are immediately implementable (often already being under construction) and compare to five years of deliverable supply required to be demonstrated by Local Planning Authorities and 5.7 years’ output estimated as required for housebuilders to secure annual growth in completions. This suggests limited opportunity to increase volume from existing pipelines, without further planning permissions coming in to replenish stocks. This is important: longer pipelines are needed to increase output, otherwise a housebuilder’s pipeline of sites and implementable planning permissions would simply be exhausted more quickly which is not compatible with business resilience in the face of the risks associated with bringing forward development, for example, the uncertainty over whether or not planning permission is granted on each site to the timelines expected. It is also equally important that those pipelines are sufficiently long to allow business to manage and employ their resources (assets, materials, and staff) in a smooth and planned manner.

3. **Increasing the number of 'outlets' – the sites from which homes are completed – is key to increasing output, with each outlet on average delivering 45 homes each year.** The largest housebuilders on average deliver 45 homes per outlet per year and all but one of the housebuilders we looked at refer to specific aspirations to grow volume, which will be reliant on them securing more implementable planning permissions through the system.
4. **The housebuilding sector will need 474 to 1,385 additional implementable planning permissions for medium to large sites (50-250+ homes) on an ongoing basis to achieve 300,000.** To bridge the gap from 243,000 net additional homes delivered in 2019/20 to 300,000 net additional homes by the mid-2020s, the planning system will need to increase the rate at which it delivers implementable planning permissions to a level that is equivalent to each of England's districts approving:
 - a 4-5 additional and new medium size sites each year **or** 4-5 additional and new large size sites which will deliver over the next five or more years; **or**
 - b One or two additional and new medium size sites each year **or** one **or** two additional and new large size sites which will deliver over the next five or more years **plus** 12 **or** 13 new smaller sites each year.

This is likely to be a minimum estimate, not least because it is important that a broad mixture of different types of site – large and small – come forward in different locations, but is illustrative of what would provide sufficient uptick in planning permissions to introduce enough additional outlets delivering at an average rate to increase output at a national level. Such an outcome would need the planning system to continue to bring through its underlying rate of allocations and permissions, with these additional permissions being added on-top.

5. **The distribution and locations of those permissions needed will not be uniformly spread across the country; some areas will need to do more than others.** There are geographical imbalances in where existing permissions exist and where homes are needed, with this particularly stark in the most constrained areas of the country, including areas (such as those affected by Green Belt) where Local Plan progress has not kept pace. Furthermore, additional outlets will need to be locations where they can deliver net additionality, meaning the natural local limits to market absorption (and local competition) will need to be considered; additional permissions in already saturated areas may not deliver the pace of delivery needed to significantly boost housebuilding. To put it another way, piling up extra permissions in locations already well served by new housebuilding is unlikely to be an effective way of boosting supply and will not tackle areas where there are greatest shortfalls or most acute problems of affordability.
6. **Even if housebuilders built from their pipelines more quickly, additional permissions would still be needed.** Housebuilders in buoyant conditions may be able to increase build out rates from their existing pipelines, and this might be welcomed. However, it would still necessitate more implementable planning permissions coming through the system to both increase outlets (alongside those existing outlets delivering more quickly) as well as to top-up already short pipelines that would otherwise be exhausted more quickly. Quite simply, without adding more permissions, there is no business rationale for housebuilders to build-out from their pipelines more quickly as the risks associated with topping up their pipeline in time would not be compatible with business resilience.

Overall, and consistent with our previous findings in Taking Stock, there is a shortfall of implementable planning permissions to scale-up, and maintain, delivery consistent with the national ambition of 300,000 homes per annum. This holds true whether that delivery is on greenfield or brownfield land, or in the north or south of the country. Broadly, an increase in the numbers of implementable planning permissions approved each year is necessary compared to the baseline rate of recent years. The precise quantification of the action needed is inherently difficult to identify, because the geographical dimension to this is important; but in simple terms, any increase in housing delivery would need to run commensurate with an increase in implementable planning permissions – and the estimates in this report provide some indicator of scale associated with achieving that.

The scale of challenge – with a requirement to deliver hundreds if not thousands of additional implementable planning permission over and above the recent rate – highlights the need for the planning system to be resourced accordingly to enable LPAs to bring through these planning permissions. It will require timely plan-making in the many areas where Local Plan progress has slowed or stalled, to bring forward new housing allocations in the very near future. It may also need LPAs in some areas, where the mismatch between permissions and housing needs is greatest, to apply the planning balance accordingly and to bring forward additional permissions. This will ensure that planning is not the barrier to delivering national ambitions for boosting housing supply.



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EP6A

**TOWN AND COUNTRY PLANNING ACT 1990
PERMISSION FOR DEVELOPMENT
APPROVED S106 SIGNED**

Barton Willmore
101 Victoria Street
Bristol
BS1 6PU

APP REF: PT14/0565/O
DATE VALID: 24th February 2014
DECISION DATE: 26th January 2021
PARISH: Almondsbury Parish
Council

**NOTICE OF DECISION
TOWN AND COUNTRY PLANNING ACT 1990
OUTLINE PERMISSION FOR DEVELOPMENT**

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT14/0565/O

DESCRIPTION OF DEVELOPMENT: Mixed use development of 44 hectares of land comprising: up to 1,000 new dwellings (Use Class C3); an 86-bed Extra Care Home (Use Class C2); a mixed use local centre including a food store up to 1,422sqm net internal sales area (Use Classes A1, A2, A3, A4, A5, B1, D1, D2); a 2-form entry primary school; community facilities including a satellite GP surgery, dentist and community centre; associated public open space and sporting facilities; green infrastructure integrated with foot and cycle paths; together with supporting infrastructure and facilities including three new vehicular accesses. Outline application including access, with all other matters reserved

APPLICANT: DFE/Taylor Wimpey

LOCATION: Land At Cribbs Causeway Almondsbury Bristol South Gloucestershire BS10 7TE

In accordance with the application and accompanying plans, subject to the conditions specified below:

CONDITIONS

- 1) Details including plans and particulars of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called "the

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reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development on land to which the reserved matters relate commences.

Reserved matters submitted for approval pursuant to this condition will be required to demonstrate how they have been designed to be compatible and fully integrated with the development approved under planning permission PT17/2562/F (or such other permission granted following the date hereof for development of a similar nature in the same location). Development thereafter shall be carried out in accordance with the approved details.

Reason:

This is an outline permission only and the reserved matters shall be made to the Local Planning Authority and to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

2. All relevant reserved matters submissions shall include details and particulars of:
 - i) The provision of car and cycle parking facilities in accordance with the standards set out in and policy PSP16 for all development and the adopted Residential Parking Standards SPD
 - ii) A lighting strategy including measures to control light spillage
 - iii) A refuse collection strategy including private and communal bin stores, routing details and refuse collection points in accordance with the approved design code (Condition 6). The details so approved shall be implemented prior to the first occupation of any or each individual dwelling to which the refuse collection strategy relates, and maintained as such thereafter
 - iv) Safer Routes to School serving off-site education facilities
 - v) Walking and cycling routes and how these link with the wider external network
 - vi) The location of affordable dwellings, including the number of bedrooms of each unit, proportion of houses and flats broke down between social rented affordable housing and intermediate housing units, and wheelchair units to be provided

Development thereafter shall be carried out in accordance with the approved details.

Reason:

To encourage means of transport other than the private car, and to accord with Policy CS8 of the South Gloucestershire Local Plan Core Strategy adopted Dec 2013 and Policy PSP16 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017 and the adopted Residential Parking Standards SPD.

3. With the exception of Infrastructure, applications for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of seven years from the date of this permission. Applications for Infrastructure shall be made to the Local Planning Authority before the expiration of 10 years from the date of this permission.

In this condition the term 'Infrastructure' means the primary school/ nursery and the community centre and connected infrastructure.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

4. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

5. No applications for the approval of reserved matters in a geographical phase shall be approved until a Phasing Plan for the relevant geographical phase identifying the geographical phase to which it relates and comprising all of the elements listed in (i) and (ii) below has been submitted to and approved in writing by the Local Planning Authority:

(i) For the geographical phase in question:

- The subdivision of the geographical phase into parcels to provide the basis for reserved matters applications;
- Location, extent and timing of infrastructure and facilities;
- Location, extent, type and timing of POS and structural landscaping, including an explanation of which areas of POS (including any strategic POS located outside the geographical phase) relates to/ serves that geographical phase and the timing of its delivery and availability for use in relation to the delivery of residential units;
- Location, extent, timing and type of SUDS;
- A schedule identifying the number of residential dwellings proposed for each residential parcel within the geographical phase;
- A schedule identifying the percentage of, and mix between social rented and intermediate affordable dwellings and number of wheelchair units to be provided in each reserved matters area ("Affordable Housing Schedule").

(ii) For the remainder of the site as a whole:

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- Geographical phases that will form the basis of each later Phasing Plan;
- Indicative location and timing of infrastructure and facilities;
- Indicative location and timing of POS, which shall comply with the overall amounts set out in the Site Specific Section 106 Agreement entered into in connection with and on the same date as this permission (hereinafter referred to as the "S106 Agreement");
- Indicative location, extent and timing of SUDs;
- A schedule identifying the number of residential dwellings proposed in each geographical phase within the site;
- A schedule identifying the indicative percentage of affordable dwellings to be provided in each geographical phase.

The Phasing Plan shall be in accordance with the Illustrative Open Space Plan (NPA), however in the event of any variation that the Local Planning Authority considers to be significant, a revised Illustrative Open Space Plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority.

Following approval of the first Phasing Plan, subsequent Phasing Plan submissions shall take the amount of POS within the approved previous Phasing Plan(s) into account in the POS calculations for the remainder of the site as a whole in order to demonstrate that the total POS quantity is in accordance with the relevant schedule of the S106 Agreement.

All Phasing Plans (both detailed and indicative) shall be in compliance with the approved Parameter Plans, the principles and concepts contained in the approved Design and Access Statement (Addendum June 2016), and the approved Flood Risk Assessment (FRA) dated June 2016 by Hydrock (Hydrock Ref: R/C13412/001.07). The timing of provision of infrastructure, and facilities within the Phasing Plan(s) shall comply with any triggers set out elsewhere in these conditions, the Section 106 Agreement or the Framework Agreement.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP1 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017 and the adopted Cribbs/Patchway Development Framework SPD.

6. No applications for the approval of reserved matters in a geographical phase, as identified in an approved Phasing Plan pursuant to condition 5, shall be submitted until a Design Code for that geographical phase has been submitted to the Local Planning Authority for approval. No applications for the approval of reserved matters shall be approved until a Design Code for the relevant geographical phase has been approved.

The Design Code shall be in accordance with and facilitate the principles and parameters set out in the approved Design and Access Statement (Addendum June 2016) of the latter, and the approved Parameter Plans. It shall include:

- A regulating plan at a scale no less than 1:1,000 (to be based on an accurate site survey), which also illustrates the urban structure and form of the immediate context
- A plan setting out the subdivision of the geographical phase in question into parcels to provide the basis for reserved matters applications;
- A plan showing safe routes to school, and walking and cycling routes through the phase;
- Specification of the extent and nature of any character areas and the key elements of urban form within them;
- Details of how the site's topography will be successfully accommodated within blocks, parking areas and along streets;
- Details of street types and junctions, block principles, frontage treatment, landscape, open space and public realm treatment including areas of parking and street lighting;
- Information relating to architectural detail and identity, energy efficiency and renewable energy generation and sustainable construction in accordance with Local Plan policy, bin storage details, street furniture, electric vehicle charging points, and signage/ way finding; and
- The mechanism for and timing of a review of the Design Code to test its effectiveness.

Any subsequent applications for agreed revisions to an approved Design Code shall be subject to the written approval of the Local Planning Authority. Reserved matters applications shall be in accordance with the approved Design Code.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP1 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017 and the adopted Cribbs/Patchway Development Framework SPD.

7. The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision:

9600_PP1_Rev P Land Use Parameter Plan

9601_PP2_Rev J Density Parameter Plan

9602_PP3_Rev I Building Heights Parameter Plan

9603_PP4_Rev Q Green Infrastructure Parameter Plan

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Reason:

For the avoidance of doubt.

8. Applications for the approval of the reserved matters shall be in accordance with the approved Parameter Plans, the principles and parameters set out in the Design and Access Statement, the approved Phasing Plan and Affordable Housing Schedule (condition 5) and Design Code (condition 6) for the relevant geographical phase to which the reserved matters application relates. A Compliance Statement shall be submitted with each reserved matters application that demonstrates the proposals are in compliance with these documents or (in exceptional circumstances and where relevant) explaining why they are not.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP1 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017 and the adopted Cribbs/Patchway Development Framework SPD.

9. A maximum of 15% of the total retail floorspace hereby approved shall be used for the sale of comparison goods and products.

Reason:

To ensure the development is designed to serve the community of the proposed application site and not impact adversely on the vitality and viability of other local centres, and to accord with Policies CS25 and CS26 of the South Gloucestershire Local Plan: Core Strategy (2013) and Policy PSP31 and PSP32 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017

10. The retail unit (Class A1) hereby approved shall not be subdivided into smaller units within Use Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to the Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason:

To protect the vitality and viability of other local centres, and to accord with Policies CS14, CS25 and CS26 of the South Gloucestershire Local Plan: Core Strategy (2013) and Policy PSP31 and PSP32 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

Delivery of affordable housing shall be carried out in accordance with the relevant approved Phasing Plan and its accompanying Affordable Housing Schedule (condition 5) and reserved matters approvals, unless otherwise agreed in writing by the Local Planning Authority.

If there are discrepancies between the affordable housing targets established in the approved Phasing Plan for the geographical phase in question and the relevant reserved matters application(s) for that geographical phase, subsequent applications for the approval of reserved matters and Phasing Plans will be amended to ensure that the overall provision and required proportions are maintained as closely as possible. The numbers and mix for each reserved matters application will be informed by the principles in the Framework Agreement, Parameter Plans, Phasing Plan and the Design Code, including any amendments to the approved Affordable Housing Schedule (condition 4) as may be reasonably agreed with the Council from time to time.

Reason:

To ensure that the distribution of affordable houses assists the creation of an inclusive mixed community in accordance with Policy CS18 of the adopted South Gloucestershire Local Plan: Core Strategy.

12. Except for reserved matters applications for infrastructure, no applications for the approval of reserved matters in a geographical phase identified in the approved Phasing Plan (condition 5) shall be approved until an Energy Statement for the phase in question has been submitted to and approved by the Local Planning Authority. It shall commit to requiring developers to build to Building Regulations and local planning policy compliant renewable energy measures current at the at the time of the commencement of construction of that phase.

The Energy Statement shall comply with the requirements of the Utilities and Renewable Energy chapter within the adopted Cribbs/Patchway New Neighbourhood Development Framework SPD and be in accordance with Policy CS4 of the South Gloucestershire Local Plan - Core Strategy and the prevailing development plans policy at the time.

Applications for approval of reserved matters shall be in accordance with the relevant approved Energy Statement, and the development of each phase shall be implemented in all respects in accordance with the relevant approved Energy Statement.

Reason:

To achieve improved energy conservation and protect environmental resources in accordance Policies CS1, CS4 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy Policy PSP6 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017 and the Cribbs/Patchway New Neighbourhood Development Framework SPD.

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13. Each reserved matters application shall include full details of both hard and soft landscaping works. These details shall include: proposed finished levels or contours; means of enclosure and boundary treatments; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines indicating lines, manhole). Any reserved matters application for infrastructure within the central reservation of Cribbs Causeway shall include details of soft landscaping in the central reservation.

Soft landscape works shall include; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants/ trees, noting species, sizes and proposed numbers/densities where appropriate; implementation programme. Landscape details shall also include a method statement for the translocation of existing hedgerows.

All hard and soft landscaping works shall be carried out in accordance with the approved details and implementation programme.

Reason:

To protect the character and appearance of the area and amenities of future occupiers to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS26 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

14. Notwithstanding the submitted details, prior to the commencement of development in any geographical phase (including the commencement of any site preparation works as defined by the S106 Agreement) a scheme including plans shall be submitted to and approved by the Local Planning Authority in writing detailing the protective fencing for those trees shown as being retained on the approved plans, which shall be in accordance with BS5837 2012 Trees in Relation to Construction.

Once the approved protective fencing is in place the fencing details, including photographs, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement. The protective fencing shall be erected, retained and maintained in accordance with these details and their positioning on the approved plans for the duration of the construction period.

Reason:

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To protect the character and appearance of the area and amenities of future occupiers to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS26 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

15. The details to be submitted in accordance with Condition 1 shall include a schedule of landscape maintenance for a minimum period of 5 years to be agreed in writing by the Local Planning Authority. The schedule shall include details of individual plot ownership, areas of amenity space and of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule. Any plant failures (dead/dying/diseased) occurring during the first 5 years following planting, shall be replaced in accordance with the original specification

Reason:

To protect the character and appearance of the area to accord with policies PSP2 and PSP 3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS26 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

16. Prior to the commencement of development an ecological and landscape management plan shall be submitted to and agreed in writing by the Local Planning Authority. The submitted plan shall show details of the existing habitat to be safeguarded (trees, hedges and grass margins (buffer strips); and any new habitat to be created (species rich grassland, hedges, scrub, open space). The plans should include a programme of monitoring of all works for a period of at least 5 years from their implementation. The development shall be carried out in accordance with the approved ecological and landscape management plan.

Reason:

To protect and enhance the ecological interests of the site in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017)

17. With reference to retained trees the plans and particulars submitted in accordance with condition 1 and 11 shall include:
 - a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
 - b) details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general of

- health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- c) details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
 - d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation within the RPA (root protection area) as defined in BS5837 2005 of any retained tree or of any tree on land adjacent to the site; and
 - e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.
 - f) details of street trees shall include specification of root protection measures, and details of street tree management to encourage high level growth and maintain a clear zone directly above sewers.

All fencing to be in accordance with BS5837 2012 'Trees in Relation to Construction' and retained and maintained for the duration of the construction period.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

18. Prior to submission of the Phasing Plan and details set out in condition 5 a veteran tree survey shall be submitted to and approved in writing by the Local Planning Authority. Proposed highways including footpaths shall not be located adjacent to veteran trees and the trees shall not be situated in or adjoining private gardens. The Design Code and accompanying regulating plan (condition 6) shall be designed in accordance with the survey and development shall be implemented in accordance with the survey and regulating plan.

Reason:

In the interests of the long term health of the tree(s) to protect and enhance the character and appearance of the area and to accord with the Town and Country Planning (Tree Preservation) (England) Regulations 2012, policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (2013) and policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

19. The development shall be implemented in accordance with the tree and hedgerow survey by Illman Young (Aug & Nov 2013, revised in Feb 2014 and July 2015).

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Reason:

To protect the character and appearance of the area and the health and amenity value of existing trees, hedgerows and landscape features in accordance with policies CS1, CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (2013) and policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

20. Prior to the submission of any reserved matters application on land within the 'Triangle' site or adjacent to any of the category A Oak trees as defined in the approved tree and hedgerow survey by Illman Young (Aug & Nov 2013 and July 2015) and revised in Feb 2014 or the root protection zone for any of these trees, in accordance with British Standard 3998: 2010 - Recommendations for Tree Work, a survey of the trees in relation to the proposed development including a method statement for how the trees are to be protected during construction for all below ground works within any root protection zone shall be first submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved survey and method statement.

Reason:

In the interests of the long term health of the trees, and to accord with The Town and Country Planning (Tree Preservation) (England) Regulations 2012 and Policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy 2013 and policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

21. Prior to the commencement of any groundworks, including site investigation works, clearance or remediation and prior to the approval of any reserved matters, a programme of archaeological work and subsequent detailed mitigation and publication strategy, including a timetable for the mitigation strategy (phase 1), must be submitted to and approved by the local planning authority. Thereafter the approved programme of mitigation measures (phases 2, 3) and method of publication (phase 4) shall be implemented in all respects. The condition requires a four phase approach, comprising field evaluation and production of mitigation and publication strategy (phase 1), open area excavation where necessary (phase 2), watching brief (phase 3) and publication/archiving (phase 4).

Reason:

In the interest of archaeological investigation or recording, and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and policy PSP17 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

22. No development shall commence comprising the demolition. Removal of Brent Knoll until a building survey to provide a historic record of the building has been submitted to and approved in writing by the Local Planning Authority.

Reason:

To provide a historic record of the architectural and historic character of the building, and to accord with Section 16(2) of the Planning (Listed Building and Conservation Areas) Act 1990 and Policy CS9 of the adopted South Gloucestershire Local plan Core Strategy 2013 and policy PSP17 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

23. Prior to the commencement of any development, including site preparation works as defined by the S106 Agreement (with the exception of ground investigation/site survey work, construction of boundary fencing or hoarding, archaeological investigation, and ecological mitigation works) on any phase identified in the approved Phasing Plan (Condition 5), a Waste Management Audit and cut and fill details for that phase shall be submitted to and approved by the Local Planning Authority in writing. Details to be submitted shall comprise:
- i. The volume and nature of the waste which will be generated through the demolition and/or excavation process;
 - ii. The volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc;
 - iii. Proposals for recycling/recovering materials of value from the waste not used in schemes identified in (b), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
 - iv. The volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction;
 - v. The probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use for it in order to reduce the amount of waste sent to landfill, and
 - vi. Detailed plans and sections at 1:500 of existing and proposed finished ground levels.

Development shall be carried out in accordance with the agreed details.

Reason:

Pre-commencement is required in order to ensure that any contamination is dealt with at the correct time when the remediation is still possible.

To control the production of waste and to ensure satisfactory finished ground levels, in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and policy PSP17 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

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24. No development shall take place (including clearance of vegetation) in a particular phase until there has been submitted and approved in writing by the Local Planning Authority measures in respect of:
- i. The identification, through an updated site survey, of badgers, and/or their setts, as required by the badger Act 1992
 - ii. The protection of badgers, and/or their setts as identified through the site survey, and a badger mitigation strategy for the site as a whole
 - iii. A hedgehog mitigation strategy for the site as a whole
 - iv. A reptile mitigation strategy for the site as a whole.

The development shall be implemented in strict accordance with the approved details.

Reason:

Pre commencement is required in order to ensure that there is no harm to badgers through construction works.

To protect the wildlife and ecological interests of the site, in accordance with Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013) and policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

25. Each reserved matters application shall be accompanied by a scheme for the provision of bird next boxes and nesting locations (to include house sparrow and starling); and bat boxes (Schwegler woodcrete) including their location (near semi-natural habitat); to be approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved scheme.

Reason:

To ensure sufficient protection for this species and protect the wildlife and ecological interests of the site, in accordance with Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013) and policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

26. No development shall commence until;
- i) a Construction Management plan has been submitted to and approved in writing by the Local Planning Authority to mitigate any harm through dust, noise, lighting and other pollutants and aerial discharges to the Haw Wood SNCI;
 - ii) details of the street lighting adjacent to Haw Wood (SNCI) and within the phase or phase(s) situated adjacent to the ancient woodland to avoid light spillage impacting on the ecology of the woodland and its (15m minimum) buffer

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have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved details.

Reason:

Pre commencement is required in order to ensure that there is no harm to ecological interests through construction works.

To protect the ecological interests of the site in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

27. All development shall be subject to the mitigation measures/ strategy relating to barn owls detailed within the Ecology Update by Nicholas Pearson Associates dated May 2017 for development approved under planning permission PT17/2562/F.

Reason:

To protect the ecological interests of the site in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

28. The development hereby approved shall be implemented in strict accordance with the approved great crested newt mitigation strategy dated July 2018 by CSA Environmental (CSA/3858/02A).

Reason:

To protect the ecological interests of the site in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

29. Development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated June 2016 by Hydrock (Hydrock Ref: R/C13412/001.07) and the following mitigation measures detailed within the FRA:
- Limiting the surface water run-off generated by the critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site,
 - Finished floor levels are set no lower than 38.252m above Ordnance Datum (AOD).

Reason:

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To prevent flooding by ensuring the satisfactory storage of/ disposal of surface water from the site and reduce the risk of flooding to the proposed development and future occupants in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Council Local Plan: Core Strategy (December 2013) and policy PSP20 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

30. There must be no new buildings, structures (including gates, walls, fences or other means of enclosure) or raised ground levels within 8.0m of the top of any bank of the watercourse(s) fronting or crossing the site.

Reason:

To maintain an appropriate access to the watercourse/ flood defence for maintenance and/or improvements in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Council Local Plan: Core Strategy (December 2013) and policy PSP20 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

31. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with, obtained written approval from the Local Planning Authority for dealing with the contamination. The remediation strategy shall be implemented as approved.

Reason:

To prevent pollution of the water environment in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Council Local Plan: Core Strategy (December 2013) and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

32. No applications for the approval of reserved matters shall be approved until details of foul, building waste water and surface drainage details (incorporating Sustainable Drainage Systems SUDS) in accordance with the Flood Risk Assessment (FRA) dated June 2016 by Hydrock (Ref: R/C13412/001.07) and Hydraulic Modelling report by Hydrock dated May 2014, and as amended by November 2014, and confirmation of hydrological conditions (inc. soil permeability, watercourses, mining, culverts) within the development have been submitted to and approved in writing by the local Planning Authority. The details shall include a timetable for implementation related to the details submitted as part of the Phasing plan (condition 5). Development shall be carried out in accordance with the approved details.

Reason:

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To prevent flooding by ensuring the satisfactory storage of/ disposal of surface water from the site and reduce the risk of flooding to the proposed development and future occupants in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Council Local Plan: Core Strategy (December 2013) and policy PSP20 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

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33. Prior to commencement of any development a phased investigation shall be carried out of the areas that have not yet been investigated for contamination, i.e. the two residential areas and the farm as indicated in the Hydrock Report: Cribbs Urban Village, Area 1 Desk Study and Ground Investigation, January 2016 (Hydrock Ref R13412/001 Issue 2). The investigation shall include previous uses and contaminants likely to affect the development. No development shall commence in these areas until a report showing the findings of the investigation has been submitted to and approved in writing by the Local Planning Authority.

Where potential contaminants are identified, prior to the commencement of development, an investigation shall be carried out to ascertain the extent, nature and risks the contamination may pose to the development in terms of human health, ground water and plant growth. No development shall commence until a report has been submitted to and approved in writing by the Local Planning Authority setting out the findings (presented in terms of a conceptual model) and identifying what mitigation measures are proposed to address unacceptable risks. Thereafter the development shall proceed in accordance with any agreed mitigation measures.

Prior to occupation of any dwelling, where measures have been required to mitigate contaminants (under section d) a report verifying that all necessary measures have been completed satisfactorily shall be submitted to and agreed in writing by the Local Planning Authority.

Reason:

In the interest of public safety as a potential result of land contamination and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

34. The Framework Travel Plan (produced by Key Consultants) is to be implemented in full accordance with the details therein.

Reason:

To ensure that the safety and efficient operation of the Strategic Road Network is not adversely affected to accord with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

35. The internal bus route infrastructure, including stops, as approved by the infrastructure permission (PT17/2562/F) shall be implemented prior to the first occupation of any dwelling more than 400m walking distance from stops provided on the A4018 and maintained as such thereafter.

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Reason:

To encourage means of transport other than the private car and to accord with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

36. Prior to the submission of any reserved matters for the proposed rail station details of a pedestrian route from the 'Main' site (to the west of the B4055) through to the proposed rail station facilities and on to the A4018 signalised junction serving the Fishpool Hill access shall be submitted to and approved in writing by the Local Planning Authority. The route shall be implemented in accordance with the approved details prior to the rail station being brought into operational use.

Reason:

In the interests of pedestrian safety and to assist with the promotion of sustainable modes of travel that do not involve the private car, and to accord with policies CS8, CS25 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

37. Prior to the submission of any reserved matters for the proposed rail station details of a carriageway link from the B4055 through to the proposed rail station facilities to facilitate bus interchange shall be submitted to and approved in writing by the Local Planning Authority. The carriageway link shall be implemented in accordance with the approved details prior to the rail station being brought into operational use.

Reason:

In the interests of pedestrian safety and to assist with the promotion of sustainable modes of travel that do not involve the private car, and to accord with policies CS8, CS25 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 PSP11 and PSP14 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

38. The new Station Road roundabout and revised bus lane shall be implemented in full in accordance with the approved details and brought into operation use prior to first occupation of any dwelling or commercial use within the 'Triangle' site.

Reason:

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In the interests of highway safety and to accord with policies CS8, CS25 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

39. A maximum of 250 dwellings can be accessed by a single junction from the A4018.

Reason:

In the interests of highway safety and to accord with policies CS8, CS25 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

40. Reserved matters submissions shall include details of the location of the construction compound to serve the development; details of wheel washing and the means of access for construction traffic. These details shall be approved in writing by the Local Planning Authority before the development commences on land to which the reserved matters relates. The development shall be carried out in strict accordance with the approved details, with all commercial vehicles having their wheels washed before entering the public highway, and no other access points being used for construction traffic.

Reason:

To minimise disturbance to occupiers of completed and nearby dwellings, and to safeguard the amenities of the locality, and in the interests of highway safety to accord with policy CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policies PSP10 and PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

41. The hours of working on site during the period of construction shall be restricted to 7.30am-6pm Mondays to Fridays; and 8am-1.00pm on Saturdays and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the site. Any 'working' outside these hours shall have the prior written consent of the Local Planning Authority.

Reason:

To minimise disturbance to neighbouring occupiers, safeguard the amenities of the locality and in the interests of highway safety to accord with Policy CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (2013)

and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

42. Prior to the approval of any residential reserved matters applications within the relevant geographical phase details of the proposed noise bund as shown in drawing ENAB.001, which shall include its construction, details of any imported soil (location, vehicle trip movements to import the soil and numbers/ frequency of movements) and geological make up shall be submitted to and approved in writing by the Local Planning Authority. The bund shall be implemented in accordance with the approved details and in accordance with the details submitted with the Phasing Plan (condition 5).

Reason:

To protect the character and appearance of the locality and to assess the sustainability of the bund construction in accordance with policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP2 and PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

43. The development shall be implemented in accordance with the recommendations of the approved Environmental Noise Assessment by Sharps Acoustics dated 24th February 2016.

Reason:

To ensure the development does not result in undue noise disturbance and the future residents of the development do not experience undue residential amenity impact in terms of noise, and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

44. Any reserved matters application that shows residential development situated closer to the M5 motorway than as shown on the Regulating Plan approved under condition 6 will require the a new or updated Air Quality Assessment to be submitted at the same time in order to demonstrate whether air quality impacts have increased above that shown in the approved air quality assessment contained in Chapter 11 of the Environmental Statement (2014). The updated air quality assessment shall provide mitigation measures and recommendations to reduce the impact of the development on air quality if the impacts are shown to have increased. The development shall be implemented in accordance with the approved measures and recommendations.

Reason:

To ensure the protection of the future residents in terms of air quality and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD

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Plan: Core Strategy (December 2013) and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

45. Prior to the approval of any reserved matters applications a detailed site-wide waste management and recycling strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include measures to control the use, sorting, storage and collection of waste material and recycling from residential and commercial uses on site, including on site composting. The development shall be carried out in strict accordance with the approved details.

Reason:

To ensure appropriate waste management, recycling and composting measures take place on site, and in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (2013) and policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017).

IN ACCORDANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2015.
POSITIVE AND PROACTIVE STATEMENT:

In dealing with this planning application the Local Planning Authority have worked with the applicant in a positive and proactive manner on seeking solutions to problems arising in the following ways:

We have worked with the applicant to consider significant amendments to the scheme through new applicant being involved, including significant changes to layout, landscape and ecology.

ADDITIONAL INFORMATION

1. This development may require a permit under the Environmental Permitting (England and Wales) Regulations 2010 from the Environment Agency for any proposed works or structures, in, under, over or within eight metres of the top of the bank of the Henbury Trym, designated a 'main river' (e.g. for the proposed surface water outfall into the Henbury Trym). This was formerly called a Flood Defence Consent. Some activities are also now excluded or exempt. A permit is separate to and in addition to any planning permission granted. Further details and guidance are available on the GOV.UK website: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

An Environmental Permit may also be required for any works on, or within 8 metres of the landward toe of any Environment Agency designated flood defence structure(s). It is common in larger river systems, or tidal areas, for Environment

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Agency flood defences to be located in excess of 8 metres from the main channel or coastline, and greater than 20 metres in some instances.

To find the location of Environment Agency flood defence structure and main rivers, together with further information, please refer to our Flood Maps.

The need for an Environmental Permit is over and above the need for planning permission. To discuss the scope of the controls please contact the Environment Agency on 03708 506 506. Some activities are now excluded or exempt; please see the following link for further information: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

It must be noted that any works in proximity of a watercourse other than a main river, may be subject to the regulatory requirements of the Lead Local Flood Authority/Internal Drainage Board.

2. You are advised to contact the Council's Extra Care Officer at the earliest opportunity to ascertain the class use of any details involving the extra care/retirement accommodation element of your proposal, prior to the submission of reserved matters. You are further advised that if the Council consider the proposed facility(ies) to comprise Use Class C3 (residential) you will be required to provide affordable housing in accordance with Policy CS18 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).
3. You are advised that notwithstanding the information submitted in support of this outline application the Council expects, through reserved matters applications, the presumption to be to keep existing trees and landscaping on the site in accordance with Policies CS1, CS2, PSP2 and PSP3 and furthermore, in accordance with PSP3, that all trees lost to development should be compensated for. Applications for reserved matters will be required to demonstrate a strong landscape framework, consisting of extensive tree and shrub planting to a high specification in order to be considered acceptable.
4. This permission is to be read in conjunction with the AGREEMENT AND UNDERTAKING dated 25th January 2021 in pursuance of Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be submitted for further approval, before all or part of the development is otherwise commenced. For further information regarding the discharge of Planning Conditions and the relevant forms please view "compliance with conditions" on our website, www.southglos.gov.uk If the permission is commenced without these requirements

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being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council's planning website.



ACTING STRATEGIC MAJOR SITES TEAM MANAGER

DATE: 26th January 2021

PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £34 per request relating to 'householder' applications and £116 for any other full planning applications. The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

COMMUNITY INFRASTRUCTURE LEVY (CIL)

If this application has been identified as being liable to CIL you should not commence development until the requirements and obligations under CIL have been established. If we require further information we will write to you requesting this. Where we already have clear information about the proposal and assumed liability we will issue a liability notice shortly. Further information can be found on our website at www.southglos.gov.uk/environment-and-planning/planning/community-infrastructure-levy

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 868271

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications – within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

Strategic Planning
South Gloucestershire Council,
Department For Environment And
Community Services
PO Box 1954, Bristol, BS37 0DD

The Planning Inspectorate
Room 3/04 Kite Wing
2 The Square Temple Quay
Bristol BS1 6PN

Please ensure this instruction is complied with in order to avoid any unnecessary delay

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.
2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provision of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.
2. If planning permission has been granted for the development, please note that

should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.

3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING REGULATIONS BEFORE ANY WORK IS COMMENCED.
4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence

EP6B

South Gloucestershire Council

Memorandum to: Patrick Jackson
from: Dan Jones
Urban Design Officer
Cc:
Date: 14th Sept 21
Your Reference: P21/04748/RM
Our Reference:
Telephone: 01454 863738
Facsimile: 01454 865173
Internet: Dan.jones@southglos.gov.uk

Site Ref: P20/04748/RM – All reserved matters for erection of 244 dwellings, at Haw Wood/Berwick Green (pursuant to PT14/0565/O)

Key Planning Policies.

NPPF (July 21) – Design (para 126-136)
NPPG – Design

NDG – National design Guide 2019

South Gloucestershire Core Strategy (Dec 13)
CS1: High Quality Design
CS25: Communities of the North Fringe of Bristol

South Gloucestershire Policies, Sites & Places DPD
PSP1: Local Distinctiveness
PSP6: Onsite Renewable & Low Carbon Energy
PSP43: Private Amenity Space Standards

Comments

Context (Policy & Condition)

The new NPPF seeks to create *high quality, beautiful and sustainable buildings and places*. It emphasises the need to utilise Design Guides and Codes consistent with the principles of the NDG and NMDC and promotes streets that are 'tree-lined'. Local Authorities should also make use of tools and processes such as 'design review'.

Para 134 of the NPPF states that, '*development that is not well designed should be refused*', and para 135 states, '*Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion*'.

The National Design Guide was published in 2019. It clearly sets out the standard that the Government expects all new development to meet.

Policy CS1 of the Core Strategy requires that, 'the highest possible standards of design and site planning area are achieved'.

Condition 6 of the outline requires that a Design Code is approved. Bullet 8 of that condition requires that the codes include 'the mechanism for and timing of a review of the Design Code *to test* its effectiveness'.

It is understood that condition 6 remains to be discharged. The following advice was provided in May of this year:

It is noted that Condition 6 requires: *'the mechanism for and timing of a review of the Design Code to test its effectiveness'*. In light of discussions with Persimmon at Fishpool Hill that has a similar condition, requiring 'testing' of the codes, *'Preparing Design Codes'* (pg78-79 DCLG), was reviewed:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7623/152675.pdf

Essentially it recommends 'design teams' who are not familiar with the code, are commissioned to design a hypothetical sketch proposal using the code, which are fed to the LPA to test the efficiency of assessing the proposals, in so doing consider ease of use and capacity to deliver quality etc. This would seem a little onerous in light of previous discussions in respect of this part of the condition. However, as with Fishpool Hill, I would request though that the following words / commitment be given in respect of 1.2:

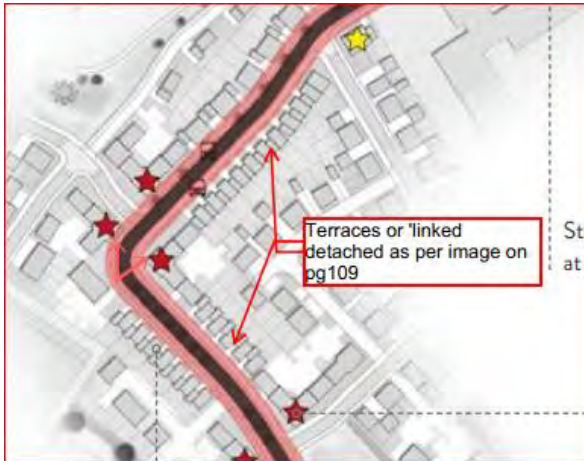
Prior to the first residential phase reserved matters approval (Parcels X & X) the submitted reserved matters will be presented to the Design Review Panel (DRP). The DRP will be asked to comment on the submitted reserved matters and the Design Code effectiveness in the context of the approved parameter plans and masterplan. The DRP comments will be considered and taken on board as appropriate in agreement with the Council in review of the reserved matters and the first review of the Design Code itself. Subsequent to the completion of the first 50 dwellings, and every twelve months thereafter, a joint site visit and meeting will be organised by the developer at which the Design Code and other implementation issues are discussed. Following the site meeting, either party can initiate a meeting to discuss and agree proposed amendments to the Design Code. An addendum will then be produced by the developer and approved by the Council. Reserved Matters for the Urban Core Key space and surrounding dwellings and school will similarly be presented to the DRP.

It is of critical importance that the first R/Ms are of high quality, as they inevitably set the standard for the remainder of the development. It is therefore requested that similar to Fishpool Hill the first R/Ms are presented to the Design Panel with the Design Codes for review. The precise scope of the review can be agreed beforehand.

The comments below are thus made notwithstanding the finalisation of the Design Codes. The most recent comments re the Design Codes are provided at Appendix 1 FYI.

Further to discussions with Bellway Homes the following amendments are also required within the design codes to further clarify intentions and update the codes to meet the new higher design standards required by the NPPF:

1. Pg36: Shared Surface Streets, the text is amended to state: *'...the street does not act as a through route for other dwellings, design speeds are restricted to a maximum of 10mph with traffic calming features no more than 30m apart. Traffic calming features should be carefully considered, respond to and inform the built form, contributing to the visual amenity of the street. They should include; changes in materials, rumble strips, raised tables, build outs, pinchpoints, designated visitor bays and street trees. The objective should be to create safe (very low speed environment), attractive, intimate streets and places. The Council's Living Streets Guide provides further guidance.'*
2. The diagram on pg 37 needs amending accordingly.
3. There is a seeming direct inconsistency between the DAS text (Pg106 of the code), code images (Pg109) and indicative master plan, which promote higher density 'terraces & occasional semi-detached' in the Urban Core and 'building types' in the coding on pg114 that states, 'Semi-detached, detached and apartments'.



The coding text needs to be clarified and be in accordance with the original DAS aspirations and images. Suggest the text (Building types) on pg 114 is amended to state, ‘*Predominantly apartments and terraces or linked detached with semis or detached along northern side of central part of the Primary Route.*’

4. In accordance with the new NPPF that now promotes ‘beauty’ etc and to be more consistent with the detailed coding text in respect of ‘Focal Buildings and Key Frontages’ (pg28) is amended to refer to only ‘Focal Buildings’ i.e. delete ‘and key frontages’ and state: ‘...*character areas. They should be designed to be of a distinctly higher quality to surrounding dwellings. Particular attention should be given to materials and detailing. Consideration should also be given to the use of:*
 - *Contrasting building details*
 - *Projection forward....’*

In general though, since May, with the publication of the new NPPF there is now a new and clear intent from Government that it expects design standards to improve, and certainly not diminish between the outline stage, R/Ms and completion.

Condition 6 is also clear that applications for the approval of the reserved matter **shall be in accordance with** the Design Codes.



Detailed Comment

It is considered that the R/Ms fail to comply with the NPPF, NDG and Design Codes (April 2021) for the following reasons:

1. The ‘tertiary/shared space’ streets (parcel14/15) appear devoid of any traffic calming features and trees etc. Share spaces should be intimate attractive places where speeds are kept very low. They should have a much stronger threshold/demarcation that you are entering them, be a combination of materials and include street trees. (See SGC Living Streets guidance). Further work is required. Its unclear why parcel 18 is served by a single sided highway. These streets could/should equally be shared space (see pg 75). The coding also requires a foot/cycle access from the Cribbs Causeway into parcel 18. Something appears demarcated but immediately hits a private path. Clarification / redesign is required.

2. Parking courts should be a 'combination of materials' with 'clear entrance thresholds'. I would expect either the parking bays or turning areas etc to be in block, with a wider threshold 'rumble strip'. Additional trees could be provided in some of the courts, with careful design.
3. I note and agree with the Landscape Officers comments that there appear incidents of potential conflicts between drainage infrastructure and trees, and trees and street lights. Trees, drainage runs and street lights must be designed together to avoid conflicts and trees being removed at the construction stage. A combined plan is required. Given the new NPPF priority must be given to ensuring trees are considered and provided for as an integral part of the street scene. I note the codes (pg50-51) promote street trees in secondary and tertiary streets and pg 53 states that: *'The location of lighting and position of trees should be considered together so that one does not detrimentally affect the other. Where utilities cannot be located to avoid tree pits, root boundaries and protective sleeves shall be integrated into the pit allowing roots to develop without harm to the utility'*. Where conflicts cannot be avoided engineering plans should indicate where root boundaries and sleeves shall be integrated etc. Further work is required.
4. Notwithstanding comment 5 in Appendix 1 below, the submitted information is unclear in respect of the total height of the various retaining structures and fences in rear gardens. It can only thus be concluded that the code requirements (pg58) may be being breached leading to unacceptable amenity for many plots. Clarification is required.
5. The submitted Housetype pack is deeply unhelpful. House types should be grouped according to the character area, so that a clear distinction in appearance principles/details is apparent. Please amend.
6. The materials plan is quite hard to read (a problem with the CAD drawing). Many dwellings also lack a roof / tile specification. It would also be helpful if the key specified *all* the materials by character area. Door and window colours are required. Window reveal depths should also be specified. There appears no distinct difference in the materials strategy with regard the character areas or by street. This is unacceptable.

Woodland Ridge

7. Repetition in unit types and elevational treatment is to be avoided (pg70), yet there is clear repetition in what is proposed.
8. The Ibstock Brunswicks are an overused and tired product, so lack the qualities to deliver a distinctive new neighbourhood. The codes require a product(s) of a 'rustic' appearance (pg71). The recon stone is specified incorrectly. See pg71.
9. Pitched canopies should be specified as timber and tile as opposed to plastic.
10. The 'lane' and build line lacks a little 'sinuosity'. The lane lacks 'block transition zones and pinch points' (pg74)
11. Plot 231 is a focal building (pg74) so should be picked out as a distinct building; higher quality materials, recon slate roof, decorative chimney and distinct robust detailing etc. It would be helpful if it was illustrated on the street scenes.
12. Chimneys are used rather too sparingly along this high edge. Some more should be added.
13. In summary, much more effort is required to exploit/respond to the coding along this edge which requires variation and variety / individuality of plots etc. A street scene of the entire Woodland Edge to check compliance would help the discussions.

Central Slopes

The submitted plans comprise:

- C7 – Key Frontage (Pg100-101) – plots 229,230,243,244 & 169



pg101

14. Full details of plots 229 & 243 don't appear to be in the house type pack. Plots 229, 230, 243 & 244 appear to be designed more in keeping with the Woodland Edge, so should be corrected.

Urban Core

15. The submitted plans comprise:
 - U1 (Primary Route) – pg114-115, plots 107-167
 - U2 – Non Key Frontage – pg 116-, remaining plots not in other character areas or street U1 above.
16. U1 & U5 – Primary Route: In terms of urban form the Core is supposed to be distinct by the greater use of 'short terraces' only occasional semi-detached, consistent rhythm of buildings, 'strong and continuous building line' with 'no large gaps' (pg 114) etc. Imagery on pg109 and the indicative master plan shows linked units to the primary route for instance. There is a discrepancy in the coding (see comment 3 in the Times New Roman Text above). Similar to the Bellway parcels (but much shorter), the indicative layout shows a row of dwellings with linked garages pushed forward (linked detached units). Plots 120-122 should be designed accordingly.
17. There are a number of focal buildings identified in this area (blocks 111-119, 123-131, 132-142 and plots 109/110). These blocks should stand out pieces of architecture. They require higher quality characterful bricks (than the adjacent units). Samples of the Marshalls bricks should be provided. It might be that the Marshalls Vintage could be used on the focal buildings and another brick elsewhere. Some consideration and coordination with Bellway should be undertaken to ensure that two halves of the Primary Route are not distinctly different, particularly apt block 157-167 'reflects' the Bellway block opposite and vice versa.
18. Architecturally all the apt blocks are pretty much the same. A little further effort is required to distinguish the key focal blocks from the others. Some element of 4 storey and details such as the boxed out eaves, balconies, brick detailing and canopies should be reviewed to create a sharper higher quality appearance, more akin to the blocks in the codes (pg109). The blank (without weatherboarding) 'side' gables, also seem a bit odd given their prominent locations. Some brick detailing wouldn't go amiss. Notes and product images should be provided. They don't as yet inject much 'beauty' into the scheme.
19. I note that pg 28 of the codes re 'Entrance Spaces' requires that, '*larger focal buildings combined with landscaped areas close to the entrance points should **create dramatic entrance spaces***'. The layout on the other hand provides an apartment block, like all the rest (not even 4 storey) and an area of parking on the frontage. This is not acceptable. Given the constraints of the plot a bespoke block that actually addresses the corner as opposed to a standard unit plonked on it, is no doubt required.
20. Some side windows (north) should be added to plot 110.
21. Galvanised metal railings with soft landscaping (hedge) is required along the primary route to the front. Again some co-ordination with Bellway is required to ensure set-backs and the railing are the same to bring some coherence to this important street.
22. U2 – Non-Key Frontages: The extent of frontage parking is noted in front of plots 221-226 and elsewhere in the Core area. In order to break up the extent of tarmac and the parking itself it is suggested that these space are provided in a different surface material. Permeable options are now plentiful on the market and have been used elsewhere to help 'soften' schemes and meet climate adaption objectives etc. A detail similar to the one in the Appendix 1 below should also be provided to confirm species and edging details to the planting beds between vehicles. A specific detail to ensure a robust and consistent approach would also be a useful addition to the resubmission pack.
23. The italic note on pg110 of the codes should be responded to. The various 'streets' within the urban core should be identified and a short strategy considered for each so providing some subtle

differentiation. As it stands these non-key frontages, although not unattractive all appear a little 'samey' so undermining legibility. Differentiation in terms of soft landscaping should also be considered.

