

CONFIDENTIAL

6th August 2019

Torbay Council

By email only to david.pickhaver@torbay.gov.uk

Dear David

Torbay Five Year Housing Supply 2019 Draft Statement for Consultation and the implications for application P/2017/1133 (commonly known as Inglewood)

Further to the publication of Torbay Council's Five Year Housing Supply for consultation, we have today submitted a representation on behalf of Abacus Projects Limited and Deeley Freed Estates Limited. This is supported by an independent review of the consultation document, undertaken by Alder King Planning Consultants, drawing upon their detailed expertise in this field of work. A copy of our representation is appended to this letter for completeness (see Appendix 1).

In summary, we do not consider that Torbay Council's 3.28 years estimate of housing supply is a robust position. Having regard to the definition of deliverable as set out within NPPF Annex 2 for which further guidance was produced in NPPG on 22 July and recent appeal and SoS decisions, we consider that Torbay Council has circa. 1.25 years housing supply with a total supply of 748 dwellings.

Whilst it is accepted that for the purposes of the update of the Council's housing land supply the housing requirement as set out within the Local Plan is used, it will be necessary at either the Local Plan Review stage or in an appeal to undertake a local housing need assessment using the standard method.

Our calculation of the Council's five year requirement (2019-2024) using 2014-based household projections is 3,500 dwellings, which equates to 700 dwellings per annum. Based on a total supply of 748 dwellings, as calculated by Alder King, this would provide the Council with a supply of 1.07 years. This only serves to highlight the worsening nature of Torbay's housing land supply position and the out-of-date nature of its Development Plan, including its Neighbourhood Plans.

The pattern of recently granted consents and / or resolutions to grant consent with no Affordable Housing Provision illustrates that the preferred form of small brownfield housing development across Torbay will continue to deny Torbay residents an expectation that an acceptable level of Affordable Housing can come forward over a reasonable timeframe. The lack of Affordable Housing in Torbay is acute and action is needed - hopefully this will begin to be addressed in the Action Plan the authority is under an obligation to provide.

Status of the Torbay Local Plan

It is undisputed amongst most parties that Torbay Council cannot demonstrate a five year supply of deliverable housing sites and the policies which are most important to determining the application are out-of-date. Therefore, for decision-taking the presumption in favour of sustainable development is engaged through paragraph 11d of the NPPF.

In respect of the Inglewood application, it has previously been agreed with the Council that the tilted balance in paragraph 11d is engaged as an appropriate assessment as required by paragraph 177 has confirmed that the project will not adversely affect the integrity of habitat sites, namely the Special Area of Conservation.

Status of the Neighbourhood Plans

Having regard to the findings of the Alder King report, the Council is unable to demonstrate a three year supply of deliverable housing sites. In accordance with NPPF paragraph 14, in circumstances where the presumption in favour of sustainable development is switched on (paragraph 11) the protection afforded to the relevant policies in the Neighbourhood Plan in the decision making process falls away where the local planning authority cannot demonstrate a three year supply.

In the context of Torbay, the protection afforded to the relevant policies in all three of the Neighbourhood Plans has fallen away for the decision making process and the policies that relate to housing must be considered out-of-date in the decision making process.

It is notable that even in your assessment of HLS only 3 of the BPNP allocated or committed housing sites are considered deliverable over the relevant five year period. These 3 sites provide just 43 dwellings of the 660 required over the plan period.

Recent SoS Decision

We would like to draw your attention to the Secretary of State (SoS) decision on 24 July for a recovered appeal against the decision of Birmingham City Council to refuse outline planning permission, with all matters reserved except access, for up to 950 dwellings, public open space, primary school and community hub. The SoS allowed the appeal granting planning permission for a revised proposal of up to 800 dwellings. The SoS also awarded the appellant costs.

The circumstances of this case were that it was an unallocated site, a newly adopted plan was in place and the Council, through the course of the inquiry were able to demonstrate a 5 year supply. The City Council argued that given the sites size at some 35ha and its greenfield nature it could not be classified as a windfall and should not be allowed to come forward after a newly adopted plan.

The Inspector disagreed with the Council's interpretation of the NPPF, with there being no size limit and the 2019 version removing reference to them being mainly previously developed land. The outcome of this decision is that any unallocated site that comes forward can be classified as a windfall.

The SoS has also made clear in this decision that evidence of a five year supply is no restriction on the grant of new permission on greenfield sites.

A copy of the decision is provided at Appendix 2 of this letter.

The Time is Now

We consider that it is imperative that the Council take action to grant planning permission without delay for those applications that will significantly boost housing land supply, particularly those with policy compliant provision of much needed affordable housing, in accordance with the requirements of NPPF Paragraph 11. Inglewood is one such application for which the economic, social and environmental benefits have been well rehearsed. We do not consider that there are any adverse impacts of granting permission for application P/2017/1133 that would significantly or demonstrably outweigh the benefits.

The recent SoS decision provides clear support for Council's applying the presumption in favour of sustainable development and taking a robust approach to the positive determination of large windfall applications that deliver much needed new homes to meet local need, regardless of their land supply position.

Extension of Time

I look forward to your response as to how the Council intend to proceed with this application in light of the representations received to the 5 year housing supply consultation. We would be very happy to meet with yourself and Andrew England to review progress in detail before confirming any extension of time to determine this application.

Yours sincerely,



Lauren Cook MRTPI, Associate Town Planner
For
STRIDE TREGLOWN LIMITED

cc. Andrew England, Asst. Director of Planning and Transport, Torbay Council
Kevin Mowat, Interim Director of Place, Torbay Council
Steve Parrock, Chief Executive, Torbay Council

**Appendix 1 – Alder King Representation to Torbay Five Year Housing Supply
2019: Draft Statement for Consultation**



Torbay Five Year Housing Supply 2019: Draft Statement for Consultation

Representations submitted on behalf of Abacus Projects Limited and Deeley Freed Estates Limited

22 July 2019

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Appendices

Appendix 1: Appeal Reference APP/Z1510/W/16/3162004: Secretary of State Decision and IR

Appendix 2: Braintree Essex Housing Supply Statement (April 2019)

1.0 Introduction

- 1.1 These representations are prepared and submitted on behalf of Abacus Projects Limited and Deeley Freed Estates Limited. The representations seek to establish the robustness of the five year land supply position as presented in Torbay Council's July 2019 Consultation Paper against the nationally prescribed methodology.
- 1.2 The Paper already establishes that the Council cannot identify a robust five year supply and estimates the supply to be 3.28 years. Paragraph 7.1 of the Paper correctly identifies the relevant paragraphs of the NPPF that are engaged in the event that a five year supply cannot be demonstrated. Torbay is however in a unique position where it is theoretically afforded protection under the terms of NPPF paragraph 14 given that the entirety of the LPA area is covered by recently made Neighbourhood Plans (NPs). Whilst the Paignton NP fails in the sense that it does not contain policies and allocations to meet its identified housing requirement¹, in respect of the other two NP areas one of the other tests of paragraph 14 is that the strategic policies are not deemed out of date in a recently made NP area if the LPAs supply is over three years.
- 1.3 For the reasons set out below, Alder King does not consider the 3.28 years estimate to be a robust position.

2.0 The Housing Requirement

- 2.1 Alder King (AK) largely agrees with Torbay Council's (TC) methodology for the calculation of the five year housing requirement, save for two important matters. Firstly, AK queries the level of completions achieved in 2018/19. Paragraph 1.3 references a Housing Land Monitor completed in April 2019 but this has not been made publicly available. The NPPG is clear in respect of what constitutes a housing completion:

*"For the purposes of calculating 5 year land supply, housing completions include new build dwellings, conversions, changes of use and demolitions and redevelopments. Completions should be net figures, so should offset any demolitions."*²

- 2.2 The level of completions should be a simple matter of fact. AK is however surprised at the extent of completions when compared against TBCs supply position as set out as recently as December 2018. In its draft position statement, the supply anticipated at December 2018 for 2018/19 was 295 dwellings. It is not clear how in the intervening three months to 31 March 2019 the number has increased by 236 dwellings to 531 (an 80% uplift). The December 2018 report appeared a robust record and trajectory of all those planning permissions that could contribute to the supply. It is acknowledged that this number could have increased by virtue of a higher rate of delivery on various sites, but it is a remarkable increase nonetheless.
- 2.3 The information as presented in the Consultation Paper makes it impossible to compare the 2018 trajectory for 2018/19 to the 531 completions now claimed. The 298 small sites figure as presented in this Paper

¹ NPPF Paragraph 14b

² Paragraph: 029 Reference ID: 68-029-20190722

(sites not started and under construction) are not listed in full as they were in 2018, so it is impossible to understand what sites in the 2018 trajectory have over-delivered. The information should have been made available as part of this exercise. Whilst it is reasonable to assume that those 298 dwellings should form part of the five year supply, there is still merit in allowing the public to scrutinise those sites, albeit it is readily recognised that the onus is on any objector and not the Council to demonstrate any concerns in respect of delivery and the trajectory.

2.4 It is important that this figure is transparent and AK reserves its position on this matter until such time as the evidence is made publicly available.

2.5 Secondly, AK does not agree with the statement at paragraph 3.5 that *“the LPA does not consider a buffer should be applied to the backlog, since this would be double counting unmet supply.”* That stance is not reflected in the NPPG:

“To ensure that there is a realistic prospect of achieving the planned level of housing supply, the local planning authority should always add an appropriate buffer, applied to the requirement in the first 5 years (including any shortfall), bringing forward additional sites from later in the plan period. This will result in a requirement over and above the level indicated by the strategic policy requirement or the local housing need figure.”³

“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.”⁴

2.6 It is not a question of ‘double counting unmet supply’. That is not the purpose of the exercise; the purpose is not to amend the overall housing requirement, it is simply to ensure that LPAs ‘catch up’ such that there is a realistic prospect of the housing requirement being met by the end of the plan period. It is seeking to achieve a boost in housing delivery at the earliest practicable opportunity. If the LPA meets its five year requirement, then the completions are discounted from the overall requirement on a rolling annual basis. There is no double counting.