24. The highway where it crosses the north-south piece of POS (between plots 56 & 191) could be in block or similar to differentiate it at this key point.
25. There seems to be an excessive amount of hardscape in front of plots 46-48. This should be reviewed and extra trees and garden space provided to the adjoining plots.
26. Some soft landscaping between parking to fronts of plots 221-226 seems to have been omitted.

Conclusion

Objection. The proposals currently fail to meet the requirements of the codes, CS1, the NPPF and NDG. There is also a clear reduction in the quality/aspirations of the outline and what is being proposed. These R/Ms should therefore be refused unless changes are forthcoming. Focal buildings in particular need further review and improvement to meet the original objectives. Materials generally and 'street definition' (in the Urban Core) needs further consideration. The objectives of the Woodland Edge coding to deliver 'individuality' to the respective dwellings in a more vigorous way needs further work and shared space streets need improving to create the safe, intimate and interesting places they should be. Some co-ordination with Bellway to ensure the Primary Route 'hangs together' is also required.

South Gloucestershire Council

Memorandum to: Patrick Jackson
from: Dan Jones
Urban Design Officer
Cc:
Date: 21st May 2021
Your Reference: PT14/0565/O – **Design Codes (April 2021)**
Our Reference:
Telephone: 01454 863738
Facsimile: 01454 865173
Internet: dan.jones@southglos.gov.uk

Site Ref: PT14/0565/O – Outline Application for up to 1000 dwellings, POS and ancillary infrastructure etc for land at Haw Wood – Design Codes

Key Planning Policies (Design).

NPPF – Design (para 124-132)

South Gloucestershire Core Strategy (Dec 13)

CS1: High Quality Design

CS25: Communities of the North Fringe of the Bristol Urban Area

CS26: Cribbs Patchway New Neighbourhood

The South Gloucestershire Design Checklist SPD (Adopted August 2007)

NPPG – Design

National Design Guide

South Gloucestershire Policies, Sites & Places DPD

PSP1: Local Distinctiveness

PSP6: Onsite Renewable & Low Carbon Energy

Comments

Much work has previously been undertaken to improve the codes, which are now broadly acceptable subject to the following final comments:

1. It is noted that Condition 6 requires: '*the mechanism for and timing of a review of the Design Code to test its effectiveness*'. In light of discussions with Persimmon at Fishpool Hill that has a similar condition, requiring 'testing' of the codes, '*Preparing Design Codes*' (pg78-79 DCLG), was reviewed:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7623/152675.pdf

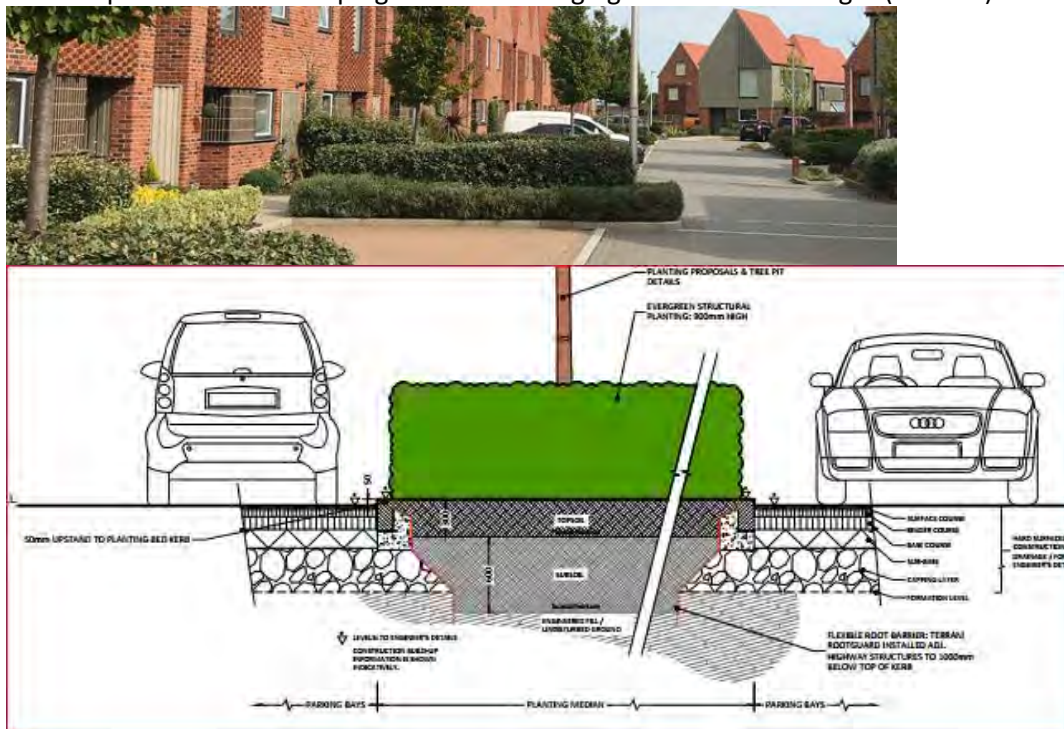
Essentially it recommends 'design teams' who are not familiar with the code, are commissioned to design a hypothetical sketch proposal using the code, which are fed to the LPA to test the efficiency of assessing the proposals, in so doing consider ease of use and capacity to deliver quality etc. This would seem a little onerous in light of previous discussions in respect of this part of the condition. However, as with Fishpool Hill, I would request though that the following words / commitment be given in respect of 1.2:

Prior to the first residential phase reserved matters approval (Parcels X & X) the submitted reserved matters will be presented to the Design Review Panel (DRP). The DRP will be asked to comment on the submitted reserved matters and the Design Code effectiveness in the context of the approved parameter plans and masterplan. The DRP comments will be considered and taken on board as appropriate in agreement with the Council in review of the reserved matters and the first review of the Design Code itself. Subsequent to the completion of the first 50 dwellings, and every twelve months thereafter, a joint site visit and meeting will be organised by the developer at which the Design Code and other implementation issues are discussed. Following the site meeting, either party can initiate a meeting to discuss and agree proposed amendments to the Design Code. An addendum will then be produced by the developer and approved by the Council. Reserved Matters for the Urban Core Key space and surrounding dwellings and school will similarly be presented to the DRP.

2. Pg37. Block paving should also be shown across the carriageway to emphasise the build out.



3. Pg 40 & 41 or elsewhere as appropriate (see point 9 below): Landscaping between parked cars requires a robust solution, like the Horsted Park example. Please include a detail, such as provided below. Note the upstand kerb to protect the landscaping and use of hedging to a minimum height (900mm).



4. Re the landscape section (pg50 maybe), a planting specification for verges should be included. **'Meadow' mixes can be lower maintenance and provide additional wildlife benefits. This should be specified.**

5. Managing levels: There are some inconsistencies between the text and the diagram. Second bullet should read, 'maximum 1:12 garden gradient...' & bullet 4 should read, 'maximum 2.4m high permacrib retaining wall *with 1.6m fence to top*', in accordance with the diagram.

6. Pg62...please highlight in bold the final paragraph.

Woodland Ridge

7. Pg70...Details: GRP door canopies are not acceptable. Pitched door canopies should small format tile to match the main roof and timber.

Woodland Ridge: Street Frontages (pg72-75)

8. 'Treatment of corners' (pg74) is now defined simply by dwellings with windows on their side *or* a corner turner unit. I suggest that in respect of this character area the 'L' shaped units only are utilised, as having a more traditional appearance. I note TW utilised the 'NT42' unit at Land East of Coldharbour Lane and a unit of that shape appears on the indicative master plan for this scheme. This would be an ideal unit to commit to use again. Secondly given the rest of the character area is based on variety I suggest the corner turners are treated distinctly and similarly, i.e. all in a roughcast render in a bold pastel shade, with rustic brick rear wing. Such distinction can assist with legibility and dementia friendly environments.

Central slopes landscape (pg86-87).

9. It is noted that some of the frontages are dominated by integ style units with frontage parking. The parking principles show planting beds between driveways. These planting beds need to be robust to prevent trampling and removal, e.g. as below. A clear image and/or detail should be included to provide a clear instruction, i.e. including an upstand, bush / hedge and tree specification (see point 3 above).

10. The Regulating Plan (as also required by the condition) should be resubmit for final checking.

Dan Jones
Principal Planning Officer – Urban Design

EP6C

TOWN AND COUNTRY PLANNING ACT 1990 OUTLINE PERMISSION FOR DEVELOPMENT

Persimmon Homes Severn Valley
Davidson House
106 Newpoundland Way
Portishead
BS20 7QE

APP REF: PT12/1930/O
DATE VALID: 18th June 2012
DECISION DATE: 16th July 2020
PARISH: Almondsbury Parish
Council

NOTICE OF DECISION

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT12/1930/O

DESCRIPTION OF DEVELOPMENT: Mixed use development across 53.80 hectares of land comprising up to 1,100 new dwellings (Use Class C3) a local centre (Use Classes A1,A2,A3,A4, A5,B1,D1,D2) a primary school together with supporting infrastructure and facilities including: new vehicular access with Wyck Beck Road, public open space and landscaping. Outline application including access with all other matters reserved.

APPLICANT: Persimmon Homes Severn Valley

LOCATION: Land At Wyck Beck Road And Fishpool Hill Patchway Cribbs Causeway South Gloucestershire

In accordance with the application and accompanying plans, subject to the conditions specified below:

1. Approval of the details of the layout, scale and appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason:

This is an outline permission only and the reserved matters shall be made to the Local Planning Authority.

- Plans and particulars of the reserved matters referred to in the condition above, relating to the layout, scale and appearance of any buildings to be erected and the landscaping of the site, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason:

This is an outline permission only and the reserved matters shall be made to the Local Planning Authority.

- Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

- The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

- Submissions for the approval of reserved matters shall be in general conformity with the following parameter plans:
Development Concept Plan 19504 9306 Revision AB
Land Use Plan 19504 9600 Revision S
Access and Movement 19504 9601 Revision R
Building Heights 19504 9602 Revision K
Density Plan 19504 9603 Revision O
Landscape Plan 19504 9604 Revision O;
and the approved Detailed Masterplan and Design Code for that geographical phase (conditions 6 and 7).

Reason:

To ensure a good quality of design to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP1 of the South Gloucestershire Policies Sites and Places Plan .

- Prior to the submission of applications for the approval of reserved matters in a particular geographical phase, a Detailed Masterplan for that phase shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent application to revisions to the approved Detailed Masterplan for a particular geographical phase shall also be submitted to and approved in writing

Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD

Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

by the Local Planning Authority. Each of the Detailed Masterplans shall include two dimensional layout drawings that shows:

- o the arrangement of street and buildings down to plot level, preferably at a scale of 1:1000
- o the arrangement for block interiors
- o the arrangements for car parking
- o density and mix
- o building heights/massing
- o the format of the public realm including all routes and spaces
- o the context within which existing landscape features are to be retained
- o the context or proposed structure planting
- o environmental performance and
- o ground levels and site sections showing existing and proposed levels
- o Details of all 'Safer Routes to School' serving on-site and off-site education facilities;
- o Details of walking and cycling routes and how these link with the wider external network.
- o Details of a strategic cycle network to link into the Cribbs/Patchway to Emersons Green East Cycle trunk Route.

Reason:

To ensure that high standards of urban design and comprehensively planned development to accord with policies CS1 and CS26 of The South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP1 of the South Gloucestershire Policies Sites and Places Plan. This is a pre-commencement condition to ensure that good design is embedded at an early stage.

7. Prior to the submission of applications for the approval of reserved matters in a particular geographical phase, a Design Code for that phase shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent applications for revisions to the approved Design Code shall also be submitted and approved in writing by the Local Planning Authority. The Design Code shall include detailed coding's for:
- o Street types and materials
 - o Block types and principles
 - o Treatment of public realm (including open space, play and areas of hard landscaping)
 - o Architectural and sustainable construction principles
 - o Areas of car parking
 - o Details of code testing prior to finalization
 - o Proposals for monitoring and review of each phase
 - o Details of waste and community composting areas

Reason:

Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

To ensure that high standards of urban design and comprehensively planned development to accord with policies CS1 and CS26 of The South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP1 of the South Gloucestershire Policies Sites and Places Plan. This is a pre-commencement condition to ensure good design is embedded into the proposal at an early stage.

8. Prior to the submission of applications for the approval of reserved matters, a Phasing Plan for the site in its entirety, comprising the elements listed in i) and ii) below shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent applications to revisions to the approved Phasing plan shall be submitted and approved in writing by the Local Planning Authority. Thereafter applications for the approval of reserved matters shall be in accordance with the approved phasing plan. The phasing plan should establish the geographical phases for each Detailed Masterplan (required under condition 6.) It is envisaged that this site is likely to have 2 such geographical phases correlating to the land east and west of Fishpool Hill respectively; and containing approximately 550 dwellings in each phase.

(i) For the geographical phase in question:

- The subdivision of the geographical phase into parcels to provide the basis for reserved matters applications;
- Location, extent and timing of infrastructure and facilities;
- Location, extent, timing and type of POS and structural landscaping;
- Location, extent, timing and type of SUDS;
- A schedule identifying the number of residential dwellings proposed for each reserved matters area within the geographical phase.
- A schedule identifying the percentage of, and mix between social rented and intermediate affordable dwellings and number of wheelchair units to be provided in each reserved matters area.

ii) For the remainder of the site as a whole:

- Geographical phases that will form the basis of each later Phasing Plan;
- Indicative location and timing of infrastructure and facilities;
- Indicative location and timing of POS, which shall comply with the overall amounts set out in the Site Specific Section 106 Agreement entered into in connection with and on the same date as this permission (hereinafter referred to as the "S106 Agreement");
- Indicative location, extent and timing of SUDs;
- A schedule identifying the number of residential dwellings proposed in each geographical phase within the site
- A schedule identifying the indicative percentage of affordable dwellings to be provided in each geographical phase.

The Local Planning Authority may in its absolute discretion accept reserved matters applications for primary access roads in advance of the approval by the LPA of the first Phasing Plan.

Following approval of the first Phasing Plan, subsequent Phasing Plan submissions shall take the amount of POS within the approved previous Phasing Plan(s) into account in the POS calculations for the remainder of the site as a whole in order to demonstrate that the total POS quantity is in accordance with the S106 Agreement.

All Phasing Plans (both detailed and indicative) shall be in compliance with the approved Parameter Plans, the principles and concepts contained in the approved Design and Access Statement and the approved Flood Risk Assessment. The timing of provision of infrastructure, and facilities within the Phasing Plan(s) shall comply with any triggers set out elsewhere in these conditions, the Section 106 Agreement or the Framework Agreement.

Reason:

To ensure that high standards of urban design and comprehensively planned development, and to ensure the development proceeds in a coordinated manner to accord with policies CS1 and CS26 of the South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP1 of the South Gloucestershire Policies Sites and Places Plan. This is a pre-commencement condition to ensure comprehensive planning.

9. No more than the following development shall be constructed and occupied as part of this permission;
- a) 1100 housing units
 - b) 800sqm Gross Internal Area (GIA) of Use Class A1
 - c) 800sqm GIA of Use Class A2
 - d) 800sqm GIA of Use Class A3
 - e) 2000sqm GIA use class D1
 - f) 2000sqm GIA use class D2
 - g) 2000sqm GIA use class B1

Reason

To ensure that the safety and efficient operation of the Strategic Road Network is not adversely affected to accord with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP11 of the South Gloucestershire Policies Sites and Places Plan.

10. All development to be served via a single point of access to be provided from Wyck Beck Road as indicated in the submitted plans.

Reason:

To ensure that the safety and efficient operation of the Strategic Road Network is not adversely affected to accord with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP11 of the South Gloucestershire Policies Sites and Places Plan.

11. The Framework Travel Plan (document reference TP01/B Rev B titled "Land at Fishpool Hill") produced by TPA shall be implemented in full in accordance with the details therein.

Reason:

To ensure that the safety and efficient operation of the Strategic Road Network is not adversely affected to accord with Policy PSP11 of the South Gloucestershire Policies Sites and Places Plan and with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

12. No phase of the development shall be commenced until a Construction Environmental Management Plan (CEMP) for that phase of the development has been submitted to and approved in writing by the Local Planning Authority (who shall consult the Highways Agency in writing prior to the discharge of this condition). The CEMP shall include measures to ensure that the applicant and contractors take all reasonable endeavours to minimise environmental disturbance from on-site construction works, including the management of dust and an off-site highway works associated with that phase of the development. That phase of the development shall be carried out in accordance with the approved CEMP.

Reason:

To ensure that the safety and efficient operation of the Strategic Road Network is not adversely affected to accord with and Policy PSP11 of the South Gloucestershire Policies Sites and Places Plan, and with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

13. Prior to the submission of any reserved matters and prior to the commencement of any groundworks, including any exempt infrastructure works, a programme of archaeological work leading to the production of a detailed mitigation strategy, including a timetable for the mitigation strategy, must be submitted and approved by the local planning authority. Thereafter the approved programme and mitigated measures identified shall be implemented in all respects.

Reason

In the interests of archaeological investigation, recording and mitigation to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP17 of the South Gloucestershire Policies Sites and Places Plan. This is a pre- commencement condition in order to protect any archaeology.

14. No development shall take place on land to which the reserved matter relates until a Waste Management Audit has been submitted to and approved by the

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Local Planning Authority in writing. The Waste Management Audit shall include details of:

- a) The volume and nature of the waste which will be generated through the demolition and/or excavation process;
- b) The volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc; Proposals for recycling/recovering materials of value from the waste not used in schemes identified in (b), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
- c) The volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction; and
- d) The probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use of it as an alternative to landfill. Development shall be carried out in accordance with the agreed details.

Reason:

To accord with the adopted Waste Management Strategy; and policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

15. Prior to the submission of any reserved matters, details of a surface water drainage masterplan shall be submitted and agreed in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the Masterplan shall be in accordance with the Flood Risk Assessment (FRA) (prepared by Brookbanks Consulting dated 7th March 2013) and drawing 10055/FL/02 Rev D showing the finished floor levels, and 10055/dr/01 rev B showing the outfalls and size and location of attenuation ponds. The masterplan shall include details of the phasing of surface water drainage infrastructure including source control measures. The development shall be implemented in accordance with the approved scheme. Discharge rates from the overall site must not exceed the Qbar flow rate or 263l/s (whichever is lower).

Reason:

To prevent the increased risk of flooding as a result of the development and to provide satisfactory drainage in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP20 of the South Gloucestershire Policies Sites and Places Plan, and the adopted Cribbs/Patchway New Neighbourhood Development Framework SPD. This is a pre-commencement condition as the drainage details need to inform the future reserved matters.

16. Reserved Matters submitted pursuant to Condition 1 shall include foul, building waste water and surface drainage details of proposals (incorporating

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Sustainable Drainage Systems (SUDS) and confirmation of hydrological conditions (e.g. soil permeability, watercourses, mining culverts) within the development have been submitted for and approved in writing by the Local Planning Authority. The details shall show a timetable for implementation, and shall accord with the drainage masterplan approved under condition 15. Development shall be carried out in accordance with the approved details.

Reason:

To ensure that a satisfactory means of surface and foul drainage is provided, and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP20 of the South Gloucestershire Policies Sites and Places Plan, and the adopted Cribbs/Patchway New Neighbourhood Framework Document SPD. This is a pre-commencement condition as the drainage details need to inform the future reserved matters.

17. Development shall be carried out in accordance with the approved Flood Risk Assessment (FRA) by Brookbanks Consulting Revision 4 (dated 7th March 2013) and subsequent correspondence. Specifically the following mitigation measures detailed within the FRA shall be adhered to:
- There will be no development, ground raising, flood attenuation storage areas or other development except for one access road within Flood Zone 3.
 - All residential or commercial development will be located within Flood Zone 1 and out of the flood plain.
 - Finished floor levels shall be set no lower than 300mm above the 1 in 100 year plus climate change flood level on the Henbury Trym at its nearest point, or 300mm above the existing ground level which is the higher. The 1 in 100 year plus climate change flood levels on the river range from 38.29m AOD to 43.49m AOD.
 - The access road level will be set no higher than the existing ground level except where required to tie into existing levels.
 - Compensatory flood storage will be provided on a level for level and volume for volume basis for any ground raising required for the access road. This will be provided on site to a 1 in 100 year plus climate change standard.

Reason

To reduce the risk of fluvial flooding to the proposed development, future occupants and the surrounding area in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP20 of the South Gloucestershire Policies Sites and Places Plan.

18. Prior to the first occupation of each phase of development (as approved under condition 8) details of the surface water discharges from the development site into the Henbury Trym, and any crossings or other changes to the flow or

capacity of the Henbury Trym should be submitted in writing to the Environment Agency in order that their model of the Henbury Trym can be kept updated.

Reason:

To assist in accurate modelling of the Henbury Trym in order to reduce the risk of fluvial flooding to the proposed development, future occupants and the surrounding area in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013), and Policy PSP20 of the South Gloucestershire Policies Sites and Places Plan.

19. The details to be submitted as part of the reserved matters under condition 1 shall include information in relation to measures taken to ensure the safety of the adjacent railway infrastructure on the following areas for the relevant phase of development:
- a) The foundation proposals of buildings closest to the existing railway cutting slopes
 - b) Drainage details in so far as whether there is additional discharge of water, and/or rate of discharge onto rail infrastructure/land.
 - c) Proposals regarding any strengthening proposed to the over-bridge at Charlton lane.

Reason:

To ensure sufficient measures are taken to safeguard the safety of adjacent railway infrastructure, to accord with policies CS7 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

20. The information to be submitted with the approval of the relevant reserved matters application (condition 1) shall include measures to demonstrate how the route of the existing permissive path which runs between Charlton common and Fishpool Hill will be retained or substituted with a similar route as part of the development.

Reason:

To ensure the protection of the existing permissive route to accord with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

21. The reserved matters submission shall include detailed plans showing the provision of car and cycle parking facilities in accordance with the standards set out in the Residential Parking Standards SPD (Adopted) for residential development. The development shall proceed in accordance with the agreed scheme with the parking facilities provided prior to the first occupation of the associated buildings and thereafter retained for that purpose.

Reason:

To ensure the satisfactory provision of parking facilities and in the interest of highway safety and the amenity of the area, and to accord with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013); and Policy PSP16 of the South Gloucestershire Policies Sites and Places Plan and the adopted Residential Parking standard SPD.

22. The particulars submitted as part of condition 1 for the relevant reserved matters shall include the following:

- o Details of all 'Safer Routes to School' serving on-site and off-site education facilities;
- o Details of walking and cycling routes and how these link with the wider external network.

The details so approved shall be implemented prior to the first occupation of the first residential dwelling of the reserved matters consent.

Reason:

To encourage means of transport other than the private car and to accord with and Policy PSP10 of the South Gloucestershire Policies Sites and Places Plan, and with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) .

23. Prior to the commencement of any ground works an ecological mitigation strategy for slow-worms shall be submitted to and agreed in writing by the Local Planning Authority. All work relating to slow-worms on site shall be subject to the approved strategy.

Reason:

To ensure sufficient protection for this species to accord with Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan, and with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

24. Prior to the commencement of any ground works an ecological mitigation strategy for brown hare and hedgehogs shall be submitted to and agreed in writing by the Local Planning Authority. All work relating to brown hare and/or hedgehogs on site shall be subject to the approved strategy.

Reason:

To ensure sufficient protection for these species to accord with and Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan and with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

25. Prior to the commencement of development, an ecological and landscape management plan shall be submitted to and agreed in writing by the Local Planning Authority. The submitted plan shall show details of the existing habitat to be safeguarded (trees, hedges and grass margins (buffer strips); and any new habitat to be created (species rich grassland, hedges, scrub, open space). The plans should include a programme of monitoring of all works for a period of at least 5 years from their implementation. The development shall be carried out in accordance with the approved ecological and landscape management plan.

Reason:

To protect and enhance the ecological interests of the site in accordance with policy and Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan. And Policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

26. Prior to the commencement of ground works an appropriately experienced and/or qualified ecological contractor shall be appointed to oversee works relating to ecology. This shall include overseeing work accords with the relevant ecological conditions and strategies.

Reason:

To protect and enhance the ecological interests of the site in accordance with Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan, and with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

27. Prior to the commencement of any ground works for each respective phase of development (and approved in condition 8) that part of the site shall be resurveyed for badgers, and the findings shall be submitted to and approved in writing by the Local Planning Authority. If setts and badgers are present, the report should also include details of all works subject to the licensing provisions of the Protection of Badgers Act 1992. The report should include details of protection, as required, of wildlife species, and/or their habitat as identified through the site survey. The approved measures shall be implemented in full.

Reason:

To protect and enhance the ecological interests of the site in accordance with Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan, policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and this is a pre-commencement condition as it relates to the construction period.

28. The relevant reserved matters submissions shall include details of street lighting in the vicinity of the great crested newt habitat, and no development for that reserved matters application shall take place until the street lighting has been

approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason:

To protect and enhance the ecological interests of the site in accordance with Policy PSP19 of the South Gloucestershire Policies Sites and Places Plan, and with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) .

29. The hours of working on site during the period of construction shall be restricted to 8am-6pm Mondays to Fridays; and 8am-1.00pm on Saturdays; and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the curtilage of site. Any exceptional "working" outside these hours shall have the prior written consent of the Local Planning Authority.

Reason:

To protect the amenities of the occupiers of nearby dwelling houses, and to accord with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

30. The reserved matters submissions shall include details of the location of the construction compound to serve the development; details of wheel washing and the means of access for construction traffic. These details should be approved in writing by the Local Planning Authority before the development commences on land to which the reserved matters relates. The development shall proceed in accordance with the approved construction details with all commercial vehicles having their wheels washed before entering the public highway; and no other access points (other than that approved) being used for construction traffic.

Reason:

To minimise disturbance to occupiers of completed and nearby dwellings; and to safeguard the amenities of the locality, and in the interests of highway safety to accord with policy CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

31. Each reserved matters application shall include full details of both hard and soft landscaping works and these works shall be carried out as approved. These details shall include: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines indicating lines, manhole); retained historic landscape features and proposals for restoration where relevant. Soft landscape works shall include; planting plans; written specifications (including cultivation

and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme. All hard and soft landscaping works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the final dwelling on land to which the reserved matter relates or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason:

To protect the character and appearance of the area and amenities of future occupiers to accord with Policy PSP2 of the South Gloucestershire Policies Sites and Places Plan; and to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) .

32. The plans and particulars to be submitted in accordance with condition 1 shall include:

a) a plan showing the location of each existing tree on the site which has a stem with a diameter measured over the bark at a point 1.5m above ground level exceeding 75mm. Of those trees, which are to be retained and the accurate crown spread of each retained tree.

b) details of the species, diameter (as measured in the previous section) and the approximate height and an assessment of general health and stability of each retained tree and of each tree which is on land adjacent to the site (and to which sections c and d apply).

c) details of any proposed tree works to any retained tree on the site or adjacent to the site.

d) details of any proposed alterations in existing ground levels, and any proposed excavation within the root protection area of any retained tree on the site on adjacent to the site.

e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

All fencing to be in accordance with BS5837 2012 Trees in Relation to Construction, and retained and maintained for the duration of the construction period.

Reason:

To protect the character and appearance of the area to accord with Policy PSP2 of the South Gloucestershire Policies Sites and Places Plan, and to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

33. No development shall take place on land to which the reserved matter relates until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and agreed in writing by the Local Planning Authority. The schedule shall include details of individual plot ownership, areas of amenity

space and of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

Reason:

To protect the character and appearance of the area to accord with Policy PSP2 of the South Gloucestershire Policies Sites and Places Plan,; and to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

34. Applications for approval of reserved matters within each geographical phase identified in the approved phasing plan submitted pursuant to condition 4 above shall not be submitted until an Energy Statement has been submitted to and approved by the Local Planning Authority. The Energy Statement shall be submitted to the Local Planning Authority at the same time as the detailed masterplan required by condition 6. The Energy Strategy shall address the requirements of the Utilities and Renewable Energy Infrastructure of the Cribbs/Patchway New Neighbourhood Development Framework SPD, and comply with Policy PSP6 of the South Gloucestershire Policies Sites and Places Plan.

Reason:

To achieve improved energy conservation, and protect environmental resources in accordance with and Policy PSP6 of the South Gloucestershire Policies Sites and Places Plan, Policy CS26 of the adopted Core Strategy and the Cribbs/Patchway New Neighbourhood Development Framework SPD.

35. Prior to the submission of any reserved matters applications a detailed site wide waste management and recycling strategy shall be submitted to and approved in writing by the Local Planning Authority. The site wide waste management and recycling strategy shall include measures to control the use, sorting, storage and collection of waste material and recycling from residential and commercial uses on site, including on site composting. The development shall thereafter be implemented in accordance with the approved details.

Reason:

To ensure appropriate waste management, recycling and composting measures take place on site and in accordance with Policies CS1 and CS26 of the Core Strategy.

36. The particulars submitted as part of condition 1 for the relevant reserved matters shall include details in respect of the provision of internet connection infrastructure to serve the future residents of the development, including a timetable for implementation. The development shall be implemented in accordance with the agreed timetable.

Reason:

To ensure an appropriate standard of internet connection is provided in the interests of the amenity of future residents and accord with Policy CS26 of the adopted Core Strategy.

37. Particulars submitted in relation to condition 1 for each relevant reserved matters shall include a lighting scheme, to accordance with the Cribbs/Patchway New Neighbourhood Development Framework SPD, to be submitted and approved in writing by the local planning authority that shall include measures to control light spillage. Development shall be carried out in accordance with the approved details prior to the first occupation of the relevant reserved matters.

Reason:

In the interests of visual amenity, security and energy efficiency in accordance with Policy CS1 of the adopted Core Strategy, and the Cribbs/Patchway New Neighbourhood Development Framework SPD.

38. Prior to the submission of any reserved matters applications (excluding applications relating to infrastructure works) a site wide affordable housing plan and an accompanying schedule shall be submitted to and approved in writing by the local planning authority showing the distribution of 25.5 % of the total dwelling number across the site in the residential land parcels shown in the approved phasing plan submitted pursuant to condition 8 above For each development parcel, the plan and the accompanying schedule shall show:

- a) the number of affordable dwellings to be provided;
- b) the mix of dwellings (in terms of the number of bedrooms and the proportion of houses and flats, broken down between social rented affordable housing units and intermediate units in that parcel.)

The subsequent reserved matters applications that show the proposed layout of the development shall show the proposed locations of the affordable dwellings. Development shall thereafter be carried out in accordance with the site wide affordable housing plan, accompanying schedule and reserved matters approvals, unless otherwise agreed in writing by the local planning authority.

Reason:

To ensure that the distribution of affordable houses assist the creation of an inclusive mixed community in accordance with Policy CS18 of the adopted Core Strategy.

39. Details submitted as part of the relevant reserved matters under condition 1 shall include details of an appropriate buffer zone opposite Elm Farm, Fishpool Hill. The development shall be carried out in accordance with the approved detail.

Reason:

To ensure the proposals appropriately mitigate the impact of the development on the non-listed heritage asset of Elm Farm, and in accordance with Policy and Policy PSP17 of the South Gloucestershire Policies Sites and Places Plan.

40. Relevant Reserved Matters submissions shall include a scheme for protecting the proposed noise sensitive dwellings in Observed Adverse Effect Level as set out in the National Planning Practice Guidance (and any document that supersedes this) and the new school have been submitted to and approved in writing by the Local Planning Authority. Development shall be implemented in accordance with the approved noise mitigation scheme and maintained thereafter as such.

Reason:

To protect the residential amenity of future residents of the site and in accordance with Policy CS9 of the adopted Core Strategy, and the National Planning Practice Guidance Document. This is a pre- commencement condition to ensure that development proceeds with appropriate mitigation and to avoid remedial action in the future.

41. The particulars submitted as part of condition 1 for each relevant reserved matters shall include details of a strategic cycle network to link into the Cribbs/Patchway to Emersons Green East Cycle trunk Route. The details so approved shall be implemented prior to first residential occupation and thereafter retained as such.

Reasons:

To encourage means of transport other than the private car and to accord with and Policy PSP10 of the South Gloucestershire Policies Sites and Places Plan and policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

42. The particulars submitted as part of condition 1 for the relevant reserved matters shall include details of internal bus route infrastructure, including stops. The details shall be implemented prior to first occupation of any dwelling more than 400m walking distance from stops provided on the A4018 and maintained as such thereafter.

Reason:

To encourage means of transport other than the private car and to accord with policy and Policy PSP11 of the South Gloucestershire Policies Sites and Places Plan and policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

43. The particulars submitted as part of condition 1 for the relevant reserved matters shall include details of a refuse collection strategy including routing details, bin stores and refuse collection points. The details so approved shall be implemented prior to the first occupation of the relevant reserved matters and maintained as such thereafter.

Reason:

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To ensure there is appropriate refuse storage and in accordance with Policy CS26 of the adopted Core Strategy.

44. Land shown on the illustrative Development Concept Plan 9306 Rev AB as 'Proposed Site for Rail Halt' shall be safeguarded and left free from development, apart from that associated with rail infrastructure.

Reason:

To ensure land is available for the development of rail infrastructure, and in accordance with Policy CS26 of the adopted Core Strategy and Policy PSP13 and PSP14 of the South Gloucestershire Policies Sites and Places Plan.

45. Prior to the submission of the first reserved matters application, the landowner/developer is to establish a residents liaison group which shall include representatives of South Gloucestershire Council and the local Town/Parish Council.

Reason:

In the interests of the safety and security of users of the site and local residents and in accordance with Policy CS1 of the adopted Core Strategy.

46. The particulars submitted as part of condition 1 for the relevant reserved matters shall include:
- o Existing and proposed levels on the same plan, at a size that is readable when printed off to the appropriate size.
 - o Site sections, to scale.

Reason:

To protect the character and appearance of the area to accord with Policy PSP2 of the South Gloucestershire Policies Sites and Places Plan, and to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

IN ACCORDANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2015.
POSITIVE AND PROACTIVE STATEMENT:

In dealing with this planning application the Local Planning Authority have worked with the applicant in a positive and proactive manner on seeking solutions to problems arising in the following ways:

Resolving transport, landscape, design, public open space, ecology issues and a Section 106 package.

ADDITIONAL INFORMATION

1. This permission is to be read in conjunction with:
 - i) The CPNN FRAMEWORK AGREEMENT made between South Gloucestershire Council (1) and YTL Property Holdings (UK) Limited (2) and BAE Systems PLC & BAE Systems (Property Investments) Limited (3) and DFE TW Residential Limited (4) DATED 20TH February 2018; and
 - ii) The SITE SPECIFIC AGREEMENT and UNDERTAKING made between South Gloucestershire Council (1) Persimmon Homes Limited (2) and Ideal Homes Limited (3) dated 16th July 2020; and
 - iii) The CPNN: Extra Site Agreement made between South Gloucestershire Council (1) Persimmon Homes Limited (2) and Ideal Homes Limited (3) dated 16th July 2020.

All in pursuance of Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.

2. Under the Wildlife and Countryside Act 1981 it is an offence to damage, destroy or obstruct access to any structure or place that bats, great crested newts or any other animal listed in Schedule 5 of the Act use for shelter or protection. Under this Act it is also an offence to disturb barn owls whilst building a nest or in the vicinity of a nest containing eggs or young. If there is any suggestion that the site is being occupied by any of the species, you are strongly advised to consult English Nature, South West Regional Office, Roughmoor, Bishops Hull, Taunton TA1 5AA before proceeding with the development hereby authorised.
3. The Wildlife and Countryside Act 1981 makes it a criminal offence to damage or destroy the nest of any wild bird whilst that nest is in use or being built. Established working practice avoids works to any hedgerow, tree or other vegetation where birds may reasonably be expected to make their nest (such as scrub) between 1 March and 31 August in any year. Care should be taken outside of this exclusion period as variations in climate may extend the nesting season.
4. The decision to grant planning permission has been taken having regard to the environmental information contained within the documentation submitted in support of the application.
5. This permission shall not be construed as granting rights to carry out works on, or over, land not within the ownership, or control, of the applicant.
6. You must obtain the prior written consent of the owner and occupier of any land upon which it is necessary for you to enter in order to construct, externally finish,

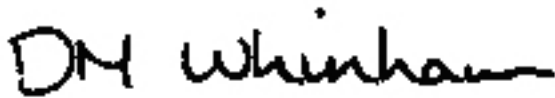
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decorate or in any other way carry out any works in connection with this development including future repairs/maintenance, or to obtain support from adjoining property. This permission does not authorise you to take such action without first obtaining this consent. Your attention is also drawn to the Access of Neighbouring Land Act 1992 and Party Wall Act 1996.

7. This decision is to be read in conjunction with the decision notices for applications PT13/4413/O and PT13/0830/O

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be submitted for further approval, before all or part of the development is otherwise commenced. If the permission is commenced without these requirements being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council's planning website.



STRATEGIC MAJOR SITES MANAGER

DATE: 16th July 2020



PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £34 per request relating to 'householder' applications and £116 for any other full planning applications. The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

COMMUNITY INFRASTRUCTURE LEVY (CIL)

If this application has been identified as being liable to CIL you should not commence development until the requirements and obligations under CIL have been established. If we require further information we will write to you requesting this. Where we already have clear information about the proposal and assumed liability we will issue a liability notice shortly. Further information can be found on our website at www.southglos.gov.uk/environment-and-planning/planning/community-infrastructure-levy

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 868271

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications – within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

Strategic Planning
South Gloucestershire Council,
Department For Environment And
Community Services
PO Box 1954, Bristol, BS37 0DD

The Planning Inspectorate
Room 3/04 Kite Wing
2 The Square Temple Quay
Bristol BS1 6PN

Please ensure this instruction is complied with in order to avoid any unnecessary delay

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.
2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provision of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.
2. If planning permission has been granted for the development, please note that should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.
3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING REGULATIONS BEFORE ANY WORK IS COMMENCED.
4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence

EP6D

TOWN AND COUNTRY PLANNING ACT 1990 OUTLINE PERMISSION FOR DEVELOPMENT

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

APP REF: PT14/3867/O
DATE VALID: 7th October 2014
DECISION DATE: 1st March 2018
PARISH: Almondsbury Parish
Council

NOTICE OF DECISION

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT14/3867/O

DESCRIPTION OF DEVELOPMENT: Mixed use development on 141.733 hectares of land comprising: residential development for up to 2,675 dwellings and apartments (comprising 2,635 x Use Class C3 and 40 x Live Work Units - Sui Generis); 24ha of stand-alone employment land (comprising up to 12ha Use Class B1a and a minimum of 12ha Use Class B1b/c, B2); 120 Bed Hotel up to 3,800 sqm (Use Class C1); Rail Station (0.45ha Use Class Sui Generis); Education provision to include a Secondary School (8.31ha), 2 no. Primary Schools (total 5ha) and 2 no. Children's Nurseries (total 0.8ha) (all Use Class D1); Community Centre incorporating Library, Built Sports facilities and Doctors surgery up to 3,400 sqm (Use Classes D1 & D2); Dental Surgery up to 800sqm; (Use Class D1); 70 Bed Extra Care Facility up to 12,500sqm (Use Class C2); Shops/Financial Services/Food and Drink facilities up to 4,787sqm (Use Classes A1, A2, A3, A4 and A5) - comprising Retail Supermarket up to 2,787sqm gross maximum (Use Class A1); drinking establishment(s) up to 800sqm (Use Class A4); Business Offices up to 500sqm (Use Class B1) together with; supporting infrastructure and facilities including demolition, ground works and remediation, highways, utilities, landscaping, sustainable urban drainage system, wildlife water basins and public open space. Outline application including access, with all other matters reserved.

APPLICANT: YTL Developments (UK) Ltd

LOCATION: Former Filton Airfield Filton South Gloucestershire

South Gloucestershire Council, Department for Environment and Community Services,
PO Box 299, Strategic Planning, Civic Centre, High Street, Kingswood, Bristol, BS15 0DR
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

In accordance with the application and accompanying plans, subject to the conditions specified below:

Submission of Reserved Matters

1. Details of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before development on land to which the reserved matters relate commences. Development thereafter shall be carried out in accordance with the approved details.

Reason:

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

2. Applications for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 15 years from the date of this permission.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

3. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

Submission of Phasing Plan

4. Prior to the submission of the first reserved matters application in a particular geographical phase, a Phasing Plan comprising all of the elements listed in (i) and (ii) below, shall be submitted to and approved in writing by the Local Planning Authority:

(i) *For the geographical phase in question:*

- The subdivision of the geographical phase into parcels to provide the basis for reserved matters applications;
- Location, extent and timing of infrastructure and facilities;

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- Location, extent, timing and type of POS and structural landscaping;
 - Location, extent, timing and type of SUDS;
 - A schedule identifying the number of residential dwellings proposed for each reserved matters area within the geographical phase.
- (ii) A schedule identifying the percentage of, and mix between social rented and intermediate affordable dwellings and number of wheelchair units to be provided in each reserved matters area. *For the remainder of the site as a whole:*
- Geographical phases that will form the basis of each later Phasing Plan;
 - Indicative location and timing of infrastructure and facilities;
 - Indicative location and timing of POS, which shall comply with the overall amounts set out in the Site Specific Section 106 Agreement entered into in connection with and on the same date as this permission (hereinafter referred to as the "S106 Agreement");
 - Indicative location, extent and timing of SUDs;
 - A schedule identifying the number of residential dwellings proposed in each geographical phase within the site
 - A schedule identifying the indicative percentage of affordable dwellings to be provided in each geographical phase.

The Local Planning Authority may in its absolute discretion accept reserved matters applications for primary access roads in advance of the approval by the LPA of the first Phasing Plan.

The Phasing Plan shall be in accordance with the approved Illustrative Landscape Distribution Masterplan, however in the event of any variation that the Local Planning Authority considers to be significant, a revised Illustrative Landscape Distribution Masterplan for the whole site shall be submitted to and approved in writing by the Local Planning Authority.

Following approval of the first Phasing Plan, subsequent Phasing Plan submissions shall take the amount of POS within the approved previous Phasing Plan(s) into account in the POS calculations for the remainder of the site as a whole in order to demonstrate that the total POS quantity is in accordance with Schedule 5 of the S106 Agreement.

All Phasing Plans (both detailed and indicative) shall be in compliance with the approved Parameter Plans, the principles and concepts contained in the approved Design and Access Statement (April 2017 and October 2017 Amendments), and the approved Strategic Drainage Strategy (FRA Addendum April 2017). The timing of provision of infrastructure, and facilities within the Phasing Plan(s) shall comply with any triggers set out elsewhere in these conditions, the Section 106 Agreement or the Framework Agreement.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted Cribbs/Patchway Development Framework SPD.

Submission of Design Codes

5. Prior to the submission of the first reserved matters application in a geographical phase, as identified in the approved Phasing -Plan pursuant to condition 4, a Design Code for that geographical phase shall be submitted to and approved in writing by the Local Planning Authority.

The Local Planning Authority may in its absolute discretion accept reserved matters applications for primary access roads in advance of the approval by the LPA of the first Design Code, but these must be wholly compliant with the approved Parameter Plans, and the principles and concepts contained in the approved Design and Access Statement (April 2017 and October 2017 Amendments).

The Design Code shall be in accordance with and facilitate the principles and parameters set out in the approved Design and Access Statement (April 2017 and October 2017 Amendments) including the Urban Design Framework (Fig 88 Rev 1) of the latter, and the approved Parameter Plans. It shall include:

- A regulating plan at a scale no less than 1:1,000 (to be based on an accurate site survey), which also illustrates the urban structure and form of the immediate context
- A plan setting out the subdivision of the geographical phase in question into parcels to provide the basis for reserved matters applications;
- A plan showing safe routes to school through the phase;
- Specification of the extent and nature of any character areas and the key elements of urban form within them;
- Details of street types and junctions, block principles, frontage treatment, and landscape, open space and public realm treatment;
- Information relating to architectural detail and identity, energy efficiency and renewable energy generation and sustainable construction in accordance with Local Plan policy, and street furniture, electric vehicle charging points, and signage including Heritage Interpretation Panels; and
- The mechanism for and timing of a review of the Design Code to test its effectiveness.

Any subsequent applications for agreed revisions to an approved Design Code shall be subject to the written approval of the Local Planning Authority.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted Cribbs/Patchway Development Framework SPD.

Tall building(s)

6. Any Design Code submitted for approval pursuant to condition 5 containing either buildings within the Linear Park axis (as shown in Fig 88 rev.1) or an area in whole or in part defined on the approved 'Heights' Parameter Plan (drawing ref: 1074_00_07_005 rev.P19) as being appropriate for buildings up to 10 storeys shall contain (as well as information required by condition 5 above) specific instructions for:

- the siting, orientation, height, form and massing of building(s), individually and where relevant within the surrounding townscape,
- any hard and soft landscaping associated with the building(s),
- how the proposed mix of uses within the building(s) will have a positive relationship with the surrounding public realm and any other buildings in the immediate area, including the location and frequency of access/egress points,
- sustainable design and construction of the building(s) having reference to the Energy Statement to be updated and approved with each geographical phase (in accordance with condition 5).

Any reserved matters application for a building or buildings either within the Linear Park axis (as shown in Fig 88 rev.1) or within the area defined on the approved 'Heights' Parameter Plan (drawing ref: 1074_00_07_005 rev.P19) as being appropriate for buildings up to 10 storeys and over 6 storeys shall include the following supporting information:

- details of scale, proportion and silhouette, facing materials and detailed surface design, including night-time appearance,
- details of hard and soft landscaping,
- details of the proposed mix of uses within the building(s) and their relationship with the surrounding public realm,
- details of their impact on identified views within the approved Environmental Statement (ref) and impact on proposed townscape and public realm, including accurate and realistic representations of the proposal,
- consideration of their impact on the settings of identified heritage assets,
- details of environmental performance including microclimate (particularly street level wind environment and pedestrian experience), overshadowing, light pollution, and any necessary vehicle movements to support/ service the proposed uses,

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- details of how the proposals have been the subject of independent design review, and how the outcomes of the design review have been incorporated into the proposed design.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted Cribbs/Patchway Development Framework SPD.

Compliance Requirements for Reserved Matters Applications

7. Applications for the approval of the reserved matters shall be in accordance with the approved Parameter Plans, the principles and parameters set out in the Design and Access Statement (April 2017 and October 2017 Amendments) including the Urban Design Framework (Fig 88 Rev 1 of the latter), and the approved Phasing Plan and Affordable Housing Schedule (condition 4) and Design Code (condition 5) for the relevant geographical phase to which the reserved matters application relates.