2.7 If the issue over 2018/19 completions is satisfactorily proven then the 5% buffer should be applied to the shortfall of 271 dwellings as well as the Local Plan requirement. This would give rise to a five year requirement of 3,009 dwellings.

³ Paragraph: 022 Reference ID: 68-022-20190722

⁴ Paragraph: 031 Reference ID: 68-031-20190722

3.0 The Housing Supply

- 3.1 Paragraph 5.2 correctly identifies the relevant section of the NPPG relating to the tests of deliverability. Nothing stays still and the Government produced revisions to the Housing Supply and Methodology section of the NPPG on 22 July. The new paragraph is reproduced in full below:

“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. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- *have outline planning permission for major development;*
- *are allocated in a development plan;*
- *have a grant of permission in principle; or*
- *are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, 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.⁵*

- 3.2 In some respects the paragraph is a consolidated version of previous iterations, but does provide more clarity over the necessary tests. For any such site that falls within the categories of the first four bullet points, there is little doubt that the bar for inclusion in any LPA five year supply is a high one. Whilst paragraph 5.3 of the consultation paper states that the above tests (in the previous NPPG) have been applied to sites in Torbay ‘as far as the information is available at the time of writing’ the evidence presented falls woefully short of the standard required.

⁵ Paragraph: 007 Reference ID: 68-007-20190722

3.3 It is important to consider how those tests are being applied through appeal and Secretary of State decisions. A recent Secretary of State decision relating to a residential site in Braintree, Essex⁶ is reproduced at **Appendix 1**. Paragraph 46 of the SoS decision states that,

“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.”

3.4 The Braintree Monitoring Report (April 2019 Addendum) is provided at **Appendix 2**. This follows a similar format to that presented by Torbay, however, further evidence is provided at Appendix 2 of the report containing pro-formas prepared by the LPA and completed by relevant developers/site promoters. This is not an uncommon approach, and in some instances the SoS accepted the content of the responses to represent sufficiently clear evidence that outline consents will be delivered within the five year period.

3.5 However, the SoS discounted sites:

- Where no information (ie pro-formas/statement of common ground) was forthcoming;
- Where new full applications had been submitted (not determined) that sought to supersede the outline;
- Where reserved matters had not been submitted.

3.6 In relation to an adopted ‘Growth Location’ area (much the same as Torbay’s Future Growth Areas), despite the fact that a hybrid planning application had been made and relevant pro-forma produced, the site was discounted from the five year supply. Evidently that site failed the test of ‘*a hybrid planning permission for large sites which links to a planning performance agreement that sets out the timescale for conclusion of reserved matters applications and discharge of conditions.*’

3.7 When these tests and ‘rules’ are applied to the Torbay supply, many sites within the trajectory fail. Indeed, in the context of NPPF Annex 2, any site that falls within the Torbay supply that is not subject to either full consent or reserved matters approval is automatically discounted on the basis that no clear evidence of the standard required is presented.

3.8 The two main components of supply are critiqued below.

⁶ APP/Z1510/W/16/3162004

4.0 Part A: Sites of 10+ units with full planning permission

4.1 AK accepts that the majority of sites within Part A should form part of the five year supply. For sites within this category it is accepted that it is not the Council's obligation to provide clear evidence; the onus is on any objector to demonstrate issues with deliverability. Nevertheless, AK queries the following sites:

- **South Devon College (Torre Marine):** This site does not have full planning permission. P/2016/1047 is an outline permission for which no reserved matters have been submitted. Clear evidence is required as a consequence and must pass the tests. In accordance with the above SoS Decision, even where a pro-forma response is provided, since no RM submissions have been made and no conditions discharged, the site should be discounted from the supply. The commentary provides no comfort that the site is coming forward and the fact that the 75 units are programmed for year four provides no confidence. The fact that the commentary states that, 'discussions are underway on how to deliver the site' provides no confidence whatsoever.
- **Hollicombe Gas Works:** It is accepted that the site is subject to full planning permission and has been implemented. However, the consent was granted in 2012. It is acknowledged that the permission has been implemented, as clarified by the certificate of lawful use in 2015 but this relates to the construction of an access. It is not uncommon for developers to implement consents in this manner to prevent them from lapsing, but provides no certainty as to when residential development will take place. The consent is seven years old and no residential development has taken place. The permission is for 185 dwellings but only half are in the trajectory. Those 92 units fall into the last two years of the five year period. There can be no confidence that this consent will be delivered in line with the proposed trajectory.
- **Brixham Paint Station, Kings Drive:** Notably this site did not feature in the 2018 trajectory despite being subject to an implemented consent. The consent dates back to 2006. It is not clear what form application reference CN/2016/0086 is as it is not on the planning register. It is not appropriate to rely on a part implemented consent from 2006 without any evidence of delivery.

4.2 AK does not consider that the above three sites should contribute to the supply and has discounted them as a consequence.

5.0 Part B: Allocated and other sites with demonstrated intent

5.1 On the basis of the above analysis describing how the methodology relating to the presentation of clear evidence should be applied, all 747 dwellings within this category should be discounted from the supply. In some circumstances should clear evidence be provided by TC then those sites could make a contribution to supply; in respect of others then in accordance with the SoS decision making process it is hard to see how they possibly could.