A Compliance Statement shall be submitted with each reserved matters application that demonstrates the proposals are in compliance with these documents or (in exceptional circumstances and where relevant) explaining why they do not.

In relation to any building(s) either within the Linear Park axis (as shown on Fig 88 Rev 1) or within the area defined on the approved 'Heights' Parameter Plan (drawing ref: 1074_00_07_005 rev P19) as being appropriate for buildings up to 10 storeys and over 6 storeys, the Compliance Statement must also demonstrate how the proposal will result in an exemplary standard of design.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted Cribbs/Patchway Development Framework SPD.

Affordable Housing

8. Delivery of affordable housing shall be carried out in accordance with the relevant approved Phasing Plan, and its accompanying Affordable Housing Schedule (condition 4) and reserved matters approvals, unless otherwise agreed in writing by the Local Planning Authority.

If there are discrepancies between the affordable housing targets established in the approved Phasing Plan for the geographical phase in question and the relevant reserved matters application(s) for that geographical phase, subsequent applications for the approval of reserved matters and Phasing Plans will be amended to ensure that the overall provision and required proportions are maintained as closely as possible. The numbers and mix for each reserved matters application will be informed by the principles in the Framework Agreement, Parameter Plans, Phasing Plan and the Design Code, including any amendments to the approved Affordable Housing Schedule (condition 4) as may be reasonably agreed with the Council from time to time.

Reason:

To ensure that the distribution of affordable houses assists the creation of an inclusive mixed community in accordance with Policy CS 18 of the adopted South Gloucestershire Local Plan: Core Strategy.

Sustainable Construction

9. Except for reserved matters applications for the first site access road infrastructure within a phase, applications for approval of reserved matters within each geographical phase identified in the approved Phasing Plan submitted pursuant to condition 4 above shall not be approved until an Energy Statement for the phase in question has been submitted to and approved by the Local Planning Authority. The Energy Statement shall be updated for each phase and shall also include, for the airfield site as a whole, the emerging CPNN District Heating Feasibility Study. It shall also commit to requiring developers to build to Building Regulations and local planning policy compliant renewable energy measures current at the at the time of the commencement of construction of that phase. The Energy Statement shall comply with the requirements of the Utilities and Renewable Energy chapter within the adopted Cribbs/Patchway New Neighbourhood Development Framework SPD and be in accordance with Policy CS4 of the South Gloucestershire Local Plan – Core Strategy and the prevailing development plans policy at the time.

Applications for approval of reserved matters shall be in accordance with the relevant approved Energy Statement, and the development of each phase shall be implemented in all respects in accordance with the relevant approved Energy Statement.

Reason:

To achieve improved energy conservation and protect environmental resources in accordance Policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and the Cribbs/Patchway New Neighbourhood Development Framework SPD.

Landscape Details

10. Each reserved matters application shall include full details of both hard and soft landscaping works and these works shall be carried out as approved. Such details shall accord with the principles of the approved Landscape Parameter Plan, the principles and concepts contained in the approved Design and Access Statement (April 2017 and October 2017 Amendments), and Design Code.

These details shall include: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines, manholes); retained historic landscape features and proposals for restoration where relevant.

Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme. Detailed planting plans shall detail size, type and specification, mixes and quantities of all proposed planting. Where appropriate, construction details of ground retention/acoustic bund along the railway boundary, boundary and surfacing treatments; construction details of all SUDS elements and maintenance proposals shall be submitted and approved.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

11. All hard and soft landscape works shall be carried out in accordance with the approved implementation programme on land to which the reserved matter relates or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

12. With reference to retained trees the plans and particulars submitted in accordance with condition 1 and 10 shall include:

- a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
- b) details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- c) details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
- d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation within the RPA (root protection area) as defined in BS5837 2005 of any retained tree or of any tree on land adjacent to the site; and
- e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.
- f) details of street trees shall include specification of root protection measures, and details of street tree management to encourage high level growth and maintain a clear zone directly above sewers.

All fencing to be in accordance with BS5837 2012 'Trees in Relation to Construction' and retained and maintained for the duration of the construction period.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

13. The plans and particulars for each Reserved Matters to be submitted in accordance with Condition 1 shall include a schedule of landscape maintenance for a minimum period of 5 years. The schedule shall include details of individual plot ownership, areas of amenity space and the arrangements for its implementation. Development shall be carried out in accordance with the approved scheme.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with South Gloucestershire Local Plan Policy L1 and to accord with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

14. The submission of any reserved matters pursuant to condition 1 above adjacent to the Henbury Trym Corridor shall include detailed sections of the Henbury Trym Corridor and its associated public open space. Only such details as approved by the Local Planning Authority shall be implemented.

Reason:

In the interests of nature conservation and landscape character, in accordance with Policies L1 and L9 of the South Gloucestershire Local Plan

15. Prior to the commencement of the development in any geographical phase, (including the commencement of any site preparation works as defined by the S106 Agreement) plans for the phase indicating the location of tree protection measures shall be submitted to and approved in writing by the LPA. Such details shall be in accordance with the tree protection measures to safeguard the retained trees as set out in the Tree Retention and Removal Table FAD-GRA-000-XX-DR-L-0122 P1 and set out how the development will not adversely affect the trees to be retained. All such details as approved shall be fully implemented in advance of any works on site and retained in situ as approved for the duration of works.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

Refuse Collection

16. The particulars submitted as part of condition 1 for the relevant reserved matters shall include details of a refuse collection strategy including routing details, bin stores and refuse collection points. The details so approved shall be implemented prior to the first occupation of any or each individual dwelling to which the refuse collection strategy relates, and maintained as such thereafter.

Reason:

To ensure there is appropriate refuse storage and in accordance with Policy CS26 of the adopted Core Strategy.

Archaeology

17. Prior to the commencement of any groundworks, including site investigation works, clearance or remediation and prior to the approval of any reserved matters, a programme of archaeological work and subsequent detailed mitigation and publication strategy, including a timetable for the mitigation strategy (phase 1), must be submitted to and approved by the local planning authority. Thereafter the approved programme of mitigation measures (phases 2, 3) and method of publication (phase 4) shall be implemented in all respects. The condition requires a four phase approach, comprising field evaluation and production of mitigation and publication strategy (phase 1), open area excavation where necessary (phase 2), watching brief (phase 3) and publication/archiving (phase 4).

Reason:

In the interest of archaeological investigation or recording, and to accord with Policy L11 of the South Gloucestershire Local Plan and policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

Construction Waste Management Audit/Cut and Fill scheme

18. Prior to the commencement of any development, including site preparation works as defined by the S106 Agreement (with the exception of ground investigation/site survey work, construction of boundary fencing or hoarding, archaeological investigation, and ecological mitigation works) on any phase, a Waste Management Audit and cut and fill details for that phase shall be submitted to and approved by the Local Planning Authority in writing. Details to be submitted shall comprise:
- i. The volume and nature of the waste which will be generated through the demolition and/or excavation process;
 - ii. The volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc;
 - iii. Proposals for recycling/recovering materials of value from the waste not used in schemes identified in (b), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
 - iv. The volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction; and
 - v. The probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use for it in order to reduce the amount of waste sent to landfill.

- vi. Detailed plans and sections at 1:500 of existing and proposed finished ground levels.

Development shall be carried out in accordance with the agreed details.

Reason:

To control the production of waste and to ensure satisfactory finished ground levels, in accordance with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy and policy L1 of the adopted South Gloucestershire Local Plan. Pre- commencement is required in order to ensure that any contamination is dealt with at the correct time when the remediation is still possible.

Ecology and Protected Species

19. Applications for Reserved Matters for residential or landscape development shall include measures to implement the strategy for the creation of suitable foraging and nesting habitats for hedgehogs, including vegetated linear features and garden habitats which shall have been incorporated into the LEMP to be approved under condition 22. All works shall be carried out in accordance with said hedgehog habitat enhancement strategy.

Reason:

To protect the wildlife and the ecological interests of the site, in accordance with Policy L9 of the South Gloucestershire Local Plan (adopted January 2006) and Policy CS9 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

20. All development, including site preparation works as defined by the S106 Agreement, affecting great crested newt habitat (European Protected Species), must accord with the mitigation strategy for great crested newts included within Chapter 11 Natural Heritage of the Environmental Statement dated April 2017 hereby approved. All works are to be carried out in accordance with said strategy.

Reason:

To protect the wildlife and the ecological interests of the site, in accordance with Policy L9 of the South Gloucestershire Local Plan (adopted January 2006) and Policy CS9 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

21. No development shall take place (including clearance of vegetation) in a particular phase until there has been submitted and approved in writing by the Local Planning Authority measures in respect of:

South Gloucestershire Council, Department for Environment and Community Services,
PO Box 299, Strategic Planning, Civic Centre, High Street, Kingswood, Bristol, BS15 0DR
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

- (i) The identification, through an updated site survey, of badgers, and/or their setts, as required by the badger Act 1992.
- (ii) The protection of badgers, and/or their setts as identified through the site survey, and a badger mitigation strategy for the site as a whole.

Reason:

To protect the wildlife and ecological interests of the site, in accordance with Policy L9 of the adopted South Gloucestershire Local Plan, and Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013). Pre commencement is required in order to ensure that there is no harm to badgers through construction works.

22. Prior to the commencement of development but excluding site preparation works as defined by the S106 Agreement and primary access road infrastructure pursuant to condition 4, a strategic Landscape and Ecological Management Plan (LEMP) shall be drawn up and agreed with the Council in writing. This plan shall accord with the Framework for the LEMP dated October 2017 (FAD-GRA-OO-XX-RP-L-9005 Rev 3). The plan shall accord with the approved parameter plans and shall include an overall site plan which delineates the areas of different landscape and ecological management regimes described in the document. It shall include details of the existing habitat to be safeguarded (trees, scrub, pond or hedges); and any new habitat to be created (species rich grassland, hedges, scrub etc). It should also consider the routing of the paths through the Trym corridor open space, taking into account the need to maintain the integrity of the Great Crested Newt ponds as well as the public right of way network. It should also include a programme of management and monitoring of all works for a period of 5 years. All works shall be carried out in accordance with the approved plan.

Reason:

To protect and manage any retained hedgerows, new semi natural habitat and Henbury Trym corridor, in accordance with Policy L9 of the adopted South Gloucestershire Local Plan, and Policy CS9 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013). Pre- commencement is required in order to ensure that there is no harm to ecological interest during construction works.

23. Hangar 16U shall be monitored for use by barn owl, in accordance with Chapter 11 Natural Heritage of the Environmental Statement (dated April 2017) hereby approved. A report on said monitoring together with any mitigation strategy as required shall be submitted to the LPA for approval with any RMA in respect of Hangar 16U.

Reason:

To protect the wildlife and ecological interests of the site, in accordance with Policy L9 of the adopted South Gloucestershire Local Plan, and Policy CS9 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

Sustainable drainage and prevention of pollution

24. All reserved matters applications shall include detailed surface water drainage plans, which accord with the principles of the 2014 Flood Risk Assessment (FRA) (by PBA Version 7) and the Flood Risk Assessment Addendum (by PBA April 2017) for each phase or parcel of land, incorporating sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, have been submitted to and approved by the LPA. The scheme shall subsequently be implemented in accordance with the approved details before the parcel is completed. Sufficient attenuation storage shall be provided for each phase of development and this should be clearly demonstrated in an updated FRA which show discharge rates and SUDs control measures for each parcel. Attenuation ponds and SUDs components shall be in place and operational before the completion of development in each separate phase. Should the site layout change the FRA will need to be updated also.

Each reserved matters application will need to demonstrate a suitable drainage scheme in accordance with the approved FRA. The following details shall be submitted in order to discharge this condition:

- A clearly labelled drainage layout plan showing the pipe networks and any attenuation ponds, soakaways and drainage storage tanks. This plan should show any pipe node numbers referred to in the drainage calculations and the invert and cover levels of manholes.
- A manhole schedule.
- Model runs to demonstrate that the critical storm duration is being used.
- Confirmation of the agreed discharge rate referring to the FRA, with any flow control devices indicated on the plan with the rate of discharge stated.
- Calculations showing the volume of attenuation provided, demonstrating how the system operates during a 1 in 100 critical duration storm event. If overland flooding occurs, a plan should also be submitted detailing the location of overland flow paths and the likely depths of flooding. A 30% allowance for climate change should be incorporated into the scheme in accordance with Table 5 of the Technical Guidance to the National Planning Policy Framework.
- Where infiltration forms part of the proposed stormwater system such as infiltration trenches and soakaways, soakage test results and test locations are to be submitted in accordance with BRE digest 365.

Reason:

To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system, in accordance with Policy CS9 and CS26 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

25. The reserved matters for layout submitted pursuant to condition 1 shall include cross sections of any proposed culverts and/or SUDs features, swales or attenuation ponds, including finished floor levels of any adjacent housing areas and roads.

Reason:

To ensure a satisfactory means of drainage is provided, and in the interests of visual amenity and to accord with policies CS9 and CS26 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

26. No development shall take place on land to which the reserved matters relate until a foul water drainage strategy is submitted and approved in writing by the local Planning Authority in consultation with the sewerage undertaker;
- a drainage scheme shall include appropriate arrangements for the points of connection and the capacity improvements required to serve the proposed development phasing
 - the drainage scheme shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority.

Reason:

To ensure that proper provision is made for foul water disposal in the interests of public health and ensure that development proposals do not increase the risk of sewer flooding to downstream property and to accord with policies CS9 and CS26 of the South Gloucestershire Local Plan: Core Strategy, (adopted Dec 2013).

27. Prior to commencement of each phase of remediation and prior to the commencement of any development within that phase, the following must be submitted to and approved by the Local Planning Authority:

- A summary of the findings of the ground investigation in relation to that phase and interpretation of the findings in relation to the proposed end use(s) (e.g. residential with gardens/commercial/school/public open space).
- Proposals for remediation of each phase (where this is necessary to mitigate against unacceptable risks to the development) which should accord with the broad terms of the Peter Brett Revised Contaminated Land Risk Assessment and Land Risk Assessment and Remediation Strategy March 2017; and include details of the proposed strategy for verification

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post- completion of the remediation works. Should the proposed end use of a phase be revised to a more sensitive end use, then the findings of the ground investigation shall be re-assessed in line with that more sensitive end use.

Post Completion

- Post completion of each phase of remediation and prior to the commencement of any development within that phase, a verification report shall be submitted to the LPA demonstrate that any necessary remediation has been implemented satisfactorily. To aid review and audit, the verification shall include a summary of the ground investigation for that phase, the remediation requirements, the remediation undertaken, and demonstrate adequate supervision. If unexpected contamination is found after the development is begun, work shall immediately cease upon the part of the site affected. The Local Planning Authority must be informed immediately in writing. An additional investigation and risk assessment should be undertaken and where necessary an additional remediation scheme prepared. The findings and report should be submitted to and agreed in writing to the Local Planning Authority. Thereafter the works shall be implemented in accordance with any further mitigation measures so agreed by the LPA prior to the recommencement of any development on the area of unexpected contamination.

Reason:

In the interest of public safety as a potential result of land contamination and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) .

Construction

28. Prior to the commencement of development other than site investigations, a phase specific Construction Environmental Management Plan will be submitted and approved in writing by the LPA and shall include details of:
- Construction access details
 - On-site materials, accommodation and vehicle storage
 - Vehicle Routing from the agreed External Construction Route
 - Vehicle Routing Dilapidation Survey
 - Delivery vehicle size and frequency
 - Minimizing temporary noise and vibration impacts as set out in Chapter 12 of the Environmental Statement Addendum (April 2017).
 - Ecology requirements as set out in 11 of the Environmental Statement Addendum (April 2017).

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- Neighbourhood liaison group
- Location and form of Wheel Washing
- All other matters as required by the Framework Environmental Management Plan (April 2017).

All works are to be carried out in accordance with said plan as approved.

Reason:

In the interests of residential amenity and to accord with Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy and L9 of the adopted South Gloucestershire Local Plan. Pre –commencement is required as the condition relates to the construction period.

Hours of Working

29. The hours of working on site during the period of construction shall be restricted to 7.30am-6pm Mondays to Fridays; and 8am-1.00pm on Saturdays and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the site. Any 'working' outside these hours shall have the prior written consent of the Local Planning Authority.

Reason:

To minimise disturbance to neighbouring occupiers and in accordance with Policy CS9 of the South Gloucestershire Local Plan: Core Strategy.

Access

30. No more than 500 occupied dwellings shall be served from a single access point onto the existing Highway Network.

Reason:

To ensure sufficient access onto a Highway Maintainable at public expense is provided in the interests of Highway Safety

Safer Routes to School

31. The particulars submitted as part of condition 1 for the relevant reserved matters shall include the following, which shall be in accordance with the approved Design Code and Regulating Plan (condition 5):
- Details of all 'Safer Routes to School' serving on-site and off-site education facilities;

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- Details of walking and cycling routes and how these link with the wider external network.

The details so approved shall be implemented prior to the first occupation of the first residential dwelling of each individual reserved matters consent.

Reason:

To encourage means of transport other than the private car and to accord with policy T12 of the South Gloucestershire Local Plan (adopted) January 2006 and with policies CS8 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

Way-finding Strategy

32. Prior to first occupation of each geographic phase, a Way-finding strategy to include full signage proposals shall be submitted to and agreed with the Local Planning Authority. The way finding strategy shall consider the following:

- HGV routing
- Access to the Concorde Museum
- Access to Employment Areas
- Access to development Parcels with confirmation of residential area and street names
- Directional signing to Metrobus Stops
- Cycle Trunk Route signage
- Cycle Route signage
- Pedestrian and recreational route signage
- Strategic routing signage to:
 - Bristol City Centre
 - Motorway Junctions

Reason:

To maximise appropriate routes to avoid unnecessary route choice and to maximise sustainable transport modes in compliance with Core Strategy Policy CS8 and in the interests of highway safety.

Bus Stop locations and Specification

33. The Metrobus stops illustrated on the approved access parameter plan shall be provided upon completion of the relevant serving road to wearing course presented in full Metrobus livery and attaining Metrobus Stop Type specification as agreed with the LPA. Local bus stops shall be provided to a specification that shall include as a minimum a shelter, lighting and real time information. All shelter designs to be agreed with and approved by the local planning authority.

Additional stops shall be provided where walking distances to planned dwellings exceed 400m.

Reason:

To ensure sufficient Public Transport infrastructure is provided to accommodate Public Transport Modal Share and modal shift in compliance with Core Strategy Policy CS8.

Bus Stops and Occupancy

34. Dwellings shall be located within 400m walking distance of a bus stop, unless otherwise agreed by the Council.

Reason:

To ensure sufficient Public Transport infrastructure is provided to accommodate Public Transport Modal Share and modal shift in compliance with Core Strategy Policy CS8.

School/Community Infrastructure links

35. Prior to their first use, all community and education facilities shall be linked to highway maintainable at public expense and by appropriate vehicle and sustainable transport infrastructure.

Reason:

To ensure that promotion and provision of sustainable modes of transport are maximised in compliance with Core Strategy Policy CS8 and that suitable vehicle access is provided in the interests of highway safety.

Heritage

36. A programme of historic building recording and analysis shall be secured and implemented in accordance with the approved Written Scheme of Investigation (October 2017) prior to the commencement of any demolition of, or site clearance operations affecting, the following buildings/structures:
- Control Tower
 - Underground Structure near Gun Butts N side of runway
 - Former Gun Butts
 - Compass Testing Circle
 - Air Raid Shelters
 - Pillbox, Gun emplacement and associated structures S side of runway

The programme of recording shall accord with the guidance for recording historic buildings set out within the Historic England publication entitled 'Understanding Historic Buildings: A Guide to Good Recording Practices (2016) and shall cover the interior and exterior of all the relevant historic buildings. The completed building records shall be submitted, together with evidence of the structures having been offered to the Bristol Aerospace Museum (BACT) (to be moved at their expense), to the Local Planning Authority for approval in writing and for deposition in the South Gloucestershire Historic Environment Record. The recording shall be carried out at all times in strict accordance with the approved scheme.

Reason: To ensure that an appropriate record is made of the historic building fabric that may be affected by the development. All in accordance with policies L11 and L12 of the SGLP (Adopted 2006), policy CS9 of the South Gloucestershire Local Plan Core Strategy (Adopted 2013) and the provisions of the National Planning Policy Framework (March 2012).

37. Prior to the approval of the Design code for the relevant Phase of development including the group of structures comprising the Sunken Pill Box and Gun Emplacement on southern boundary (originally identified as possible Battlefield Headquarters), further survey work shall be undertaken in accordance with the approved Written Scheme of Investigation (October 2017) in order to assess the extent, former function, degree of survival and heritage significance of the structures. The record shall be to Level 3 in order to enable an assessment of the significance of the asset at a local, regional and national level and to secure a full record of the structures should the assessment conclude that they are of local rather than national significance and their retention as part of the development is not practicable. The recording shall be carried out in strict accordance with the approved scheme and shall inform the Design Code and future development of the area in question.

Reason:

In the interests of ensuring the appearance, scale, form, materials and overall aesthetic and architectural contribution of the historic buildings is recorded for future generations and to enable any redevelopment proposals to be read in historic context. All in accordance with policies L11 and L12 of the SGLP (Adopted 2006), policy CS9 of the South Gloucestershire Local Plan Core Strategy (Adopted 2013) and the provisions of the National Planning Policy Framework (March 2012).

38. Prior to the approval of the Design code for the phase including Hangar 16U, or within 6 months of the date of planning permission – whichever is the earlier, a report shall be submitted to and approved by the LPA comprising the surveying, recording and implementing of a schedule of urgent works to Hangar 16U with a view to arresting any deterioration in its condition. This shall include a detailed

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condition survey of the building (& options appraisal) and recommended schedule and timetable for implementation of urgent works (to keep the building secure, weathertight and structurally sound). All such works as agreed by the LPA shall be implemented in accordance with a timetable to be agreed by the LPA.

Reason:

In order to ensure that future repair costs are minimised, will help inform future proposals for the building, and would be a tangible positive public benefit arising from the application. It will also reduce the risk of the building becoming identified as being 'at risk' and potentially subject to formal action by the council. All in accordance with policies L11 and L12 of the SGLP (Adopted 2006), policy CS9 of the South Gloucestershire Local Plan Core Strategy (Adopted 2013) and the provisions of the National Planning Policy Framework (March 2012).

Extra Care

39. The extra care accommodation hereby permitted shall only be used for the provision of Assisted Living Dwellings to people in need of care, being a use within Class C2 of the Town and Country Planning (Use Classes) Order 1987, (as amended), and for no other purpose. Assisted Living Dwellings means the dwelling which can accommodate up to a maximum of two occupants and shall be occupied by the Assisted Living Person and where for the avoidance of doubt there is more than one occupant, at least one occupant must be over the age of 70. Assisted Living Person shall mean a person who is identified as a person in assessed need of at least one element of care, and or support provided by a registered domiciliary car provider and can be suitably housed in such accommodation in order to maintain independence, health, wellbeing and social inclusion.

Reason:

To ensure that the use of the building remains in a C2 use at all times, to ensure that the scheme remains policy compliant.

40. The extra care accommodation hereby permitted shall be registered for the provision of extra care with the Care Quality Commission, or any successor body.

Reason:

To ensure that the use of the building remains in a C2 use at all times, to ensure that the scheme remains policy compliant.

41. The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision:

1074_00_07_001 Rev P10– Site Application Boundary
 1074_00_07_002 Rev P21– Land Use Parameter Plan
 1074_00_07_004 Rev P24 – Density Parameter Plan
 1074_00_07_005 Rev P19 – Heights Parameter Plan
 1074_00_07_006 Rev P20– Access Parameter Plan
 1074_00_07_010 Rev P19 – Landscape Parameter Plan
 1074_00_07_011 Rev P11 – Heritage Parameter Plan

36713-2012-001 Rev A– Airfield Access Strategy_ Proposed A38 Access
 FAD-PBA-011-XX-DR-C-002 Brabazon Roundabout Access
 FAD-PBA-012-XX-DR-C-001 Blenheim Roundabout Access
 470310. AX.01.14-SK01 Rev P4 Combination Ground Access junction

Tree Retention and Removal Overview_FAD-GRA-000-XX-DR-L-0110 P1
 Tree Retention and Removal Plan Page 01_FAD-GRA-000-XX-DR-L-0111 P1
 Tree Retention and Removal Plan Page 02_FAD-GRA-000-XX-DR-L-0112 P1
 Tree Retention and Removal Plan Page 03_FAD-GRA-000-XX-DR-L-0113 P1
 Tree Retention and Removal Plan Page 04_FAD-GRA-000-XX-DR-L-0114 P1
 Tree Retention and Removal Plan Page 05_FAD-GRA-000-XX-DR-L-0115 P1
 Tree Retention and Removal Plan Page 06_FAD-GRA-000-XX-DR-L-0116 P1
 Tree Retention and Removal Plan Page 07_FAD-GRA-000-XX-DR-L-0117 P1
 Tree Retention and Removal Plan Page 08_FAD-GRA-000-XX-DR-L-0118 P1
 Tree Retention and Removal Plan Page 09_FAD-GRA-000-XX-DR-L-0119 P1
 Tree Retention and Removal Plan Page 10_FAD-GRA-000-XX-DR-L-0120 P1
 Tree Retention and Removal Plan Page 11_FAD-GRA-000-XX-DR-L-0121 P1
 Tree Retention and Removal Table_FAD-GRA-000-XX-DR-L-0122 P1

Plans – submitted for information only:

Illustrative Landscape Masterplan FAD-GRA-000-XX-DR-L-1000 Rev P3
 Illustrative Landscape Distribution Masterplan – FAD-GRA-000-XX-DR-L-1001
 Rev 06
 Illustrative Masterplan Land Use & Quantum – 1074_00_03_001 Rev P21

Reason:

For the avoidance of doubt.

42. Prior to the commencement of any development within a geographical phase, but excluding site preparation works as defined by the S106 Agreement, and primary access road infrastructure, a scheme of new bird nest boxes/nesting features for the geographic phase shall be submitted to and approved in writing by the LPA. The scheme should include the type and location of all nest boxes and design

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features, to cover a variety of species including starling, house martin, kestrel and house sparrow to be provided in appropriate parts of the site. All works are to be carried out in accordance with the approved scheme.

Reason:

To protect the wildlife and ecological interests of the site, in accordance with Policy L9 of the adopted South Gloucestershire Local Plan, and Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy.

- 43 No development other than the Blenheim and Brabazon roundabout works and/or the primary access roads comprised in the first phase of the development shall be commenced until either (a) the Council is provided with satisfactory evidence that the leasehold interest registered with title number GR361160 has been determined or surrendered and merged with the freehold or (b) the said leasehold interest is bound by the terms of the S106 Agreement by way of the owner of that leasehold interest entering into a supplemental agreement to the S106 Agreement in a form acceptable to the Local Planning Authority and which is in accordance with the provisions of the Framework Agreement.

Reason:

In order to ensure that the leaseholder cannot bring forward residential development not bound by the terms of the associated S.106 obligations for supporting infrastructure and facilities, in the interests of the comprehensive development of the CPNN and in accordance with Policies C1 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy.

IN ACCORDANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2015.
POSITIVE AND PROACTIVE STATEMENT:

In dealing with this planning application the Local Planning Authority have worked with the applicant in a positive and proactive manner on seeking solutions to problems arising in the following ways: The negotiation of a revised scheme to take into account issues arising relating to landscaping, public open space, transportation, urban design, ecology, community facilities and heritage.

ADDITIONAL INFORMATION

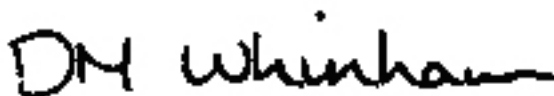
1. This permission is to be read in conjunction with the CPNN FRAMEWORK AGREEMENT made between South Gloucestershire Council (1) and YTL Property Holdings (UK) Limited (2) and BAE Systems PLC & BAE Systems (Property Investments) Limited (3) and DFE TW Residential Limited (4) DATED 20TH February 2018 and the SITE SPECIFIC AGREEMENT AND UNDERTAKING made between South Gloucestershire Council (1) and YTL Property Holdings (UK) Limited (2) dated 27th February 2018 in pursuance of

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Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.

2. The Wildlife and Countryside Act 1981 makes it a criminal offence to damage or destroy the nest of any wild bird whilst that nest is in use or being built. Established working practice avoids works to any hedgerow, tree or other vegetation where birds may reasonably be expected to make their nest (such as scrub) between 1 March and 31 August in any year. Care should be taken outside of this exclusion period as variations in climate may extend the nesting season.
3. If the development will permanently affect a right of way, then the developer must apply for a diversion of the route under the Town and Country Planning Act 1990 as part of the planning application. No development should take place over the route of the path prior to the confirmation of a Town and Country Planning Act path diversion order. If the development will temporarily affect a right of way then the developer must apply for a temporary closure of the route (preferably providing a suitable alternative route). South Gloucestershire Council will take such action as may be necessary, including direct enforcement action and prosecution, to ensure that members of the public are not inconvenienced in their use of the way both during and after development work has taken place.

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be submitted for further approval, before all or part of the development is otherwise commenced. For further information regarding the discharge of Planning Conditions and the relevant forms please view "compliance with conditions" on our website, www.southglos.gov.uk If the permission is commenced without these requirements being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council's planning website.



STRATEGIC MAJOR SITES MANAGER

DATE: 1st March 2018

South Gloucestershire Council, Department for Environment and Community Services,
PO Box 299, Strategic Planning, Civic Centre, High Street, Kingswood, Bristol, BS15 0DR
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £28 per request relating to 'householder' applications and £97 for any other full planning applications.

The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 863451

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications – within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

South Gloucestershire Council.
Department for Environment and Community Services
PO Box 299
Strategic Planning
Civic Centre High Street Kingswood Bristol BS15 0DR

The Planning Inspectorate
Room 3/04 Kite Wing
2 The Square
Temple Quay
Bristol BS1 6PN

Please ensure this instruction is complied with in order to avoid any unnecessary delay.

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.

2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time within a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provisions of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal.
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.
2. If planning permission has been granted for the development, please note that should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.
3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING REGULATIONS BEFORE ANY WORK IS COMMENCED.
4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence.

EP6E



Department for Environment and Community Services

Date: 3rd February 2022
Our Ref: P21/033/SCO
Enquiries to: Sean Herbert
Principal Planning Officer – Strategic Major Sites
Tel: 01454 863056
Email: Sean.Herbert@southglos.gov.uk

Natalie Atkinson
Senior Planning Executive
Planning & Development
YTL Developments (UK) Ltd.
Concorde House
18 Concorde Road
Patchway
Bristol, BS34 5TB

Dear Ms. Atkinson,

TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 2017, REGULATION 15

RESPONSE TO REQUEST FOR AN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SCOPING OPINION, YTL DEVELOPMENTS, BRABAZON BRISTOL (P21/033/SCO)

South Gloucestershire Council (SGC) has reviewed the content of the Environmental Impact Assessment (EIA) Scoping Report submitted by YTL (prepared by Stantec, dated December 2021), registered 7th December 2021.

Although a Screening Opinion (pursuant to Part 2 of the Regulations) has not been requested, for the sake of clarity the development type and threshold fall within Schedule 2 (10 (b)) of the Regulations: *Urban development projects* and exceeds the threshold of more than 150 dwellings and the overall area exceeds 5 hectares. The proposals represent EIA development for which an Environmental Statement (ES) is required. This letter forms the Scoping Opinion of the Local Planning Authority setting out the matters to be addressed within the ES.

The following comments are provided without prejudice to other matters which may arise either before or after submission of the forthcoming planning application.

1. THE DEVELOPMENT PROPOSAL

The application site ('the Site') comprises the entirety of the former Filton Airfield strategic site, lying between the A38 (to the east), the Cribbs Causeway retail and business area and Charlton Hayes development site (to the north and west) and the Henbury Loop rail line and Fishpool Hill development

site to the south. The administrative boundary of South Gloucestershire Council and Bristol City Council are defined by the railway line along the site's southern boundary. The Site is defined as the extent of the former airfield but includes some areas of highway access and drainage which lie outside of that.

The Site is allocated for mixed-use regeneration as part of the Cribbs Patchway New Neighbourhood (CPNN) under Policy CS26 of the South Gloucestershire Local Plan Core Strategy (adopted 2013) and falls within the Filton Enterprise Area. The Site has an extensive planning history (as detailed further in Section 2 below) and development is currently underway on the ground.

Historically, the airfield played an important role in UK aviation history and was the UK home for the construction and testing of the first supersonic passenger jet, Concorde. Several related heritage assets remain on and around the site. Immediately adjacent to the site to the south, across the railway line, are the Brabazon Hangars (an undesignated heritage asset), set to be transformed into the YTL Bristol Arena over the next couple of years.

The description of the proposed development (as stated within the Scoping Report) is as follows:

Mixed use development on 141.7 hectares of land comprising: residential development for up to 6,500 dwellings; Student Accommodation up to 50,000 sqm (Sui Generis); Business Office and Research development up to 270,000 sqm (Use Class E); General Industry up to 55,000m² (B2); 3 no. Hotels (Use Class C1); Extra Care accommodation up to 600 units (Use Class C2); Education provision to include a Secondary School (8.31ha), 2 no. Primary Schools (total 5ha), 2 no. Children's Nurseries (total 0.8ha) and up to 55,000 sqm of further education buildings (Use Class E and F1); Community facilities (Use Class E, F1 and F2); Other E use class and Sui Generis development inclusive of nightclubs, public house and other drinking establishments, and hot food takeaway together with; supporting infrastructure and facilities including demolition, ground works and remediation, highways and parking, utilities, landscaping, sustainable urban drainage system, water basins and public open space. Outline application including access, with all other matters reserved.

2. PLANNING HISTORY AND RELATIONSHIP WITH BRISTOL ARENA

There is already a considerable amount of previously submitted environmental information available to the Council and other key stakeholders that has been taken into account in preparing this Scoping Opinion.

An Outline planning permission (ref. PT14/3867/O) (the 'extant Outline') was granted for the Site on the 1st March 2018 for a strategic scale mixed-use development including 2675 new dwellings. The extant Outline was subject to EIA. An ES was originally prepared in 2014 ('2014 ES') to support an earlier BAE systems masterplan. An ES Addendum was then prepared in 2015 ('2015 ES') and a further ES Addendum prepared in 2017 ('2017 ES'). A package of mitigation measures has been agreed in response to the previous ES work secured via planning conditions, Section 106 agreement and embedded within the extant masterplan. There is also a wider Framework S106 agreement that applies across the whole of the Cribbs Patchway New Neighbourhood (CPNN) area.

The description of development for the extant Outline is as follows:

Mixed use development on 143.73 hectares of land comprising: residential development for up to 2,675 dwellings and apartments (comprising 2,635 x Use Class C3 and 40 x Live Work Units - Sui Generis); 24ha of stand-alone employment land (comprising up to 12ha Use Class B1a and a minimum of 12ha Use Class B1b/c, B2) ; 120 Bed Hotel up to 3,800 sqm (Use Class C1); Rail Station (0.45ha Use Class Sui Generis); Education provision to include a Secondary School (8.31ha), 2 no. Primary Schools (total 5ha) and 2 no. Children's Nurseries (total 0.8ha) (all Use Class D1); Community Centre incorporating Library, Built Sports facilities and Doctors surgery up to 3,400 sqm (Use Classes D1 & D2); Dental Surgery up to 800sqm; (Use Class D1); 70 Bed Extra Care Facility up to 12,500sqm (Use Class C2); Shops/Financial Services/Food and Drink facilities up to 4,787sqm (Use Classes A1, A2, A3, A4 and A5) - comprising Retail Supermarket up to 2,787sqm gross maximum (Use Class A1); Business Offices up to 500sqm (Use Class B1) together with; supporting infrastructure and facilities including demolition, ground works and remediation, highways, utilities, landscaping, sustainable urban drainage system, wildlife water basins and public open space. Outline application including access, with all other matters reserved.

A number of the planning conditions attached to the extant Outline have now been discharged and several Reserved Matters applications have been approved including for the first residential parcel of Geographic Phase 1. Development commenced in 2018 on the first residential phase with occupations of residential dwellings now taking place.

A significant change has occurred to the context of the Site with planning permission granted in 2021 by Bristol City Council (BCC) for the YTL Bristol Arena. A series of four planning applications were submitted to SGC and BCC in December 2019 that collectively proposed to deliver a 17,000-seater entertainment venue at the Brabazon Hangar building. The Arena proposals are cross-boundary in nature between SGC and BCC's administrative areas given that the Hangar building itself sits within BCC's administrative area whilst the proposed parking and access arrangements sit within SGC. A new pedestrian footbridge was approved over the railway line which forms the administrative boundary between the two authorities.

A single Environmental Statement (ES) was submitted in support of all four Arena applications which included impact assessments of socioeconomics, heritage, traffic and highways, air quality, noise and vibration, wind microclimate, ground conditions and contamination, greenhouse gases and climate change. A package of mitigation measures was attached to the Arena permissions in the form of planning conditions and Section 106 agreement. The following list summarises all four of the Arena applications:

- **Application A: Proposed Arena** (BCC application reference 19/05500/P): Hybrid planning application comprising the demolition of existing ancillary buildings and structures; full details associated with the change of use of, and associated external alterations to, the Brabazon Hangar buildings from Class B8 use to a mixture of Class D1, D2, A1, A3, A4 and B1a uses, along with outline details associated with infrastructure works including: revised vehicular access arrangements; redevelopment and reorganisation of the former aircraft apron to provide parking, servicing and associated infrastructure provision; plus associated landscaping, service infrastructure and other associated works and improvements. Address: Brabazon Hangars, Filton.
- **Application B: Highways Amendments** (SGC application reference P19/16740/F): Amendments to existing highway and highway junction at Charlton Road and West Way. Address: Land at Charlton Road and West Way.

- **Application C: Temporary Car Park** (SGC application reference P19/16741/F): Formation of a temporary car park for up to 2,000 vehicles and bus, taxi, park and ride, pick up and drop off areas on the eastern end of the former Filton Airfield. Address: Land at the former Filton Airfield.
- **Application D: Pedestrian Bridge** (SGC application reference P19/16742/F and BCC application reference 19/05514/F): Construction of a new pedestrian bridge linking the former Filton Airfield and the Brabazon Hangar site over the Henbury Loop railway line, including associated demolition, earthworks and landscaping. Address: Land at the former Filton Airfield.

A Section 73 (S73) application to amend the extant Outline was approved in 2021 (the ‘2021 S73’) (ref. P21/02390/RVC) to better accommodate the Arena and some transport-related changes. The description of development remained unchanged as well as the package of mitigations previously agreed. An ES was also submitted with this Section 73 application to take account of changes to the EIA Regulations (2017) and to assess the new cumulative impacts arising from the Arena permission. A Design Code and Phasing Plans for the eastern part of the Site were then subsequently approved by way of discharge of conditions shortly afterwards.

3. PROPOSED EIA METHODOLOGY

As set out within the Scoping Report, the ES should be prepared in accordance with Regulation 18 and Schedule 4 of the EIA regulations 2017.

The new proposals constitute a significant densification of the Site comprising a different land use mix and different masterplan layout. As such although much of the previous environmental information remains useful, a fresh ES is now required to ensure that any new or different significant effects are fully identified and assessed.

For the purposes of clarity and for the avoidance of doubt I draw your attention to a number of matters arising from your Scoping Report which should be further considered and addressed through the ES.

Key Matters:

- A number of ES reports have been provided previously and the planning history is extensive. As well as identifying any new mitigations this fresh ES should make it clear which (if any) of the existing mitigation measures are to be relied upon to support the new proposals and clearly restate those.
- In accordance with the EIA Regs (2017, Schedule 4), the ES should clearly describe the *“physical characteristics of the whole development, including where relevant, demolition works, and the land-use requirements during the construction and operational phases.”* (1. b)). As such the ES should make it clear which aspects of extant/live permissions are being relied upon to deliver the whole development so that the full land-use requirements of the development are clear to enable effects to be fully identified and assessed.
- As previously discussed, the justification for using 2036 as the future baseline assessment year is not accepted. We are aware from pre-application information (and previously approved Phasing Plans on the extant permission) that completion is likely to be circa 2048-2050. The assessments

should therefore ensure they fully consider the effects of the completed development which would be well beyond 2036.

- In informing the justification for the future assessment years/s, the assessment should include an estimated build-out rate for the development with timeframes, so it is clear when the development is intended to be completed.
- The Transport Assessment is proposed to be based on a series of development phases. It is proposed that permission is given based on a set of public transport mitigation measures that will be delivered at these key stages. It is therefore recommended that, where appropriate, the other assessments are aligned or suitably take account of the timeframes of these transport phases.
- It is requested that Phasing Plans are submitted so that it is clear which parts of the development are intended to be completed in the various development phases (aligned with the Transport Assessment). It is recommended that the various authors of the assessment chapters are provided with a consistent set of these phasing plans to ensure that their assessments clearly acknowledge and take account of the proposed development phasing. For example, there may be different construction phase effects depending on the phasing of the development.
- It should be made clear in the assessment when key facilities such as early years, education, community uses, play areas and open spaces are intended to be provided in relation to the development phasing.
- Given that this is a fresh application, updated assessments of construction phase effects should be undertaken rather than solely relying on previously submitted information. It is acknowledged that previously agreed mitigations may remain appropriate. These assessments should take account of the current programme of work on site, including Arena-related works as well as the proposed phasing of the development.
- Details should be provided within each chapter as to what consultation work has taken place and which consultees have been involved in pre-application discussions.

Some pre-application discussions have already taken place as well as two Design Review Panels. Some key points to note for the assessment arising from these discussions:

- The feedback from the Design Review Panels on the emerging Outline proposals should be reviewed and factored into assessments as appropriate.
- The new Outline is proposing a different housing mix than the extant consent with a larger proportion of flats as well as student accommodation and a greater amount of affordable housing. The assessment should therefore consider any effects arising in relation to this altered mix.
- Given the increased amount of housing being proposed, the socio-economic section should set out the findings of the updated needs assessments (i.e. for early years, education, community, health, economic and public open space etc) compared with the extant permission.
- A Public Open Space (POS) Assessment is required to be undertaken to inform the findings of the socioeconomic, landscape and biodiversity assessments. Ideally this should be in the form of a stand-alone assessment and should be assessed in the context of Council's adopted POS standards. It should include a quantitative and qualitative assessment of open space provision in the context of the proposed housing mix, layout, development phasing as well as existing and

planned provision within the wider area surrounding the site. Where shortfalls in provision are identified, proposed mitigation measures should be set out to avoid and reduce adverse effects.

- As detailed further below, it is critical that safety and security considerations in relation to the operation of the Arena are included within relevant topic assessment, in particular the Transport and Access assessment and Socio-economic assessment.
- The assessment for each aspect should take account of the comments provided by the consultees as set out within this report below and appended.

4. CUMULATIVE EFFECTS ASSESSMENT

The most significant areas of development close to the site to be considered as part of the assessment of cumulative effects is the remainder of the Cribbs Patchway New Neighbourhood development area as well as the Arena. For completeness, the list of sites should be cross-checked with the list of cumulative sites within the final Arena ES.

The assessment should take in to account the details of the latest approved schemes on each site at the time of the ES preparation.

It is acknowledged that each environmental topic area may not need to consider all cumulative schemes, depending on the nature of the topic area. The approach to the assessment of cumulative effects for each topic paper should be fully justified within each chapter of the ES.

In addition to the sites listed in Table 6.3 of the Scoping Report, the following should be noted:

Live applications under consideration on the Site:

- P21/05318/RM - Construction of primary access infrastructure (Brabazon Eastern Framework) that facilitates road links and associated pedestrian and cycle paths through the Brabazon Eastern Framework. Under consideration.
- P21/08021/RM - Laying out of public open space to include provision of two Local Equipped Areas of Play (LEAP), a Neighbourhood Equipped Area of Play (NEAP), area for Youth Play and a Sports Zone, informal open space, landscaping, water feature/sustainable drainage system (SuD) and all associated works. Under consideration.
- P21/06296/F – Former Filton Airfield - Erection of railway station with 1 no. footbridge, temporary car park, access. Under consideration.
- P20/24199/F - Former Filton Airfield - Application for the temporary change of use for a period of 3 years to mixed use retail (Class E), pop-up food and drink space (Classes A4, A5) and temporary events (sui generis) with associated car parking. Under consideration.
- Information submitted to discharge conditions attached to the Arena permissions.

In surrounding area:

- PT16/4928/O – North of the railway East of Harry Stoke New Neighbourhood (EoHSNN) - Hybrid planning application for the demolition of farmhouse and agricultural buildings and erection of 327 dwellings with a primary school. Approved 30.10.2019
- Full element of PT16/4928/O superseded by P20/03681/F - North of the railway East of Harry Stoke NN - Erection of 150 no. dwellings. Approved 18.06.2021
- PT17/5873/O – Old Gloucester Road within EoHSNN Erection of up to 158no dwellings. Approved 05.10.2020
- PT17/5387/F - Northfield Park, Patchway - Erection of Lidl foodstore (Class A1) with access, servicing, parking and associated works. Approved 27.02.2019
- PT18/6360/F – Land at Norton Farm - Demolition of existing buildings and erection of 30no dwellings. Resolution to grant 2021.
- P20/05916/F - Erection of mixed-use development comprising of Hotel and Restaurant, Supermarket, Coffee Shop with Drive Thru Facility and multi-use building (comprising flexible combinations of Use (Class A1) shops, (Class A2) financial and professional, (Class A3) food and drink, (Class A5) hot food takeaways, (Class B1) business, (Class D1) non-residential institutions, and (Class D2) Assembly and Leisure). Approved 23.04.2021
- Re-location Plans for Bristol Zoo from Clifton to Wild Place Project site in 2024 – check current status of proposals at time of assessment.

5. PROPOSED SCOPE – ASPECTS TO BE SCOPED IN

Set out below are detailed comments provided by the consultees on each environmental topic. The comments are grouped into the topics that the authority advises should be scoped in, followed by those to be scoped out.

Environmental aspects to be scoped in:

- **Socioeconomics (to include Human Health)**
- **Transport and Access**
- **Air Quality**
- **Noise and Vibration**
- **Landscape, Townscape and Visual Impact**
- **Biodiversity**
- **Wind Microclimate**
- **Climate Change and Sustainability**
- **Cultural Heritage**
- **Risk of Accidents and Disasters (to be covered within topics above)**

The following sets out the consultee responses received against each of the aspects to be scoped in:

Socioeconomics

The **Community Infrastructure Officer** has provided the following comments:

I'd like to highlight the following in relation to community infrastructure and have referenced each point to a paragraph for ease of reading:

- Para 3.2.1: *The Proposed Development seeks to accord with meeting South Gloucestershire Council's emerging Urban Lifestyle policies which aim to maximise new housing on sustainable brownfield sites.* In this context "sustainable" includes access for everyone to suitable social infrastructure including general purpose community centre, library, facilities for young people, and sport and recreation. Increasing the quantity of new housing from the permitted 2,675 dwellings to 6,500 dwellings will necessitate an increase in such facilities; evidence of existing provision and future requirements should be acknowledged within the scope of the EIA.
- Para 3.2.10: *Other land uses which formed part of the extant planning consent will also be retained within the Proposed Development, including hotels, extra care, community centre incorporating a library, built sports facilities, doctors surgery and dental surgery*
The provision of community centre, library, youth and sports facilities will be required to be scaled up in scale with the increase in dwellings/population.
- Para 4.2.1: *NPPF continues to explain that in order to achieve this (sustainable development) aim the planning system has three overarching objectives; an economic objective; a social objective and an environmental objective.* The social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being. The United Kingdom along with other members of the United Nations have agreed to pursue the 17 Global Goals for Sustainable

Development in the period to 2030. These address social progress, economic well-being and environmental protection. Para 4.2 should include reference to NPPF para 92, 93, 98 which relate to addressing the social objective.