5.2 In respect of those sites where clear evidence might allow for inclusion:

- **Land South of Yalberton Road:** In accordance with the SoS decision making process, where RMs are submitted then it is appropriate for such sites to be included in the supply. However, there needs to be clear evidence of delivery and there is nothing available at present. None of the NPPG tests are met. There are objections to the RM on the planning file and no applications have been made in respect of discharge of conditions attached to the outline consent. The trajectory has no basis in evidence and the site has to be discounted on that basis.
- **Devonshire Park, off Brixham Road:** The same applies here as above. In respect of both sites TC has applied an annual rate of 45 dwellings per annum (dpa) despite mentioning in the commentary a rate of 40 dpa. Notably the 'standard completion rate' in the 2018 report was 35 dpa. There is no evidence presented to justify a further 10dpa. It is a moot point in any event; under no circumstances should a standard rate of completions be used. There must be clear evidence of a robust trajectory presented on a site by site basis.

5.3 In respect of all other sites in Part B, none are the subject of either outline or full planning permission. In many instances no planning application has been submitted. Whilst it is acknowledged that such sites can feature within the five year supply, given their status, clear and compelling evidence needs to be provided demonstrating certainty of delivery. It is acknowledged that an adopted allocation provides certainty in respect of the principle of development. In all other respects however, there is no certainty until such time as planning permission is forthcoming. There are many hundreds of examples of allocated sites across the country that have not come forward for development, whether that is in part or at all, or in the timescales originally envisaged.

5.4 Of the residual 447 dwellings in Part B (once the above two sites have been discounted), 215 are identified within the Local Plan as Future Growth Areas. It is worth exploring the status of this 'designation' further and whether it is appropriate to include such sites within the five year supply.

Future Growth Areas

5.5 The Torbay Local Plan was adopted in December 2015 and covers the period 2012-2030. Policy SS1 sets out the growth strategy for Torbay and Policy SS2 identifies 'Future Growth Areas'.

5.6 Policy SS1 states that the Plan seeks to identify land for the delivery of an overall average of around 495 homes per annum, equating to about 8,900 new homes over the Plan period. The first 5 years of supply was to come forward through committed sites whilst the supply for years 6-10 was to come forward through committed sites and developable sites identified in Neighbourhood Plans (NPs).

5.7 Policy SS2 relates specifically to 'Future Growth Areas' (FGAs) and identifies three locations where they are proposed. The Policy states that the FGAs shown on the Policies Map show broad locations in which the Council, community and landowners will work together, through neighbourhood planning and / or masterplanning, to identify in more detail the sites, scale of growth, infrastructure (including green infrastructure) and delivery mechanisms required to help deliver the Local Plan.

5.8 The supporting text for Policy SS2 recognises that 'it is not expected that all land within these Areas will be developed. This is unlikely to be sustainable or to meet with the requirements of Policy SS2. Rather they represent a broad canvass on which the adopted Masterplans and three Neighbourhood Plans will work up detailed proposals for sustainable growth, in partnership with developers, local communities and infrastructure providers.'

5.9 AK recognises that there is an adopted masterplan in place for the Paignton/Collaton St Mary growth area, giving it a further level of status than the somewhat vague designation in the Local Plan. Of those sites that feature in the five year supply:

- **Little Blagdon:** This site cannot reasonably form part of the supply. No application is submitted and not due until next year. It is impossible to know whether it will accord with the adopted masterplan and thus whether the principle of development in the form ultimately presented will be acceptable. We do not know the nature of the application or how the 60 units has been derived. The site has no status as required by the NPPG (the FGA status is insufficient) and no clear evidence of delivery has been provided.
- **Land north of Totnes Road (Bloor), Land north of Totnes Road (TW) and Former Torbay Motel:** All three sites share a similar context insofar as they are all subject to undetermined outline applications that run contrary to the adopted Masterplan. Clearly the LPA does not necessarily support the departures from the adopted Masterplan as it only makes provision for the units advocated in the Masterplan document, not that which has been applied for. All three applicants are seeking planning permission for more units than that contained within the Masterplan. Two out of the three sites have been subject to withdrawn applications and resubmissions suggesting genuine problems with viability. Applications are often withdrawn and resubmitted to overcome planning issues – it is quite unusual for resubmitted applications to make significant uplifts in numbers as the planning issues are exacerbated. Viability is at the heart of these sites yet no evidence of how these matters are going to be overcome has been presented.

In that sense there is no real status to the applications insofar as their ability to contribute to the five year supply. It would be doing a huge disservice to proper procedure and public scrutiny to suggest that these sites will secure consent when they are contrary to policy. It is not appropriate to 'fall back' to the masterplan figures given there is no indication whatsoever that the developers plan to respect the masterplan process. No reliance on these sites can be proved until such time as they are subject to outline consent. No reliance on them in terms of a five year supply can be realised until such time as they are subject to RM submissions.