- Para 4.3.7 *CS15: Distribution of Housing* refers to Policy CS23 (Community Infrastructure and Cultural Activity) which requires new development to provide or contribute towards additional, extended, or enhanced community and cultural infrastructure. Policy CS23 should be covered under a separate paragraph.
- Para 4.3.11 *CS24: Green infrastructure, sport and recreation* states ‘Green Infrastructure assets are integral to sustainable communities.’ YTL wholly acknowledges this statement and Brabazon has a range of high-quality green and blue infrastructure provision across the scheme. This paragraph should include the requirement for Brabazon to provide sport and recreation under policy CS24, to clarify the need for both green infrastructure and a range of public open space.
- Para 4.3.15: states that *In line with the (CS26) policy requirement, Brabazon includes a range of services and amenities expected as part of a new high-quality imaginative community, including three new schools, medical facilities, a range of retail and leisure facilities, as well as the new YTL Arena.* CS26 lists community infrastructure including secondary school, primary schools, full day nursery facilities, library, doctors surgery, community meeting space(s), indoor sport, children’s and youth facilities, well planned and integrated Green Infrastructure, sport and recreation provision sufficient to meet the needs of the new communities. Should more of these be listed in para 4.3.15?
- Para 4.3.28 lists a range of community infrastructure; this should include library and community centre to be consistent with para 3.2.10
- Para 6.2.1 refers to gate checks for BNG and Education. It should also include gate checks for community facilities.
- Para 6.2.4: Current state of environment includes 302 dw in phase1 expect to complete mid 2023. for consented Persimmon, Taylor Wimpey devts not yet built? The assessment should take account of the dwellings due to complete in that period on other sites in the CPNN.
- Table 6.3 *cumulative developments*: PT14/0565/O Cribbs Urban Village: Description of development includes “satellite GP surgery, dentist and community centre”. The design code and triangle masterplan include 3 distinctive uses on the triangle land - residential, retail store and community building - there is no GP or dentists on the development. Should this be amended for accuracy? Will the CI in the s106 agreements for these developments be taken into account in the 2036 baseline e.g. infrastructure in s106s for consented Persimmon, Taylor Wimpey devts not yet built?
- Chapter 7, Para 7.1.1: lists nurseries, schools and GP surgeries and recreation and public access under “community infrastructure”. Community centres, Youth clubs, indoor and outdoor sport facilities, play and public open space should also be included here (these are required under policies CS23 and CS24)
- Para 7.2.7 *Recreation and public access study area* appears to relate to publicly accessible places and metrobus services within 1km. What is the aim of this study area? Is it to illustrate where is walkable within 1km of the site or accessible via metrobus? Does this study aim to identify parks

and places for play, sport and recreation that are accessible from the site? Where is 1km measured from? Should this para cross-refer to para 7.2.27?

- Para 7.2.8: data sources listed e.g. IDP 2014 don't take account of the increase in population/dwelling numbers proposed; however para 7.2.9 states that latest publicly available information will be used and gaps noted.
- Para 7.2.26: refers to several dental practices: will data about the capacity of those practices be collected?
- Para 7.2.28: refers to Local centres including that on Rodway Rd in Patchway. As well as retail will the socio-economics Chapter also assess the community facilities located in Local centres?
- Para 7.3.1: Refers to stakeholders including SGC Community Services; Community Services is no longer a separate directorate, should this be amended to Environment & Community Services?
- Para 7.4.3: Significant effects listed include effects on community infrastructure provision and use and some facilities are listed; this list should include reference to the community hub and sport facilities (in extant consent) – cross ref to Para 7.1.1 above.
- Energy statement at para 15.9.6 should include non-residential buildings and development including community infrastructure.
- Section 15.7 sets out why it is considered appropriate for human health effects to be considered within socio-economics, transport and access, air quality and noise chapters of the ES, rather than an overarching health impact assessment. The justification given is that the masterplan incorporates a number of healthy community principles and lists para 15.7.4 public open space and in para 15.7.7 a mix of uses. I agree it appropriate to cover aspects of human health under these topics, but would like to see reference to community centre, library, facilities for young people, and indoor sport explicitly included in the earlier sections of the scoping report as outlined above.

Strategic Housing Enabling have made the following comments in relation to **Affordable Housing**:

The site benefits from an extant planning permission PT14/3867/O for 2,750 dwellings. The proposed development will see an increase to 6,500 dwellings.

A scoping report has been submitted which sets out items being scoped in and out of the ES. "Socio-economics" has been scoped into the ES due to the potential for likely significant effects (both beneficial and adverse) resulting from the construction and operational stages of the Proposed Development on sensitive receptors including the local labour housing market, community infrastructure such as nurseries, schools and GP surgeries as well as recreation and public access on the site.

The following extracts are taken from the submitted Scoping Report which are deemed relevant to Strategic Housing Enabling in terms of the delivery of Affordable Housing:

7.2.2 The study areas identified for the purposes of assessing the effects of the Proposed Development on relevant receptors are set out below:

7.2.3 Housing Market Study Area: South Gloucestershire Housing Market Area taking cognisance of the wider strategic housing market including the City of Bristol

7.2.10 Initial analysis of the socio-economic baseline indicates the following:

Housing Market

7.2.15 The site lies within South Gloucestershire which is part of the West of England Housing Market Area but it has a close interaction with the City of Bristol. South Gloucestershire produced a guidance note in 2020 to identify the mix and scale housing that the local population is likely to need over a plan period. The wider Bristol Strategic Housing Market Assessment was prepared in 2015 and provided evidence to inform planning and housing policy up to 2036. This work was updated and published in 2019

7.2.16 The Joint Spatial Plan (JSP) for Bristol, South Gloucestershire and North Somerset was formally withdrawn on 7 April 2020. As a result, any evidence that relates specifically to the JSP strategy has now been retracted. This has meant the Strategic Housing Market Assessment (SHMA) Volume 1 has now also been retracted. Whilst the SHMA Volume 2 was also commissioned to support the JSP, SGC it to be relevant to support South Gloucestershire's affordable housing delivery.

7.2.17 The West of England Housing Needs Assessment was published in September 2021 (West of England Local Housing Needs Assessment, September 2021).

7.2.18 As the Council's Core Strategy is now more than five years old, they have identified and updated a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply against local housing need (LHN. South Gloucestershire's 2020 annual report suggest that they have a supply of 7,833 between 2019/t20 to 2023/24.

Conclusion

Housing Enabling would like to take this opportunity and advise that any new submitted planning application must deliver a policy compliant affordable housing scheme i.e., 35% affordable housing in

accordance with current planning Policy CS18 of the Council's adopted Core Strategy Development Plan Document.

Strategic Housing Enabling have made the following comments in relation to **ExtraCare Housing**:

The site benefits from an extant planning permission PT14/3867/O for 2,750 dwellings. The proposed development will see an increase to 6,500 dwellings.

A scoping report has been submitted which sets out items being scoped in and out of the ES. "Socio-economics" has been scoped into the ES due to the potential for likely significant effects (both beneficial and adverse) resulting from the construction and operational stages of the Proposed Development on sensitive receptors including the local labour housing market, community infrastructure such as nurseries, schools and GP surgeries as well as recreation and public access on the site.

The following extracts are taken from the submitted Scoping Report which are deemed relevant to Strategic Housing Enabling in terms of the delivery of Affordable Housing:

7.2.2 The study areas identified for the purposes of assessing the effects of the Proposed Development on relevant receptors are set out below:

7.2.3 Housing Market Study Area: South Gloucestershire Housing Market Area taking cognisance of the wider strategic housing market including the City of Bristol

7.2.10 Initial analysis of the socio-economic baseline indicates the following:

Housing Market

7.2.15 The site lies within South Gloucestershire which is part of the West of England Housing Market Area but it has a close interaction with the City of Bristol. South Gloucestershire produced a guidance note in 2020 to identify the mix and scale housing that the local population is likely to need over a plan period. The wider Bristol Strategic Housing Market Assessment was prepared in 2015 and provided evidence to inform planning and housing policy up to 2036. This work was updated and published in 2019

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7.2.18 As the Council's Core Strategy is now more than five years old, they have identified and updated a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply against local housing need (LHN. South Gloucestershire's 2020 annual report suggest that they have a supply of 7,833 between 2019/t20 to 2023/24.

Conclusion

- ExtraCare Housing is sought in line with Policy CS20 of the Council's adopted Core Strategy Development Plan. This policy gives regard to the Use Class Order and whether an application is subject to the provisions of Policy CS18 in relation to affordable housing provision.
- An ExtraCare Housing application will also need to comply with the requirements of the Affordable Housing and ExtraCare Housing Supplementary Planning Document. Schemes will be required to meet development and location criteria in particular CS1 relating to high quality design and CS5 relating to location.

The **Self-Build Officer** has made the following comments:

The site benefits from an extant planning permission PT14/3867/O for 2,750 dwellings. The proposed development will see an increase to 6,500 dwellings.

A scoping report has been submitted which sets out items being scoped in and out of the ES. "Socio-economics" has been scoped into the ES due to the potential for likely significant effects (both beneficial and adverse) resulting from the construction and operational stages of the Proposed Development on sensitive receptors including the local labour housing market, community infrastructure such as nurseries, schools and GP surgeries as well as recreation and public access on the site.

The following extracts are taken from the submitted Scoping Report which are deemed relevant to Strategic Housing Enabling in terms of the delivery of Self and Custom Housebuilding:

7.2.2 The study areas identified for the purposes of assessing the effects of the Proposed Development on relevant receptors are set out below:

7.2.3 Housing Market Study Area: South Gloucestershire Housing Market Area taking cognisance of the wider strategic housing market including the City of Bristol

7.2.10 Initial analysis of the socio-economic baseline indicates the following:

Housing Market

7.2.15 The site lies within South Gloucestershire which is part of the West of England Housing Market Area but it has a close interaction with the City of Bristol. South Gloucestershire produced a guidance note in 2020 to identify the mix and scale housing that the local population is likely to need over a plan period. The wider Bristol Strategic Housing Market Assessment was prepared in 2015 and provided evidence to inform planning and housing policy up to 2036. This work was updated and published in 2019

7.2.16 The Joint Spatial Plan (JSP) for Bristol, South Gloucestershire and North Somerset was formally withdrawn on 7 April 2020. As a result, any evidence that relates specifically to the JSP strategy has now been retracted. This has meant the Strategic Housing Market Assessment (SHMA) Volume 1 has now also been retracted. Whilst the SHMA Volume 2 was also commissioned to support the JSP, SGC it to be relevant to support South Gloucestershire's affordable housing delivery.

7.2.17 The West of England Housing Needs Assessment was published in September 2021 (West of England Local Housing Needs Assessment, September 2021).

7.2.18 As the Council's Core Strategy is now more than five years old, they have identified and updated a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply

against local housing need (LHN. South Gloucestershire's 2020 annual report suggest that they have a supply of 7,833 between 2019/t20 to 2023/24.

Policy:

The Self-build and Custom Housebuilding Act 2015 placed a duty on local authorities to keep a register of individuals (and associations of individuals) who wish to acquire serviced plots of land to bring forward Self-build and custom housebuilding projects, to publicise that register and to have regard to it when carrying out planning and housing functions. South Gloucestershire Council have kept a register since the 1st April 2016, as of the 11th January 2022 the total number of entries on the register was 1109. Further information can be found on the Council's self-build and custom housebuilding web page.

The Housing and Planning Act 2016 (Section 9, (1)) defines Self-build and Custom Housebuilding as "the building or completion by -

1. individuals
2. associations of individuals, or
3. persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals.

It does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person".

The Housing and Planning Act 2016 defines a serviced plot of land as a plot that –

- a) has access to a public highway and has connections for electricity, water and waste water, or
- b) can be provided with those things in specified circumstances or within a specified period.

The Policies Sites and Places (PSP Plan) was adopted on 8th November 2017 and forms part of the South Gloucestershire Development Plan. The PSP Plan contains detailed planning policies to manage new development, allocate and safeguard sites for various types of development and includes Policy PSP42 – Self and Custom Housebuilding. When considering such proposal(s) for self and custom build dwellings the Council will take a positive approach. The Council will require developers to supply at least 5% of the total dwellings on residential and mixed-use sites of over 100 dwellings, for sale to self and custom builders (criterion 4).

The Council's first Self-Build and Custom Housebuilding Supplementary Planning Document was adopted on 30th April 2021. The SPD provides further guidance and advice on the implementation of policy PSP42.

Conclusion:

I would advise that any new submitted planning application for development over 100+ units must deliver policy compliant self-build and custom housebuilding plots in line with current planning policy PSP42 of the Council's adopted Policies Sites and Places Plan (PSP).

Human Health

The **Public Health Officer** has made the following comments:

Paragraph 15.7 of the report, entitled 'Human Health' seeks to justify that the potential effects on of the proposed development on human health are scoped out of the EIA. This is proposed on the grounds that the masterplan has incorporated several healthy community principles and any health effects will be considered within the Environmental Statement as part of the socio-economic, transport, air quality and noise chapters, rather than as a Health Impact Assessment.

I do not consider that this is adequate for the following reasons:

1. This does not comply with Policy PSP9 of the SGC Policy Sites and Places Plan (adopted 2017). A development of this scale is clearly included within the 'very major development' category and requires a full Health Impact Assessment to identify and promote positive health impacts, mitigate negative ones and reduce health inequalities.
2. Policy PSP9 also requires applicants of 'very major developments' to consult the Director of Public Health at pre-application stage to ascertain whether a Health Impact Assessment is required. To my knowledge, the applicants have not done this, so cannot assume that a HIA would not be required.

The Scoping document contains a very limited amount of detail relating to health and no mention of health inequalities and how these may be addressed. A very large-scale development such as Brabazon will have long-term health implications for sectors of the population of South Gloucestershire and Bristol and these should be properly assessed and quantified at the earliest stage. A full Health Impact assessment should therefore be included either as part of the EIA or as a separate assessment.

Transport and Access

SGC Highways have been involved in pre-application discussions and have provided comments as follows:

We have now reviewed the EIA Scoping Report submitted for the latest proposals for the redevelopment of the former Filton Airfield under application (ref P21/033/SCO) and understand that this is seeking to increase the development density of this site.

Overall, whilst we consider that the procedures described in this document are acceptable, we are rather concerned about the details of the future development and its relationship to transport provision as set out here. This is because they do not accord with our understanding of these issues arising from direct discussions with the applicant. This is matter of great concern as it is the first time these proposals have appeared in the public domain and so we consider that this information is very likely to lead to public misunderstanding of this development. Hence, we would wish to see these items significantly revised to emphasize the proposed step-change in non-car transport provision.

In addition, we have a number of detailed comments about the highways and transportation matters raised by this document are set out below. They are as follows:

- Index – We are pleased to note that this document includes an Index, however, as no page numbers are provided within the body of the text, this appears to be of very little value. Hence, we would welcome the addition of these numbers so that the document is more accessible to the public.
- Paragraph 2.2.5 – We would not wish to see M5 Junction 17 described as the ‘principal access’ to the regional shopping centre at Cribbs Causeway and an alternative nomenclature should be employed.
- Paragraph 2.26 – The history of the Henbury Loop stated here seems to be incorrect as we understand that unadvertised workman’s trains continued to serve North Filton/Filton North station for many years after its public closure.
- Section 3.1 – We note that the description of development is different from the extant consent and it includes a larger quantum of development overall, as well as land- uses which will potentially generate more trips. Therefore, so explanation of the means by which the number of trips generated will be controlled in practice is required. This is particularly pertinent given the presence of the Arena and associated multi-storey car parks which did not form part of the extant consent.
- Section 3.2 – It is our understanding that later phases of the Brabazon development will be dependent on the achievement of pre-set modal split targets which are also likely to dictate the level of non-car transport provision and all will be subject to appropriate legal agreements. This is not clear from this section of the text and so we would expect this document to be revised to reflect an accurate narrative for this relationship.
- Paragraph 3.2.7 – The explanation of the relationship between transport provision and densification set out here does not accord with our understanding. Whilst we acknowledge that this is not transport report, we would expect it to be correct and to highlight the applicants’

intentions to submit these proposals to a full transport assessment. This should include an indication of potential timescales.

- Paragraph 4.3.14 – It is noteworthy that the very little of the *'ambitious transport proposals'* mentioned here is actually being delivered by the Applicant and that it was designed to accommodate the existing approved Airfield redevelopment, not any future intensification of the site. Hence, we look forward to significant additional transport measures, both 'hard' and 'soft' to support the densification of the site.
- Paragraph 6.2.5 et seq – We would be interested to understand the applicants intend to derive 2036 Base Traffic flows for this assessment as we have already indicated that the GBATS model alone is not fit for this purpose.
- Section 8 – We would reiterate our comments about the relationship between development and transport provision here.
- Paragraph 8.1.2 – It is not clear from this text that the quantum of development will be dependent on success in achieving modal split and mitigating increased traffic flows at each phase change point. Moreover, this paragraph states that *'additional densification sought within the Proposed Development will be achieved through additional public transport capacity alongside enhanced cycle and pedestrian infrastructure.'* Given that the current RM application will set the main strategic infrastructure to be constructed through the site, it is not clear how 'enhanced' strategic infrastructure will be realised without the RM application taking that into account now. Hence, whilst raising our concerns at this point, we must reserve final judging on these statements until such time as a full assessment of the transport facilities provided for this development has been undertaken.
- Table 8.1 – In addition to the modes shown, the applicants will be required to make provision for all modes of travel at every stage which includes cars, cycling, walking and general public transport. Moreover, should they wish their site to be served by other modes listed then they will need to make provision for them to do so. In this context, we refer particularly to mass transit which is still at the concept stage at present.
- Paragraph 8.1.5 to 8.1.7 – This text is inaccurate because the Airfield redevelopment already has access to these junctions listed here and they are not 'additional proposed accesses' as stated in this text and so are not related to the mitigation of relocation of development from Patchway Trading Estate. As implied by the text. Indeed, we await the applicants' proposals for this mitigation.
- Paragraph 8.1.6 – Whilst it has been indicated that the combination Junction may be usable by Airfield traffic, to-date no assessment of this junction has been carried out and so no formal agreement for its use had been made. This should be reflected here.
- Paragraph 8.1.7 and 8.1.8 – We acknowledge that as a result of previous assessment work, relocation of housing development from Patchway Trading Estate to the Airfield is likely to mean that on a macro-scale traffic movements will not be changed. However, as the redevelopment of the Trading Estate has not obtained formal planning permission, it will require detailed assessment which will undoubtedly result in local changes in traffic patterns. It will also be necessary to ensure that it does not breach the legal thresholds for traffic flows from the Airfield development. If it does, then additional mitigation will be required. Overall, therefore, the

presumption that this move is a mere formality conveyed by this text is incorrect and it should be revised to reflect the need for assessment to prove that this is possible. This must include an assessment of all the transportation impacts arising from the change such as accident potential, user safety, pedestrian and residential amenity etc.

- Section 8.2 – The comments made about Section 8.1 above apply here as well.
- Paragraph 8.2.3 – A reference to the application number (PT14/3867/O) should be included here for clarity. Moreover, the site access arrangements described here should include reference to the bus gate to/from Charlton Road, as well as presence of one at San Andreas roundabout available for metrobus and other bus services only.
- Section 8.3 – We are unaware of any pre-submission consultations held by YTL with Bristol City Council and National Highways and would welcome evidence of these.
- Section 8.4 – Here again, our comments about the transfer of housing from Patchway Trading Estate to the Airfield apply here as well. Thus, we consider that the potential effects of a development of this scale and nature must include all matters not just traffic flows, hence it is necessary to examine other matters such as accidents, safety, amenity etc.
- Paragraph 8.4.2 – This paragraph states that there will be '*significant effects of increases in traffic on the existing local highway network*' which is contrary to the statements made to-date by YTL and their transport consultants. This needs explanation.
- Paragraph 8.4.2 – Also the use of the term planning consent in 2020 is rather odd and needs to be clarified with a reference number.
- Paragraph 9.2.5 – Is there likely to be any impact from passenger trains using the turn back at Henbury station?
- Paragraph 9.5 – Given the scale of this development a full assessment of the transportation impacts of the construction phase is required. This regime must ensure that it dovetails with that associated with the Arena.
- Paragraph 10.5.4 to 10.5.6 – Will this include an allowance for traffic related to the Arena?

National Highways have provided the following comments (copy of response appended):

Thank you for inviting National Highways to provide comments on the above request for a scoping opinion. National Highways is a Statutory Consultee on Planning Applications under the Town and Country Planning (Development Management Procedure) Order 2015. In discharging this responsibility, we act as a proactive partner and therefore welcome pre-application discussion, including the opportunity to provide advice on the scope of any Environmental Statement pursuant to the procedures set out in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, which also identifies Highways England (now National Highways) as a statutory party.

The request is in respect of a proposed 141.7ha mixed-use development known as Brabazon at the former Filton airfield. The site is located approximately 600m south of the M5 boundary, 850m south of M5 Junction 17, 2.4km south of M5 Junction 16 and 3.5km west of M32 Junction 1.

The site already benefits from outline permission granted under reference PT14/3867/O for a 141.733ha mixed use development comprising up to 2,675 dwellings, employment (including office), rail station, education, community centre, sports facilities, healthcare facilities, care home, retail and supporting infrastructure. It is understood a new outline planning application is now proposed to accommodate an uplift in the number of residential units from the 2,675 consented to 6,500.

Our comments relate to matters arising from our responsibilities to manage and maintain the safe operation of the strategic road network (SRN), in this case the M5 and M32 motorways. We have therefore set out below both the general and specific areas of concern that National Highways would expect to see considered as part of any Environmental Statement. Comments relating to the local road network should be sought from the appropriate Local Highway Authority.

General aspects to be addressed in all cases:

- An assessment of transport related impacts of the proposal should be carried out and reported as described in the current Ministry for Housing, Communities and Local Government (MHCLG) guidance on *'Travel Plans, Transport Assessments and Statements in decision-taking'*.
- Environmental impacts arising from any disruption during construction, traffic volume, composition or routing change and transport infrastructure modification should be fully assessed and reported, along with the environmental impact of the road network upon the development itself.
- Adverse changes to noise and air quality should be particularly considered, including in relation to compliance with the European air quality Limit Values and/or Local Authority designated Air Quality Management Areas (AQMAS) and World Health Organisation (WHO) criteria.
- No new connections are permitted to National Highways' drainage network. In the case of an existing 'permitted' connection, this can only be retained if there is no land use change.
- Development must not lead to any surface water flooding on the SRN carriageway.

Location specific considerations:

- The transport assessment should consider the impact of the development (including during the construction phase), on the operation of the strategic road network, particularly M5 J16 and J17 and J1 of the M32, in line with national planning practice guidance and DfT Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development'. We are currently engaging with South Gloucestershire Council regarding the scope of the transport assessment required to support any application. Where it is identified that the proposals would result in a severe congestion or unacceptable safety impact, mitigation will be required in line with current policy.
- The effects of the proposed development should be assessed cumulatively with other schemes and we would expect the applicants to agree an appropriate list of schemes, including committed development in the area, with the Local Planning Authority.

These comments are only advisory, as the responsibility for determining the final scope and form of the EIA Report rests with the local planning authority, and they imply no pre-determined view as to the acceptability of the proposed development in traffic, environmental or highway terms.

Network Rail have provided the following comments (copy of comments appended):

Thank you for your email dated 8 December 2021 together with the opportunity to comment on this proposal. The topic of interest to Network Rail is Transport and Access.

Network Rail has a statutory obligation of ensure the availability of safe train paths and as such we are required to take an active interest in any development adjacent to our infrastructure that potentially could affect the safe operation of the railway. When you formally consult Network Rail we need to be satisfied that there will be no adverse safety issues arising as a result of the proposed development to users of the railway.

Based on the current proposals, we therefore comment that the ES must explore:

- i) The impact of the development upon passenger numbers/usage the new and existing railway stations and the need for any improved customer facilities to mitigate any adverse impacts;
- ii) The change in both pedestrian and vehicular movement over the railway, including any proposed new assets crossing the railway and the use of existing level crossings;
- iii) The ES should demonstrate that the railway infrastructure will not be compromised and be adequately protected during construction and operation.

As Network Rail is a publicly funded organisation with a regulated remit it would not be reasonable to require Network Rail to fund rail improvements necessitated by commercial development. It is therefore appropriate to also include any developer contributions to fund such improvements with an appropriate legal agreement linked to any planning permission.

Air Quality

Environmental Protection Team have provided the following comments:

The EIA Scoping Report by Stantec on behalf of YTL developments (Rev 2, dated 6 December 2021) has been reviewed. Air quality has been scoped into the EIA and is covered in Chapter 9 of the Scoping Report. The relevant potential air quality effects and their significance are satisfactorily identified. The proposed assessment methodology is generally acceptable, however, the most recent version of the Emissions Factor Toolkit (EFT) v11.0 (November 2021) should be used rather than EFT v10.1 referred to in the report. It should also be noted as advised on the Defra website¹ that the default fleet projections in EFT v11.0 are based on fleet growth assumptions which were current before the Covid-19 pandemic. Consequently, default fleet outputs from the tool do not reflect longer term impacts on emissions resulting from behavioural change during the pandemic.

Similarly with use of background maps, the projections in the 2018 reference year background maps are based on assumptions prior to the pandemic and again do not reflect longer term impacts on emissions of behavioural change during the pandemic. These uncertainties will need to be acknowledged and considered within the assessment.

Furthermore, the impacts on air quality should be assessed against the current baseline for the site, not the extant permission, to reflect the realistic situation that will be experienced by receptors, although a comparison with the extant permission, as indicated in paragraph 9.5.8, would also be useful.

The intention in Paragraph 5.4.1 that the proposals will incorporate measures to mitigate potential adverse environmental effects and to enhance environmental benefits, where possible through its design, is noted and welcomed. As regards possible mitigation, the principles identified in the “Land-Use Planning & Development Control: Planning for Air Quality” guidance produced by Environmental Protection UK (EPUK) /Institute of Air Quality Management (IAQM) (January 2017)² paragraph 5.10 should be applied to the development in the design and operational phases to reduce both emissions and exposure, thereby contributing to better air quality management. In particular with regard to the significant increase in density and building heights, the design of the development should not create new “street canyons” or building configurations that inhibit effective pollution dispersion as this could have a detrimental effect on air quality and subsequent impacts on the health of future occupants and users of the site. .

Further consultation is welcomed with the Environmental Protection Team to agree the detailed assessment methodology and to obtain the latest information and available data.

Natural England have provided the following comments on Air Quality (refer to full set of comments appended):

Air Quality

Air quality in the UK has improved over recent decades but air pollution remains a significant issue. For example, approximately 85% of protected nature conservation sites are currently in exceedance

¹ <https://iaqm.defra.gov.uk/air-quality-assessment/>

² <https://iaqm.co.uk/text/guidance/air-quality-planning-guidance.pdf>

of nitrogen levels where harm is expected (critical load) and approximately 87% of sites exceed the level of ammonia where harm is expected for lower plants (critical level of 1µg) [1]. A priority action in the England Biodiversity Strategy is to reduce air pollution impacts on biodiversity. The Government's Clean Air Strategy also has a number of targets to reduce emissions including to reduce damaging deposition of reactive forms of nitrogen by 17% over England's protected priority sensitive habitats by 2030, to reduce emissions of ammonia against the 2005 baseline by 16% by 2030 and to reduce emissions of NOx and SO2 against a 2005 baseline of 73% and 88% respectively by 2030. Shared Nitrogen Action Plans (SNAPs) have also been identified as a tool to reduce environmental damage from air pollution.

The planning system plays a key role in determining the location of developments which may give rise to pollution, either directly, or from traffic generation, and hence planning decisions can have a significant impact on the quality of air, water and land.

The ES should take account of the risks of air pollution and how these can be managed or reduced. This should include taking account of any strategic solutions or SNAPs, which may be being developed or implemented to mitigate the impacts on air quality. Further information on air pollution impacts and the sensitivity of different habitats/designated sites can be found on the Air Pollution Information System (www.apis.ac.uk).

Information on air pollution modelling, screening and assessment can be found on the following websites:

- SCAIL Combustion and SCAIL Agriculture - <http://www.scail.ceh.ac.uk/>
- Ammonia assessment for agricultural development
<https://www.gov.uk/guidance/intensivefarming-risk-assessment-for-your-environmental-permit>
- Environment Agency Screening Tool for industrial emissions
<https://www.gov.uk/guidance/airemissions-risk-assessment-for-your-environmental-permit>
- Defra Local Air Quality Management Area Tool (Industrial Emission Screening Tool) – England
<http://www.airqualityengland.co.uk/laqm>

Noise and Vibration

Environmental Protection Team have provided the following comments:

The Environmental Protection team (Noise) notes the submitted Stantec EIA -scoping report ref 332510846 dated Dec2021; and specifically, Chapter 10 Noise and Vibration. The proposed methodology scoped for the anticipated detailed noise assessment and analysis is satisfactory, alongside the framework CEMP Construction and Environmental Management Plan -

- building on the agreed previous CEMP in the extant consent; now scoped as Short ,Medium and Long term works given the anticipated long build out period.
- Local Planning and Noise docs are references in the set-out methodology: SPG1 Note specifically refers.
- Para 10.3.1 confirms proposed discussions at officer level to validate real time monitoring protocols, and the detailed assessment/modelling; to be of value given the significant increase in noise
- sensitive receptors recognised as a fundamental reason for the voluntarily EIA submission.

Construction Sites

1. Any existing buildings on site shall be assessed for asbestos materials prior to demolition. Any asbestos must be removed in full consultation with the Health & Safety Executive and safely disposed of providing a full audit trail of waste disposal.
2. Where the site is adjacent to residential or business premises, heavy plant, noisy equipment or operations and deliveries, shall not take place outside the hours of;
Monday - Friday.....7.30 – 18.00
Saturday.....8.00 – 13.00.
No noisy activities on Sundays or Bank Holidays.
3. All plant and equipment shall be suitably chosen, sited, operated and serviced so as to minimise noise, vibration, fumes and dust. Best practical means shall be employed to minimise potential nuisance to neighbouring properties. All plant should be turned off when not in use.
4. Pneumatic tools shall be fitted with an integral silencer and/or purpose made muffler, which is maintained in good repair.
5. In periods of dry weather, dust control measures shall be employed including wheel washing and damping down. Any stockpiles of materials which are likely to give rise to windblown dust, shall be sheeted, wetted or so located as to minimise any potential nuisance. Lorries carrying waste material from the site shall be covered or sheeted at all times.
6. Where the site is adjacent to residential or business premises, all waste materials shall be removed from site and suitably disposed of. No burning of waste material is permitted.
7. Radio noise shall not be audible at the boundary of the nearest neighbouring property.

8. Any temporary oil storage tanks shall be safely and securely sited so as to prevent pollution in the events of spills or leakage. It is also strongly recommended that any oil storage tank should be surrounded by an impervious oil/watertight bund having a capacity of at least 110% of the tank.
9. Neighbouring residential premises shall be advised of any unavoidable late night or early morning working which may cause disturbance. Any such works shall be notified to the Environmental Services Department on (01454) 868001 prior to commencement.
10. For sites with more than 5 houses, and for large industrial/commercial developments, it is strongly recommended that the applicant register the site under the "Considerate Contractors Scheme". Further information and an application form can be obtained by telephoning... Tel: (01920) 872837.

Landscape, Townscape and Visual Impact

The **Landscape Officer** has provided the following comments:

The extant planning permission is for 2,675 dwellings. The Proposed Development will see an increase to 6,500 dwellings, to be achieved through an increase in density and building height. It is intended that the highest density housing will be within the central and eastern area, near Brabazon Park, with building heights of up to 18 storeys and 2 buildings up to 30 storeys. The height and density of development will decrease towards the western part of the site.

A scoping report has been submitted which sets out items being scoped in and out of the ES. Landscape & visual impact and biodiversity is to be scoped into the ES, with details of the information to be included within the Landscape & Townscape Visual Impact Assessment (LTVIA) set out in section 11. The report states that the LTVIA will be carried out in accordance with GLVIA 3 guidance and related best practice, including 'Guidance on Tall Buildings' CABE (2007)'Townscape Character Assessment' Technical Information Note 05/2017 by the Landscape Institute (LI, revised April 2018). The assessment will include a ZTV to show the theoretical extent of the area from which the proposed development is likely to be visible and will illustrate the worst-case scenario. The study will also factor in a maximum development height of 134m within the tall building zones, to accurately assess the landscape and visual impact.

The scoping report confirms that the approved Landscape Strategy will be broadly retained, but that there will be changes required in the western half of the site to accommodate the revised development layout. 4.3.23 of the report states that the development intends to deliver at least 10% Biodiversity Net Gain, which is welcomed. A BNG calculation should be submitted to demonstrate this.

The scoping report refers to our CS policies but omits CS2 GI. The forthcoming proposals will need to also adhere to this policy CS2 and should also accord with our adopted GI SPD and Trees and Development SPD, adopted in April this year.

Conclusion

It is considered that the landscape information to be included in the ES set out in the scoping report is acceptable. Consultation is welcomed to agree the visual receptors and verified views to support the LTVIA, as confirmed at 11.3.1 of the scoping report.

Natural England have provided the following comments on Landscape (refer to full set of comments appended):

Landscape and visual impacts

The environmental assessment should refer to the relevant National Character Areas. Character area profiles set out descriptions of each landscape area and statements of environmental opportunity.

The ES should include a full assessment of the potential impacts of the development on local landscape character using landscape assessment methodologies. We encourage the use of Landscape Character Assessment (LCA), based on the good practice guidelines produced jointly by the Landscape Institute and Institute of Environmental Assessment in 2013. LCA provides a sound basis for guiding, informing, and understanding the ability of any location to accommodate change and to make positive proposals for conserving, enhancing or regenerating character.

A landscape and visual impact assessment should also be carried out for the proposed development and surrounding area. Natural England recommends use of the methodology set out in Guidelines for Landscape and Visual Impact Assessment 2013 ((3rd edition) produced by the Landscape Institute and the Institute of Environmental Assessment and Management.

For National Parks and AONBs, we advise that the assessment also includes effects on the ‘special qualities’ of the designated landscape, as set out in the statutory management plan for the area. These identify the particular landscape and related characteristics which underpin the natural beauty of the area and its designation status.

The assessment should also include the cumulative effect of the development with other relevant existing or proposed developments in the area. This should include an assessment of the impacts of other proposals currently at scoping stage.

To ensure high quality development that responds to and enhances local landscape character and distinctiveness, the siting and design of the proposed development should reflect local characteristics and, wherever possible, use local materials. Account should be taken of local design policies, design codes and guides as well as guidance in the National Design Guide and National Model Design Code. The ES should set out the measures to be taken to ensure the development will deliver high standards of design and green infrastructure. It should also set out detail of layout alternatives, where appropriate, with a justification of the selected option in terms of landscape impact and benefit.

Heritage Landscapes

The ES should include an assessment of the impacts on any land in the area affected by the development which qualifies for conditional exemption from capital taxes on the grounds of outstanding scenic, scientific, or historic interest. An up-to-date list is available at www.hmrc.gov.uk/heritage/lbsearch.htm.

Connecting People with nature

The ES should consider potential impacts on access land, common land, public rights of way and, where appropriate, the England Coast Path and coastal access routes and coastal margin in the vicinity of the development, in line with NPPF paragraph 100. It should assess the scope to mitigate for any adverse impacts. Rights of Way Improvement Plans (ROWIP) can be used to identify public rights of way within or adjacent to the proposed site that should be maintained or enhanced.

Measures to help people to better access the countryside for quiet enjoyment and opportunities to connect with nature should be considered. Such measures could include reinstating existing footpaths or the creation of new footpaths, cycleways, and bridleways. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Access to nature within the development site should also be considered, including the role that natural links have in connecting habitats and providing potential pathways for movements of species.

Relevant aspects of local authority green infrastructure strategies should be incorporated where appropriate.

The **Urban Design Officer** has provided the following comments:

NPPF – Design (para 124-132)

South Gloucestershire Core Strategy (Dec 13)

CS1: High Quality Design

CS25: Communities of the North Fringe of the Bristol Urban Area

CS26: Cribbs Patchway New Neighbourhood

The South Gloucestershire Design Checklist SPD (Adopted August 2007)

NPPG – Design

National Design Guide

National Model Design Codes

South Gloucestershire Policies, Sites & Places DPD

PSP1: Local Distinctiveness

PSP6: Onsite Renewable & Low Carbon Energy

Comments

I defer to respective specialist colleagues where appropriate but note the following points:

1. Para 15.5.4: The impact of tall buildings on their neighbours will require careful consideration. The commitment to daylight, sunlight & overshadowing considerations being incorporated into the detailed design of each phase is welcome. *Design Coding as well as Reserved Matters, should reflect this commitment.* Engagement to date with the Design Panel has been very welcome and for a project of this scale should continue. Commitment to a clear programme, specifying when the Design Panel will be engaged throughout the life of this new outline application, subsequent DoCs & R/Ms would be helpful. Early engagement with the panel in respect of tall buildings and those phases affected by them would be very welcome.
2. Re 15.7 Human Health. Please note that the project is of such a scale that it triggers policy *PSP9 – Health Impact Assessments*. The PSPDPD para 4.19 states, *‘For developments requiring an Environmental Impact Assessment (EIA), the potential health impacts identified as part of the HIA should be clearly cross-referenced between both documents where appropriate.’* A HIA should also be undertaken at the pre-app stage.
3. 15.9 Sustainability. It is disappointing to note that out-dated standards are still being referred to. The Panel recently noted that *with respect to operational carbon, embodied carbon, biodiversity net gain or other environmental metrics that targets for the masterplan had not been set for the site, or for phases, or areas of the site. The only targets in place at this stage were those required for statutory compliance. The design team reported that this ‘detail’ will emerge as the work continues.* The Panel therefore suggested that *further consideration is given to how challenging targets, constraints or incentives may be set as part of the process by which environmental standards can be raised. There is an opportunity and a need driven by the scale of development overall, and the timing in relation to current global issues and local policy development, to work with the Council to align the sustainability aims with emerging local and national policy. Currently there is a possibility that the detailed design, referred to by the team, may simply establish what the current proposals offer in terms of potential net gains in biodiversity, or other measures. This bottom-up process is important. However, it is a different process to that which sets strategic*

targets for environmental performance, which can then inform the design and facilitate more ambitious and innovative results. The design team and the client for this project clearly have the expertise and desire to deliver an exemplary scheme in terms of sustainability. Nevertheless, the Panel has yet to see any defined metrics against which the efficacy of the design approach can be quantifiably assessed or benchmarked. Aligning strategic targets for environmental performance would no doubt influence responses to other issues as set out in the EIA.

Biodiversity

The **SGC Ecologist** has provided the following comments:

The site comprises 40ha of semi-improved grassland, 40ha of poor semi-improved grassland, 1.6 ha broadleaved woodland, 1.3ha bramble scrub and 0.8ha settlement lagoon (eastern end of site) and 51ha of hard standing. There is also 4km of hedgerow and scrub boundary habitat.

Scoping Opinion

BNG - The applicant's commitment for Brabazon to deliver at least 10% BNG in line with South Gloucestershire's Local Plan policy PSP19 is welcomed and encouraged (paragraph 4.3.23) and we will happily consult with the applicant on the approach to achieving this. We expect to see the consideration of net gain from the outset in the design process, with the baseline calculations based on original Phase 1 maps of the site and the design of the project evolving to fit the net gain targets. It is expected that suitable metrics i.e. Natural England's Biodiversity Metric 3.0. will be used and that there will be consideration for the creation of Habitats of Principle Importance and/or habitats which will support Species of Principle Importance within the design to help achieve the net gain target.

Biodiversity assessment methodology - Section 6 of the scoping report states – '*Given the planning history for the Site, the ES will consider the current state of the environment and the 2036 baseline*' (paragraph 6.2.2), however it is not clear in Section 12 Biodiversity whether the biodiversity assessment will comprise both an assessment of impacts on the current baseline as well as an assessment of impacts on the future 2036 baseline, or, if it will only comprise an assessment of impacts on the 2036 baseline. It lists receptors that are being scoped out of the biodiversity assessment, including foraging and commuting bats, badgers, breeding birds, GCN, slow worm – it is assumed this is with regard to the future baseline only. We recommend that all potential impacts of the new outline are assessed on the current 2022 baseline. It is appreciated that the extant outline permission and its conditions mean that some ecological mitigation has been set, and in some instances is underway. For this reason, it is important that the biodiversity chapter sets out clearly what has already been undertaken as part of the extant permission and how this interlocks with the new outline and how it effects the assessment. It is encouraged that the biodiversity assessment does not rely on that from the previous ES or addendums but rather is started from afresh.

With regard to the 2036 baseline, there is concern over the uncertainties involved with predictions of a baseline 15 years in advance, and especially since it is known that not all phases will be built out by then.

The biodiversity assessment needs to set out the zone of influence of the project, or, the zone of influence of the different phases of the project (if appropriate), for each ecological receptor. There seems to be some confusion in the scoping report over the use of 'zone of influence' (paragraphs 12.5.2 and 12.5.2). The definition from CIEEM's Guidelines for EclA (2018) paragraphs 2.20 and 2.21. should be followed, i.e. '*the area over which ecological features may be affected by biophysical changes as a result of the proposed project and associated activities*'.

The methodology includes assigning each receptor 'a level of sensitivity to change' (Table 12.1), which is not a methodology from the referenced Guidelines for Ecological Impact Assessment (CIEEM, 2018). All aspects of the methodology for the biodiversity assessment should be detailed in the ES and the reasons for use explained.

Other comments

We encourage the consideration of design alternatives early on in the project which avoid/minimise biodiversity impacts and expect to see these outlined in the biodiversity chapter.

With regard to gaps in the scoping of the biodiversity assessment - as discussed with YTL's ecologist, dormice have been found likely present on the Fishpool Hill site bordering the Filton airfield site to the south. This species should therefore be considered in the assessment. There is no mention of invertebrates within the scoping report, are invertebrates being scoped out, if so why? This should be explained in the ES.

We expect all relevant biodiversity stakeholders to be consulted as part of the consultation process for the biodiversity assessment and a consultation strategy established.

The Environment Agency have provided the following comments on biodiversity (copy of response appended):

There will be many opportunities within the scheme to enhance the value of the wider area for biodiversity. We note that an extended phase 1 habitat survey has been undertaken, and an ecological assessment for the ES will be produced to accompany any planning application.

The incorporation of a wildlife corridors is encouraged, and enhancement and creation of aquatic habitats should be an integral part of this. Increasing biodiversity should also extend to the wider built environment, where there will be opportunities to connect people and wildlife through sustainable urban development schemes and the development of public open space. The design of this should be ambitious and influenced by the Ecological Assessment, but even if species and habitats of note are not found within the site, design should include landscaping with native planting which targets local priority species and habitats and contributes to improving the wider natural environment.

It is noted that Japanese knotweed has been recorded and continues to be controlled and if possible eradicated from the site.

ENVIRONMENTAL GAINS

This is a large development and consideration should be given to making contributions for environmental gains, either on or off-site. This aspiration already in the NPPF is now further supported by the 25 Year Environment Plan. This sets an expectation for development including commercial and infrastructure, by all organisations and individuals, that will help deliver net gain. We note a separate report which sits outside the ES will be produced and we look forward to the opportunity to review.

Natural England have provided the following comments on biodiversity (refer to full set of comments appended):

Biodiversity and Geodiversity

General principles

The National Planning Policy Framework (paragraphs 174-175 and 179-182) sets out how to take account of biodiversity and geodiversity interests in planning decisions. Further guidance is set out in Planning Practice Guidance on the natural environment.

The potential impact of the proposal upon sites and features of nature conservation interest and opportunities for nature recovery and biodiversity net gain should be included in the assessment.

Ecological Impact Assessment (EclA) is the process of identifying, quantifying, and evaluating the potential impacts of defined actions on ecosystems or their components. EclA may be carried out as

part of the EIA process or to support other forms of environmental assessment or appraisal. Guidelines have been developed by the Chartered Institute of Ecology and Environmental Management (CIEEM). International and European sites

European site conservation objectives are available at <http://publications.naturalengland.org.uk/category/6490068894089216>

The ES should thoroughly assess the potential for the proposal to affect nationally and internationally designated sites of nature conservation importance, including marine sites where relevant. European sites (Special Areas of Conservation (SAC) and Special Protection Areas (SPA) fall within the scope of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'). In addition paragraph 181 of the National Planning Policy Framework (NPPF) requires that potential SPAs, possible SAC, listed or proposed Ramsar sites, and any site identified or required as compensatory measures for adverse effects on habitat (European) sites, potential SPAs, possible SACs and listed or proposed Ramsar sites have the same protection as classified sites (NB. sites falling within the scope of regulation 8 of the Conservation of Habitats and Species Regulations 2017 are defined as 'habitats sites' in the NPPF).

Under Regulation 63 of the Habitats Regulations, an appropriate assessment must be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site.

Should a likely significant effect on a European/Internationally designated site be identified (either alone or in-combination) or be uncertain, the competent authority (in this case the Local Planning Authority) may need to prepare an appropriate assessment in addition to the consideration of impacts through the EIA process. Further guidance is set out in Planning Practice Guidance on appropriate assessment <https://www.gov.uk/guidance/appropriate-assessment>

This should also take into account any agreed strategic mitigation solution that may be being developed or implemented in the area to address recreational disturbance, nutrients, or other impacts.

Nationally designated sites

The development site is within or may impact on the following Site of Special Scientific Interest:

- Pen Park Hole SSSI

Sites of Special Scientific Interest are protected under the Wildlife and Countryside Act 1981 and paragraph 180 of the NPPF. Further information on the SSSI and its special interest features can be found at www.magic.gov .

Natural England's SSSI Impact Risk Zones can be used to help identify the potential for the development to impact on a SSSI. The dataset and user guidance can be accessed from the Natural England Open Data Geoportal.

The Environmental Statement should include a full assessment of the direct and indirect effects of the development on the features of special interest within the SSSI and identify appropriate mitigation measures to avoid, minimise or reduce any adverse significant effects.

Regionally and Locally Important Sites

The ES should consider any impacts upon local wildlife and geological sites, including local nature reserves. Local Sites are identified by the local wildlife trust, geoconservation group or other local group and protected under the NPPF (paragraph 174 and 175). The ES should set out proposals for mitigation of any impacts and if appropriate, compensation measures and opportunities for enhancement and improving connectivity with wider ecological networks. Contact the relevant local body for further information.

Protected Species

The conservation of species protected under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017 is explained in Part IV and Annex A of Government Circular 06/2005 Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System.