Neighbourhood Plan Sites

5.10 Three Neighbourhood Plans have been 'made' that together cover the full extent of the Torbay area. The Torquay and Brixham Peninsula Neighbourhood Plans both include site allocations to meet the housing need identified for that area within the Torbay Local Plan. The Paignton Neighbourhood Plan does not

include any site allocations and does not meet the Local Plan identified housing need. The Paignton NP area is not therefore 'protected' under the terms of NPPF paragraph 14.

- 5.11 Where NPs do not identify sufficient sites to provide the housing requirement of the Local Plan, Policy SS1 identifies that the Council will bring forward sites through site allocations development plan documents. The Council has not progressed a site allocations development plan document in light of the failure of the Paignton Neighbourhood Plan to make any site allocations.
- 5.12 In respect of the Brixham Peninsula Neighbourhood Plan, it is notable that only 3 of the committed or allocated sites listed within Policy BH3 are contained within this consultation paper. These sites combined provide just 43 dwellings of the 660 required over the plan period.

- **Hatchcombe Lane, Palace Hotel, Conway Court, Westhill Garage, and St Kildas:** All of these sites enjoy a similar status; allocated in Neighbourhood Plans but not subject to any planning application. The only evidence provided in the commentary is in relation to '2019 pre-app discussions'. We have no knowledge of the nature or outcome of those discussions. We do not know whether the pre-application proposals have been positively or negatively received, or indeed whether any response has been provided. It is not clear even whether any pre-application submission has been made and is simply anticipated?

The commentary falls woefully short of national requirements. When considered against the SoS criteria, there is no possibility that these sites should be included within the supply. All these sites feature only in year five of the trajectory, which tells its own story. There is no compelling evidence to demonstrate that these sites will deliver in five years or the numbers anticipated.

- **Dairy Crest site:** This site differs from the above insofar as an outline application has been approved. Nevertheless, there is no clear evidence as required to demonstrate that the site can meaningfully contribute to the supply. There is no written agreement between the local planning authority and the site developer which confirms the developers' delivery intentions and anticipated start and build-out rates, or for that matter any information relating to the other tests in the NPPG.

Brownfield Register Sites

- 5.13 Only one such site is included in the supply:

- **Victoria Centre:** the 60 dwellings fall within year five giving rise to doubt. 60 dpa is not contemplated on any other site in the trajectory. There is no certainty of delivery even though the principle of development might be acceptable. The Design Brief has not been approved. No application has been submitted nor even anticipated. No clear evidence has been provided; whilst a successful bid for funding might have been achieved this in itself is not sufficient.

This is a complex site that needs to go through the planning application and consent process before any reliance in five year supply terms can be placed upon it.

Summary

- 5.14 Not one site within Part B meets the necessary tests. All 747 units should be discounted from the supply until such time as clear evidence as required by the NPPG is provided.

6.0 Part C: Small Sites

- 6.1 Please see commentary set out under paragraphs 2.3 and 2.4 of these representations.

7.0 Part D: Windfall Allowance

- 7.1 Paragraph 67 of the NPPF requires planning policies to identify a supply of:

- a) specific, deliverable sites for years one to five of the plan period; and
- b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan.

- 7.2 The NPPG goes on to advise that,

“A windfall allowance may be justified in the anticipated supply if a local planning authority has compelling evidence as set out in paragraph 70 of the National Planning Policy Framework.”⁷

- 7.3 Paragraph 70 of the NPPF is written in the context of plan-making. Further clarity is provided by the NPPG in relation to how windfalls should be treated in that sense:

“Local planning authorities have the ability to identify broad locations in years 6-15, which could include a windfall allowance (using the same criteria as set out in paragraph 67 of the National Planning Policy Framework).”⁸

- 7.4 The NPPG does not suggest that it is appropriate to rely on a windfall allowance within the first five years. Given the sentiment of guidance set out above, it is little surprise that reliance on a notional figure (where the tests for identified sites are so stringent) that it would be appropriate to incorporate a windfall allowance into the five year supply.

- 7.5 It is accepted that Policy SS13 of the Local Plan references inclusion of a windfall allowance within the first five years. Nevertheless, this was prepared against ‘old’ paragraph 48 of the 2012 NPPF which has been replaced by the wording above; the new wording does not allow for windfalls to feature in the first five years.

- 7.6 In any event it is not clear how the 283 homes figure has been derived. There is no compelling evidence presented to support it. In December 2018 the figure was 200 homes.

⁷ Paragraph: 023 Reference ID: 3-023-20190722

⁸ Paragraph: 023 Reference ID: 3-023-20190722

7.7 The windfall allowance should be discounted from the five year supply.

8.0 Conclusion

8.1 In respect of paragraph 7.3 of TCs 5 year Housing Supply Statement, we consider that in light of changes in local circumstances, namely the increase in local housing need established through the NPPF standard methodology and updates to national policy particularly in respect of deliverability, the Torbay Local Plan should be reviewed, a new housing requirement established and additional site allocations made. The wording in paragraph 7.3 is disappointing insofar as there is no urgency expressed. Indeed, it suggests that there may not need to be a review; this cannot possibly be right given the need to move towards the use of the standard methodology. By December 2020 the strategic policies will be out of date and the standard method will apply; to suggest that there is no need to have a new Local Plan to deal with the effect and that of a new plan period (whether it be an additional five or ten years) is irresponsible at best given the paucity in supply.

8.2 In theory in the interim Policy SS13 is engaged, and given the urgency of the situation, TC must consider favourably applications for new housing, consistent with Policy SS2, H1 and other policies of the plan. This reflects the wording of Policy SS13, however, because the strategic policies are out of date given the paucity of supply, the reality is that the tests for any residential application are those set out in the NPPF and NPPG.

8.3 A summary of Alder King’s position is set out below:

Component	Dwellings
TBLP Housing Requirement 2012-19	2,990
Completions 2012-2019	2,719
Shortfall 2012-2019	271
Five Year Requirement 2019 to 2024	2,595
Plus Shortfall and 5% Buffer	3,009
Part A Supply (sites with full planning permission)	450
Part B Supply (allocated and other)	0
Part C Supply (small sites)	298
Part D Supply (windfall)	0
Total Supply	748
Number of Years Supply	1.25 years

Appendix 1: Appeal Reference APP/Z1510/W/16/3162004: Secretary of State Decision and IR



Ministry of Housing,
Communities &
Local Government

Our ref: APP/Z1510/W/16/3162004

Mr Christien Lee
Senior Planner
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton
CW12 1LB

8 July 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY GLADMAN DEVELOPMENTS LIMITED
LAND OFF STONE PATH DRIVE, HATFIELD PEVEREL, ESSEX CM3 2LG
APPLICATION REF: 16/00545/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 between 12 December 2017 and 30 January 2018 into your appeal against the decision of Braintree District Council to refuse your application 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, in accordance with application ref: 16/00545/OUT, dated 30 March 2016.
2. On 12 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 by way of an Inspector decision dated 24 July 2017. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 13 September 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original hearing are set out in the 24 July 2017 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed.
5. 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 appeal and grant outline 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

6. As set out in IR17, the Secretary of State notes that the version of plans formally before him for approval are location plan (7015-L-04 rev B) and access plan (A095687-SK01 rev C). He agrees with the Inspector and parties that this technical alteration to the submitted application plans has no material bearing on the determination of the appeal, and he is satisfied that no interests have thereby been prejudiced.
7. On 21 June 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the judgment of the Court of 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.
8. On 1 August 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the new National Planning Policy Framework, published on 24 July 2018.
9. 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.
10. On 5 March 2019, 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 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 (at that time) published 5 year supply statement, January 2019(see also paragraphs 42 to 48 of this Decision 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).

11. A list of representations received in response to these letters is 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.

12. 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 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

13. 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.

14. 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 IR34-42.

15. 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.

16. 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.

Emerging plan

17. 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 IR44-48 and the emerging NDP policies of most relevance are HPE2, HPE6 and HPE8, described at IR50-52.

18. 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.

19. At the time of the Inquiry the examination hearings into part 1 of the BNLDP 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 IR709 to 712, the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLDP.
20. 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 IR714-715, 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

21. For the reasons given in IR704-706, the Secretary of State agrees with the inspector that the policy set out in Framework paragraph 62 would be delivered, and that the Green Infrastructure Plan and Design and Access Statement set important context and establish important principles at this outline application stage.

The extent to which the proposed development is consistent with the development plan for the area

22. For the reasons given in IR719-721, 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 IR719-721, that the appeal proposals would be in accordance with the spatial strategy. For the reasons given in IR722-730, 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 will 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 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

23. The Secretary of State agrees with the Inspector's view in IR732 that it is necessary to take into account the context of the appeal site, and notes the historic pattern of growth described in IR 732 and IR733. For the reasons given in IR734 to IR743 the Secretary of State agrees with the Inspector at IR744 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.

24. For the reasons given in IR745 to IR755, the Secretary of State agrees with the Inspector that he sees no reason to disagree with the appellant's assessment of the effect on landscape character - 'negligible' at both years 1 and 10 at national, county and District level, and 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10 on very local landscape character.
25. In terms of visual impact, for the reasons given in IR756 to IR764, 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.
26. For the reasons given in IR765 to 768, 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.
27. For the reasons given in IR769, 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 the enjoyment of users of the public right of way crossing the appeal site

28. For the reasons given in IR770 to IR776, the Secretary of State agrees with the Inspector that the experience of walkers along the relatively short length of PROW would be harmed by the development proposed, and, like the Inspector in IR856, he attaches limited weight to this harm.

The effect that the development would have on the significance of designated heritage assets

29. For the reasons given in IR777 to IR780, the Secretary of State agrees with the Inspector that policy RLP100 does not apply in relation to this development. He also agrees with the Inspector that policy CS9 does not meet the requirements generally of Framework section 16 and paragraph 196 in particular, concerning the assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits. He agrees with the Inspector that this consideration should therefore be assessed against policies in the Framework.
30. With regard to Hatfield Place, the Secretary of State notes the Inspector's review of the evidence presented in IR783 to IR790. He agrees with the Inspector, for the reasons given in IR791 to IR804 that the evidence of Mr Handcock for the appellant should be preferred and that the development proposed would not harm the significance of Hatfield Place. In respect of the William B, the Secretary of State agrees with the Inspector's understanding in IR808, that there was no evidence before the Inquiry of

any harm to the significance of the William B. He notes the Inspector's precautionary approach of setting out his conclusions on the called-in application at IR808, but is content that this is not necessary for him to conclude on this appeal scheme.