The ES should assess the impact of all phases of the proposal on protected species (including, for example, great crested newts, reptiles, birds, water voles, badgers and bats). Natural England does not hold comprehensive information regarding the locations of species protected by law. Records of protected species should be obtained from appropriate local biological record centres, nature conservation organisations and local groups.

Consideration should be given to the wider context of the site, for example in terms of habitat linkages and protected species populations in the wider area.

The area likely to be affected by the development should be thoroughly surveyed by competent ecologists at appropriate times of year for relevant species and the survey results, impact assessments and appropriate accompanying mitigation strategies included as part of the ES. Surveys should always be carried out in optimal survey time periods and to current guidance by suitably qualified and, where necessary, licensed, consultants.

Natural England has adopted standing advice for protected species, which includes guidance on survey and mitigation measures. A separate protected species licence from Natural England or Defra may also be required.

District Level Licensing for Great Crested Newts

District level licensing (DLL) is a type of strategic mitigation licence for great crested newts (GCN) granted in certain areas at a local authority or wider scale. A DLL scheme for GCN may be in place at the location of the development site. If a DLL scheme is in place, developers can make a financial contribution to strategic, off-site habitat compensation instead of applying for a separate licence or carrying out individual detailed surveys. By demonstrating that DLL will be used, impacts on GCN can be scoped out of detailed assessment in the Environmental Statement.

Priority Habitats and Species

Priority Habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. Lists of priority habitats and species can be

found here. Natural England does not routinely hold species data. Such data should be collected when impacts on priority habitats or species are considered likely.

Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land. Sites can be checked against the (draft) national Open Mosaic Habitat (OMH) inventory published by Natural England and freely available to download. Further information is also available here.

An appropriate level habitat survey should be carried out on the site, to identify any important habitats present. In addition, ornithological, botanical, and invertebrate surveys should be carried out at appropriate times in the year, to establish whether any scarce or priority species are present.

The Environmental Statement should include details of:

- Any historical data for the site affected by the proposal (e.g. from previous surveys)
- Additional surveys carried out as part of this proposal
- The habitats and species present
- The status of these habitats and species (e.g. whether priority species or habitat)
- The direct and indirect effects of the development upon those habitats and species
- Full details of any mitigation or compensation measures
- Opportunities for biodiversity net gain or other environmental enhancement

Ancient Woodland, ancient and veteran trees

The ES should assess the impacts of the proposal on any ancient woodland, ancient and veteran trees, and the scope to avoid and mitigate for adverse impacts. It should also consider opportunities for enhancement. Natural England maintains the Ancient Woodland Inventory which can help identify ancient woodland. The wood pasture and parkland inventory sets out information on wood pasture and parkland. The ancient tree inventory provides information on the location of ancient and veteran trees. Natural England and the Forestry Commission have prepared standing advice on ancient woodland, ancient and veteran trees.

Biodiversity net gain

Paragraph 174 of the NPPF states that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Biodiversity Net Gain is additional to statutory requirements relating to designated nature conservation sites and protected species.

The ES should use an appropriate biodiversity metric such as Biodiversity Metric 3.0 together with ecological advice to calculate the change in biodiversity resulting from proposed development and demonstrate how proposals can achieve a net gain. The metric should be used to:

- assess or audit the biodiversity unit value of land within the application area
- calculate the losses and gains in biodiversity unit value resulting from proposed development
- demonstrate that the required percentage biodiversity net gain will be achieved

Biodiversity Net Gain outcomes can be achieved on site, off-site or through a combination of both. On-site provision should be considered first. Delivery should create or enhance habitats of equal or

higher value. When delivering net gain, opportunities should be sought to link delivery to relevant plans or strategies e.g. Green Infrastructure Strategies or Local Nature Recovery Strategies.

Opportunities for wider environmental gains should also be considered.

Wind Microclimate

The commitment to wind microclimate modelling is welcomed.

Paragraph 13.4.6 states that *“At outline stage these measures will not be quantitatively tested if they are expected to be successful, and they will be verified as needed through reserved matters.”* The modelling process undertaken should take in to account the parameter plans and illustrative masterplan proposed in order to provide sufficient confidence around likely effects to inform the Outline application decision-making process.

Sustainability and Climate Change

The Council's **Low Carbon Projects/Heat Networks Consultant** has the following comments:

- I agree with inclusion of climate change within the EIA.
 - The exclusion of Scope 3 emissions (para 14.4.5) is acceptable.
- In terms of the Climate Risk and Resilience Assessment (CCRA) the proposed baseline of 2036 is too early (i.e. should be set at a later date) when considering the implications of anticipated changes in the local climate on subsequent development at Filton Airfield.
- SGC's working assumption is that new development will have an operational life of 60 years i.e. be functioning/operating in 2080.
- Accepting that future predictions become less certain with time, and are dependent on actions taken between now and then, I still think the timeline for considering the direct impacts of climate change on the new development should be extended to 2080.
- This 2080 timeframe would align the EIA with the analysis we ask developers to provide for current planning applications in order to demonstrate climate resilience. It also aligns with emerging policy on climate adaptation.
- Overheating analysis of new development run against 2080 weather files commonly shows it failing (i.e. to be at risk of overheating), however, we request this to establish whether amendments are needed to designs to increase future resilience to overheating (and allow mitigation measures to be retrofitted) or whether additional mitigation measures can be added as part of normal maintenance/refurbishment cycles during the lifetime of the scheme. It is acknowledged that the specific detailed assessment will be dealt with at detailed design state however the matter should be acknowledged as part of the mitigation section of the assessment.
- Noting the proposal to use UK Climate Projections 2018 (UKCP18) produced by the UK Met Office (Met Office, 2018). UKCP18 projections run to 2100. When asking developers to consider overheating risk we ask for this to take account of the design life of new construction which is assumed to be 60 years, i.e. to 2080. Accepting that the range of the uncertainty of the projections increases with time, it would be helpful for the EIA to consider the same timeframe when considering resilience and adaptation i.e. to 2080.

Sustainability

I *disagree* with the proposal (section 15) to exclude Sustainability from the EIA and think this should be included for the following reasons. This topic could be combined with Climate Change and/or included as a key consideration throughout the other topic chapters.

- The expanded scale and strategic significance of the development at Filton Airfield as currently proposed.
 - This relates to one of the aims of an EIA '*to ensure that the public are given early and effective opportunities to participate in the decision making procedures*' <https://www.gov.uk/guidance/environmental-impact-assessment#the-purpose-of-environmental-impact-assessment> .

- The nature of the built environment is such that sustainability and climate change (impact on and adaptation to) are interconnected and cannot easily be separated. Therefore, both should be considered within the EIA.
- Adaptation: The impact on the built environment of changes in the local climate is likely to be very significant.
 - It is essential that the design of new development at Filton Airfield takes these changes into account and that climate adaptation is included within and is integral to the design process from the outset. This includes the EIA.
 - Localised impacts include increases in average and peak summer temperatures, increased frequency of heat wave events and longer duration heat wave events, and increased intensity of rainfall. These will impact the built environment, public health and productivity.
- Heat network study: SGC is undertaking a Techno-economic study of a heat network at Filton Airfield (for which YTL is a stakeholder). This will have a bearing on the energy and climate change strategy and design of subsequent phases of development at FA up to 2048 and should therefore be included within the EIA.

Further comments

Insignificant effects

- Section 14.8.1 states that *'During the construction phase it is anticipated that the risk of climate hazards, for example from heatwaves or periods of heavy precipitation may increase however it is expected that these will be managed through standard construction and health and safety practices, such as securing material/equipment and not undertaking works during periods of extreme rainfall'*.
- I suggest that this section is expanded and considered in more detail within the EIA.
- During heat waves it may become necessary to reschedule construction work on-site to avoid peak temperatures.
- This may then have a knock-on effect on existing and occupied parts of Filton Airfield for example as a consequence of earlier start and later finish times on-site.

The Environment Agency have provided the following comments on Climate Change (copy of response appended):

CLIMATE CHANGE

A strategy should be drawn up and set out for guidance to deal with the climate emergency and for the development to be carbon neutral. Innovative methods should be considered and encouraged.

Natural England have provided the following comments on Climate Change (refer to full set of comments appended):

Climate Change

The ES should identify how the development affects the ability of the natural environment (including habitats, species, and natural processes) to adapt to climate change, including its ability to provide adaptation for people. This should include impacts on the vulnerability or resilience of a natural feature (i.e. what's already there and affected) as well as impacts on how the environment can accommodate change for both nature and people, for example whether the development affects species ability to move and adapt. Nature-based solutions, such as providing green infrastructure on-site and in the surrounding area (e.g. to adapt to flooding, drought and heatwave events), habitat creation and peatland restoration, should be considered. The ES should set out the measures that will be adopted to address impacts.

Further information is available from the Committee on Climate Change's (CCC) Independent Assessment of UK Climate Risk, the National Adaptation Programme (NAP), the Climate Change Impacts Report Cards (biodiversity, infrastructure, water etc.) and the UKCP18 climate projections.

The Natural England and RSPB Climate Change Adaptation Manual (2020) provides extensive information on climate change impacts and adaptation for the natural environment and adaptation focussed nature-based solutions for people. It includes the Landscape Scale Climate Change Assessment Method that can help assess impacts and vulnerabilities on natural environment features and identify adaptation actions. Natural England's Nature Networks Evidence Handbook (2020) also provides extensive information on planning and delivering nature networks for people and biodiversity.

The ES should also identify how the development impacts the natural environment's ability to store and sequester greenhouse gases, in relation to climate change mitigation and the natural environment's contribution to achieving net zero by 2050. Natural England's Carbon Storage and Sequestration by Habitat report (2021) and the British Ecological Society's nature-based solutions report (2021) provide further information.

Contribution to local environmental initiatives and priorities

The ES should consider the contribution the development could make to relevant local environmental initiatives and priorities to enhance the environmental quality of the development and deliver wider environmental gains. This should include considering proposals set out in relevant local strategies or supplementary planning documents including landscape strategies, green infrastructure strategies, tree and woodland strategies, biodiversity strategies or biodiversity opportunity areas.

Cultural Heritage

The **Conservation Officer** has provided the following comments:

The issue from a heritage perspective will be the proposed increases in scale, height and density of development in the parcels surrounding the listed hangars at Aerospace Bristol.

The approved master plan parameter plans reflected the sensitivity of frontages facing the designated heritage assets with a view to avoiding inappropriate visual competition or harm to the setting of

these assets. Heights are set between 3-4 storeys around hangar 16S. The parameters in this eastern part of the site are to be revised although there is no indication as to how they are to change. Substantial increases in height to facilitate the mix of uses and substantial increase in quantum of housing will likely have an adverse impact on the setting and significance of the listed hangars which could potentially be deemed significant for the purposes of the EIA.

Paragraph 15.3.5 of the Scoping Report identifies only two grade II listed buildings within the site boundary but excludes the presence of the two additional grade II listed hangars that form part of the Bristol Aerospace Museum. Of the two assets within the site, the hangar to the north is part of Phase 1 which is being built out, and there will be a degree of separation and screening by new development that should limit the significance of effects resulting from the proposed development. There may be some intervisibility with the development on the east side of Brabazon Gardens, or possible co-visibility if viewing the hangar from the west side of the gardens, but, for the most part, the immediate setting of the hangar will be as approved in the Phase 1 development. Likewise, the context of the grade II listed pillbox will not materially change from that which has already been approved as per 15.3.7 of the report – it will still be a remnant of the airfield in the context of a new urban square next to the railway station.

My concern, therefore, lies with the two grade II listed assets that lie outside the site boundary but which will be affected by development to their south, east and north east. These assets are not identified in Chapter 15 of the Scoping Report, other than in reference to the mitigation measure to retain sight-lines between the hangars. As noted above, substantial increases in scale and height of the perimeter blocks facing the hangars could have a considerable adverse effect on the setting of these assets compared to the approved masterplan.

To confuse matters slightly, Section 11 of the Scoping Report (Landscape, Townscape and Visual Impact) records that likely significant effects, which may be adverse or beneficial, are anticipated for two of the hangars; 16U (single hangar to west, part of Phase 1) and 16M (WWI flight shed), as well as the listed pillbox. These assets will be part of the landscape assessment that is being scoped into the ES, yet being scoped out under the heritage chapter. Conversely, Hangar 16S (triple hangar to east) is noted as being anticipated to not receive significant effects despite being exposed on two sides to the proposed new development, the increased scale and massing of which is unclear at present. Of the three listed hangars, 16M and 16S are, in my opinion, the most likely to be affected by the revised proposals, with substantial increases in the scale, height and density of development in the surrounding parcels having the potential to result in significant effects above and beyond that previously approved. Without any supporting parameter plans, however, it is impossible to make an informed assessment compared to the approved proposals and the applicants should be invited to comment accordingly.

The grade II listed Cedar House adjacent to the south boundary is also noted in Table 11.1 in the Landscape Chapter but is not mentioned in the Heritage Chapter. Again, a lack of information makes it impossible to assess the potential impacts on this asset compared to the approval and the applicants should be invited to comment accordingly. If the development to the north remains the 'Destination Park' with no buildings then there may be no demonstrable impact above and beyond that which was considered under the previous application.

Brabazon Hangar, which will be converted to the arena, lies outside SGC and is a non-designated heritage asset. Although outside the airfield development, it is an iconic landmark which is to form the focal point of the Brabazon Gardens. The relationship of this asset with the adjacent development

parcels will require further assessment should the height parameters be increased substantially over the approved scheme.

Hollywood Tower (grade II) to the east is reported in the Landscape Section as being scoped out of the LVIA which is acceptable.

The impact of the new development proposals on the setting and significance of the designated and non-designated heritage assets identified above will need to be assessed in the application, in line with paragraph 194 of the Framework. This may be via the ES if Heritage is scoped in but, in the event that it remains scoped out, it will still need to be assessed as part of the specialist assessments that will be submitted as per paragraph 15.1.1 of the Scoping Report. Any assessment of the impact of development on the setting of the heritage assets should be carried out using the Historic England Framework as set out in 'The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)'.

Given that the extent of the new effects and their significance remains uncertain from the Scoping submission, it is recommended that at this stage cultural heritage remains scoped in to the assessment. Depending on the findings of further assessment work, potentially the topic could be scoped out of further inclusion. Hopefully the applicants can provide some further evidence to assist in this assessment.

Historic England have provided the following comments (copy of response appended):

Historic England has reviewed the information submitted in the scoping report from the applicant and our own records for the proposed development area. In our view this development could, potentially, have an impact upon a number of designated heritage assets and their settings in the area around the site.

In line with the advice in the National Planning Policy Framework (NPPF), we would expect the Environmental Statement to contain a thorough assessment of the likely effects which the proposed development might have upon those elements which contribute to the significance of these assets. In this way it should be possible to identify (and where possible avoid, minimise or if appropriate mitigate) what may be substantial direct and indirect impacts on assets of local, regional and national importance.

In general terms, Historic England advises that a number of considerations will need to be taken into account when proposals of this nature are being assessed. In order for your authority to understand the potential impacts of the proposals on the significance of both designated and non-designated heritage assets of all types, we would recommend that you ensure that the Environmental Impact Assessment (EIA) conducted takes the following issues into account. This includes consideration of the impact of ancillary infrastructure:

- The potential impact upon the landscape, especially if a site falls within an area of historic landscape;
- Direct impacts on historic/archaeological fabric (buildings, sites or areas), whether statutorily protected or not;
- Other impacts, particularly the setting of listed buildings, scheduled monuments, registered parks and gardens, conservation areas etc., including long views and any specific designed views and vistas within historic designed landscapes. All grades of listed buildings should be identified. In some cases, intervisibility between historic sites may be a significant issue;
- The potential for buried archaeological remains;

- Effects on landscape amenity from public and private land;
- Cumulative impacts.

The level of carefully considered information required under the EIA process will need to be proportional to the severity of the potential issues which may arise from any proposed scheme, and directly related to the need to assess the overall sustainability of any development proposals.

a) Assessment of Designated Heritage Assets

The proposed development site is within the former Filton airfield and to south of the site boundary are the Brabazon hangers and an arrangement of other associated historic structures, some of which are designated Grade II, and others not. The site is not within a Conservation Area and does not contain any designated historic landscapes or Scheduled Ancient Monuments. However, approximately 2000m to the south west is Brentry Conservation Area and Royal Victoria Park (Grade II Registered Park and Garden). There is potential for impact upon setting.

The only designated heritage asset within the site boundary (or at least very close to) is a non-standard, and therefore rare Grade II listed pill box located on the south side of the airfield. The other designated assets would be considered within the setting of the identified site, and therefore impacts upon setting would need to be identified and assessed. While the Brabazon hangers are not designated heritage assets, they are included on the council's 'local list', as they hold significant historic and communal heritage value.

We would also expect the Environmental Statement to consider the potential impacts on non-designated features of historic, architectural, archaeological or artistic interest, since these can also be of national importance and make an important contribution to the character and local distinctiveness of an area and its sense of place. Contact information is available via the local authority Historic Environment Record (www.heritagegateway.org.uk) and relevant local authority staff.

We would strongly recommend that you involve your Conservation Officer and archaeological advisor in the development of this assessment. They are best placed to advise on: local historic environment issues and priorities; how the proposal can be tailored to avoid and minimise potential adverse impacts on the historic environment; the nature and design of any required mitigation measures; and opportunities for securing wider benefits for the future conservation and management of heritage assets.

Historic England recommends that an approach to the significance of designated heritage assets is reflective of the assessment criteria for the designation process, can be easily understood within the language of the NPPF regarding the significance of heritage assets and the impact of proposals on that significance, and takes full account of the most recent published advice including:

Historic Environment Good Practice Advice in Planning Notes (GPA1-3):
<https://historicengland.org.uk/advice/planning/planning-system/> in particular GPA 3 on The Setting of Heritage Assets

Conservation Principles, Policies and Guidance: Sustainable Management of the Historic Environment (English Heritage, 2008)

<https://historicengland.org.uk/advice/constructive-conservation/conservation-principles/>

a) Assessment of Visual Impact

In general we recommend that there should be a close relationship between the Landscape and Visual Impact Assessment and the Cultural Heritage Assessments. Your authority must ensure that the EIA will provide you a robust assessment of the impact of development on the significance designated heritage assets derive from their settings including, but not limited to visual impacts.

Heritage Assets are key visual receptors and any impact upon them would need to be considered in depth with appropriate selection of viewpoints relevant to the significance of the assets in question and the likely impacts. We would recommend the inclusion of long views and any specific designed or historically relevant views and vistas within this historic landscape.

It is important that the assessment is designed to ensure that all impacts are fully understood. Section drawings and techniques such as photomontages are a useful part of this.

b) Assessment of Associated Activities

The assessment should also take account of the potential impact which associated activities (such as construction, servicing and maintenance, and associated traffic) might have upon perceptions, understanding and appreciation of the heritage assets in the area. The assessment should also consider, where appropriate, the likelihood of alterations to drainage patterns that might lead to in situ decomposition or destruction of below ground archaeological remains and deposits, and can also lead to subsidence of buildings and monuments.

Recommendation

Historic England urge your authority to address the issues set out above to ensure that the Environmental Impact Assessment will provide a sound basis on which to assess the significance of any heritage assets affected and the effect on that significance of the proposed scheme. A sound EIA report is the basis on which to identify (and where possible avoid, minimise or mitigate) what may be substantial direct and indirect impacts on assets of local, regional and national importance.

Human Health

The **Public Health Officer** has made the following comments:

Paragraph 15.7 of the report, entitled 'Human Health' seeks to justify that the potential effects on of the proposed development on human health are scoped out of the EIA. This is proposed on the grounds that the masterplan has incorporated several healthy community principles and any health effects will be considered within the Environmental Statement as part of the socio-economic, transport, air quality and noise chapters, rather than as a Health Impact Assessment.

I do not consider that this is adequate for the following reasons:

3. This does not comply with Policy PSP9 of the SGC Policy Sites and Places Plan (adopted 2017). A development of this scale is clearly included within the 'very major development' category and requires a full Health Impact Assessment to identify and promote positive health impacts, mitigate negative ones and reduce health inequalities.
4. Policy PSP9 also requires applicants of 'very major developments' to consult the Director of Public Health at pre-application stage to ascertain whether a Health Impact Assessment is required. To my knowledge, the applicants have not done this, so cannot assume that a HIA would not be required.

The Scoping document contains a very limited amount of detail relating to health and no mention of health inequalities and how these may be addressed. A very large-scale development such as Brabazon will have long-term health implications for sectors of the population of South Gloucestershire and Bristol and these should be properly assessed and quantified at the earliest stage. A full Health Impact assessment should therefore be included either as part of the EIA or as a separate assessment.

Risk of Accidents and Disasters

The **Neighbourhood Policing Support Team** (Avon and Somerset Constabulary) have provided the following comments:

I am a Crime Prevention Design Advisor (CPDA) with a responsibility for Crime Prevention Through Environmental Design (CPTED) projects within South Gloucestershire area. As a Constabulary we offer advice and guidance on how the built environment can influence crime and disorder.

In relation to the submitted EIA Scoping Report concerning this new outline proposal I offer the below comments:

1. In paragraph 15.6.9 reference is made to the conditions in relation to the Arena and additional applications including the Sec 73. One of those conditions was the regular 'security' meetings to discuss the applications as they went through the planning process. This EIA and the altered extent of the Outline Application have not been discussed at those meetings.
2. The scope of the application from that agreed in March 2018 has changed considerably and as a result has increased the risk of crime and in particular terrorism. This risk due to the nature of the proposed application has increased in areas outside of the Arena and previously agreed four applications.

Avon and Somerset Constabulary

Existing March 2018	Proposed 2021	Risk
2635 dwellings	6500 dwellings	Red
	Student Accommodation up to 50,000 sqm	Red
120 bed hotel	3 no Hotels	Red
Rail Station	Rail Station	Yellow
Secondary School	Secondary School	Yellow
2 x Primary School	2 x Primary School	Yellow
2 x Nurseries	2 x Nurseries	Yellow
	Further Education 55,00 sqm	Red
Community Centre	Community Centre	Yellow
Library	Library	Yellow
Sports Facilities	Sports Facilities	Yellow
Doctors Surgery	Doctors Surgery	Yellow
Dental Surgery	Dental Surgery	Yellow
70 Bed Extra Care Facility	600 Units of Extra care	Red
Shops/ Financial		Yellow
Food Drink	Hot food takeaway	Yellow
Supermarket		Green
Drinking Establishments (800 sqm)	Drinking Establishments	Yellow
	Nightclubs	Red
	Public House	Red
Business Offices (500 sqm)	Business Offices and Research Development 270,00 sqm	Red
Red – Increased Risk, Amber – Retained Risk, Green – Reduced Risk		

3. The dwelling increase will be by way of increasing building height and density both of which increase the risk to the premises from crime. It would be expected that some of the increase would be by the

way of accommodation over commercial premises including licenced premises. Where this type of premises are co-located it opens them up to an increase in risk to terrorism.

4. The additional provision of student accommodation needs to be addressed, student accommodation is specialist accommodation, which has its own needs and has its own crime risk, etc. Home Office research shows that: "Students are, statistically, one of the most likely groups to fall victim to crime. Students own more expensive consumer goods per head than the rest of the population. It is no surprise then that 1 in 3 students becomes the victim of a crime each year. Added to that fact, young people (aged 16 to 24 year old) are around three times more likely to be victims of burglary than people in other age groups, which makes students all the more vulnerable." In addition the provision of a Further Education Establishment itself brings further risk.

5. The move away from a zonal approach to a mixed approach also increases the risk of crime and terrorism throughout the development, not just to the Arena vicinity.

6. Under 15.6 therefore the risk/vulnerability to major accidents and disasters extends beyond the existing conditioned applications and needs to be addressed somewhere. Whether this is by way of conditions, additional documents or scoped into the EIA is a decision for others.

6. Under 15.7 it would normally be expected that a development of the size proposed would have a Health Impact Assessment, where options for the provision of and use of open spaces as well as walking and cycle routes could be assessed for safety. This has been covered in the Masterplan however as demonstrated in the above table the increase in dwellings and in particular the student accommodation will put pressure upon the leisure provision for the development.

7. Under 15.7.7 the applicant considers the health effects are suitably considered within socio-economics, transport and access, air quality and noise chapters of the ES, however these sections do not adequately as they stand cover the health related crime impacts.

In order to fully comply with the safety and security requirements of the National Planning Policy Framework and the South Gloucestershire Core Strategy the applicant is advised to consider the above comments.

The Health and Safety Executive (HSE) have provided the following comments:

Town and Country Planning (Environmental Impact Assessment) Regulations 2017, Regulation 4(4) - the vulnerability of the proposed development to major accidents relevant to the development

- HSE's response is limited to our role in the land use planning system on the control of major industrial hazards involving dangerous substances.
- HSE is not responding in our regulatory role in the health and safety system

1. We can confirm that the development is not located within any of HSE's land-use-planning consultation zones for major-accident-hazard pipelines or hazardous substances consented sites.

2. In addition, the development is not located within a safeguarding zone of an Explosives site licensed under the Explosives regulations 2014 or the Dangerous Goods in Harbour Area Regulations 2016.

Due to the above points, there is no need to consult HSE on this report, and we have no comments to make.

3. General health and safety at work

HSE realises that Environmental Risk Assessments are not expected to include general health and safety at work however we take this opportunity to point out that it may be beneficial for employer(s) to undertake a risk assessment as early as possible to satisfy themselves that their design and operation will meet requirements of relevant health and safety legislation as the project progresses.

6. PROPOSED SCOPE – ASPECTS TO BE SCOPED OUT

It is agreed that the following topics can be scoped out:

Environmental aspects to be scoped out:

- **Flood Risk and Drainage**
- **Archaeology**
- **Ground Conditions and Contamination**
- **Daylight and Sunlight**
- **Human Health**
- **Waste**
- **Utilities**

The following sets out the consultee responses against each of the aspects to be scoped out:

Flood Risk and Drainage

The Lead Local Flood Authority have provided the following comments:

Matters appertaining to the consultee comments below from the Lead Local Flood Authority (LLFA) must be directed to the Planning Case Officer in the first instance, including queries regarding the discharge of conditions.

Having reviewed the Scoping Report, we would agree with the findings that Flood Risk and Surface Water Drainage do not need to be included in the EIA Scope. The reason for this is as follows:

- As the agreed pre-development flowrates are the critical factors and remain unaffected, we are satisfied that the increased density of the proposed development does not introduce any additional significant elements that would generate new or different impacts or alter the significance of previously identified impacts relating to Flood Risk and Surface Water Drainage.
 - Surface water management (including water quality) from the Site will be outlined in a revised FRA (taking into account current climate change allowances) and controlled through the planning consultation process by the Environment Agency (EA) and Lead Local Flood Authority (LLFA).
 - Construction Stage impacts on environmental factors including surface water and sediment, will be mitigated through the CEMP and controlled through the planning consultation process by the Lead Local Flood Authority (LLFA).

Note: Please ensure that the LLFA are consulted when the CEMP is submitted.

The Environment Agency have provided the following comments (copy of response appended):

GROUNDWATER

The Environment Statement scoping document concerns the revised development (increased number of homes) of the extant planning permission (PT14/3867/O, 1st March 2018). The extant planning permission is conditioned in relation to drainage and pollution prevention, ground investigation and remediation.

Chapter 15 of the December 2021 Scoping Report identifies the topics that have been scoped out of the EIA for the revised development plan number of homes. Ground Conditions and Contamination

(paragraph 15.4) indicates the revised plan, and development approach is largely unchanged, and that the outcome of the ES is also unchanged.

It is reported that ground conditions were investigated by BAE during 2012-2014 and that this was supplemented and updated in 2017 by Peter Brett. It is stated that the previous assessment work and mitigation strategy will be re-submitted with the planning application.

We agree that the ES approach proposed for the revised development does not require specific further assessment of ground and groundwater contamination, pollution and surface water drainage. These can be conditioned as part of the planning process.

Ground contamination was conditioned (Condition 27) in the extant planning permission. *Any subsequent condition should include that the ground investigation should consider any revisions to contaminants of concern and specifically to include for the presence of PFAS, typical of firefighting foam encountered on airfields.* This is to account for new and improved awareness regarding chemical contamination, over the extended period of the site development.

FLOOD RISK

The site is located within Flood Zones 1, 2 and 3 at low medium and high risk of flooding.

The area of land to the west of the proposed site show the Henbury Trym as being in Flood Zone 2 and 3 and downstream of Cribbs Causeway Reservoir.

An updated site specific Flood Risk Assessment would therefore be required for this site to consider potential impact to the reservoir and increase of flood risk to Henbury Trym.

The FRA would need to demonstrate the development would be safe from flood risk and no effect on third parties.

We would like to recommend a no development zone within 8 m of any watercourse to minimise the impact of flood risk on the development, reduce the impact of climate change on the development and to make sure we maintain our access to the watercourse for maintenance and emergency access.

Natural England have provided the following comments on Water Quality (refer to full set of comments appended):

Water Quality

The planning system plays a key role in determining the location of developments which may give rise to water pollution, and hence planning decisions can have a significant impact on water quality, and land. The assessment should take account of the risks of water pollution and how these can be managed or reduced. A number of water dependent protected nature conservation sites have been identified as failing condition due to elevated nutrient levels and nutrient neutrality is consequently required to enable development to proceed without causing further damage to these sites. The ES needs to take account of any strategic solutions for nutrient neutrality or Diffuse Water Pollution Plans, which may be being developed or implemented to mitigate and address the impacts of elevated nutrient levels. Further information can be obtained from the Local Planning Authority.

Archaeology

The **Archaeology and Historic Environment Record Officer** has the following comments:

I have reviewed the scoping report sent in and concur with the findings that the archaeology does not need to be included in the EIA. Largely the archaeological issues have already been dealt with and any further archaeological requirements can be dealt with through the planning process. As such, archaeology can be scoped out of the EIA

Ground Conditions and Contamination

Environmental Protection – Contaminated Land have provided the following comments:

Chapter 15 of the Scoping Report identifies the topics that have been scoped out of the EIA. Specifically, paragraph 15.4 refers to Ground Conditions and Contamination.

It is reported that ground conditions were investigated by BAE during 2012-2014 and that this was supplemented and updated in 2017 by Peter Brett. It is stated that the previous assessment work and mitigation strategy will be re-submitted with the planning application.

I concur with the conclusion that Ground Conditions and Contamination do not need to be included in the EIA and can be dealt with through the planning process.

It should be noted however, that where the new application proposes changes to the land use to a more sensitive use (in terms of ground contamination) in relation to the previous application, the contamination status of the relevant part(s) of the site will need to be re-assessed and the remediation strategy may need to be amended and updated. This would apply for example where land previously proposed to be developed for a commercial use is proposed to be changed to a residential end use.

The Environment Agency have provided the following comments (copy of response appended):

ENVIRONMENT MANAGEMENT

A scheme for prevention of pollution during the construction phase should be included within the Environment Statement. The scheme should include details of the following:

1. Site security.
2. Fuel oil storage, bunding, delivery and use.
3. How both minor and major spillage will be dealt with.
4. Containment of silt/soil contaminated run-off.
5. Disposal of contaminated drainage, including water pumped from excavations.
6. Site induction for workforce highlighting pollution prevention and awareness.

Measures should be taken to prevent the runoff of any contaminated drainage during the construction phase.

All foul drainage should be kept separate from the clean surface water and roof water, and connected to the public sewerage system after conferring with the sewerage undertaker if practicable.

Any oil or chemical storage facilities should be sited in bunded areas. The capacity of the bund should be at least 10% greater than the capacity of the storage tank or, if more than one tank is involved, the capacity of the largest tank within the bunded area. Hydraulically inter-linked tanks should be regarded as a single tank. There should be no working connections outside the bunded area.

There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses, ponds or lakes, or via soakaways/ditches.

Daylight and Sunlight

The commitment to address daylight, sunlight and overshadowing considerations within the Reserved Matters applications for each phase is welcomed.

Paragraph 15.5.1 of the Scoping Report acknowledges the potential for changes in heights of buildings to impact both residential receptors of the early residential phases and new residential receptors in future phases. As such it is recommended that considerations of daylight, sunlight and overshadowing impacts are considered at an early stage of masterplanning to inform the proposed parameters plans as opposed to being left to the Reserved Matters stage. It is recommended that the 'Initial daylight and sunlight analysis' that has been carried out is submitted with the Outline application for consideration.

Waste

The **Council's Waste & Street Cleansing Manager** as provided the following comments:

I have lifted out the sections below regarding household waste collections. I would be happy to look over any plans regarding household collections for this development and guidance can be found through the council supplementary waste planning document.

15.8.5 During the operation of the Proposed Development, waste (including recyclables) generated by dwellings will be managed by the local waste authority (SGC), while waste from commercial uses will be managed by commercial operators. None of the proposed users are anticipated to be major generators of waste and the wastes generated by the Proposed Development should not significantly affect the capacity of local waste infrastructure. Information relating to the approach the Proposed Development will take to managing waste will be included in the Design and Access Statement which will be submitted with the planning application.

The Environment Agency have provided the following comments (copy of response appended):

WASTE

If the development involves raising of levels by importing waste to the site this will require either a registered exemption or Environmental Permit (waste operation) dependant on the quantity of waste needed to achieve the required level. More information on waste exemptions and waste permits can be found at: <https://www.gov.uk/environmental-permit-check-if-you-need-one>

If any controlled waste is to be removed off site, the site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably permitted facility. The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable for any off-site movements of wastes. The developer, as waste producer therefore has a duty of care to ensure all materials removed go to an appropriately permitted facility and all relevant documentation is completed and kept in line with regulations.

The developer must apply the waste hierarchy in a priority order of; prevention, re-use, and recycling before considering other recovery or disposal options.

Utilities

It is accepted that Utilities can be scoped out as a stand-alone topic. Effects related to Utilities to be referenced where appropriate within other topics.

7. CONCLUSION

The submitted Scoping Report identifies a number of documents, plans and reports that are intended to be submitted with the application. Subject to the submission of these documents and the comments made within this Scoping Opinion; the Council broadly agrees with the topics identified as being scoped in and scoped out of the ES. The exceptions to this, are Sustainability and Cultural Heritage which are to be scoped in. It is also essential that (particularly in relation to Arena operations) Risks of Accidents and Disasters are suitably addressed within relevant topics, including the completion of a Health Impact Assessment.

A copy of this opinion, together with the relevant documents, will be made available for public inspection for a period of two years at the relevant Council Offices.

If a planning application is subsequently made for development to which this Scoping Opinion relates, the opinion and related documents will be transferred to Part 1 of the register with the application.

Please note that in accordance with the EIA regulations further information can be requested during the course of the determination period.

Please do not hesitate to contact me if you have any questions in respect of the above.

Yours sincerely



Jane Fuller MRTPI

Associate

Black Box Planning (acting on behalf of South Gloucestershire Council)

BlackBoxPlanning.co.uk

EP7A

TOWN AND COUNTRY PLANNING ACT 1990 OUTLINE PERMISSION FOR DEVELOPMENT

Savills
Embassy House
Queens Avenue
Bristol
BS8 1SB

APP REF: PT16/4782/O
DATE VALID: 23rd August 2016
DECISION DATE: 3rd March 2020
PARISH: Winterbourne Parish
Council

NOTICE OF DECISION

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT16/4782/O

DESCRIPTION OF DEVELOPMENT: Outline planning permission for mixed use development comprising up to 1,290 dwellings including an extra care facility (Use Class C2/C3); community facilities (comprising use classes D1 and D2); provision of a mixed use local centre (Use Classes A1, A2, A3 and D1) together with the supporting infrastructure and facilities including: new vehicular and pedestrian accesses, public open space and landscaping with access to be determined and all other matters reserved.

APPLICANT: Crest Strategic Projects LtdCrest Strategic Projects Ltd

LOCATION: Land At The South Of The Railway East Of Harry Stoke Bristol
South Gloucestershire

In accordance with the application and accompanying plans, subject to the conditions specified below:

CONDITIONS

1. Details of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development on land to which the reserved matters relate commences. Development thereafter shall be carried out in accordance with the approved details.

Reason:

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

2. All applications for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiration of 10 years from the date of this permission.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended)

3. The development hereby permitted shall be begun either before the expiration of 2 years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

4. The development shall conform in all aspects with the plans and details shown in the application as listed below:

Parameter Plan Height - 13168/3252 Rev H

Parameter Plan Movement - 13168/3253 Rev O

Parameter Plan Land Use - 13168/3250 Rev I

Parameter Plan Density - 13168/3251 Rev F

Parameter Plan Landscape - 13168/3254 Rev H

2097.59D Hambrook Lane East Traffic Calming

2097.36F Hambrook Lane West Traffic Calming

2097.66E Old Gloucester Road access and shared use cycle/footway

2097.75B SGTL shared use cycle / footway

2097.77H SGTL crossroads access and Hambrook Lane junction including Metrobus stops and Toucan crossing

2097.T66 SGTL junction with Hambrook Lane Tracking drawing with adjustments to width of Hambrook Lane

2097.45C SGTL northern site access

2097.46B SGTL southern access.

Reason:

In the interest of clarity and in order to define the planning permission and to ensure a good quality of design to accord with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

5. Applications for the approval of the reserved matters shall be in accordance with the approved Parameter Plans, the principles and parameters set out in the Design and Access Statement (August 2018) including the Urban Design Framework, and the approved Phasing Plan (condition 7) and Affordable Housing Schedule and Design Code (condition 8) for the relevant Phase to which the reserved matters application relates.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

6. Delivery of affordable housing shall be carried out in accordance with the relevant approved Phasing Plan (condition 7), and its accompanying Affordable Housing Schedule and reserved matters approvals, unless otherwise agreed in writing by the Local Planning Authority.

If there are discrepancies between the affordable housing targets established in the approved Phasing Plan for the Phase in question and the relevant reserved matters application(s) for that Phase, subsequent applications for the approval of reserved matters and Phasing Plans will be amended to ensure that the overall provision and required proportions are maintained as closely as reasonably possible. The numbers and mix for each reserved matters application will be informed by the principles in the S106 Agreement, Phasing Plan and the Design Code, including any amendments to the approved Affordable Housing Schedule as may be reasonably agreed with the Council from time to time.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

7. Prior to the approval of the first reserved matters application in any particular geographical phase within the site (hereinafter referred to a "Phase"), a phasing plan/s comprising all of the elements listed in (i) and (ii) below (hereinafter referred to as a "Phasing Plan"), shall be submitted to and approved in writing by the Local Planning Authority:

(i) For the phase in question:

- The subdivision of the Phase into parcels to provide the basis for reserved matters applications;
- Location, extent type and timing of infrastructure and facilities;
- Location, extent, timing and type of public open space ("POS") and structural landscaping including an explanation of which areas of POS (including any strategic POS located outside the Phase) relates to/serves that Phase and the timing of its delivery and availability for use in relation to the delivery of dwellings and GCN mitigation measures;
- Location, extent, timing and type of SUDS, including critical cross sections to demonstrate compliance with CIRIA guidance and practical management and maintenance objectives;
- An indicative schedule identifying the number of residential dwellings proposed for each parcel within the Phase.
- An indicative accommodation schedule including schedule identifying the percentage of, and mix between, social rented and intermediate affordable dwellings and custom build dwellings to be provided in each parcel.
- The provision of the transport infrastructure for all modes of travel including connections to adjacent sites within the East of Harry Stoke New Neighbourhood area; and
- An energy statement.

(ii) For the remainder of the site as a whole:

- Phases that will form the basis of each later Phasing Plan and Design Code;
- Indicative location and timing of infrastructure and facilities;
- Indicative location and timing of POS, which shall comply with the overall amounts set out in the Section 106 agreement entered into in connection with and on the same date as this permission (hereinafter referred to as the "S106 Agreement");
- Indicative location and timing of SUDs;
- An indicative schedule identifying the number of residential dwellings proposed in each Phase within the site.
- A schedule identifying the indicative percentage of affordable dwellings and custom build dwellings to be provided in each Phase; and
- The provision of the transport infrastructure for all modes of travel including connections to the wider highway network beyond the East of Harry Stoke New Neighbourhood which shall include but not exclusively:

-SGTL southern signalised junction.

-SGTL main signalised crossroads.

-SGTL junction with Hambrook Lane including Toucan Crossing on the SGTL and surface details for central island and Metrobus stop platforms.

-Link road from Hambrook Lane east side to the main crossroads.

-Metrobus stops including IPoints, shelters, cycle stands, CCTV and power supply.

-Shared use cycle / footway along the east side of the SGTL from the railway line to Southern Metrobus stop.

-Hambrook Lane east and west traffic calming.

-Site access from Old Gloucester Road.

-Footway on west side of Old Gloucester Road from site access to and including a central reservation crossing point south of the motorway bridge.

-Shared use cycle / footway along the west side of Old Gloucester Road from the site access to opposite Players Close.

The phasing plan shall be in accordance with the illustrative plan entitled Landscape Open Space Provision, however in the event of any variation that the Local Planning Authority considers to be significant, a revised Landscape Open Space Provision plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority.

(Following approval of the first Phasing Plan, subsequent Phasing Plan submissions shall take this into account in the POS calculations for the remainder of the site as a whole).

All Phasing Plans shall be in compliance with the approved Parameter Plans, and the principles and concepts contained in the approved Design and Access Statement (August 2018). The timing of provision of infrastructure and facilities within the phasing plans shall comply with any triggers set out elsewhere in either conditions or Section 106.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South

Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

8. With the exception of land west of the Stoke Gifford Transport Link, prior to the approval of the first reserved matters application in a Phase, as identified in the approved Phasing Plan, a design code for that Phase (hereinafter referred to as a "Design Code") shall be submitted to and approved in writing by the Local Planning Authority.

Each Design Code shall be in accordance with and facilitate the principles and parameters set out in the Design and Access Statement, approved Parameter Plans, Energy Statement and the relevant Phasing Plan approved pursuant to condition 7. It shall include:

- A regulating plan at a scale no less than 1:1,000 (to be based on an accurate site survey), which also illustrates the urban structure and form of the immediate context;
- A plan showing safe routes to school through the Phase, serving on-site and off-site education facilities and details of walking and cycling routes and how these links connect to the wider network;
- Specification of the extent and nature of any character areas and the key elements of urban form within them;
- Details of street types and junctions, block and parking principles, build line & set back principles, frontage treatment, and landscape, open space and public realm treatment; and
- Specification of the architectural appearance principles for the principal streets, frontages and landmark buildings, including roofs and chimneys, eaves, window and door proportions and style, reveal depths, colour strategy, materials mix and detailing.
- Commentary on the success or otherwise of previous Phase(s) (if any) and or relevant and similar development elsewhere and how the principles applied shall be replicated or varied as appropriate.
- A highway hierarchy detailing carriageway, footway, cycleway and shared surfaces widths and surface materials.

Any subsequent applications for agreed revisions to an approved Design Code shall be subject to the written approval of the Local Planning Authority.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

9. Reserved matters applications shall include full details of both hard and soft landscaping works and these works shall be carried out as approved. Such details shall accord with the principles of the approved Landscape Parameter Plan, the principles and concepts contained in the approved Design and Access Statement (August 2018), and Design Code.

These details shall include: proposed finished floor levels and contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. SUDs, surface and foul water sewers, power and communications cables, other pipelines and manholes); retained historic landscape features and proposals for restoration where relevant.

Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.

Detailed planting plans shall detail size, type and specification, mixes and quantities of all proposed planting. Where appropriate, construction details of boundary and surfacing treatments; construction details of all SUDS elements and maintenance proposals shall be submitted with each Reserved Matters for approval.

A combined drainage, landscaping and street lighting plan shall also be submitted with each Reserved Matters for approval. Where applicable the plan shall include a scheme of street lighting to prevent light spill over great crested newt habitat and/or bat commuting/foraging habitat (European Protected Species).

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

10. All hard and soft landscape works shall be carried out in accordance with the approved implementation programme on land to which the reserved matter relates, or in accordance with a programme agreed in writing with the Local Planning Authority prior to approval of the relevant reserved matters application.

Reason:

To protect the character and appearance of the area and amenities of future occupiers to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS27 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

11. With reference to retained trees the plans and particulars submitted in accordance with condition 1 and 9 shall include:
 - a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;

- b) details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- c) details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
- d) details of all RPAs (root protection areas) for all trees and hedgerows to be retained within the site and the RPA for any tree or hedgerow adjacent to the site where any part of the RPA of the tree or hedgerow in question falls within the application site, any proposed alterations to existing ground levels, and of the position of any proposed excavation within the RPA as defined in BS5837 2005 of any retained tree or of any tree on land adjacent to the site;
- e) Details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.
- f) Details of street trees shall include specification of root protection measures, and details of street tree management to encourage high level growth and maintain a clear zone directly above sewers.
All fencing to be in accordance with BS5837 2012 'Trees in Relation to Construction' and retained and maintained for the duration of the construction period.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy.

12. Prior to the commencement of the development in any geographical phase, (including the commencement of any site preparation works as defined by the S106 Agreement) plans for the phase indicating the location of tree protection measures shall be submitted to and approved in writing by the LPA. Such details shall be in accordance with the tree protection measures to safeguard the retained trees as set out in the Tree Quality Survey 1302_R12b_JP_JW (Oct 2017) and set out how the development will not adversely affect the trees to be retained. All such details as approved shall be fully implemented in advance of any works on site and retained in situ as approved for the duration of works.

Reason:

In the interests of the long term health of the tree(s) and to accord with the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (2013).

13. Prior to the commencement of any groundworks (including the commencement of any site preparation works as defined by the S106 Agreement) and prior to the approval of any reserved matters, a programme of archaeological work and subsequent detailed mitigation, outreach and publication strategy, including a timetable for the mitigation strategy (phase 1), must be submitted to and approved in writing by the local planning authority. Thereafter the approved programme of mitigation measures (phases 2, 3) and method of publication (phase 4) shall be implemented in all respects. The condition requires a four phase approach, comprising field evaluation and production of mitigation and

publication strategy (phase 1), open area excavation where necessary (phase 2), watching brief (phase 3) and publication/archiving (phase 4).

Reason:

In the interest of archaeological investigation or recording, and to accord with Policy PSP17 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017) and policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy.

Pre-commencement is required in order to ensure that any features or findings of archaeological importance are recorded and/or protected.

14. Prior to the commencement of any development, including site preparation works as defined by the S106 Agreement (with the exception of ground investigation/site survey work, construction of boundary fencing or hoarding, archaeological investigation, and ecological mitigation works) on any phase, a Waste Management Audit and cut and fill details for that phase shall be submitted to and approved by the Local Planning Authority in writing. Details to be submitted shall comprise:
- i. The volume and nature of the waste which will be generated through the demolition and/or excavation process;
 - ii. The volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc
 - iii. Proposals for recycling/recovering materials of value from the waste not used in schemes identified in (ii), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
 - iv. The volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction;
 - v. The probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use for it in order to reduce the amount of waste sent to landfill; and
 - vi. Detailed plans and sections at 1:500 of existing and proposed finished ground levels.

Development shall be carried out in accordance with the agreed details.

Reason:

To control the production of waste and to ensure satisfactory finished ground levels, in accordance with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy and policy PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

Pre-commencement is required in order to ensure that any contamination is dealt with at the correct time when the remediation is still possible.

15. No development comprising land raising shall commence within flood zone 3 as defined in drawing no. BASELINE-FZS-001 until a flood mitigation scheme required as part of the approved Land East of Harry Stoke Outline Application

Site Flood Risk Assessment by PBA dated May 2016 has been first submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be implemented in strict accordance with the approved scheme.

Reason:

In order to allow the Environment Agency to formally update the flood map and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP20 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

16. No development shall commence within the flood zone 3 as defined in drawing no. BASELINE-FZS-001 until an O&M manual has been first submitted to and approved in writing by the local planning authority explaining how the flood mitigation scheme is to be maintained following implementation of the approved engineering works as defined in the approved Land East of Harry Stoke Outline Application Site Flood Risk Assessment by PBA dated May 2016. The flood plain shall thereafter be maintained as approved.

Reason:

In order to allow the Environment Agency to formally update the flood map and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP20 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

17. No dwelling located within flood zone 3 as defined in drawing no. BASELINE-FZS-001 shall be occupied until the flood outlines and flood routes within the application site have been mapped in an updated hydraulic model using a wider 2D domain around the site and the map(s) have been approved in writing by the Local Planning Authority.

Reason:

In order to allow the Environment Agency to formally update the flood map and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy and Policy PSP20 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

18. No development shall take place on land to which the reserved matters relate until a foul water drainage strategy is submitted and approved in writing by the Local Planning Authority in consultation with the sewerage undertaker. The scheme shall include appropriate arrangements for the points of connection and the capacity improvements required to serve the proposed development phasing and shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority.

Reason:

In the interest of public safety and to avoid potential land and water environment contamination and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

19. The particulars submitted as part of condition 1 for the relevant reserved matters shall include details of a refuse collection strategy including routing details, bin stores and refuse collection points. The details so approved shall be

implemented prior to the first occupation of any or each individual dwelling to which the refuse collection strategy relates, and maintained as such thereafter.

Reason:

To ensure appropriate waste management, recycling and composting measures take place on site, and in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (2013).

20. Prior to the commencement of development additional investigation shall be carried out by a suitably competent person to ascertain the extent, nature and risks the contamination may pose to the development in terms of human health, ground water and plant growth. A report shall be submitted and approved in writing by the Local Planning Authority prior to commencement of the development setting out the findings (presented in terms of a conceptual model) and identify what mitigation measures are proposed to address unacceptable risks (Remediation Strategy). The resulting Remediation Strategy shall include a schedule of how the works will be verified (The Verification Strategy). Thereafter the development shall proceed in accordance with any mitigation measures within the approved Remediation Strategy.

Prior to occupation, where works have been required to mitigate contaminants a report verifying that all necessary works have been completed satisfactorily shall be submitted to and approved in writing by the Local Planning Authority.

If unexpected contamination is found after the development is begun, development shall immediately cease upon the part of the site affected. The Local Planning Authority must be informed immediately in writing. A further investigation and risk assessment shall be undertaken and where necessary an additional remediation scheme prepared. The findings and report shall be submitted to and approved in writing with the Local Planning Authority prior to works recommencing. Thereafter the works shall be implemented in accordance with any further mitigation measures so agreed.

Reason:

In the interest of public safety as a potential result of land contamination and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

21. Each reserved matters application shall include a detailed surface water drainage scheme (including detailed plans) for the development parcel to which the reserved matters application relates. The scheme shall accord with the principles of the Flood Risk Assessment (by PBA dated May 2016) and outline surface water strategy (drawing 32700/4002/SK10) and shall incorporate sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The scheme shall subsequently be implemented in accordance with the approved details before the parcel is completed. Sufficient attenuation storage shall be provided for each parcel and this should be clearly demonstrated in an updated FRA which show discharge rates and SUDs control measures for each parcel.

Attenuation ponds and SUDs components shall be in place and operational before the last occupation of development in each separate parcel. Each reserved matters application will need to demonstrate a suitable drainage scheme in accordance with the approved FRA. The following details shall be submitted in order to discharge this condition:

- i) A clearly labelled drainage layout plan showing the pipe networks and any attenuation ponds, soakaways and drainage storage tanks. This plan should show any pipe node numbers referred to in the drainage calculations and the invert and cover levels of manholes.
- ii) Cross sections of any proposed culverts and/or SUDs features, swales or attenuation ponds, including finished floor levels of any adjacent housing areas and roads
- iii) A manhole schedule.
- iv) Model runs to demonstrate that the critical storm duration is being used.
- v) Confirmation of the agreed discharge rate referring to the FRA, with any flow control devices indicated on the plan with the rate of discharge stated.
- vi) Calculations showing the volume of attenuation provided, demonstrating how the system operates during a 1 in 100 critical duration storm event. If overland flooding occurs, a plan should also be submitted detailing the location of overland flow paths and the likely depths of flooding.
 - a. For Fluvial flooding, a 30% allowance for climate change should be incorporated into the scheme in accordance with Table 5 of the Technical Guidance to the National Planning Policy Framework.
 - b. For Pluvial Flooding a 20% allowance for climate change should be incorporated into the scheme in accordance with Table 5 of the Technical Guidance to the National Planning Policy Framework.
- vii) In addition, all designs should be tested against a 40% climate change as a sensitivity check and to determine flood routing.
- viii) Where infiltration forms part of the proposed storm water system such as infiltration trenches and soakaways, soakage test results and test locations are to be submitted in accordance with BRE digest 365.

Reason:

To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and reduce the risk of flooding to the proposed development and future occupants in accordance with policies CS9 and CS27 of the adopted South Gloucestershire Council Local Plan: Core Strategy (December 2013) and Policy PSP20 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

22. No development shall take place until a site-specific Construction Environmental Management Plan (CEMP) has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to:
 - Procedures for maintaining good public relations including complaint management, public consultation and liaison
 - All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:

07 30 Hours and 18 00 Hours on Mondays to Fridays and 08 00 and 1300 Hours on Saturdays and; at no time on Sundays and Bank Holidays

- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above
 - Measures to control the migration of mud from the site by vehicles during construction
 - Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works. Piling will not be undertaken
 - Procedures for emergency deviation of the agreed working hours
 - Identify a 'Considerate Contractors' or similar regime for the site induction of the workforce highlighting pollution prevention and awareness
 - Control measures for dust and other air-borne pollutants; to be incorporated into a dust management plan in order to minimise the impacts of construction dust.
 - Measures for controlling the use of site lighting whether required for safe working or for security purposes
 - Locations for the storage of all plant, machinery and materials including oils and chemicals to be used in connection with the construction of the development
 - The control and removal of spoil and wastes
 - Adequate provision for the delivery and storage of materials.
 - Adequate provision for contractor parking
 - A lorry routing schedule
 - Adequate provision of fuel oil storage, landing, delivery and use, and how any spillage can be dealt with and contained
 - Contact details for the Site Manager
 - Details of the Main Contractors membership of the Considerate Constructors Scheme
 - Details of how all semi-natural habitat within the application site (including the Ham Brook and existing great crested newt habitat as detailed within the Great Crested Newt Design Strategy) will be safeguarded from development, including pollution incidents
- The development shall be implemented in accordance with the approved CEMP.

Reason:

To ensure the protection of the future residents in terms of air quality, highway safety and environmental impacts and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP21 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future and as it relates to the construction process.

23. Prior to first occupation of each Phase, a Way-finding strategy to include full signage proposals and an implementation programme shall be submitted to and agreed with the Local Planning Authority. The way finding strategy shall consider the following:
- Existing signage in the locality

- HGV routing
- Access to development parcels with confirmation of residential area and street names
- Directional signing to Metrobus Stops
- Cycle Trunk Route signage
- Cycle Route signage including to the wider cycle network
- Pedestrian and recreational route signage
- Strategic routing signage to:
 - Bristol City Centre
 - Motorway Junctions

The strategy shall seek to avoid and reduce unnecessary highway clutter in the locality.

Reason:

In the interest of highway safety and to provide legible directions in the interest of promoting sustainable travel choices and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

24. Prior to their first use, all community facilities shall be linked to the public highway to be maintainable at public expense and by appropriate vehicle, pedestrian & cycle and sustainable transport infrastructure.

Reason:

In the interest of highway safety and to provide legible directions in the interest of promoting sustainable travel choices and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

25. Each reserved matters application for a parcel containing dwellings and/or public parking areas (including the Local Centre) shall include full details of facilities for charging plug in or other ultra-low emission vehicles at each dwelling with an adjacent garage or parking space and at locations within the public parking areas including the Local Centre. No relevant development in the parcel shall be commenced until such details have been approved in writing by the Local Planning Authority. The facilities are to be provided in accordance with the approved details prior to occupation of each relevant dwelling/building or prior to the opening of the relevant public car park (as appropriate).

Reason:

To ensure all infrastructure is provided at an early stage to promote sustainable travel choices and to provide for connections to adjacent sites in the interest of achieving a comprehensive development and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

26. No dwelling shall be occupied until the highway linking that dwelling to the existing public highway has been provided with street lighting and completed to

base course level for the carriageway or shared surface and surface course level for the footway (or suitable level surface to be agreed with the highways inspector), in accordance with the approved Movement Parameters Plan and the approved reserved matters details.

Reason:

In the interests of highway safety, to ensure all dwellings are provided with a safe and suitable access and to accord with Policy CS8 of the Core Strategy adopted December 2013 and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

27. No dwelling shall be occupied until car and cycle parking has been provided for the dwelling to which the car and cycle parking relates in accordance with the approved reserved matters details.

Reason:

In the interest of highway safety, to promote sustainable transport choices and to accord with Policy CS8 of the Core Strategy adopted December 2013 and South Gloucestershire Council's PSP Policy 16.

28. All Affordable Dwellings shall be constructed to meet Part M of the Building Regulations accessibility standard M4 (2).

Reason:

To ensure inclusive design access for all in accordance with Policy PSP37 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan.

29. 8% of Affordable Dwellings shall be constructed to meet Part M of the Building Regulations accessibility standard M4(3)(2)(a) and all such Affordable Dwellings provided as M4(3)(2)(a) shall be provided in the social rented tenure.

Reason:

To ensure inclusive design access for all in accordance with Policy PSP37 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan.

30. The development hereby approved shall be implemented in accordance with the recommendations of the Noise Survey and Assessment was submitted as part of the ES accompanying this application (by noise.co.uk - Dated May 2016).

Reason:

To protect the amenities of the future occupiers of the dwellings hereby approved, and to accord with Policy CS9 of the South Gloucestershire Local Plan Core Strategy 2006-2027 adopted Dec 2013.

31. No dwellings shall be occupied shall until a strategy for the provision of public art for the development site has been first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved strategy.

Reason:

To contribute to the objectives of the South Gloucestershire Cultural, Heritage and Arts Strategies, through the provision of additional, extended or enhanced

facilities and access to/or facilitation of art and cultural activities for the new residents in accordance with Policy CS23 South Gloucestershire Local Plan: Core Strategy (adopted December 2013).

32. No buildings shall be occupied within 65m of the existing gas pipeline crossing the site until it has been diverted to run along the eastern boundary of the site

Reason:

In the interest of public safety and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

33. All reserved matters submissions shall include an adoptions plan to show the areas of the site to be adopted by the Council (including Highway Land) and to fall within the control of any Public Open Space management company/entity and land to be conveyed to the dwelling owner.

Reason:

To protect the character and appearance of the area to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS27 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

34. Any energy statement submitted under condition 7 which includes any proposal for Combined Heat and Power (CHP) scheme within a development phase shall include an assessment of the potential impacts of the CHP scheme on air quality. The assessment shall be carried out in accordance with current guidance produced by the Institute of Air Quality Management (IAQM) and Environmental Protection UK (EPUK) on Combined Heat and Power (Feb 2012) or any documents which subsequently supersedes this guidance. The assessment must be carried out by a suitable qualified person and the assessment methodology agreed with South Gloucestershire Council Environmental Protection Team prior to approval of the energy statement. If the assessment identifies any adverse or significant impacts, then appropriate mitigation measures must be specified in the assessment. The development shall thereafter be implemented in strict accordance with the approved assessment and mitigation measures.

Reason:

In the interest of protecting the amenity of existing local residents and future residents of the proposal and public safety as a potential result of air pollution and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP6 and PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

35. The development hereby approved shall accord with the elements of the Great Crested Newt Design Strategy dated July 2018 by South Gloucestershire Council that are located within the application site. All works shall be carried out in accordance with said strategy.

Reason

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

36. No development shall commence until a mitigation strategy for reptiles (slow-worms and grass snakes) has been first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved strategy.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

37. No development shall commence until a mitigation strategy for hedgehog has been first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved strategy.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

38. No development shall commence until a scheme for provision of bird nest boxes/features has been first submitted to and approved in writing by the Local Planning Authority. The scheme should include the type and location of all nest boxes and design features, to cover a variety of species including starling, house martin, swift and house sparrow. The development shall be implemented in strict accordance with the approved scheme.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

39. No development shall commence until a Landscape and Ecological Management Plan has been drawn up and agreed with the Council in writing. The Plan shall

accord with the approved Landscape Parameter Plan and mitigation strategies and include details of the existing habitat to be safeguarded (trees and hedges); and any new habitat to be created (to include a mosaic of species-rich grassland, woodland, scrub, ponds and newt hibernacula - 'the green spine'). The approved plan shall include the management regime for said habitats and a programme of monitoring of all works for a period of 5 years from their implementation. The development shall be carried out in accordance with the approved Landscape and Ecological Management Plan.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

Reason:

To protect and enhance the ecological interests of the site in accordance with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

40. Prior to commencement of any development a mitigation strategy for badger shall be first submitted to and approved in writing by the Local Planning Authority. No development within each Phase identified in condition 7 shall commence, if 12 months or more has elapsed since the original field survey, until a re-survey has been undertaken and a report of the findings of the survey has been first submitted to and approved in writing by the Local Planning Authority. The report shall provide details of all works subject to the licensing provisions of the Protection of Badgers Act 1992. The development shall be implemented in strict accordance with the approved strategy.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

41. No development shall be commenced on the Brown Land (save for implementation of the approved earthworks strategy, remediation works related to ground contamination, archaeological investigation, drainage and utilities) unless and until:

a) all third party legal interests in the Brown Land existing at the point of commencement are bound by the S106 agreement entered into in connection with this permission ("S106 Agreement") via the completion of a supplemental deed in the form attached as Appendix 3 to the S106 Agreement ("Agreed Form Supplemental Deed"); and

b) in the event that the Council as landowner owns a legal interest in the Brown Land (or part thereof) at the point of commencement, the Council as landowner has provided a unilateral undertaking to the LPA (in a form which is satisfactory to the LPA) in which the Council as landowner undertakes as follows:

- i) to abide by the terms of the S106 Agreement with the intention that the planning obligations contained therein bind its interest in the Brown Land and will become enforceable against successors in title and persons deriving title under them; and
- ii) not to dispose of its interest in the Brown Land without first seeking a legally enforceable obligation on the disponent to enter into the Agreed Form Supplemental Deed and notifying the LPA whether such an obligation has been secured.

Reason:

In order to secure mitigation for the development as the Council cannot enter into a S106 agreement with itself.

42. No development shall be commenced on the Yellow Hatched Triangle (save for implementation of the approved earthworks strategy, remediation works related to ground contamination, archaeological investigation, drainage, utilities) unless and until:

a) all third party legal interests in the Yellow Hatched Triangle existing at the point of commencement are bound by the S106 agreement entered into in connection with this permission ("S106 Agreement") via the completion of a supplemental deed in the form attached as Appendix 3 to the S106 Agreement ("Agreed Form Supplemental Deed"); and

b) in the event that the Council as landowner owns a legal interest in the Yellow Hatched Triangle (or part thereof) at the point of commencement, the Council as landowner has provided a unilateral undertaking to the LPA (in a form which is satisfactory to the LPA) in which the Council as landowner undertakes as follows:

- i) to abide by the terms of the S106 Agreement with the intention that the planning obligations contained therein bind its interest in the Yellow Hatched Triangle and will become enforceable against successors in title and persons deriving title under them; and
- ii) not to dispose of its interest in the Yellow Hatched Triangle without first seeking a legally enforceable obligation on the disponent to enter into the Agreed Form Supplemental Deed and notifying the LPA whether such an obligation has been secured.

Reason:

In order to secure mitigation for the development as the Council cannot enter into a S106 agreement with itself.

43. No development shall be commenced on the Green Hatched Strip (save for implementation of the approved earthworks strategy, remediation works related to ground contamination, archaeological investigation, drainage, utilities and works to layout vehicular, cycle and pedestrian accesses (including any verge and landscaping associated with those accesses) unless and until:

a) all third party legal interests in the Green Hatched Strip existing at the point of commencement are bound by the S106 agreement entered into in connection with this permission ("S106 Agreement") via the completion of a supplemental deed in the form attached as Appendix 3 to the S106 Agreement ("Agreed Form Supplemental Deed"); and

b) in the event that the Council as landowner owns a legal interest in the Green Hatched Strip (or part thereof) at the point of commencement, the Council as landowner has provided a unilateral undertaking to the LPA (in a form which is satisfactory to the LPA) in which the Council as landowner undertakes as follows:

- i) to abide by the terms of the S106 Agreement with the intention that the planning obligations contained therein bind its interest in the Green Hatched Strip and will become enforceable against successors in title and persons deriving title under them; and
- ii) not to dispose of its interest in the Green Hatched Strip without first seeking a legally enforceable obligation on the disponee to enter into the Agreed Form Supplemental Deed and notifying the LPA whether such an obligation has been secured.

Reason:

In order to secure mitigation for the development as the Council cannot enter into a S106 agreement with itself.

44. No development shall be commenced on the Pink Hatched Land (save for implementation of the approved earthworks strategy, remediation works related to ground contamination, archaeological investigation, drainage, utilities and works to layout vehicular, cycle and pedestrian accesses (including any verge and landscaping associated with those accesses)) unless and until:

a) all third party legal interests in the Pink Hatched Land existing at the point of commencement are bound by the S106 agreement entered into in connection with this permission ("S106 Agreement") via the completion of a supplemental deed in the form attached as Appendix 3 to the S106 Agreement ("Agreed Form Supplemental Deed"); and

b) in the event that the Council as landowner owns a legal interest in the Pink Hatched Strip (or part thereof) at the point of commencement, the Council as landowner has provided a unilateral undertaking to the LPA (in a form which is satisfactory to the LPA) in which the Council as landowner undertakes as follows:

- i) to abide by the terms of the S106 Agreement with the intention that the planning obligations contained therein bind its interest in the Pink Hatched Strip and will become enforceable against successors in title and persons deriving title under them; and
- ii) not to dispose of its interest in the Pink Hatched Strip without first seeking a legally enforceable obligation on the disponee to enter into the Agreed Form Supplemental Deed and notifying the LPA whether such an obligation has been secured.

Reason:

In order to secure mitigation for the development as the owner of the land is not known as the land is unregistered at HM Land Registry.

**IN ACCORDANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2015.
POSITIVE AND PROACTIVE STATEMENT:**

In dealing with this planning application the Local Planning Authority have worked with the applicant in a positive and proactive manner on seeking solutions to problems arising in the following ways:

Officers have worked for over two years with the applicant to resolve matters related to design, traffic, renewable energy, landscape, ecology public open space, environmental matters, community infrastructure, education in a positive and proactive way to take the application forward to be determined.

ADDITIONAL INFORMATION

1. The Land-Use Planning & Development Control: Planning for Air Quality guidance produced by EPUK/IAQM (January 2017) recommends the following emission standards for installed combustion plant:
 - All gas fired boilers to meet a minimum standard of <40mgNO_x/kWh
 - All gas fired CHP plant to meet a minimum emissions standard of:
 - Spark ignition engine 250 mg NO_x/Nm³
 - Compression ignition engine 400 mg NO_x/Nm³
 - Gas turbine 50 mg NO_x/Nm³

A presumption should be made to use natural gas-fired installations, as biomass technologies could have potential adverse air quality impacts in the smoke control area the proposed development lies within.
2. The Development Control West Planning Committee have raised concerns over a lack of local bus service through this site. The applicant is therefore requested to shall use all reasonable endeavours to secure a local bus service in consultation with SGC and the West of England Combined Authority (WECA).
3. In relation to conditions 28 and 29, the person carrying out the building work must inform the building control body of the conditions above. The building control body will be required to determine compliance with Part M of the Building Regulations accessibility standard M4 (2) and/or M4 (3)(2)(a).
4. This permission is to be read in conjunction with the AGREEMENT AND UNDERTAKING dated 2nd March 2020 in pursuance of Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be submitted for further approval, before all or part of the development is otherwise commenced. For further information regarding the discharge of Planning Conditions and the relevant forms please view “compliance with conditions” on our website, www.southglos.gov.uk If the permission is commenced without these requirements being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council’s planning website.

DM Whinham

STRATEGIC MAJOR SITES MANAGER

DATE: 3rd March 2020



PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £34 per request relating to 'householder' applications and £116 for any other full planning applications. The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

COMMUNITY INFRASTRUCTURE LEVY (CIL)

If this application has been identified as being liable to CIL you should not commence development until the requirements and obligations under CIL have been established. If we require further information we will write to you requesting this. Where we already have clear information about the proposal and assumed liability we will issue a liability notice shortly. Further information can be found on our website at www.southglos.gov.uk/environment-and-planning/planning/community-infrastructure-levy

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 868271

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications – within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

Strategic Planning
South Gloucestershire Council,
Department For Environment And
Community Services
PO Box 1954, Bristol, BS37 0DD

The Planning Inspectorate
Room 3/04 Kite Wing
2 The Square Temple Quay
Bristol BS1 6PN

Please ensure this instruction is complied with in order to avoid any unnecessary delay

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.
2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provision of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.
2. If planning permission has been granted for the development, please note that

should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.

3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING REGULATIONS BEFORE ANY WORK IS COMMENCED.
4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence

EP7B

TOWN AND COUNTRY PLANNING ACT 1990 OUTLINE PERMISSION FOR DEVELOPMENT

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

APP REF: PT16/4928/O
DATE VALID: 1st September 2016
DECISION DATE: 30th October 2019
PARISH: Stoke Gifford Parish
Council

NOTICE OF DECISION

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT16/4928/O

DESCRIPTION OF DEVELOPMENT: Hybrid planning application for the demolition of farmhouse and agricultural buildings and erection of 327 dwellings with a primary school and nursery; along with site access/spine road, car parking, public open space, landscaping, drainage infrastructure and associated infrastructure; of which full permission is sought (with no matters reserved) for a site wide earthworks strategy and drainage infrastructure together with 150 no. dwellings (of the 327 total) and associated landscaping, layout, infrastructure and access; and outline permission is sought for the erection of 177 dwellings, primary school and nursery (Use Class D1) with access to be determined and all other matters reserved.

APPLICANT: Crest Nicholson Operations Ltd

LOCATION: Land At The North Of The Railway East Of Harry Stoke
Bradley Stoke Bristol South Gloucestershire

In accordance with the application and accompanying plans, subject to the conditions specified below:

CONDITIONS

1. The development hereby permitted comprising the full submission (hereafter called "the Detailed Site" and "the Strategic Landscaping Site") (inclusive of remediation work related to ground contamination, archaeological investigation, landscape planting and pedestrian accesses, drainage and utilities and routes from the primary school to the SGT and from the Primary school to other adjacent development land and the development of the primary school) shall be begun before the expiration of three years from the date of this permission.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

2. For the land subject to outline consent only (hereafter called "the Outline Site") details of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development on land to which the reserved matters relate commences. Development thereafter shall be carried out in accordance with the approved details.

Reason:

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

3. All applications for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiration of 10 years from the date of this permission

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended)

4. The development of the Outline Site hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

5. Prior to the approval of any reserved matters application, a plan/s comprising all of the elements listed below (hereafter call the "Phasing Plan"), shall be submitted to and approved in writing by the Local Planning Authority:

Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD

Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

If required, the subdivision of the Outline Site into parcels to provide the basis for reserved matters applications;

Location, extent and timing of infrastructure and facilities;

Location, extent, timing and type of public open space and structural landscaping (including street trees) including an explanation of which areas of Public Open Space relate to/serve the site and the timing of its delivery and availability for use in relation to the delivery of dwellings;

Location, extent, timing and type of SUDS, including critical cross sections to demonstrate compliance with CIRIA guidance and practical management and maintenance objectives;

A schedule identifying the number of residential dwellings proposed for each reserved matters area if applicable;

An indicative accommodation schedule including schedule identifying the percentage of, and mix between social rented and intermediate affordable dwellings and custom build dwellings to be provided in each parcel (hereafter called the "Affordable Housing Schedule");

the provision of the transport infrastructure for all modes of travel including connections to adjacent sites within the East of Harry Stoke New Neighbourhood area;

An energy statement;

A schedule identifying the amount and location of custom build dwellings; and the provision of the transport infrastructure for all modes of travel including connections to the wider highway network beyond the East of Harry Stoke New Neighbourhood which shall include but not exclusively

Shared use cycle / footway along the east side of the SGTL from Parkway North Roundabout to the railway line bridge.

Old Gloucester Road/Beacon Lane cycle link

Beacon Lane cycleway improvements

Toucan crossing south of Parkway North Roundabout

Site access from Old Gloucester Road.

Site access from Parkway North Roundabout

pedestrian and cycle links (including a tarmac surface and street lighting) to the adjacent development site (PT17/5873/O)

The Phasing Plan shall be in accordance with the approved Parameter Plans, however in the event of any variation that the Local Planning Authority considers to be significant, a revised Illustrative Landscape Distribution Masterplan for the whole site shall be submitted to and approved in writing by the Local Planning Authority.

The Phasing Plan shall be in compliance with the approved Parameter Plans, and the principles and concepts contained in the approved Design and Access Statement (August 2018). The timing of provision of infrastructure, and facilities within the Phasing Plan shall comply with any triggers set out elsewhere in either conditions or Section 106.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

6. Applications for the approval of the reserved matters shall be in accordance with the approved Parameter Plans, the principles and parameters set out in the Design and Access Statement (November 2018) and the phasing plan in condition 5.

Reason:

For the avoidance of doubt.

7. Delivery of affordable housing shall be carried out in accordance with the relevant approved Phasing Plan under condition 5, and its accompanying Affordable Housing Schedule and matters approvals, unless otherwise agreed in writing by the Local Planning Authority.

If there are discrepancies between the affordable housing targets established in the approved Phasing Plan and the relevant reserved matters application, subsequent applications for the approval of reserved matters will be amended to ensure that the overall provision and required proportions are maintained as closely as reasonably possible.

The numbers and mix for each reserved matters application will be informed by the principles in the S106 Agreement, including any amendments to the approved Affordable Housing Schedule (condition 5) as may be reasonably agreed with the Council from time to time.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

8. Reserved matters submissions on the Outline Site shall include full details of both hard and soft landscaping works and these works shall be carried out as approved. Such details shall accord with the principles of the approved Landscape Parameter Plan, the principles and concepts contained in the approved Design and Access Statement (November 2018).

These details shall include: proposed finished floor levels and contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. SUDs, surface and foul water sewers, power and communications cables, other pipelines and

manholes); retained historic landscape features and proposals for restoration where relevant.

Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.

Detailed planting plans shall detail size, type and specification, mixes and quantities of all proposed planting. Where appropriate, construction details of boundary and surfacing treatments; construction details of all SUDS elements and maintenance proposals shall be submitted with each Reserved Matters for approval.

A combined drainage, landscaping and street lighting plan shall also be submitted with each Reserved Matters for approval.

Reason:

To ensure the highest standards of urban design and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, and the adopted East of Harry Stoke Framework SPD.

9. Prior to construction of the first dwelling on the Detailed Site to damp proof course level full details of the footbridge connection over the former quarry adjacent to Old Gloucester Road shall be submitted in writing to the Local Planning Authority for approval. These details shall include hard surfacing and construction materials; lighting and implementation programme. The development shall be implemented in accordance with the approved detailed.

Reason:

To ensure the satisfactory appearance of the development in the interests of visual amenity and to accord with Policies CS1, CS2, CS9, CS24, CS25, CS27 of the South Gloucestershire Local Plan Core Strategy Adopted December 2013 and Policies PSP2, PSP3 and PSP44 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

10. All hard and soft landscape including drainage works for each of the Detailed Site, the Strategic Landscaping Site and the Outline Site shall be carried out in accordance with an implementation programme to be first agreed in writing with the Local Planning Authority prior to damp proof course on each of the Detailed Site and the Outline Site.

For the avoidance of doubt, there will be two implementation programmes, one for each of the Detailed Site and the Outline Site (which combined will cover the implementation of work on the Strategic Landscaping Site) and the condition can be partially discharged for the purposes of compliance for the land in question once approved in writing.

Reason:

To protect the character and appearance of the area and amenities of future occupiers to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS27 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

11. The plans and particulars for the Detailed Site and each Reserved Matters application for the Outline Site to be submitted shall include a schedule of landscape maintenance for a minimum period of 5 years. The schedule shall include details of areas of amenity space and other public space and the arrangements for its implementation. Development shall be carried out in accordance with the approved scheme.

Reason:

To protect the character and appearance of the area to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and CS1 and CS27 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

12. With reference to retained trees any reserved matters submitted in accordance with condition 2 shall include:
 - a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
 - b) details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
 - c) details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
 - d) details of all RPAs (root protection areas) for all trees and hedgerows to be retained within the site and the RPA for any tree or hedgerow adjacent to the site where any part of the RPA of the tree or hedgerow in question falls within the application site, any proposed alterations to existing ground levels, and of the position of any proposed excavation within the RPA as defined in BS5837 2005 of any retained tree or of any tree on land adjacent to the site;
 - e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.
 - f) details of street trees shall include specification of root protection measures, and details of street tree management to encourage high level growth and maintain a clear zone directly above sewers.

All fencing to be in accordance with BS5837 2012 'Trees in Relation to Construction' and retained and maintained for the duration of the construction period.

Reason:

To protect and enhance the character and appearance of the area and the amenities of future occupiers in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy.

13. Prior to the commencement of the development (including the commencement of any site preparation works as set out in the definition of "Commencement" in the S106 Agreement) plans including delivery programme indicating the location of tree protection measures shall be submitted to and approved in writing by the LPA. Such details shall be in accordance with the tree protection measures to safeguard the retained trees as set out in the tree survey by Tyler Grange ref: 1302_R015a_JJ_LP (July 2016) and set out how the development will not adversely affect the trees to be retained. All such details as approved shall be fully implemented in advance of any works on site and retained in situ as approved for the duration of works.

Reason:

In the interests of the long term health of the tree(s) and to accord with the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (2013).

14. The particulars submitted as part of condition 2 for the relevant reserved matters shall include details of a refuse collection strategy including routing details, bin stores and refuse collection points. The details so approved shall be implemented prior to the first occupation of any or each individual dwelling to which the refuse collection strategy relates, and maintained as such thereafter.

Reason:

To ensure appropriate waste management, recycling and composting measures take place on site, and in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (2013).

15. Prior to the commencement of any groundworks on the Detailed Site (including the commencement of any site preparation works as set out in the definition of "Commencement" in the S106 Agreement) and in relation to the Outline Site prior to the approval of any reserved matters, a programme of archaeological work and subsequent detailed mitigation, outreach and publication strategy, including a timetable for the mitigation strategy (phase 1), must be submitted to and approved in writing by the local planning authority. Thereafter the approved programme of mitigation measures (phases 2, 3) and method of publication (phase 4) shall be implemented in all respects. The condition requires a four phase approach, comprising field evaluation and production of mitigation and

publication strategy (phase 1), open area excavation where necessary (phase 2), watching brief (phase 3) and publication/archiving (phase 4).

Reason:

In the interest of archaeological investigation or recording, and to accord with Policy PSP17 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017) and policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy.

Pre-commencement is required in order to ensure that any features or findings of archaeological importance are recorded and/or protected.

16. Prior to the commencement of any development, including site preparation works as set out in the definition of "Commencement" in the S106 Agreement (with the exception of ground investigation/site survey work, construction of boundary fencing or hoarding, archaeological investigation, the approved land contamination remediation strategy, and ecological mitigation works), a Waste Management Audit shall be submitted to and approved by the Local Planning Authority in writing. Details to be submitted shall comprise:
- i. The volume and nature of the waste which will be generated through the demolition and/or excavation process;
 - ii. Proposals for recycling/recovering materials of value from the waste not used in schemes including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
- Development shall be carried out in accordance with the agreed details.

Reason:

To control the production of waste and to ensure satisfactory finished ground levels, in accordance with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy and policy PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

Pre-commencement is required in order to ensure that any contamination is dealt with at the correct time when the remediation is still possible.

17. The approved SUDS surface water drainage scheme for the site shall be carried out in accordance with the approved details.

Reason

To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system and to accord with policies CS9, CS25 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP20 and PSP21 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

18. No development shall take place on the Outline Site until a foul water drainage strategy is submitted and approved in writing by the Local Planning Authority in

consultation with the sewerage undertaker. The scheme shall include appropriate arrangements for the points of connection and the capacity improvements required to serve the proposed development phasing and shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority.

Reason:

In the interest of public safety and to avoid potential land and water environment contamination and to accord with policies CS9 and CS26 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

19. Prior to the commencement of any development (including the commencement of any site preparation works as set out in the definition of "Commencement" in the S106 Agreement) additional investigation shall be carried out by a suitably competent person to ascertain the extent, nature and risks the contamination may pose to the development in terms of human health, ground water and plant growth. A report shall be submitted and approved in writing by the Local Planning Authority prior to commencement of the development setting out the findings (presented in terms of a conceptual model) and identify what mitigation measures are proposed to address unacceptable risks (Remediation Strategy). The resulting Remediation Strategy shall include a schedule of how the works will be verified (The Verification Strategy). Thereafter the development shall proceed in accordance with any mitigation measures within the approved Remediation Strategy.

Prior to occupation of the first dwelling, where works have been required to mitigate contaminants a report verifying stating that all necessary works have been completed satisfactorily shall be submitted to and approved in writing by the Local Planning Authority.

If unexpected contamination is found after the development is begun, development shall immediately cease upon the part of the site affected. The Local Planning Authority must be informed immediately in writing. A further investigation and risk assessment shall be undertaken and where necessary an additional remediation scheme prepared. The findings and report shall be submitted to and approved in writing with the Local Planning Authority prior to works recommencing. Thereafter the works shall be implemented in accordance with any further mitigation measures so agreed.

Reason:

In the interest of public safety as a potential result of land contamination and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP21 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (adopted November 2017).

20. No development (including the commencement of any site preparation works as set out in the definition of "Commencement" in the S106 Agreement) shall take place until a site specific Construction Environmental Management Plan (CEMP)

has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to:

Procedures for maintaining good public relations including complaint management, public consultation and liaison

All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:

07 30 Hours and 18 00 Hours on Mondays to Fridays and 08 00 and 1300 Hours on Saturdays and; at no time on Sundays and Bank Holidays

Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.

Measures to control the migration of mud from the site by vehicles during construction

Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works. Piling will not be undertaken

Procedures for emergency deviation of the agreed working hours.

Identify a 'Considerate Contractors' or similar regime for the site induction of the workforce highlighting pollution prevention and awareness.

Control measures for dust and other air-borne pollutants; to be incorporated into a dust management plan in order to minimise the impacts of construction dust.

Measures for controlling the use of site lighting whether required for safe working or for security purposes.

locations for the storage of all plant, machinery and materials including oils and chemicals to be used in connection with the construction of the development;

the control and removal of spoil and wastes;

Adequate provision for the delivery and storage of materials.

Adequate provision for contractor parking

A lorry routing schedule

Adequate provision of fuel oil storage, landing, delivery and use, and how any spillage can be dealt with and contained.

Contact details for the Site Manager.

Details of the Main Contractors membership of the Considerate Constructors Scheme

Details of soil retention measures which may include planting

Detail how all semi-natural habitat will be safeguarded from development, including pollution incidents.

The development shall be implemented in accordance with the approved CEMP.

Reason:

To ensure the protection of the future residents in terms of air quality, highway safety and environmental impacts and to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013)

and Policy PSP21 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future and as it relates to the construction process.

21. Prior to first occupation of each development parcel comprising any of the Detailed Site or the Outline Site, a Way-finding strategy to include full signage proposals and an implementation programme shall be submitted for that development parcel and agreed with the Local Planning Authority. The way finding strategy shall consider the following:

- Existing signage in the locality
- HGV routing
- Access to development Parcels with confirmation of residential area and street names
- Directional signing to Metrobus Stops
- Cycle Trunk Route signage
- Cycle Route signage including to the wider cycle network
- Pedestrian and recreational route signage including signage to local bus stops
- Strategic routing signage to:
 - Bristol City Centre
 - Motorway Junctions

The strategy shall seek to avoid and reduce unnecessary highway clutter in the locality.

Reason:

In the interest of highway safety and to provide legible directions in the interest of promoting sustainable travel choices and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

22. Prior to the use commencing, the Primary School shall be linked to the public highway to be maintainable at public expense and by appropriate vehicle, pedestrian & cycle and sustainable transport infrastructure.

Reason:

In the interest of highway safety and to provide legible directions in the interest of promoting sustainable travel choices and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

23. The development parcel comprising the Detailed Site and each reserved matters application for a parcel on the Outline Site containing dwellings shall include full details of facilities for charging plug in or other ultra-low emission vehicles at each dwelling with an adjacent garage or parking space. No relevant development in the parcel shall be commenced until such details have been approved in writing by the Local Planning Authority. The facilities are to be provided in accordance with the approved details prior to occupation of each relevant dwelling/building. Commencement of development shall exclude the approved earthworks strategy, archaeological investigation and any contamination remediation works.

Reason:

To ensure all infrastructure is provided at an early stage to promote sustainable travel choices and to provide for connections to adjacent sites in the interest of achieving a comprehensive development and to accord with policies CS8 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

24. No dwelling shall be occupied until the highway linking that dwelling to the existing public highway has been provided with street lighting and completed to base course level for the carriageway or shared surface and surface course level for the footway, (or suitable level surface to be agreed with the highways inspector) in accordance with the approved detailed layout plan for the Detailed Site or Movement Parameters Plan and the approved reserved matters details for the Outline Site.

Reason:

In the interests of highway safety, to ensure all dwellings are provided with a safe and suitable access and to accord with Policy CS8 of the Core Strategy adopted December 2013 and Policy PSP11 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

25. No dwelling shall be occupied until car and cycle parking has been provided for the dwelling to which the car and cycle parking relates in accordance with the approved details.

Reason:

In the interest of highway safety, to promote sustainable transport choices and to accord with Policy CS8 of the Core Strategy adopted December 2013 and South Gloucestershire Council's PSP Policy 16.

26. 22.6% (40 units) of Affordable Dwellings on the Outline Site shall be constructed to meet Part M of the Building Regulations accessibility standard M4(2).

Reason:

To ensure inclusive design access for all in accordance with Policy PSP37 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan.

27. 8% (3 units) of Affordable Dwellings on the Outline Site shall be constructed to meet Part M of the Building Regulations accessibility standard M4(3)(2)(a).

Reason:

To ensure inclusive design access for all in accordance with Policy PSP37 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan.

28. The development hereby approved shall be implemented in accordance with the recommendations of the Noise Survey and Assessment was submitted as part of the ES accompanying this application (Environmental Noise and Vibration Assessment (5th August 2016), Noise.co.uk, Report No: 15446-2 R2).

Reason:

To protect the amenities of the future occupiers of the dwellings hereby approved, and to accord with Policy CS9 of the South Gloucestershire Local Plan Core Strategy 2006-2027 adopted Dec 2013.

29. Prior to commencement of development of the MUGA (with reference NS4 on the public open space provision plan reference 2331/HYB/028) (multi use games area) details to attenuate noise from the MUGA including fence enclosure shall be first submitted to and approved in writing by the Local Planning Authority. The MUGA shall be implemented in accordance with the approved scheme.

Reason:

To protect the amenities of the future occupiers of the dwellings hereby approved, and to accord with Policy CS9 of the South Gloucestershire Local Plan Core Strategy 2006-2027 adopted Dec 2013.

30. Prior to the commencement of development in each development parcel comprising any of the Detailed Site or the Outline Site details and/or samples of the roofing and external facing materials proposed to be used in that parcel including boundary walling shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason:

To ensure the highest standards of urban design, visual amenity and comprehensively planned development in accordance with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy, Policy PSP1 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan and the adopted East of Harry Stoke Framework SPD.

31. Prior to the first residential occupation of the relevant phase of development, detailed plans shall be submitted to, and approved by the Local Planning Authority, to demonstrate which areas of landscaping and tree planting, both formal and informal shall be retained as part of the private management company, or transferred to the Local Planning Authority for adoption.

Reason

To ensure the preservation of a cohesive development in the interests of visual amenity and to accord with policies PSP2 and PSP3 of the adopted South Gloucestershire Local Plan Policies, Sites and Plans Plan (November 2017) and Policies CS1, CS2, CS9, CS20, CS24, CS25 of the South Gloucestershire Local Plan Core Strategy Adopted December 2013.

32. No development shall be commenced on the Council Land (save for implementation of the approved earthworks strategy, remediation work related to ground contamination, archaeological investigation, ground stabilisation works, landscape planting and pedestrian accesses, drainage and utilities and routes from the primary school to the SGTL and from the Primary school to other adjacent development land and the development of the primary school) unless and until:

a) all third party legal interests in the Council Land existing at the point of commencement are bound by the S106 Agreement via the completion of one or more Agreed Form Supplemental S106s;

and

b) in the event that the Council as landowner owns a legal interest in the Council Land (or part thereof) at the point of commencement, the Council as landowner has provided a unilateral undertaking to the LPA (in a form which is satisfactory to the LPA) in which the Council as landowner undertakes as follows:

i) to abide by the terms of the S106 Agreement with the intention that the planning obligations contained therein bind its interest in the Council Land and will become enforceable against successors in title and persons deriving title under them; and

ii) not to dispose of its interest in the Council Land without first imposing a legally enforceable obligation on the disponent to enter into the Agreed Form Supplemental S106

Reason:

In order to secure community and highway infrastructure as mitigation for the development as the Council cannot enter into a s106 agreement with itself.

33. The development shall conform in all aspects with the plans and details shown in the application as listed below,
- | | |
|-----------|---|
| 2097.90. | Beacon Lane cycle path improvements. |
| 2097.44C. | Site access from Parkway roundabout. |
| 2097.53C. | Toucan crossing on south arm of Parkway roundabout. |

2097.47G.	Site access from Old Gloucester Road and footway/cyclepath link along Old Gloucester Road to Winterbourne Road.
2097.75B.	Footway/cyclepath along the eastern side of the Stoke Gifford Transport Link.
13170/3301	Framework Plan 1:1000 C
13170 1000	Site Location Plan 1:2500 B
13170 1001	Existing Site Plan 1:500
13170 5000	Planning layout 1:500 D
13170 5000. 1	Planning Layout 1:500 X
13170 3270	Roof Mat.Strategy 1:1000 K
13170 3271	Facing Mat. Strategy 1:1000 J
13170 3272	Affordable Strategy 1:1000 J
13170 3273	Movement Strategy 1:1000 J
13170 3274	Refuse Strategy 1:1000 J
13170 3275	Storey H. Strategy 1:1000 I
13170 3276	Adoption Strategy 1:1000 I
13170 3277	Chimney Strategy 1:1000 L
13170 3278	Boundary Strategy 1:1000 E
13170 3279	Door & Window Strategy 1:1000 C
13170 3510	Proposed Site Sections 1:500 A
13170 3600	Street Elevations 1:200 F
13170 3601	Street Elevations 2 1:200 F
SCH001	Accommodation schedule
SCH002	Parking schedule
3005	Landscape Edge Studies
3308B	Parcel Plan
13170 6000	Elmswell D
13170 6001.3	Hartley (Render) C
13170 6001.4	Hartley (Detached) B
13170 6001.5	Hartley/Welwyn A
13170 6002.2	Elsenham (Render) D
13170 6005	Monksfield C
13170 6006.1	Welwyn (side) A
13170 6006.2	Welwyn (V2 side) D
13170 6007.1	Welwyn (Render) D
13170 6008.1	Calder (Render) E
13170 6009	Apartment Block (Plans) D
13170 6010	Apartment Block (Elevations) D
13170 6017	Garage Types B
13170 6018	Cycle & Bin Storage A
13170 6019.1	Caldwick (Elevations) A
13170 6019.2	Caldwick (Plans) A
13170 6022.1	3B6P-1234 (Plans) A
13170 6022.2	3B6P-1234 (Elevations) B
13170 6022.3	House Types - 3B6P (Colour Variants)
13170 6023.1	4B7P-1954 (Plans) A

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13170 6023.2 4B7P-1954 (Elevations) B
13170 6023.3 House Types -4B7P (Colour Variants)
13170 6024 HA.1B.2P Maisonette
13170 6025 HA.2B.4P Maisonette
13170 6026.1 HA. 2B.4P.852
13170 6026.2 HA. 2B.4P.852
13170 6027 HA. 3B.5P.1002
13170 6028 WCH 3B.5P.1297
13170 6029 HA.4B.6P.1159
13170 6030 HA.2B.4P.1120.WCH
13170 6201 Substation

Reason:

In the interest of clarity and in order to define the planning permission and to ensure a good quality of design to accord with policies CS1 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

34. The development hereby approved shall accord with the bat mitigation strategy/measures outlined within Paragraphs 12.5.18 to 12.5.20 of Chapter 12 (Ecology) of the Environmental Statement (ES) dated August 2016. All works shall to be carried out in strict accordance with said strategy.

Reason

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

35. No development shall commence until a mitigation strategy for reptiles (common toad) has been first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved strategy.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

36. No development shall commence until a mitigation strategy for hedgehog has been first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved strategy.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

37. No development shall commence until a scheme for provision of bird nest boxes/features has been first submitted to and approved in writing by the Local Planning Authority. The scheme should include the type and location of all nest boxes and design features, to cover a variety of species including starling, house martin, swift and house sparrow. The development shall be implemented in strict accordance with the approved scheme.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

38. No development shall commence until a Landscape and Ecological Management Plan be drawn up and agreed with the Council in writing. The Plan shall accord with the approved Landscape Parameter Plan and mitigation strategies and include the agreed masterplan and mitigation strategies and include details of the existing habitat to be safeguarded; any new habitat to be created (species-rich grassland, hedges, woodland, scrub and ponds). The approved plan shall include the management regime for said habitats; and a programme of monitoring of all works for a period of 5 years from their implementation. The development shall be carried out in accordance with the approved ecological and landscape management plan.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

39. No development within the Detailed Site and each phase of the Outline Site identified in condition 5 shall commence, if 12 months or more has elapsed since

the original field survey, until a re-survey has been undertaken and a report of the findings of the survey has been first submitted to and approved in writing by the Local Planning Authority. The report shall provide details of all works subject to the licensing provisions of the Protection of Badgers Act 1992. The development shall be implemented in strict accordance with the approved strategy.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

40. Prior to commencement of development within the Detailed Site and each phase of the Outline Site as stated in condition 5 (save for implementation of the approved earthworks strategy, remediation work related to ground contamination, archaeological investigation, drainage and utilities) details of a scheme of street lighting for that phase shall be first submitted to and approved in writing by the Council to prevent light spill over bat commuting/foraging habitat (European Protected Species). All works are to be carried out in accordance with said scheme.

For the avoidance of doubt, there will be a scheme for each of the Crest land and each further phase as defined by condition 5 and the condition can be partially discharged for the purposes of compliance for the land in question once approved in writing.