The effect of the development on community infrastructure

Education

31. The Secretary of State notes that by virtue of his decision on this case and on the proposal at land East of Gleneagles Way, 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

32. The Secretary of State notes the Inspector's summary of evidence submitted on health matters at IR818 to IR820, and has considered the subsequent closure of the Sydney House and Laurels surgeries to new registrations.

33. The Secretary of State remains of the view, for the reasons set out by the Inspector in IR821 to IR823, 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.

Other matters

34. For the reasons given in IR824 to IR827, the Secretary of State agrees with the Inspector that there is no policy conflict with respect to best and most versatile agricultural land, and no evidence to justify a finding of conflict with the development plan on transport and highway matters and air quality.

35. On ecology matters, for the reasons given in IR828 to IR832, the Secretary of State agrees with the Inspector that although there is potential for the survey area to support breeding and foraging farmland bird species, the restricted range of habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. While post-inquiry representations, referred to the presence of lapwings on the application site, given his findings on the site set out above, these representations do not alter his view on the site overall.

36. Other post-inquiry representations referred to cancellation of a bus route that served Hatfield Peverel, and air quality near the "blue land". The Secretary of State has considered each of these, but remains of the view that Hatfield Peverel still demonstrates good public transport links, and that the inquiry appropriately addressed air quality issues.

Appropriate Assessment

37. Following the reference back to parties exercise described in paragraph 7 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.
38. 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.
39. 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

40. The Secretary of State has considered the Inspector's findings as regards housing land supply at IR860 -873. 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.
41. 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 of February 2019.
42. 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.
43. 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.
44. 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.

45. 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*
46. 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.
47. 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.
48. The Secretary of State considers that, bearing this definition in mind, the authority are able to demonstrate around 4.15 years supply.
49. 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

50. The Secretary of State has given consideration to the Inspector’s analysis at IR679-693, 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 as 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

51. Having had regard to the Inspector’s analysis at IR694-696, the planning obligation dated 17 May 2017 and the addendum to that dated 20 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 IR697 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the new Framework.
52. 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 IR694-696, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

53. 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.
54. The Secretary of State has concluded that the authority is not able to demonstrate a 5-year supply of housing land, and that the presumption in favour of sustainable development does apply because of the effect of paragraph 177 of the revised Framework (as set out in paragraph 39 above).
55. 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 moderate weight to the enhanced biodiversity arising from the new boundary planting.
56. 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, as is the harm to users of Footpath 43. He further concludes that only very limited weight can be attached to conflict with policy HPE6 of the emerging NDP.
57. 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 the appeal should be allowed and planning permission granted.

Formal decision

58. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in Annex B of this decision letter 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, in accordance with application ref: 16/00545/OUT, dated 30 March 2016
59. 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

60. 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.

61. 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
62. A copy of this letter has been sent to Braintree District Council and Rule 6 parties, 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 Elliston	15 March 2018
Mr Kearns	22 March, 18 April and 5 June 2018
Cllr Derrick	6 April 2018
Mr Simmonds	6 June 2018 2018
Rt Hon Priti Patel MP	2 October 2018
Hatfield Peverel Parish Council	12 November 2018
Stone Path Meadow Residents Group (SPMRG)	1 and 17 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
Stone Path Meadow Residents Group (SPMRG)	7 August (x3) 2018
Gladmans	15 August 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 August, 29 August (x2) and 5 September 2018
Stone Path Meadow Residents Group (SPMRG)	15 August 2018
Gladmans	15 and 28 August 2018
Savills	15 August (x2) 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
Gladmans	11 and 19 October 2018
Stone Path Meadow Residents Group (SPMRG)	10 and 18 October (x2) 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
Gladmans	26 March, 1 and 3 April 2019
Stone Path Meadow Residents Group (SPMRG)	21 March, 1 and 17 April 2019
Braintree District Council	26 March 2019

Annex B 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 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 80 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 illustrative Development Framework Plan 7015-L-02 rev J.
Approved Plans:
Location Plan: 7015-L-04 Rev B
Access Details: A095687-SK01 Rev C
Green Infrastructure Plan 7015-L-06 Rev B
- 5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

- 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) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.
- 9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed. The development shall be implemented in accordance with the approved Management Plan.

- 10) 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.

- 11) 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.

12) 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.

13) 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.

14) 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.

15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of

completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

- 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 by 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 scheme shall subsequently be implemented prior to occupation. In particular the scheme shall provide for the following mitigation measures outlined in the Flood Risk Assessment:
- i) Control all the surface water run-off generated within the development for all events up to and including the 1 in 100 year event plus 40% climate change.
 - ii) In the event of using attenuation SUDs (infiltration basin soakaway) as a means of controlling run-off from the development, the design criteria should be based on limiting the discharge (overflow after all infiltration) from the basin/pond to the 1 in 1 greenfield rate for all events up to and including the 1 in 100 plus 40% climate change.
 - iii) Run-off management within the site must prioritise the use of SUDs both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement.
 - iv) Provide evidence of water quality treatment from the development using the risk based approach as outlined in the CIRIA SUDs manual C753.
 - v) Provide a plan showing the final exceedance flow paths, these shall be away from any buildings.
 - vi) Provide details of the adoption and routine maintenance of the SUDs features including the maintenance of the outfall to the ditch downstream of the pond/basin.