Reason:

To ensure sufficient protection for this species to accord with policies CS9 and CS27 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP19 of the South Gloucestershire Local Plan Policies, Sites and Places Plan November 2017.

This is a pre-commencement condition to avoid any unnecessary remedial action in the future.

41. No more than 75 dwellings shall be occupied until the pedestrian/cycle link is completed to the foot/cycle bridge to the north-west corner of the site in accordance with the submitted details.

Reason:

In the interest of highway safety and to accord with Policy CS27 of the Core Strategy adopted December 2013 and South Gloucestershire Council's PSP Policy 11.

42. Upon the School opening the submitted and approved School Travel Plan shall be implemented in accordance with the program and action plan therein.

Reason:

In the interest of highway safety and to promote sustainable transport choices and to accord with Policy CS8 of the Core Strategy adopted December 2013

**IN ACCORDANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER 2015.
POSITIVE AND PROACTIVE STATEMENT:**

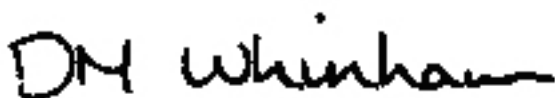
In dealing with this planning application the Local Planning Authority have worked with the applicant in a positive and proactive manner on seeking solutions to problems arising in the following ways:

Officers have worked for over three years with the applicant to resolve matters related to design, traffic, renewable energy, landscape, ecology, public open space, environmental matters, community infrastructure, education, earthworks in a positive and proactive way to take the application forward to be determined.

ADDITIONAL INFORMATION

1. The existing Saxon hedge feature within the site to be lost as part of implementation of the development is an important feature and as such a photographic record of the hedge prior to any work taking place on site should be provided and submitted to the LPA to ensure a historic record of the feature is recorded.
2. The applicant and subsequent land owners attention is drawn to the possibility of there being unexploded ordinance on the Mulgrove Farm site.
3. This permission is to be read in conjunction with the AGREEMENT AND UNDERTAKING dated 30.10.2019 in pursuance of Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.
4. The following defined terms used in this decision notice shall have the meaning ascribed to them in the S106 Agreement of even date to this permission:
"Council Land"
"Detailed Site"
"Outline Site"
"Strategic Landscaping Site"
5. The term "Agreed Form Supplemental S106" in this decision notice means the Supplemental Deed at Appendix 3 of the S106 Agreement of even date to this permission.

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be submitted for further approval, before all or part of the development is otherwise commenced. If the permission is commenced without these requirements being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council's planning website.



STRATEGIC MAJOR SITES MANAGER

DATE: 30th October 2019



PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £34 per request relating to 'householder' applications and £116 for any other full planning applications. The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

COMMUNITY INFRASTRUCTURE LEVY (CIL)

If this application has been identified as being liable to CIL you should not commence development until the requirements and obligations under CIL have been established. If we require further information we will write to you requesting this. Where we already have clear information about the proposal and assumed liability we will issue a liability notice shortly. Further information can be found on our website at www.southglos.gov.uk/environment-and-planning/planning/community-infrastructure-levy

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 868271

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications – within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

Strategic Planning
South Gloucestershire Council,
Department For Environment And
Community Services
PO Box 1954, Bristol, BS37 0DD

The Planning Inspectorate
Room 3/04 Kite Wing
2 The Square Temple Quay
Bristol BS1 6PN

Please ensure this instruction is complied with in order to avoid any unnecessary delay

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.
2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provision of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.
2. If planning permission has been granted for the development, please note that should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.
3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING

REGULATIONS BEFORE ANY WORK IS COMMENCED.

4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence

EP7C

TOWN AND COUNTRY PLANNING ACT 1990 OUTLINE PERMISSION FOR DEVELOPMENT

Corylus Planning And Environmental Ltd
3 The Old Dairy
Yanworth
Cheltenham
Gloucestershire
GL54 3LQ

APP REF: PT17/5873/O
DATE VALID: 3rd January 2018
DECISION DATE: 5th October 2020
PARISH: Winterbourne Parish
Council

APPROVED SUBJECT TO 106

NOTICE OF DECISION

South Gloucestershire Council in pursuance of powers under the above mentioned Act hereby PERMIT:

APPLICATION NO: PT17/5873/O

DESCRIPTION OF DEVELOPMENT: Erection of up to 158no dwellings together with associated infrastructure and engineering works (Outline) with access to be determined. All other matters reserved.

APPLICANT: Castel Ltd

LOCATION: Land Off Old Gloucester Road Old Gloucester Road Hambrook
Bristol South Gloucestershire

In accordance with the application and accompanying plans, subject to the conditions specified below:

CONDITIONS

1. Details of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before development on land to which the reserved matters relate commences.

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Services, PO Box 1954, Bristol, BS37 0DD
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

Development thereafter shall be carried out in accordance with the approved details.

Reason

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).

2. All applications for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiration of 3 years from the date of this permission.

Reason

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

3. The development hereby permitted shall be begun either before the expiration of 2 years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason

To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

4. This decision relates only to the plans below:

H21/TC/2/06 Location Plan

H21/TC/2/31 Site Survey

H21/TC/2/44-1 Rev B Building Height Parameter Plan

H21/TC/2/44-2 Rev B Density Parameter Plan

H21/TC/2/44-3 Rev B Land Use Parameter Plan

H21/TC/2/44-4 Rev D Blue and Green Infrastructure Parameter Plan

H21/TC/2/44-5 Rev B Access and Movement Parameter Plan

H21/TC/2/54 Application Area

T178-01 Rev E Proposed Access Arrangements

T178-100 Rev K Off-site Works General Arrangement

Reason

To clarify the plans forming this consent.

5. Applications for the approval of the reserved matters shall be in accordance with the approved Parameter Plans, and the principles and parameters set out in the Design and Access Statement. Where additional space or revisions to the space are required for infrastructure to that shown on the parameter plans, this shall be

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Services, PO Box 1954, Bristol, BS37 0DD

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provided from within the residential development area shown on the approved parameter plans.

Reason

For the avoidance of doubt, and to ensure satisfactory provision of landscaping, open space and other infrastructure to accord with policy CS24 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

6. Prior to the submission of the first reserved matters, details shall be first submitted to and approved in writing by the Local Planning Authority demonstrating how foul sewage will be disposed of, including details to demonstrate whether a foul sewage pumping station is required on site and if it is required, where it is proposed to be located. The development shall be implemented in accordance with the approved details.

Reason

To ensure satisfactory arrangements are made for foul sewerage, and to accord with policy CS24 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policies PSP8 and PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

7. If a foul sewage pumping station is required on site, it shall be provided on site prior to the occupation of the first dwelling and shall comply with the following:
 - (i) The foul sewage pumping station shall have a 15 metre buffer zone between its boundary and the boundary of the curtilage of any dwelling;
 - (ii) The foul sewage pumping station shall include suitable access arrangements for the operation and maintenance of the pumping station.

Reason

To ensure any pumping station is constructed to a suitable standard, and to accord with policy CS24 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policies PSP8 and PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

8. Prior to the approval of the first reserved matters, a noise assessment of the whole site layout, including details to establish the levels of mitigation provided by housing layouts and orientation and to determine those properties where alternative ventilation would be needed to achieve internal noise levels compatible with BS8233:2014 and the South Gloucestershire Specific Guidance Note 1- Planning and Noise (or any subsequent amendments to these documents), shall be first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason

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Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

In the interest of residential amenity and to accord with policy CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policies PSP8 and PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

9. The reserved matters shall include the following details for the play areas:
- (i) Landscaping;
 - (ii) Fencing;
 - (iii) Site levels;
 - (iv) A buffer between the play areas and the nearest dwellings to comply with the following (from Fields in Trust (October 2015), Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard):
 - o Local Area for Play (LAP)- 5 metres between the activity zone and the boundaries of dwellings;
 - o Local Equipped Area for Play (LEAP)- 20 metres between the activity zone and any dwelling façade containing habitable room windows;
 - o Neighbourhood Equipped Area for Play (NEAP)- 30 metres between the activity zone and the boundaries of dwellings;
 - (v) Access to the play areas for both pedestrians and maintenance vehicles;
 - (vi) The play equipment to be installed within the play areas.

The play areas shall be implemented in accordance with the approved details.

Reason

To ensure satisfactory provision of open space, to accord with policy CS24 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

10. The reserved matters shall include appropriate vehicular access and parking for the allotments. The allotments shall be provided in accordance with the approved details.

Reason

To ensure satisfactory provision of open space, to accord with policy CS24 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

11. Prior to the approval of the first reserved matters, the surface water drainage infrastructure for the site, and the detailed design for this, including a detailed development layout showing surface water and SUDS (sustainable drainage) proposals shall be first submitted to and approved in writing by the Local Planning Authority. The details shall include the following:

- (i) A clearly labelled drainage layout plan showing the pipe networks and all attenuation features;

- (ii) Drainage calculations to show there is no flooding on site in 1 in 30 year storm events (winter and summer); and no flooding of buildings or off site in 1 in 100 year plus an allowance for climate change storm event (winter and summer);
- (iii) Where attenuation forms part of the Surface Water Network, calculations showing the volume of attenuation provided, demonstrating how the system operates during a 1 in 100 year plus an allowance for climate change storm event (winter and summer);
- (iv) The drainage layout plan shall also show exceedance / overland flood flow routes if flooding occurs and the likely depths of any flooding (where applicable);
- (v) The plan shall also show any pipe node numbers referred to within the drainage calculations;
- (vi) A manhole / inspection chamber schedule to include cover and invert levels;
- (vii) Ownership and/or responsibility, along with details of the maintenance regime in relation to the Surface Water Network and any components such as attenuation features and flow control devices where applicable;
- (viii) Sufficient access arrangements and space to allow for the maintenance of the attenuation basin and associated channels, and landscaping along boundary of the development site;
- (ix) Details of landscaping of the attenuation basin.

The development shall be implemented in accordance with the approved details.

Reason

To ensure satisfactory drainage, and to accord with policies CS1 and CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP20 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

12. Prior to the approval of the first reserved matters a report of a site-wide investigation carried out by a suitably qualified person into the previous uses and contaminants likely to affect the development shall be first submitted to and approved in writing by the Local Planning Authority. Where potential contaminants are identified, the report shall include an investigation carried out by a suitably qualified person to ascertain the extent, nature and risks the contamination may pose to the development and how any unacceptable risks will be mitigated. The report shall set out the findings of the investigations and what mitigation measures are proposed to address these. Thereafter the development shall proceed in accordance with any approved mitigation measures. If works have been required to mitigate contaminants, prior to occupation of the first dwelling a report verifying that all necessary works have been completed satisfactorily shall be submitted to and approved in writing by the Local Planning Authority.

Reason

In the interest of public safety, human health, ground water and plant growth and to accord with policy CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

13. Prior to the approval of the first reserved matters a scheme of Public Art (including timescales and triggers) for the whole site to be implemented within the development shall be first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the submission shall be prepared in line with recommendations in the Council's Art and Design in the Public Realm - Planning Advice Note. Thereafter the artwork/s shall be installed in accordance with the approved details and retained as such.

Reason

To ensure public art is appropriately included within the scheme in the interests of the visual amenity of the development and to accord with policies CS1 and CS23 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013).

14. The reserved matters shall be accompanied by an Energy Statement detailing the energy saving measures that will be incorporated into the design of the development, including layout and orientation, massing and landscaping, and how the development will reduce carbon dioxide emissions by at least 20% through on-site renewable and/or low carbon energy generation. Development shall be carried out in accordance with the approved Energy Statement.

Reason

To ensure the development is sustainable, in accordance with Policies CS1 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP6 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

15. Prior to the approval of the first reserved matters a plan showing an area where the self-build and custom build housing will be located and how the area will be accessed and divided into plots shall be first submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason

To ensure adequate provision can be made for self-build and custom build housing, in accordance with Policy PSP42 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

16. Prior to the approval of the first reserved matters details of a site-wide pedestrian and cycle movement strategy identifying existing and predicted desire routes, safe routes to school and connections to the adjacent residential development shall be first submitted to and approved in writing by the Local Planning Authority. The development shall thereafter accord with this strategy.

Reason

To ensure appropriate pedestrian and cycle access across the site and to accord with Policy PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

17. The reserved matters shall include details of carriageways, footways, cycleways and shared surfaces widths and surface materials. The development shall thereafter be implemented in accordance with the approved details.

Reason

To ensure the reserved matters layout provides safe and suitable access to all dwellings and to accord with Policy PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

18. Prior to the approval of the first reserved matters a method statement and accompanying plans showing the following in relation to the existing trees and hedge along the boundary of Old Gloucester Road shall be first submitted to and approved by the Local Planning Authority in writing:

- (i). The root protection areas for any trees and hedgerows to be retained;
- (ii). The trees that are to be felled to construct the access and footway;
- (iii). Cross-sections showing the proposed access and footway works and adjacent trees to remain at a recognised scale;
- (iv). Methods of construction proposed to ensure the trees to remain are not adversely impacted by the works;
- (v). Replacement trees for those to be felled to accommodate the construction of the access and footway.

The development shall be implemented in accordance with the approved details.

Reason

To protect the character and appearance of the area to accord with Policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP2 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

19. Prior to the commencement of development, protective fencing shall be installed around the hedgerows and trees to be retained to accord with BS5837:2012 (or

any subsequent amendments to this). The fencing shall remain for the duration of the build.

Reason

To protect the trees and hedgerows, and to accord with Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP3 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan (November 2017).

20. The reserved matters shall contain details of the reinstatement of the boundary hedgerows on the north-west and south west boundaries of the site including planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme. The planting shall be implemented in accordance with the approved details.

Reason

To protect the character and appearance of the area to accord with Policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP2 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

21. 21. The reserved matters shall be accompanied by a method statement and accompanying plan(s) showing the following:
- (i). The root protection areas for any trees and hedgerows to be retained;
 - (ii). Any development or works to be taking place within or adjacent to those root protection areas, including below ground works;
 - (iii). Methods of construction proposed to ensure the trees are not adversely impacted by the works;
 - (iv). Routes to allow for maintenance of the trees both during and after construction.

The development shall be implemented in accordance with the approved details.

Reason

To protect the character and appearance of the area to accord with Policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP2 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

22. The reserved matters shall include full details of both hard and soft landscaping works in the area applied for. These details shall include proposed finished levels or contours; means of enclosure; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units,

signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines indicating lines, manhole); retained landscape features, including trees and hedgerows and proposals for restoration where relevant. Soft landscaping works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.

Reason

To protect the character and appearance of the area to accord with Policies CS1 and CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP2 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

23. If within a period of 5 years from the date of the planting of any tree, that tree, or any tree planted in replacement of it, is removed, uprooted or destroyed and dies, or becomes in the opinion of the Local Planning Authority seriously damaged or defective, another tree of the same species and size as the originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Reason

To protect the character and appearance of the area to accord with Policy CS1 of the South Gloucestershire Local Plan Core Strategy adopted December 2013 and Policy PSP2 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan adopted November 2017.

24. The principal windows of all proposed dwellings shall be at least 20 metres from those of existing dwellings on the boundary of the site, unless it can be demonstrated as part of a reserved matters application that measures have been implemented, as set out in South Gloucestershire Council's Technical Advice Note: Assessing Residential Amenity (June 2016) (or any subsequent amendments to this) to prevent a lesser distance adversely impacting on the amenity of residents.

Reason

To protect residential amenity, in accordance with Policy CS1 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013) and Policy PSP8 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

25. The reserved matters shall show details of facilities for charging electric or other ultra-low emission vehicles at each dwelling applied for with an adjacent garage or parking space. The approved facilities shall be provided prior to occupation of each relevant dwelling.

Reason

To promote sustainable transport choices and to accord with CS Policy CS8 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

26. Prior to the commencement of development, a site specific Construction Environmental Management Plan (CEMP), shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Highways England. The CEMP as approved by the Council shall be fully complied with at all times.

The CEMP shall address the following matters:

- (i). Measures to control the tracking of mud off-site from vehicles;
- (ii). Measures to control dust from the demolition and construction works approved;
- (iii). Adequate provision of fuel oil storage, landing, bunding, delivery and use, and how any spillage can be dealt with and contained;
- (iv). Adequate provision for the delivery and storage of materials;
- (v). Adequate provision for contractor parking;
- (vi). A Lorry routing schedule;
- (vii). Temporary access arrangements for construction traffic;
- (viii). Details of Main Contractor including membership of Considerate Constructors scheme;
- (ix). Site Manager contact details;
- (x). Processes for keeping local residents informed of works being carried out and dealing with complaints;
- (xi). Site security;
- (xii). Containment of silt/soil contaminated run-off. To include managing how soil deposits will be minimised from being deposited on the road;
- (xiii). Disposal of contaminated drainage, including water pumped from excavations;
- (xiv). Site induction for workforce highlighting pollution prevention and awareness;
- (xv). Measures to prevent the runoff of any contaminated drainage during the construction phase;
- (xvi). Site working hours;
- (xvii). How all semi-natural habitat and species of fauna will be safeguarded from development during construction.

Reason

Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD

Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

This is a pre-commencement condition as this plan needs to be in place to ensure appropriate management of works on site. In the interests of highway safety, the safe and efficient operation of the Strategic Road Network and preventing pollution, protecting biodiversity and to accord with and to accord with policy CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policies PSP11, PSP19 and PSP21 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

27. Prior to the commencement of development, including any groundworks, geotechnical works or remediation works, a programme of archaeological work and subsequent detailed mitigation, outreach and publication strategy, including a timetable for the mitigation strategy, shall be first submitted to and approved in writing by the Local Planning Authority. Thereafter the approved programme of work and mitigation measures and method of outreach and publication shall be implemented in all respects.

Reason

This is a pre-commencement condition that is required to ensure that archaeological interests are not prejudiced by construction works on the site and in the interests of archaeological investigation, recording and mitigation and to accord with policy CS9 of the South Gloucestershire Local Plan Core Strategy adopted December 2013.

28. The affordable dwellings shall be constructed to meet Part M of the Building Regulations accessibility standard M4(2), with the exception of 8% of these affordable dwellings, which shall be constructed as wheelchair accessible homes to meet Part M of the Building Regulations accessibility standard M4(3)(2)(a).

Reason

To ensure inclusive design access for all in accordance with Policy PSP37 of the adopted South Gloucestershire Local Plan: Policies, Sites and Places Plan.

29. 29. No dwelling shall be occupied until the following highway works have been implemented in full in accordance with drawing no. T178-100 Rev K:
- (i). Site access;
 - (ii). Bus stop platforms;
 - (iii). Shared foot/cyclepath from the site access to the central island refuge at Players Close;
 - (iv). Refuge island on Old Gloucester Road at the junction with Players Close and footway link to Players Close;
 - (v). All associated street lighting, signing, lining and drainage.

Reason

Strategic Planning, South Gloucestershire Council, Department For Environment And Community Services, PO Box 1954, Bristol, BS37 0DD
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

In the interest of highway safety and to provide a safe and suitable access to the site for all modes of travel and to accord with Policy CS8 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

30. No dwelling shall be occupied until the highway linking that dwelling to the existing public highway has been provided with street lighting, completed to base course level for the carriageway and surface course level for the footway or shared surface. These details shall be first submitted as part of the reserved matters.

Reason

In the interests of highway safety, to ensure all dwellings are provided with a safe and suitable access and to accord with Policy PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

31. No dwelling shall be occupied until car and cycle parking has been provided for that dwelling. These details shall be first submitted as part of the reserved matters.

Reason

In the interest of highway safety and to accord with Policy PSP16 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

32. No dwelling shall be occupied until a site-wide Travel Plan has been submitted to and approved in writing by the Local Planning Authority, in consultation with Highways England, which shall include incentives for occupiers to use modes of travel other than single occupancy car journeys. The Travel Plan shall be implemented in accordance with the approved details.

Reason

To promote sustainable travel, in the interests of the safe and efficient operation of the Strategic Road Network and the reduction on the reliance of the private vehicle, and to accord with Policy CS8 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP11 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

33. Prior to the approval of the first reserved matters, a Landscape and Ecological Management Plan shall be first submitted to and approved by the Local Planning Authority in writing. The Plan shall include:

- (i) Details of the existing habitat to be safeguarded (trees, hedges);

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- (ii) Any new habitat to be created, including the SUDS scheme, and its management;
- (iii) A programme of monitoring of all works for a period of 5 years;
- (iv) A scheme of bat tubes/boxes and bird nest boxes. The scheme shall include details of the type and location of boxes and be suitable for a variety of species of birds such as house sparrow and starling;
- (v) A mitigation strategy for hedgehog.

All development shall be carried out in accordance with the approved details.

Reason

To protect and enhance biodiversity on the site, and to accord with Policy CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

34. Prior to the approval of the first reserved matters, the site shall be re-surveyed for badger and a report shall be first submitted to and approved in writing by the Local Planning Authority. The report shall provide details of any and all works subject to the licensing provisions of the Protection of Badgers Act 1992. All development shall be carried out in accordance with the approved details.

Reason

To protect any badgers using the site, and to accord with Policy CS9 of the adopted South Gloucestershire Local Plan Core Strategy (December 2013) and Policy PSP19 of the adopted South Gloucestershire Local Plan Policies, Sites and Places Plan (November 2017).

ADDITIONAL INFORMATION

1. The submitted indicative masterplans (plan no. H21/TC/2/27 rev G & H21/TC/2/39) have been withdrawn from the proposal as they do not accord with the approved parameter plans and are not therefore considered to illustrate satisfactory ways in which the approved scheme can be delivered. In order to achieve 158 dwellings on the site and to ensure acceptable levels of amenity, landscaping and open space are met in accordance with usual and adopted standards, it is expected that an imaginative high quality design solution will be provided that incorporates a dwelling mix comprising predominantly flats, terraced and semi-detached dwelling forms. Attention to design of communal parking, garden and bin storage areas will also be required. Early pre-application discussions in respect of layout and design are recommended.
2. The Environment Agency have advised that there shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses, ponds or lakes, or via soakaways/ditches.
3. In respect of the affordable dwellings, the person carrying out the building work must inform the building control body of the conditions relating to the Building Regulations. The building control body will be required to determine compliance with Part M of the Building Regulations accessibility standard M4(2) and/or M4(3)(2)(a).
4. The construction of the site access and all other off site highway works will require the Applicant to enter into a Highway Works Agreement with the Local Highway Authority prior to commencement of the Development.
5. If breeding birds are present, development (including any clearance of vegetation or trees) should only take place outside the nesting season to avoid potential offences under the Wildlife & Countryside Act 1981 (as amended) or CROW Act 2000. Generally speaking, this will be between March and August inclusively although it will vary according to seasonal temperatures.
6. This permission is to be read in conjunction with the AGREEMENT AND UNDERTAKING dated 01.10.2020; in pursuance of Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning & Compensation Act 1991.

PLEASE NOTE: The development hereby permitted must be implemented in accordance with plans hereby approved and any conditions specified above. The conditions may specify that works are to be carried out or details are required to be

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submitted for further approval, before all or part of the development is otherwise commenced. For further information regarding the discharge of Planning Conditions and the relevant forms please view “compliance with conditions” on our website, www.southglos.gov.uk If the permission is commenced without these requirements being fully met, or in any other manner, the development may be unauthorised and the permission invalidated. The council holds a definitive copy of this planning decision notice. You should be aware of the risk that subsequent copies of the decision notice may be subject to unauthorised alteration and if necessary you are advised to refer to the council for verification. The definitive copy can be viewed via the council’s planning website.

STRATEGIC MAJOR SITES MANAGER

DATE: 5th October 2020



Strategic Planning, South Gloucestershire Council, Department For Environment And Community
Services, PO Box 1954, Bristol, BS37 0DD
Telephone: 01454 868004 Email: planningapplications@southglos.gov.uk

PLANNING PERMISSION THE NEXT STEPS

Your Decision could be subject to conditions. It is essential that you comply with these conditions in order to protect your planning permission. If you have conditions requiring details to be submitted prior to the commencement of development then failure to discharge these conditions could invalidate your planning permission and result in enforcement action being taken against the development.

HOW TO APPLY TO DISCHARGE CONDITIONS ON YOUR PLANNING PERMISSION

If the condition requires you to agree something in writing with the Authority before development commences then you will need to consider submitting these details at least 8 weeks prior to starting work. In order to submit your application, you can do so by one of the following options:

- Submit an online application using the Planning Portal online application service www.planningportal.gov.uk/
- Complete an application form online via the Planning Portal online Application service, www.planningportal.gov.uk/ printing it off and enclosing it with the correct plans, fee and details before sending it to Development Services.
- Download a copy of the application form from the South Gloucestershire website on www.southglos.gov.uk/planning.
- Request a paper copy from our PT&SE Customer Contact Centre by calling 01454 868004.
- Visit one of the Council One Stop Shop receptions to collect a paper copy of the application form.

The fee amount is £34 per request relating to 'householder' applications and £116 for any other full planning applications. The fee is payable for each submission (a single submission may be for more than one condition to be discharged).

COMMUNITY INFRASTRUCTURE LEVY (CIL)

If this application has been identified as being liable to CIL you should not commence development until the requirements and obligations under CIL have been established. If we require further information we will write to you requesting this. Where we already have clear information about the proposal and assumed liability we will issue a liability notice shortly. Further information can be found on our website at www.southglos.gov.uk/environment-and-planning/planning/community-infrastructure-levy

BUILDING REGULATIONS

You might require separate Building Control approval and you can also secure this through the Council. For advice on development requiring Building Regulations approval please visit the Planning Portal or contact our Team on 01454 868271

ACTING AS AN AGENT?

Please forward the full copy of this decision to your client and advise them of any conditions. The Council continues to be involved with enforcement action taken against applicants who claim not to have been passed the decision by their Agent.

APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY (LPA)

If the applicant is aggrieved by the decision to refuse permission/consent for this proposal or to grant permission/consent subject to conditions, he may appeal to the Secretary of State for the Department of Communities and Local Government (SOS) in accordance with the provisions below. All appeals should be submitted on a form obtainable from The Planning Inspectorate, at the address below.

- (a) Refusal of planning permission for **Householder applications** – **within 12 weeks** (Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (b) Refusal of planning permission or permission granted subject to conditions - **within 6 months** (Section 78 Town & Country Planning Act 1990 (T & CPA) and Article 37 of the Town & Country Planning (Development Management Procedure) (England) Order 2015)
- (c) Refusal of Listed Building consent or consent granted subject to conditions. Refusal of Conservation Area consent or the decision of the LPA on an application to vary or discharge conditions attached to a Listed Building consent **within 6 months** (Regulation 8 of the Town & Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 and Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (d) Refusal of consent for display of advertisement or consent granted subject to conditions - **within 8 weeks** of the date you receive the Council's decision - please refer to separate notice attached where necessary.
- (e) Refusal of Tree Preservation Order consent or consent granted subject to conditions. Issuing of an Article 5 certificate on refusing consent or an Article 6 direction on granting consent to fell any part of a woodland – within 28 days Town & Country Planning (Trees) Regulations 2012.

The SOS has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. He is not however required to entertain an appeal if it appears to him that permission for the proposals could not have been granted by the LPA, or could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development orders and to any directions given under the orders.

In the case of refusal of permission to develop land or refusal of Listed Building consent or the granting of permission or Listed Building consent subject to conditions whether by the LPA or SOS and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development works which has been or would be permission, he may serve on the Council in which the land is situated a Purchase Notice (or Listed Building Purchase Notice) requiring the Council to purchase his/her interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town & CP Act 1990 and Part 1, Chapter III of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In certain circumstances (not applicable to Advertisement proposals) a claim may be made against the LPA for compensation where permission is refused or granted subject to conditions by the SOS on appeal or on reference of the application to him.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

NOTES IN RESPECT OF SUBMISSION OF APPEALS

Data Protection: Please note all appeal documentation will appear on the Planning Casework Service website.

When submitting an appeal, please note that an identical set of documents should be sent to both the local authority and The Planning Inspectorate at the following addresses:

Strategic Planning South Gloucestershire Council, Department For Environment And Community Services PO Box 1954, Bristol, BS37 0DD	The Planning Inspectorate Room 3/04 Kite Wing 2 The Square Temple Quay Bristol BS1 6PN
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Please ensure this instruction is complied with in order to avoid any unnecessary delay

NOTES IN RESPECT OF APPLICATIONS FOR CONSENT TO DISPLAY ADVERTISEMENTS

1. Under the provisions of Schedule 2 of the Town & Country Planning (Control of Advertisements) Regulations 2007 before any advertisement is displayed, the permission of the owner of the land, or building on which the advertisement is to be displayed must be obtained.
2. If a conditions imposing a time limit has been expressly included as part of a consent, then that condition must be observed. If no such condition is imposed Regulation 14 (7) of the 2007 Regulations provides that any consent is granted for a period of FIVE YEARS from the date hereof.
3. Where the Authority grant consent for a period shorter than five years they shall (unless the application required such a consent) state in writing their reasons for doing so, and the limitation in respect of time shall for the purposes of these Regulations be deemed to be a condition imposed upon the granting of consent.
4. At any time a period of 6 months before the expiry of a consent granted under these Regulations, application may be made for the renewal thereof and the provision of these Regulations relating to applications for consent and to the determination thereof shall apply where application is made for such renewal
5. Penalty for Contravention. The amount of the fine to which a person who displays an advertisement in contravention of these Regulations is liable on summary conviction as set out in Section 224 of the Town and Country Planning Act 1990 and Regulation 30 of the 2007 Advertisement Regulations.

NOTES IN RESPECT OF ALL APPLICATIONS

1. Attention is drawn to the need for strict compliance with the approved plan(s), failing which appropriate action will be taken.

2. If planning permission has been granted for the development, please note that should this involve any work within the highway, such as the construction of a vehicular access, the consent of the Highway Authority should be obtained.
3. WHERE PLANNING PERMISSION OR LISTED BUILDING CONSENT HAS BEEN GRANTED, APPROVAL MAY ALSO BE REQUIRED UNDER THE BUILDING REGULATIONS BEFORE ANY WORK IS COMMENCED.
4. Although planning permission may have been granted, should the proposed work involve the demolition, alteration or extension of a Listed Building or the demolition of an existing building in a Conservation Area, Listed Building or Conservation Area Consent will also be required before the work commences.
5. If the work authorised by this permission requires the supply of utility or other public services, you are requested to contact the appropriate statutory or other undertaker as soon as possible following the receipt of the decision. Failure to do so may result in delay in the provision of these services.
6. If planning permission has been granted this may be subject to condition(s) as listed on the decision notice. Some of these conditions require details to be submitted or other work to be carried out before development commences (conditions precedent). If you start development without complying with any such conditions you may invalidate the permission itself. Requests to discharge or confirm conditions made under Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be submitted on the appropriate forms and with any required fee.

Any further information concerning this decision may be obtained from the Director of Environment and Community Services Please quote the Reference Number of this permission in any correspondence

EP8A

19 December 2007

Mr Simon Fitton
RPS
155 Aztec West
Almondsbury
BS32 4UB

Our Ref: APP/P0119/A/07/2035178
Your Ref:

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CREST NICHOLSON (SOUTH WEST) LTD AND HARCOURT
DEVELOPMENTS
LAND AT HARRY STOKE, STOKE GIFFORD, SOUTH GLOUCESTERSHIRE
BS16 1QE
APPLICATION: REF PT06/1001/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, MT O'Rourke BA(Hons) DipTP MRTPI, who held a public local inquiry between 19 June and 17 September 2007 into your client's appeal against South Gloucestershire Council's failure to give notice within the prescribed period of the decision on an application for outline planning permission for residential development of approximately 1,200 dwellings with supporting infrastructure, public open space and ancillary facilities, in accordance with application reference PT06/1001/O, dated 28 March 2006.
2. On 7 February 2007, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. The reason for recovery was that the appeal related to proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with her recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Communities and Local Government
Maria Stasiak, Decision Officer
Planning Central Casework Division,
1/J1, Eland House
Bressenden Place
London
SW1E 5DU

Tel: 020 7944 3676
Fax: 020 7944 3919
Email: maria.stasiak@communities.gsi.gov.uk

Procedural matters

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the application.
5. Since the original application for planning permission was submitted, various revisions have been made to the application, as detailed at IR1.2-1.3 and IR4.7. The Secretary of State considers that no prejudice has been caused to any party by determining the appeal on this basis.

Policy considerations

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the Regional Spatial Strategy for the Southwest (RPG10), the Joint Replacement Structure Plan (JRSP) for the four unitary authorities of the former county of Avon (adopted in 2002 and now saved until the publication of the final RSS) and the South Gloucestershire Local Plan (SGLP) (adopted in January 2006). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR5.2-5.17, with the exception of JRSP policies 35, 24, 47, 51 and 59 (mentioned at IR5.10-5.11) which have not been saved. The Secretary of State has not taken these non-saved policies into account; she considers that this does not affect her overall conclusions in this case.
8. The Examination in Public (EiP) of the emerging Draft RSS for the Southwest finished in July 2007, but the Panel Report has not yet been issued. The emerging development plan policies most relevant to the appeal are those set out by the Inspector at IR5.18-5.22. The Secretary of State considers that the emerging Draft RSS for the Southwest carries some weight.
9. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development*; Planning Policy Statement 3 (PPS3): *Housing*, and its associated guidance *Delivering Affordable Housing*; and Planning Policy Guidance Note 13: *Transport*. Representations were made during the inquiry about the applicability of Circular 01/2006: *Guidance on Changes to the Development Control System*. The Secretary of State's conclusions on this are set out at paragraph 12 below. The Secretary of State has also taken into account "*Planning and Climate Change*", the supplement to PPS1, which was published on 17 December 2007. She does not consider that this document raises any new issues relevant to this application that either affect her decision, or require her to refer back to the

parties for further representations before reaching her decision. The Secretary of State has also taken into account the documents listed at IR5.23-5.29.

Main issues

10. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR12.4. Before turning to these, she has considered the relationship of the proposal to the development plan.

The relationship of the proposal to the development plan

11. As the majority of the site is allocated for housing, the Secretary of State considers that it does draw considerable support from the development plan, for the reasons set out in IR12.113. As set out below in paragraph 13, she disagrees with the Inspector's conclusions on design, and considers that the proposal is in accordance with design policies. While there is conflict with some aspects of open space policies (paragraph 15 below), the Secretary of State gives this only limited weight. However, as set out in paragraph 16 below, she considers that the proposal is not in accordance with local Green Belt policies. The Secretary of State concludes overall that the proposal is not in accordance with the development plan.

Design quality

12. The Secretary of State has considered carefully whether Circular 01/06 is applicable to this appeal (IR12.18). As the original application was submitted in March 2006, prior to the publication of Circular 01/06, she concludes that it is not applicable, and that there was no requirement on the Applicants to put forward a design and access statement. The Secretary of State has taken into account the Inspector's reasoning and conclusions on design, as set out in IR12.14-12.42. For the reason given above, she considers that the detailed criticisms which the Inspector makes of the Design Guide and Design and Access Statement by reference to the particular requirements of Circular 01/06 carry little weight.
13. However, high quality design is also required by development plan policies, PPS1 and PPS3, and the Secretary of State has considered whether overall there is sufficient clarity and detail to enable a full understanding of the design and access rationale, to inform subsequent detailed reserved matters applications and to ensure that a high quality development results. She has taken into account the Inspector's reasoning and her conclusion that there is insufficient assurance at outline stage to ensure the delivery of a high quality inclusive and sustainable development (IR12.54). She notes, however, the Inspector's conclusion at IR12.53 that whether the deficiencies justify dismissal of the appeal and the refusal of outline planning permission is a matter of fine judgment. In view of the non-applicability of Circular 01/06, the Secretary of State considers that the post-permission stage set out at IR12.43-12.49 is an appropriate way of bringing about a high-quality development. With this in place, she considers overall that the flaws in the design documents are not so great that on their own they would justify refusing the appeal. She further disagrees with the Inspector's conclusion at IR 12.54 that the development would not comply with the objectives of PPS1, PPS3 and SGLP policy D1.

14. The Secretary of State agrees with the Inspector's conclusion at IR12.42 that the alternative access put forward by the Council (IR12.38-12.41) would require a new outline application, and therefore concludes that it does not fall to her to reach a conclusion on its merits as part of this decision.

Open space provision

15. For the reasons put forward at IR12.55-12.82, the Secretary of State agrees with the Inspector's conclusion that there is no objection in principle or in policy to the Applicant's proposal to address the shortfall in Category 1 space through off site provision (IR12.82). She further agrees that because of the absence of any detailed schemes worked up by the Applicants for particular sites supported by evidence based costs, she cannot be satisfied that the proposal makes adequate provision for formal open space to serve the needs of those who would live in the appeal development, contrary to the objectives of SGLP policies LC8 and H1 (IR12.82). However, the Secretary of State has taken into account the Inspector's conclusion at IR12.77 that there appear to be potential opportunities for enhancement and upgrading of existing facilities within 2km of the site which would be easily accessible to residents of the application site, and has further taken into account that £2.55m is offered for open space provision, of which £100,000 forms a feasibility fund which would be useful to help understand better how the monies offered could be used most effectively (IR12.79). Overall, she attaches limited weight to the conflict with the development plan with respect to the open space provisions.

Green Belt

16. For the reasons set out in IR12.5-12.13, the Secretary of State agrees with the Inspector that the proposed new road would be inappropriate development in the Green Belt (IR12.11). She further agrees that there would be an impact on the openness of the Green Belt (IR12.9) and encroachment into the countryside (IR12.10), as well as an adverse impact on the visual amenity of the Green Belt (IR12.13). She concludes that the proposals are not in accordance with SGLP policy GB1 and therefore not in accordance with the development plan in this respect.
17. The Secretary of State has, therefore, in line with the guidance in PPG2, gone on to consider whether the other considerations in favour of the application clearly outweigh the harm to the Green Belt from inappropriateness and from other harm identified, and whether there are very special circumstances which would justify the development of the new road in the Green Belt.

Other considerations

Potential removal of land from the Green Belt

18. For the reasons given at IR12.89, the Secretary of State agrees with the Inspector that some weight can be given to DRSS policies (IR12.89), and therefore considers that the potential removal of land to the east of the appeal site from the Green Belt carries some weight.

Access/roads

19. For the reasons set out at IR12.92-12.95 and IR12.103-12.104, the Secretary of State agrees with the Inspector that a new road in the location proposed would be capable of providing the first leg of a by-pass to Stoke Gifford (IR12.95), and would result in an important piece of the infrastructure to service Area of Search C already being in place, which would undoubtedly assist in its early delivery within the RSS period (IR12.104).
20. She further agrees (IR12.97) that given the potential prejudice in terms of dictating the form that future development might take, and in pre-empting the DPD process, this limits the weight that these benefits can be given. She agrees with the Inspector, for the reasons given at IR12.98-12.99, that the proposed road layout could avoid the disruption of another junction onto the A4174, and that this is a small positive benefit (IR12.100).

Housing need

21. For the reasons given at IR12.101-102, the Secretary of State agrees with the Inspector's assessment that there is an acknowledged urgent shortfall in housing supply in South Gloucestershire (IR12.101), that the longer-term position also looks pessimistic (IR12.101) and that there is not an up-to-date five year supply of deliverable sites (IR12.102).
22. The Secretary of State has also taken into account that there is an urgent shortfall of affordable housing in South Gloucestershire, amounting to a need of between 970 and 1,270 dwellings per year over the period 2003-2011 (SGLP paragraph 8.187), and that the appeal proposal would deliver approximately 400 affordable homes. She considers that the delivery of the affordable housing units, set against a background of such urgent need, carries significant weight.
23. The Secretary of State agrees with the Inspector that the importance of housing delivery, both now and in the DRSS period, is a significant positive benefit (IR12.104). Her conclusions on the weight to be attached to the benefits of a new road in this location are set out in paragraphs 19-20 above. The Secretary of State disagrees with the Inspector's conclusion at IR12.105 that the weight these benefits carry should be mitigated by the Inspector's earlier conclusion that housing on the SGLP allocation at Harry Stoke could be served by an alternative access within the site and outside the Green Belt. For the reasons set out in paragraph 14 above, the Secretary of State considers that it does not fall to her to reach a conclusion on the merits of the alternative access as part of this decision.

Green Belt conclusions

24. The Secretary of State has taken into account the other considerations set out above, and considered whether they clearly outweigh the harm to the Green Belt from inappropriateness, and other harm as identified in paragraph 16 above. In the light of the urgent shortfall of housing supply in South Gloucestershire, and the current poor prospects for remedying this, she gives significant weight to the benefits arising from housing delivery, of both market and affordable homes, on this allocated site and also gives some weight to the benefits of a new road in this

location, and to the potential removal of land to the east of the appeal site from the Green Belt. Overall, she concludes that these factors clearly outweigh the harm to the Green Belt from inappropriateness and other harm identified and concludes that they do constitute the very special circumstances necessary to justify the element of the development lying in the Green Belt. She therefore disagrees with the Inspector's conclusion that the very special circumstances required to justify inappropriate development in the Green Belt do not exist (IR12.112).

Conditions

25. The Secretary of State has considered the proposed conditions and national policy as set out in circular 11/95. She agrees with the Inspector at IR11.2 that they are relevant to the development, and to planning, and necessary and reasonable to ensure a satisfactory standard of development and to minimise the impact on the environment.

Obligations

26. The Secretary of State has considered the two planning obligations and national policy as set out in circular 05/2005. She agrees with the Inspector at IR11.6 that the content and purpose of the Agreement is robust, that the matters provided for are all matters necessary to make the development acceptable in planning terms, and that they are consistent with national guidelines and fairly and reasonably relate in scale and kind to the proposed development. She further agrees with the Inspector's conclusions on the unilateral undertaking (IR11.6), and has dealt with the question of open space provision in paragraph 15 above.

Overall conclusions

27. The Secretary of State concludes that because the access road constitutes inappropriate development, and there is other harm to the Green Belt, the appeal proposals are, overall, not in accordance with the development plan. She has therefore gone on to consider whether there are material considerations in favour of the proposals which are sufficient to outweigh this conflict. She concludes that the housing delivery, including affordable housing, the potential benefits of a new road in this location, and potential removal of land to the east of the site from the Green Belt are considerations which, taken together, clearly outweigh the harm to the Green Belt caused by development of the new road, and that they constitute very special circumstances. She also concludes that these are material considerations which justify determining the appeal other than in accordance with the development plan.

Formal decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. She hereby allows your client's appeal and grants outline planning permission for residential development of approximately 1,200 dwellings with supporting infrastructure, public open space and ancillary facilities, in accordance with application reference PT06/1001/O, dated 28 March 2006, subject to the conditions set out in Annex A.

29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
31. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
33. A copy of this letter has been sent to South Gloucestershire Council and all parties who appeared at the inquiry.

Yours faithfully

Maria Stasiak
Authorised by Secretary of State
to sign in that behalf

Annex A

1. Details of the siting, design, external appearance of the buildings and the landscaping of the site (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
2. Submissions for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of ten years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of seven years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Submissions for the approval of reserved matters shall accord with the approved Masterplan and the parameters described in the Harry Stoke Design Guide, incorporating the Design Codes hereby approved, unless otherwise agreed in writing by the Local Planning Authority.
5. No development, except that associated with the exempt infrastructure works, shall take place until there has been submitted to and approved in writing by the Local Planning Authority a Design Code for the site in its entirety (hereinafter called “the approved Design Code”). The Design Code shall be so approved before the submission of applications for the approval of the reserved matters (excluding applications relating to exempt infrastructure works). Any subsequent applications for revisions to the approved Design Code shall also be submitted to and approved in writing by the Local Planning Authority. The Design Code shall include detailed codings for:
 - architectural and sustainable construction principles;
 - character areas;
 - street types and street materials;
 - block types block principles;
 - car parking principles;
 - boundary treatments;
 - building types and uses;
 - building heights;
 - suds and public open spaces;
 - building materials;
 - environmental performance;
 - implementation; and
 - mechanisms for periodic review and if necessary revision of the Design Code.
6. Applications for the approval of the reserved matters shall be in accordance with the detailed codings set out in the approved Design Code, unless otherwise agreed in writing by the Local Planning Authority.

7. No development, except that associated with the exempt infrastructure works, shall take place in any of the geographical phases identified in the approved Site Wide Master Plan until there has been submitted to and approved in writing by the Local Planning Authority a Detailed Master Plan for the geographical phase in question (hereinafter called “the approved Detailed Master Plan” for the geographical phase in question). The Detailed Master Plan for the geographical phase in question shall be so approved before the submission of applications for the approval of the reserved matters within that geographical phase (excluding applications relating to exempt infrastructure works). Any subsequent applications for revisions to the approved Detailed Master Plan for a particular geographical phase shall also be submitted to and approved in writing by the Local Planning Authority. Each of the Detailed Master Plans shall include a two-dimensional layout drawing that shows:
- the arrangement of street blocks, plots and their buildings;
 - the arrangements for block interiors;
 - the arrangements for car parking;
 - density and mix;
 - building heights/massing;
 - the format of the public realm, including all routes and spaces;
 - the context within which existing landscape features are to be retained;
 - the context or proposed structural planting;
 - environmental performance; and
 - ground levels.
8. Submissions for the approval of the reserved matters shall accord with the approved Detailed Master Plan for the phase to which the reserved matters in question relate, unless otherwise agreed in writing by the Local Planning Authority.
9. The residential development of the site shall not exceed 1,200 units in accordance with the following mix of type of unit, unless otherwise agreed in writing by the Local Planning Authority.

No. of Bedrooms	Proposed units
One (Flat)	84
Two (Flat)	348
Two (House)	180
Three (House)	336
Four (House)	252
Total	1,200

10. The development hereby permitted shall be at a minimum average net density, as defined in PPS3, of not less than 50 dwellings per hectare. Each submission for reserved matters shall be accompanied by a statement of the submitted proposed density.
11. The development hereby authorised shall be carried out in accordance with the details of the phasing plan and supporting text contained in Section 6 of

the submitted Harry Stoke Design Guide, unless otherwise agreed in writing by the Local Planning Authority.

12. No residential development shall take place within the designated Green Belt as shown on the adopted South Gloucestershire Local Plan – Proposals Map.
13. No development shall take place until a scheme for environmental assessment of the reserved matters proposals has been submitted to and approved in writing by the Local Planning Authority (hereinafter called the approved scheme for environmental assessment). The approved scheme for environmental assessment shall require reserved matters proposals for development to achieve as a minimum a 'Very Good' rating under the Building Research Establishment (BRE) EcoHomes environmental assessment method or the current mandatory level of the Code for Sustainable Homes or equivalent, and for all other uses to achieve as a minimum 'Very Good' rating under the relevant BRE Environmental Assessment Method (BREEAM). The approved scheme for environmental assessment shall require:
 - i. The necessary assessments to be carried out using the categories and weighting contained in the EcoHomes or relevant BREEAM manuals or the Code for Sustainable Homes as are current on the date of submission to the Local Planning Authority of the reserved matters submission in question.
 - ii. Adherence to a formal post-construction assessment regime, as described in the approved scheme, which shall be implemented prior to the first occupation of any building other than general housing, retail, or office use, to which the reserved matters submission in question relates.

The development shall be carried out in accordance with the approved scheme for environmental assessment, unless otherwise agreed in writing by the Local Planning Authority.

14. No development shall take place (except exempt infrastructure works) until a renewable energy scheme for each phase of the development has been submitted to and approved by the Local Planning Authority. The renewable energy scheme must achieve a minimum 10% CO₂ reduction from the target emission rate as defined by Part L1(a) of the Building Regulations current at the time of reserved matters submission(s), by reason of energy efficiency improvements and/or on site energy production from renewable sources.
15. No development shall take place on land to which the reserved matter relates until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines, manholes); retained historic landscape features and proposals for restoration

where relevant. Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.

16. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the final dwelling on land to which the reserved matter relates or in accordance with the programme agreed in writing with the Local Planning Authority.

17. The plans and particulars submitted in accordance with condition no.15 shall include:

- a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
- b) details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- c) details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
- d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation within the RPA (root protection area) as defined in BS5837 2005 of any retained tree or of any tree on land adjacent to the site; and
- e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition “retained tree” means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

All fencing to be in accordance with BS5837 2005 ‘Trees in Relation to Construction’ and retained and maintained for the duration of the construction period.

18. No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the Local Planning Authority.

19. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a programme of archaeological monitoring and recording for the site. Thereafter, the approved programme shall be implemented in all respects, unless the Local Planning Authority agrees in writing to any variation.
20. No development shall take place on land to which the reserved matter relates until a Waste Management Audit has been submitted to and approved by the Local Planning Authority in writing. The Waste Management Audit shall include details of:
- i. The volume and nature of the waste which will be generated through the demolition and/or excavation process;
 - ii. The volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc;
 - iii. Proposals for recycling/recovering materials of value from the waste not used in schemes identified in (b), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
 - iv. The volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction; and
 - v. The probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use for it as an alternative to landfill.

Development shall be carried out in accordance with the agreed details, unless otherwise agreed in writing by the Local Planning Authority.

21. The finished floor levels for properties adjacent to the Ham Brook shall be set at least 600mm above the 100 year (+20%) flood event, as outlined in Appendix G of the Flood Risk Assessment (March 2006). The finished floor levels of properties located elsewhere on the site should be set at least 150mm above finished ground level, and must be at a level that ensures surface water sewers can discharge under gravity to the balancing ponds.
22. Bridge structures over the Ham Brook shall be free spanning with a soffit level set at 600mm above the 100 year (+20%) flood level.
23. No development approved by this permission shall be commenced until details of the existing and proposed ground and floor levels have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans, unless otherwise agreed in writing by the Local Planning Authority.
24. A strip of land 8 metres wide adjacent to the top of the banks of all watercourses fronting or crossing the site must be kept clear of all new buildings and structures (including gates, walls and fences) and there shall be

no raising of ground levels within the floodable area of the Ham Brook, as shown by the red hatched area on Drawing SKC010A.

25. No development shall take place until the detailed design of each phase of the strategic sustainable drainage attenuation systems (SUDs) within the development and the details of phasing in relation to the development have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved phasing details.
26. No development shall take place on land to which the relevant reserved matters submission relates until drainage details of proposals incorporating Sustainable Drainage Systems (SUDS) and confirmation of hydrological conditions (eg soil permeability, watercourses, mining culverts) within the development have been submitted to and approved in writing by the Local Planning Authority. The scheme as approved will be implemented in accordance with the approved details before the final dwelling on land to which the reserved matter relates is occupied, unless otherwise agreed in writing by the Local Planning Authority.
27. There shall be no residential properties located outside of the areas shown experiencing Noise exposure categories (NEC) A and B on Figure 8.3 in Environmental Statement Volume 1 unless a scheme for noise mitigation has been submitted to and approved in writing by the Local Planning Authority. Reserved matters submissions shall, as necessary, show details of mitigation measures as outlined in section 8.8 of the Environmental Statement Volume 1 for any residential properties falling within the area of the site shown subject to NEC B noise levels. Development shall be carried in accordance with these approved details unless otherwise agreed in writing by the Local Planning Authority.
28. The Reserved Matters submissions shall include detailed plans showing the provision of car and cycle parking facilities in accordance with the standards set out in Policies T7 and T8 of the South Gloucestershire Local Plan (Adopted January 2006). The development shall proceed in accordance with the agreed scheme, with the parking facilities provided prior to the first occupation of the associated buildings; and thereafter retained for that purpose, unless otherwise agreed in writing by the Local Planning Authority.
29. Prior to the submission of any reserved matters submission a plan indicating proposed pedestrian and cycle links through the site shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent submission for reserved matters approval shall accord with the approved details, unless otherwise agreed in writing by the Local Planning Authority.
30. The buildings shall not be occupied until the associated parking areas and manoeuvring areas have been drained and surfaced in accordance with the details approved in writing by the Local Planning Authority. The facilities so provided shall not be used, thereafter, for any purpose other than the parking and manoeuvring of vehicles, unless otherwise agreed in writing by the Local Planning Authority.

31. The approved means of access for construction traffic shall be submitted to and approved in writing by the Local Planning Authority and provided before the development commences on land to which the reserved matter relates and no other access points for construction traffic shall be provided unless otherwise agreed in writing by the Local Planning Authority.
32. The hours of working on site during the period of construction shall be restricted to 8am-6pm Mondays to Fridays; and 8am-1.00pm on Saturdays and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the site. Any 'working' outside these hours shall have the prior written consent of the Local Planning Authority.
33. No development shall take place on land to which the reserved matter relates, until details of wheel-washing facilities to be provided on site have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided prior to development commencing on land to which this reserved matter relates and maintained during the period of construction. All commercial vehicles shall have their wheels washed before entering the public highway.
34. The reserved matters submissions shall include details of the location of the construction compound to serve the development and no development shall take place until details have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the agreed details, unless otherwise agreed in writing by the Local Planning Authority.
35. Prior to commencement of any ground works, an ecological mitigation strategy for slow-worms shall be submitted to and agreed in writing with the Local Planning Authority. All work relating to slow-worms on site shall be subject to said strategy, unless otherwise agreed in writing by the Local Planning Authority.
36. Bats (European Protected Species) have been recorded on site. Prior to commencement of any ground works an updated ecological mitigation strategy shall be submitted and agreed in writing by the Local Planning Authority. All work shall be carried out in accordance with the approved mitigation strategy unless otherwise agreed in writing by the Local Planning Authority.
37. Great crested newts, a European Protected Species, have been recorded on site. Prior to commencement of any ground works an updated ecological mitigation strategy shall be submitted to and agreed with the Local Planning Authority. All work shall be carried out in accordance with the approved mitigation strategy unless otherwise agreed in writing by the Local Planning Authority.
38. Prior to commencement of development, an ecological management plan for both the site and adjoining great crested newt habitat shall be submitted to

and agreed with the Local Planning Authority, in consultation with Natural England. The development shall be carried out in accordance with the approved plan unless otherwise agreed in writing by the Local Planning Authority.

39. As part of the reserved matters submission for either the community building or mixed use local centre details shall be submitted to and approved in writing by the Local Planning Authority of a waste recycling facility on an area not exceeding 225m²; such details shall include a timetable for implementation and a variety of shared recycling banks for paper, cans, separated glass, textiles, books and plastic bottles. The provision of the waste recycling facility shall be carried out in accordance with the approved details and implementation plan, unless otherwise agreed in writing by the Local Planning Authority.
40. No development shall take place until full details of the hard and soft landscaping treatment of the principal access road between the A4174 junction and Maules Lane and its adjoining verged areas/embankments have been submitted to and approved in writing by the Local Planning Authority. The details shall include an implementation programme and the works shall be carried out as approved, unless otherwise agreed in writing by the Local Planning Authority. These details shall include: proposed finished levels or contours; the areas for vehicles, cyclists and pedestrians; hard surfacing materials; minor artefacts and structures (eg signs and lighting); and proposed and existing functional services above and below ground (eg drainage power, communication cables, pipelines, manholes). Soft landscaping works shall include: planting plans; written specifications; (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.
41. The first reserved matters submission for any of the sub phases 3c, 5b and 5c, or phases 6, 7 and 8 as identified on the phasing plan contained in Section 6 of the submitted Harry Stoke Design Guide shall include a scheme, including timetable, for the removal, diversion, or undergrounding of the overhead electricity supply lines and pylons together with the attached telecommunications wires, cables, stays, apparatus, and equipment.

The overhead electricity supply lines, pylons and attached telecommunications wires, cables, stays, apparatus and equipment shall be removed in accordance with the agreed details and timetable and prior to the residential occupation of dwellings in phases 3c, 5b, 5c, 6, 7 or 8.

Exempt infrastructure works as provided for in Conditions 5, 7 and 14

The East-West Link Road;
The North -South Boulevard;
The main square area;
Public transport link at the junction at Coldharbour Lane;
Strategic on and off site surface and foul drainage;
Site remediation works that do not affect existing landscape features; and

Demolition of existing building(s) and structure(s) that have been highlighted in the design guide.

EP8B

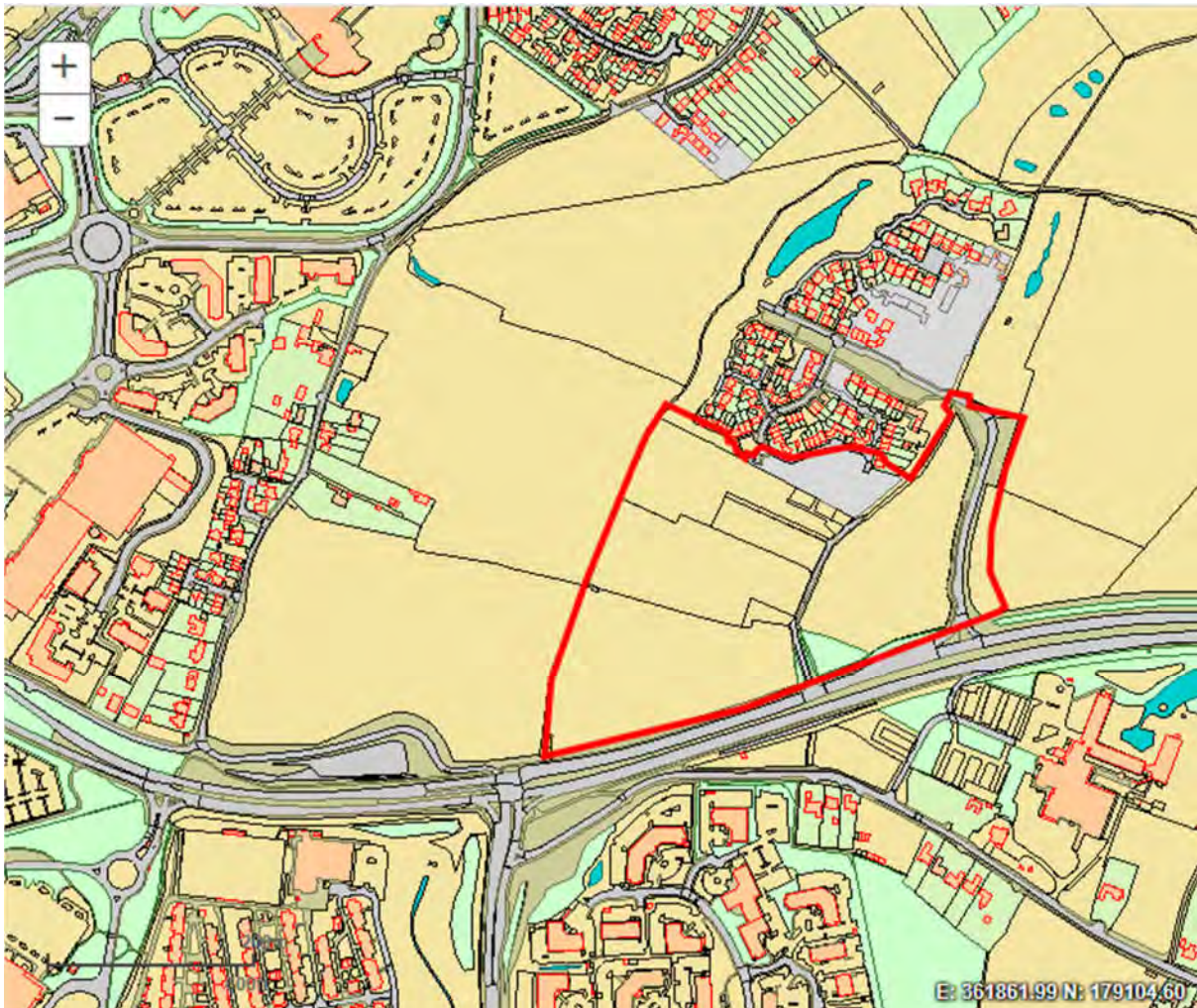
INFORMATION COVER SHEET

Site Location: Land at Harry Stoke, Stoke Gifford (pending) Crest

Capacity: 257

Trajectory Code: 0021c

Application Number: PT17/5847/RM



Additional documentation for this site can be found on Public Access via the provided link below, with the table outlining specific documents relating to the deliverability of this site.

Link to Application: <https://developments.southglos.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P162GSOKMKL00>


Documents	Steps to view Documents
Application Form	<ol style="list-style-type: none"> 1) Navigate from the application details page to the Documents tab. 2) Once in Documents tab, select filter by and click description. 3) Type in the word "Application" and click apply. 4) Select the most recent version available to view document.
Delegated Committee Reports	Repeat process above but replace Application with " Delegated ".
Decision Notice	Repeat process above but replace Application with " Decision ".
Phasing Plan and information from Design and Access Statement	Repeat process above but replace Application with " Design ".

(Note: Supplementary documents will follow in due course).

For **further guidance** on how to access the documents above, please see **screenshot below**.

Select the description option. (A search bar will appear afterwards).













Documents Tab.

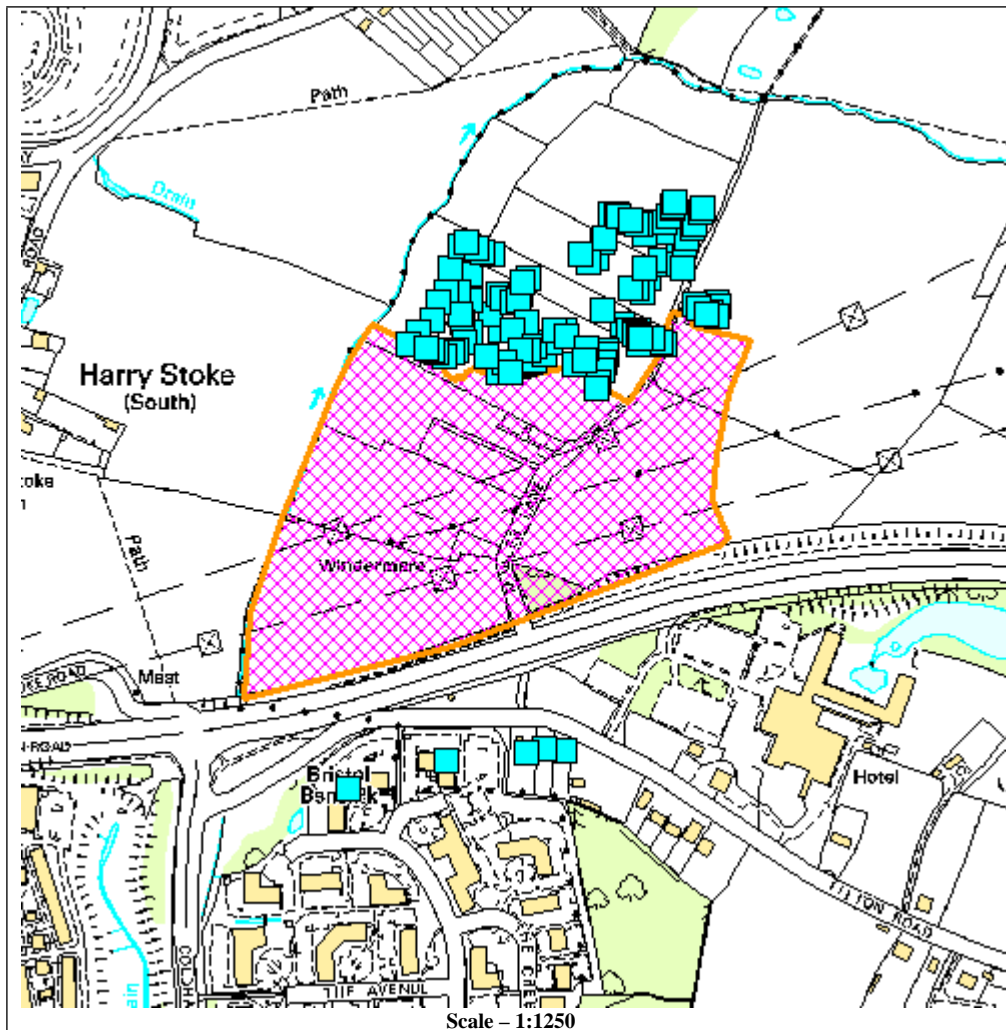
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Details Constraints (38) **Documents (34)** Related Cases (3) Map Make a Comment

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<input type="checkbox"/>	05 Dec 2016	Application Form	APPLICATION FORM	
<input type="checkbox"/>	26 Mar 2015	Supporting Document	ARBORICULTURAL IMPACT ASSESSMENT	
<input type="checkbox"/>	22 May 2015	Consultee Comment	ARCHAEOLOGY	
<input type="checkbox"/>	26 Mar 2015	Correspondence	COVERING LETTER	
<input type="checkbox"/>	04 Jun 2015	Decision	DECISION NOTICE	
<input type="checkbox"/>	11 Jun 2015	Report	DELEGATED REPORT	
<input type="checkbox"/>	26 Mar 2015	Supporting Document	DESIGN AND ACCESS STATEMENT	
<input type="checkbox"/>	10 Apr 2015	Supporting Document	DOCUMENT REGISTER	
<input type="checkbox"/>	28 Apr 2015	Consultee Comment	DRAINAGE OFFICER	
<input type="checkbox"/>	26 Mar 2015	Supporting Document	ECOLOGICAL APPRAISAL	
<input type="checkbox"/>	27 Apr 2015	Consultee Comment	ECOLOGY	



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Application No.: PT17/5847/RM
Land At Harry Stoke
Harry Stoke Road
Stoke Gifford
Bristol
South Gloucestershire
BS34 8QH

Deliverability Statement

Site Location:	Application Number	RLAS Code
Land at Harry Stoke, Stoke Gifford - Crest	PT17/5847/RM	0021c

The submitted reserved matters application forms part of an outline planning application (PT06/1001/O) which was approved by the Council in 2007 to provide; 1,200 dwellings, 1 new primary school, 1 nursery, a local centre and associated facilities (the outline development) on 39.57ha of land (the outline site). This RM would provide 263 dwellings, public open space, new roads, foot and cycle ways and drainage infrastructure (the development) on 9.37 ha of land (the site). This would add to the already constructed part of the outline development, which provides 166 dwellings, road infrastructure and associated facilities on land to the north of the site (PT12/1302/RM and PT06/0407/F).

As outlined in Paragraph 7, Reference ID: 68-007-20190722 of the 2019 [National Planning Policy Guidance](#) major sites which have made clear progress towards or gained full, or reserved matters planning status, can be considered as having evidence to demonstrate deliverability. The paragraph also sets out that clear information on addressing infrastructure/constraints can contribute to demonstrating deliverability.

The site forms the remainder of the outline permission and is subject to some constraints, namely the need to underground the electricity pylons running through the site which is scheduled to take place in 2022. Therefore in order to allow sufficient time for this process to occur, the Council maintains a modest delivery of only 75 units in years 4 and 5 year supply reflecting a modest year's delivery by Crest.

Date: 9 February 2021

EP9



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HomeChoice

The HomeChoice service is responsible for housing options, housing advice and homelessness, the housing register (waiting list) and the choice based lettings system (the way that we let social housing in South Gloucestershire).

Applicants for social housing are prioritised by placing them in one of four categories, which makes it easy for people to see their level of priority. There is a high demand for housing in the district and a shortage of suitable properties, which means that applicants can wait a long time before they bid successfully. Most people who apply to us will never receive an offer of housing, even if they are in a higher category. Because of this, our housing system offers advice and information on other housing options, and enables you to complete our Housing Options Wizard to see which of these are suitable for you.

HomeChoice gives a clear picture of the properties available and real-time information on how many people are bidding for a property, including where bidders are on the shortlist at that time, and the priority of the successful bidder. This provides customers with a realistic view of the current situation and helps you to identify if there are properties or areas that are less popular that you could consider.

You can register an application on [HomeChoice](#) if you have a local connection. When you have registered, we will send you confirmation of your registration number, your priority for housing and the size and type of properties you are eligible for. Once you receive your registration details, you can bid for properties that you are interested in. Please see our [frequently asked questions](#) for more information about the way that the scheme works.

Social housing (including previous council houses)

[Council housing](#)

[Eviction from council housing](#)

HomeChoice

[Social housing policy](#)

[Tenancy fraud](#)

[More...](#)

Contact

 [01454 868005](tel:01454 868005)

@ [Email](#)

EP10

Frequently asked questions

- **How do I apply to join the Housing Register?**

You will need to complete an application form. To start, please complete our [housing options wizard](#).

- **Who can bid for properties through South Gloucestershire HomeChoice?**

You must be accepted onto South Gloucestershire Council's Housing Register to be able to bid for rented properties through South Gloucestershire HomeChoice.

- **What documents do I need to provide to apply?**

You do not need to provide any documents unless we ask you for them.

If you are offered a property, the landlord will probably ask you to provide documents before the offer will go ahead. You will be advised of what you need to provide at that stage.

- **How do I know if I have been accepted onto the Housing Register?**

You will receive a letter confirming that you have been accepted onto the Housing Register. This will tell you the band you have been placed in, the date of your registration, and the size of property you are eligible for. If you give us an e-mail address, we will always contact you by e-mail, so please make sure you keep this up to date.

- **Can you refuse to accept me onto the Housing Register?**

To be able to join the Housing Register you must be eligible to apply, be aged 18 or over (or be where there is a statutory duty for those aged 16/17), and be [qualified to apply](#), for instance you must have a local connection with this area.

- **What are priority Bands?**

We use [Bands](#) to assess your level of housing need. Your application will be placed into one of these.

- **How long will I stay in the same band?**

You will remain in that band unless your circumstances change in a way that also changes your priority.

- **What do I do if my circumstances change?**

It is very important that you tell us about any changes in your circumstances so that we can amend your application. We will tell you if this results in your application moving to a different band.

If you move up a band, your registration date will change to the date you move into that band. If you move down a band the date used will be the date that applied when you were previously in that band.

- **Do I need to renew my application each year?**

Yes, once a year, normally on the anniversary of your application. You will be asked to review your application to make sure the information is correct. If you fail to renew your application, it will be cancelled and you will have to reapply.

- **What if someone in my household has a medical condition?**

If someone in your household has a medical condition you will be asked to provide details, and we may need to ask your GP for more information. There is no need for you to ask your GP to write to us as well.

- **How often are properties advertised?**

Properties available for rent are advertised each week. The advertising cycle runs from Friday to the following Thursday.

- **Where are properties advertised?**

Properties are advertised in the following ways:

- Online through this website
- In a newsletter available from the Council's One Stop Shops and libraries.

- **What information will the property adverts contain?**

The adverts will tell you the landlord, location, size, rent and other features of the property. Where available a photograph of the property or a similar house type will be provided and you will be able to access information about the local area and facilities. The advert will also tell you if there are any special requirements that the applicant must meet, such as age requirements, which bands may bid for the property and which will be given priority for the property. It also tells you the number of bedrooms that applicants applying for the property need to be entitled to. If your bedroom entitlement is different to this you will not be able to bid for that property.

If you need further information about the property you should contact the landlord - the HomeChoice service do have any more details.

- **How do I bid for a property?**

You can express your interest or 'bid', as it is also known, in the following ways:

- Online through our website (you must be logged into your account first),
- In person in a One Stop Shop or by ringing the Housing Contact centre on 01454 868 005
- By completing the coupon on the advert sheet

- **How many properties can I bid for?**

You will be able to bid for a maximum of three properties in each advertising cycle. However, you will only be able to bid for properties that are suitable for you and your family. You cannot bid if you are under offer to another property.

- **Will I know how many other people are interested in the same property?**

Yes, when you bid for a property you will be told where you are in the queue. This can change frequently, as other people bid for the same property. Using this information you may decide to withdraw your bid for one property and bid for a different property, as you may have a higher priority for that home. You can do this at any time before the closing date.

- **How do you decide who is offered a property?**

Once the closing date for bids has passed a shortlist of interested applicants is drawn up. The shortlist is in order of eligibility according to the criteria stated in the advert details for that property, and then time waiting. The applicant at the top of the list will normally be offered the property.

- **If I successfully bid for a rented property, can the landlord refuse to let it to me?**

A landlord may refuse to offer you a property for the following reasons:

- You owe rent or have other housing related debts
- You are a Council or Housing Association tenant and legal action has been taken against you because you have broken your tenancy condition
- Your circumstances have changed and your application is not up to date.
- You have provided incorrect or misleading information, which has resulted in your application being awarded a higher priority than it deserves.
- The landlord considers that the property is unsuitable for you.

- **If I am offered a property, will I be able to view it before making up my mind?**

Yes. You will be given an opportunity to view the property and decide whether you would like to accept it.

- **What if I don't like the property when I have seen it?**

You can refuse an offer of a property, however if the property is suitable you will lose a 'life'. If you refuse two suitable offers your application will be suspended for 6 months.

Please note that where the council has accepted a statutory duty to accommodate a household, they will only be entitled to one offer of housing.

- **How will I know what has happened to the properties advertised?**

Information about homes that have been successfully let is published on the website. We tell you the number of applicants that expressed an interest in each property, the band and the registration date of each property. To see the results of properties that have been let use the [Properties and recent lets](#) search.

- **How will this information help me?**

It will give you a better idea of how many properties become available, how popular a particular property or area is and how long you would normally have to wait. You can then decide whether to look for other types of property or areas where you may not have to wait as long.

- **Are carpets and appliances provided?**

You will normally have to provide your own carpets and appliances.

- **What other options are there for housing?**

There is a severe shortage of homes in the South Gloucestershire area. Most applicants on the Housing Register will have to wait a long time for re-housing and many will not be re-housed at all. Depending on your circumstances you may wish to consider other options such as renting in the private sector, and we can give you information on how to do this and what the legal requirements are.

- **What if I become homeless?**

If you are homeless or threatened with homelessness, you should contact us to discuss your circumstances. Please speak to one of our housing advisors on 01454 868005.

- **How do I request feedback on a decision, or a review that I disagree with?**

You can request feedback, or a review if you disagree with decisions that are made on your application. These include

- You are not eligible to join the housing register
- You are not offered a property that you are top of the list for
- You think that you have been placed in the wrong band or given the wrong priority date
- Your application has been cancelled

To request a review you must contact the HomeChoice team within 21 days of the date you are notified of the decision and the reason for it. You may provide additional information in writing that you wish to be taken into account, and you will be usually advised of the outcome of the review within 8 weeks.

EP11

Planning Inspectorate APP/P0119/W/21/3288019:

Land to the West of Park Farm, Thornbury, South Gloucestershire

Affordable Housing Delivery and Supply

February 2022

Affordable Housing delivery: completions 2006-2021

Over the plan period, from April 2006 to the end of March 2021, there have been a gross total of 4913 Affordable Homes delivered, or 4719 Affordable Housing completions delivered through net planning gain. These are shown annually in table 1 below.

Table 1 – gross and net Affordable Housing completions through plan period 2006-21

	2006-7	2007-8	2008-9	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	total
DELIVERY GROSS																
AH gross completions	75	215	291	281	340	269	223	298	326	263	360	368	636	565	403	4913
DELIVERY NET																
AH net planning gain	49	192	249	257	329	244	220	290	325	262	351	352	632	565	402	4719

Affordable Housing Stock Variations

Any RTB sales that may have occurred during the plan period are not measured through planning net gain. The Council does not hold data about any RTB sales or other stock losses that may have occurred during the plan period apart from loss through demolition. However, it should be noted that if any loss from current stock is being considered then consideration should also be taken of any return to use of vacant stock and of turnover rates in existing stock.

Table 2 shows loss of Affordable Homes through demolition as part of redevelopment schemes in the plan period. This data should not be used in isolation regarding Affordable Housing stock variations.

Table 2 – demolition of Affordable Homes as part of redevelopment schemes 2006-2021

	2006-7	2007-8	2008-9	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	total
Demolitions AH	0	0	0	0	0	0	0	0	-61	-6	-31	-40	-18	0	-2	-158

Projected Affordable Housing supply based on HT Dec 2021

Affordable Housing supply projections for the next 5 years, from 2021-22, from existing commitments align with the Council’s Housing trajectory issued in December 2021. Table 3 shows these projections annualised for the next 5 years.

Table 3 – projected Affordable Housing supply next 5 years from existing commitments aligned with HT (Dec 2021)

	2021-22	2022-23	2023-24	2024-25	2025-26	total
Projected AH supply through existing commitments	608	584	493	412	405	2502

EP12

South Gloucestershire Council
Chief Executive & Corporate Resources Department
Customer Relations
PO BOX 1953
Bristol
BS37 0DB

1 – 4 South Park Court
Hobson Street
Macclesfield
Cheshire
SK11 8BS

Macclesfield: 01625 433881
Chester: 01244 732447

support@emeryplanning.com
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22 February 2022

EP ref: 21-658

Ben Pycroft
T: 01625 442 799
benpycroft@emeryplanning.com

By e-mail only to: freedomofinformation@southglos.gov.uk

Dear Sir or Madam

Re: Freedom of Information Request re: Affordable Housing

We write to request the following information in relation to affordable housing, which is relevant to an appeal made by Barwood Development Securities Ltd against the failure of the Council to determine to an outline planning application within the relevant timescales for a mixed use development including up to 595 dwellings (LPA ref: PT18/6450/O, PINS ref: 3288019).

Housing Register

1. The total number of households on the Council's Housing Register at 1st April 2021.
2. The total number of households on the Council's Housing Register at 1st April 2021 specifying Thornbury as their preferred choice of location.
3. The average number of bids per property in Thornbury over the 2020/21 monitoring period.
4. The average waiting times at 1st April 2021 for an affordable property.
5. The average waiting times at 1st April 2020 for an affordable property.
6. Any changes the Council made to its Housing Register Allocations Policy since 2010.

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Social Housing Stock and Lettings

7. The total number of social housing stock at 1st April 2021 in Thornbury.
8. Whether all, or a part of the Local Authority's social housing stock has been transferred to another organisation and if so when and by whom.
9. The number of social housing lettings in the period 1st April 2019 to 31st March 2020 and between 1st April 2020 and 31st March 2021 in Thornbury.

Housing Completions

10. The number of net housing completions in South Gloucestershire broken down on a per annum basis for the period between 2000/01 and 2020/21.
11. The number of net affordable housing completions in South Gloucestershire broken down on a per annum basis for the period between 2000/01 and 2020/21.
12. The number of net housing completions in Thornbury broken down on a per annum basis for the period between 2000/01 and 2020/21.
13. The number of net affordable housing completions in Thornbury broken down on a per annum basis for the period between 2000/01 and 2020/21.

Right to buy

14. The number of social rented dwellings lost in South Gloucestershire through Right to Buy broken down on a per annum basis for the period between 2000/01 and 2020/21.
15. The number of Right to Buy replacements funded by receipts from Right to Buy sales in South Gloucestershire broken down on a per annum basis for the period between 2000/01 and 2020/21.
16. The number of social rented dwellings lost in Thornbury through Right to Buy broken down on a per annum basis for the period between 2000/01 and 2020/21.
17. The number of Right to Buy replacements funded by receipts from Right to Buy sales in Thornbury broken down on a per annum basis for the period between 2000/01 and 2020/21.

Temporary Accommodation

18. The number of households on the Housing Register housed in temporary accommodation within South Gloucestershire at 1st April 2021.
19. The number of households on the Housing Register housed in temporary accommodation outside of South Gloucestershire at 1st April 2021.
20. The number of households on the Housing Register housed in temporary accommodation within South Gloucestershire at 1st April 2020.
21. The number of households on the Housing Register housed in temporary accommodation outside of South Gloucestershire at 1st April 2020.

We look forward to hearing from you.

Yours sincerely
Emery Planning

Ben Pycroft

**Ben Pycroft BA (Hons), DIP TP, MRTPI
Director**

Cc Eileen Paterson - Eileen.Paterson@southglos.gov.uk

EP13

Appendix A: South Gloucestershire 2020-21 Housing Trajectory

Status at base date	RLS Ref.	Planning Application Number	Address	Past Completions											5 year total	EP TOTAL	Total AH provision	AH percentage	AH in 5 year period	EP AH supply in 5 year period
				2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025	2025/2026								
RM	0008aa	PT16/4740/RM	Charlton Hayes (PT18/3452/RVC) - Bovis [LC2]			10	2	40							40	40	12	23%	9	9
RM	0008ab	PT16/6598/RM	Charlton Hayes - Bovis [H11, H12, H13]		30	25	64	11							11	11	34	26%	3	3
RM	0008ac	PT17/5946/RM	Charlton Hayes - [H6, H7, MU1]			22	21	38	17						55	55	23	23%	13	13
RM	0008ad	PT18/0268/RM	Charlton Hayes - Bovis [H1, H2a and H2b]			18	72	20							20	20	31	28%	6	6
Full	0011a	PT15/1179/O	East of Coldharbour Lane - Phase 1 (PT15/1179/O)	98	52	45	16	28							28	28	86	30%	8	8
RM	0011c	PT18/0659/RM	East of Coldharbour Lane - Phase 2 (PT15/1179/O)			22	35	26	20						46	46	0	0%	0	0
RM	0021b	PT17/5810/RM	Land at Harry Stoke, Stoke Gifford - Crest & Sovereign & Linden Homes				10	150	120	120	120	95			605	372	194	25%	154	95
RM	0035	PK10/1057/F	South of Douglas Road, Kingswood	18	20	21	27	14	20	20	32	50			136	136	107	33.3%	45	45
RM	0036ah	PK15/0681/RM	Lyde Green - Barratt [Parcel 11]	49		2	6	9							9	9	24	25%	2	2
RM	0036am	PK16/2568/RM	Lyde Green - Persimmon [Parcel 1]	84							6				6	6	17	19%	1	1
RM	0036ao	PK17/4155/RM	Lyde Green - Persimmon Homes [Parcels 18, 20a]				59	48	7						55	55	22	19%	11	11
RM	0036ar	PK18/1513/RM	Lyde Green - Persimmon Homes [Parcels 27a & 28]			37	53	48	2						50	50	40	29%	14	14
RM	0036at	PK18/1464/RM	Lyde Green - Taylor Wimpey 25a, 25B And 26			28	87	40	7						47	47	48	30%	14	14
RM	0036au	PK18/4996/RM	Lyde Green - Quatro Design Architects (Extra Care)					50							50	50	50	100%	50	50
RM	0036av	P19/8823/RM	Lyde Green - Taylor Wimpey [Parcel 16b]					20	50	26					96	96	19	20%	19	19
RM	0036aw	P19/16786/RM	Parcel 2b Emersons Green East							19					19	19	0	0%	0	0
Outline	0036ax	P20/10826/RM	Parcel 27B Emersons Green East							15	12				27	27	7	26%	7	7
RM	0036aa a	P19/19012/RM	Parcel 19 Emersons Green East								16	30	30		76	76	14	18%	14	14
Full	0036d	PK17/1112/F	Land South Of Lyde Green - BDW & Taylor Wimpey					25	35	55					115	115	40	35%	40	40
Full	0036e	PK18/3977/F	Land At White House Farm - Taylor Wimpey & Persimmon						44	45					89	89	30	34%	30	30
RM	0132b	PT15/5528/RM	North of Park Farm, Thornbury	71	43	126	126	8							8	8	131	35%	3	3
Outline	0133	PK12/1913/O	Land at North Yate (PK12/1913/O) Barratt/DWH									100	100				69	16%	69	
RM	0133ab	PK17/5388/RM	Land at North Yate - Barratt PL23a, PL23c		14	46	8	9									25	32%	0	
RM	0133ac	PK17/5389/RM	Land at North Yate - DWH PL14d, PL22		25	41	7	10									30	36%	0	
RM	0133ae	PK18/1723/RM	Land at North Yate - Barratt PL12b, PL13b			73	119	34									76	34%	0	
RM	0133af	PK18/3185/RM	Land at North Yate - DWH PL15a, 16a, 16b					31	25	25	25						37	35%	37	
RM	0133ah	P19/2525/RM	Land at North Yate, PL17a, 17b, 18a, 18b & 21					29	100	50	50						80	35%	80	
RM	0133ai	P19/14361/RM	Land at North Yate - Barratt PL14e						48						1487	951	12	25%	12	285
RM	0133aj	P19/12246/RM	Land at North Yate - PL12a, PL13a					60	71	24							45	29%	45	
Outline	0133ak	P20/16804/RM	Land at North Yate - PL7, 8, 9 & 11					23	40	40	40	40					69	38%	69	
Outline	0133al	P21/02473/RM	Land at North Yate - PL15c and PL16					17	35	35	35	35					64	41%	64	
RM	0133b	P19/11377/RM	Land at North Yate - Bellway PL24, 25, 26 & 27					58	87	102							86	35%	86	
Outline	0133am	P21/04892/RM	North Yate - Land At Ladden Garden Village									9					0	0%	0	
Outline	0133an	P21/03161/RM	North Yate - PL19, 20, 28 and 29									50	50				47	32%	32	
RM	0134a	PT14/0565/O	Cribbs/Patchway NN - West of A4018 Haw wood									16	45		61	0	127	25.5%	86	86
Outline	0134b	PT12/1930/O	Cribbs/Patchway NN - Wyke Beck Rd/Fishpool Hill										100		100	0	221	25.5%	86	0
Full	0134bb	PT15/4165/F	Cribbs/Patchway NN - Charlton Common								20	30	30		80	80	30	38%	30	30
Outline	0134c	PT14/3867/O	Cribbs/Patchway - Former Filton Airfield YTL (PT14/3867/O)									70	230		300	0	407	17%	51	0
RM	0134ca	PT18/5892/RM	Parcelss RO3 and RO4 - Former Filton Airfield YTL					45	95	162					302	292	44	15%	44	43
Outline	0135a	PT16/4782/O	New Neighbourhood - East of Harry Stoke - Crest [South of railway]										55		55	0	259	22.6%	12	0
Outline	0135aa	P20/17975/RM	New Neighbourhood - East of Harry Stoke - Crest [South of railway] (PT16/4782/O)						16	65	56	5		142	142	33	23%	33	33	
Outline	0135b	PT16/4928/O	New Neighbourhood - East of Harry Stoke - Council Land [North of railway]								50	50		100	0	40	22.6%	23	0	
No PP	0135ba	P20/03681/F	New Neighbourhood - East of Harry Stoke - Wain Homes [North of railway]								36	36	36	42	150	150	34	22.6%	34	34
Full	0135c	PT16/6182/F	New Neighbourhood - East of Harry Stoke - Engle formerly Keepmoat [Hambrook Ln/Curtis					23	12	34					46	46	25	36%	17	17
Outline	0135d	PT17/5873/O	New Neighbourhood - East of Harry Stoke [Land off Old Gloucester Road, Hambrook]										53		53	0	55	35%	19	0
RM	0138a	PT15/5412/RM	Phase 1 Frenchay - Redrow	54	27						8				8	8	21	24%	2	2
RM	0138b	PT17/0973/RM	Phase 2 Frenchay - Redrow		36	65	13	13							13	13	36	28%	4	4
Outline	0138d	PT17/5624/RM	Phase 3b Frenchay - Redrow							34	35				69	69	17	25%	17	17
RM	0138e	PT17/5363/RM	Phase 4 Frenchay - Redrow					57	90	15					162	162	37	23%	37	37
RM	0156	P19/5320/RM	Eastwood Park, Falfield (PT12/3707/O)							-10	10	10			10	10	0	0%	0	0
RM	0167	PT17/3333/RM	R/O Dick Lovett, Laurel Hill, Cribbs Causeway		-2		5	36	36	33					105	105	37	35%	37	37
RM	0169	PT17/4963/RM	Goodmans additional land "Northfield Park"			47	40	33							33	33	42	35%	12	12
Full	0174	P20/17527/F	Mendip Crescent, Downend - Merlin					-4	11						7	7	7	100%	7	7
RM	0190	PT16/4055/RM	Land at Post Farm, Thornbury	16	44	20	39	6							6	6	43	35%	2	2
RM	0204	P19/2524/RM	West of Gloucester Road, Thornbury (PT16/4774/O)					30	50	50					130	130	46	35%	46	46
RM	0207	P19/3928/RM	Heneage Farm, Falfield (PT17/4800/O)				5	21	25	25	9				80	80	30	35%	28	28
Outline	0211	P19/14956/F	Land To The West Of Stowell Hill, Tytherington (PT17/2331/O)					15	14						29	29	10	34%	10	10
Full	0216	PK17/5109/F	East of Trinity Lane, Chipping Sodbury			12	36	12							12	12	21	35%	4	4
RM	0218	P19/4513/RM	Land South Of Park Street, Hawkesbury Upton (PK18/1532/O)						11	10					21	21	6	29%	6	6
RM	0219	P19/5258/RM	Land South Of Horwood Lane, Wickwar (PK17/4552/O)					36	36	18					90	90	32	36%	32	32
RM	0222	PT18/6493/RM	Land north of Wotton Road, Charfield, Gloucestershire, Barratt					35	40	40					115	115	42	35%	42	42
RM	0223a	PT18/6313/RM	Blackberry Park, Land east of Park Lane, Coalpit Heath				65	31							31	31	34	35%	11	11

RM	0223b	P19/18441/RM	Phases 2 And 3 Land At Park Lane Coalpit Heath						10	50	40	8		108	108	38	35%	38	38	
RM	0224	P19/15929/RM	Former North Avon Magistrates Court, Yate							45				45	45	45	100%	45	45	
RM	0225	PK18/5781/RM	The Shant, Crown Road, Kingswood						10					10	10	0	0%	0	0	
Outline	0226	PT18/0930/R30	Watermore Junior School, Lower Stone Close Frampton Cotterell								27			27	5	9	35%	9	0	
Outline	0227a	P20/07655/RM	Cleve Park, Thornbury (PT16/3565/O)								25	50	50	125	125	123	35%	44	44	
Full	0229	PK17/0704/F	Land At 298 Soundwell Road (Cross boundary with Bristol)								10	10		20	20	6	30%	6	6	
Full	0230	PK16/4840/F	Masters Church Park Road, Kingswood								22			22	22	8	36%	8	8	
No PP	0234	P19/15643/O	Land East of Cedar Lodge (replace PT17/1209/F)										29	29	0	10	35%	10	0	
Full	0236	P19/10586/PNOR	Kingsgate House - HHC Investments							8	8			16	16	0	0%	0	0	
Full	0237	P19/7309/PNOR	International House - Kingswood							9	10			19	19	0	0%	0	0	
No PP	0242	P19/19778/F	West of Garston Farm, Marshfield							15	3			18	18	12	67%	12	12	
Full	0243	P20/00319/F	33 Quarry Road, Alveston					-2		13				13	13	4	36%	4	4	
No PP	0249	P20/23871/F	Alveston House Hotel Davids Lane Alveston							22				22	22	2	9%	2	2	
Full	0199	P19/12563/F	Land At MU6 Charlton Hayes (PT16/4975/F)									10		10	10	0	0%	0	0	
Outline	0227	PT16/3565/O	Cleve Park, Thornbury (PT16/3565/O) - Care Home										14	14	0	0	0%	0	0	
Full	0231	PT18/4625/F	Land At Oaklands Drive Almondsbury											0	0	0	0%	0	0	
Full	0232	P19/5351/F	The Park Hotel, Gloucester Road							2				2	2	0	0%	0	0	
Full	0235	PK18/6115/F	Warmley Court - Linden homes Care Home								2			2	2	0	0%	0	0	
Full	0239	P20/05310/F	Former GB Neuro Building									8		8	8	0	0%	0	0	
Full	0246	P19/19773/F	64 Bed Nursing Home, Gravel Hill Road Yate									8		8	8	0	0%	0	0	
No PP	0251	P20/21983/F	University Of West Of England - Phase 1 (18 studio & 882 cluster)								270			270	0	0	0%	0	0	
No PP	0252	P20/10080/F	Block B Cheswick Village (36 studio & 3 cluster)						37					37	0	0	0%	0	0	
	0133c		Land at North Yate - Barratt (Formerly TW)											0	0	0	0%	0	0	
No PP	0135da		New Neighbourhood - East of Harry Stoke [Residual Land]								50	50		100	0		Unknown		0	
No PP	0238	P20/22922/RM	Romney House - Cross Boundary Application (PK18/0989/O)							8				8	8	2	25%	2	2	
No PP	0254	P20/15214/F	Land North Of Lodge Road, Engine Common, Yate							15	16			31	31	11	35%	11	11	
No PP	0255	P21/00546/F	Land At Hampton Close, Cadbury Heath							-24	44			20	20	20	100%	20	20	
	0257	P19/2575/F	Land North of Iron Acton Way & East of Dyers Lane											0	0	0	0%	0	0	
No pp	0258	P20/13119/F	Land East of Malmaims Drive, Frenchay								30			30	30	11	37%	11	11	
No pp	0259	P21/02958/F	Savages Wood Road, Bradley Stoke									21		21	21	21	100%	21	21	
Outline	0021c	PT17/5847/RM	Land at Harry Stoke, Stoke Gifford - Crest								25	50	50	125	0	88	33.3%	42	0	
Outline	0036ay	P21/03348/RM	Parcel 29 Emersons Green								20	20	27	67	67	18	27%	18	18	
Outline	0036az	P21/06187/RM	Parcel 30 Emersons Green								20	20	28	68	63	15	22%	15	15	
No pp	0036ca	P19/1275/F	Land At Lyde Green Farm - Edward Ware Homes									50		50	0	139	35%	17	0	
Outline	0134aa	P21/04349/RM	Land At Cribbs Causeway (Berwick Green / Haw Wood)							37	46	42	37	162	125	66	25.5%	41	32	
Outline	0134ab	P21/04748/RM	Parcels 14-19 Land At Cribbs Causeway (Berwick Green / Haw Wood)							74	93	68	9	244	0	62	25.5%	62	0	
Outline	0134ba	P21/05421/RM	Land At Wyck Beck Road And Fishpool Hill							30	72	72	61	235	174	60	25.5%	60	44	
No pp	0247a	P21/06953/RM	Land At Crossways Morton Way Thornbury									30	39	69	0	24	35%	24	0	
No pp	0248	P20/12395/F	Land West of Trinity Lane								20	20	20	60	0	32	35%	21	0	
No pp	0250a	P21/04070/RM	Land East Of North Road Yate									40	44	84	83	29	35%	29	29	
No pp	0253	P21/07653/RM	The Railway Inn, Station Road, Yate									40		40	40	0	0%	0	0	
No pp	0256	P21/05128/F	The Hoodlands, Hambrook Lane, Hambrook (MMC)								25	25		50	0	18	35%	18	0	
										1281	1565	1950	1360	1518	7674	5052			2258	1569
			Small Sites Core Strategy Projected						0	392	210	210	210	210	1050	0				
										1491	1775	2160	1570	1728	8724					
									1,599	1,573	1,518	1,650	1,491	1,775	2,160	1,570	1,728			
									Total 2006/07 to 2019/20		Total 2021/22 to 2025/26									
									17,206		8,724									