The mitigation measures shall be implemented in accordance with timing/phasing arrangements embodied within the scheme

- 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) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev B) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

- 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 have been 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) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 3 years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

- 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) 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 shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. 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.
- 28) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.
- 29) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

- 30) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.
- 31) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

Annex C Screening and Appropriate Assessment

RECORD OF THE SCREENING ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AS AMENDED FOR AN APPEAL UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

**Project Title and Location: Recovered planning appeal No. APP/Z1510/W/16/3162004
Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG**

Project description: 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. All matters reserved with the exception of the site access. (Planning Application Ref: 16/00545/OUT, dated 30 March 2016.)

Completion Date: November 2018

Project description – further information

1. The project site and surroundings are described at paragraphs 24 – 32 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 54 – 56 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, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County 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 assessment provided to the Inquiry 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 appeal, 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 "Information for Habitats Regulations Assessment" dated June 2018, ref: 7446.IHRA.16-00545-OUT.vf "IHRA 80". 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 agent of the developer in the case heard at the same Inquiry, Ref: APP/Z1510/V/17/3180729: Land east of Gleneagles Way, Hatfield Peverel.
6. The Secretary of State notes and agrees with sections 1 to 4 of IHRA 80, which set out relevant background and context, the legislative and policy background, factual information about the Special Area of Conservation (SAC), Special Protection Area (SPA) and RAMSAR site and its relation to the appeal site, and the conservation status of the SAC, SPA and RAMSAR site.

Consideration and Conclusions

7. 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.
8. 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**
9. 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.**

10. The Secretary of State agrees with the approach set out in section 5.8 of IHRA 80 that given that the reasons for classification as an SPA and designation as a Ramsar Site are essentially similar, it is reasonable to consider the potential for impacts upon these designations as one rather than undertake a separate assessment for each.
11. For the reasons given in section 5.9 of IHRA 80, the Secretary of State finds there would be no significant direct effects from lighting, air quality or noise impacts during the construction or operational phases of the development proposals.
12. For the reasons given in sections 5.10 to 5.13 of IHRA 80, the Secretary of State concludes that the Appeal Site does not represent land which could be classed as important 'supporting habitat' for the Blackwater estuary SPA / RAMSAR site.
13. The Secretary of State has paid close regard to sections 5.16 to 5.40 of IHRA 80, and to the views of interested parties.
14. He concludes that, for the reasons given in sections 5.16 to 5.25 and sections 5.34 to 5.40 of IHRA 80, there would be no likely significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts. The Secretary of State notes that in respect of hydrological impacts, the Stone Path Meadow Residents Group (SPMRG), at paragraphs 31 to 33 of their response consider that it would be improper to rule out risk of pollution to the coastal zone. He has also considered that construction and management of hydrological impacts are covered by proposed conditions 4, 17, 18 and 19, and that this gives sufficient certainty that any likely impacts will be de minimis in nature.
15. In terms of disturbance effect, the Secretary of State 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.
16. The Secretary of State does however find, for the reasons given in 5.26 to 5.33 of IHRA 80, 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. The Secretary of State has considered the issues raised by SMPRG at paragraph 20 of their response, and of Hatfield Peverel Parish Council at paragraph 11.e of their response, concerning the activities to be considered in this assessment, and whether a median or worst-case estimate should form the basis of estimates of impact. 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.
18. The Secretary of State recognises that other activities such as windsurfing, canoeing and water-skiing are capable of causing harm. However, the prevalence of take-up of these activities is much less than that of recreational walking or dog-walking, and people will travel further than the recognised Zone of Influence (ZOI) to undertake such activities. He does not therefore recognise the application proposal as contributing to these activities to any significant extent, either alone or in-combination. He has also borne in mind that the

emerging Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for these sites does cover this type of disturbance.

19. The Secretary of State also 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

20. 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
21. In light of that conclusion the Secretary of State has considered the position of the Stone Path Meadow Residents Group that if harm cannot be excluded at the Screening stage (without suggested mitigation) then the applications should be refused. He disagrees with this position, and considers that, in these circumstances, in light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment.
22. As the competent authority in this case, he has carried out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

23. 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.
24. 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 over-riding public interest as to why it must proceed.

Relevant documentation

25. The Secretary of State has had regard to the previously mentioned document “Information for Habitats Regulations Assessment” dated June 2018, ref: 7446.IHRA.16-00545-OUT.vf “IHRA 80”, 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 Sets A and C and “Documents submitted during the Inquiry by the parties”.
26. 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 paragraphs 39-40 of this Appropriate Assessment.

Consideration

27. At the prior screening stage, the Secretary of State has already concluded that the appeal proposals would not be likely to have a significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts.
28. 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.
29. For the reasons given in sections 6.4 to 6.11 of IHRA 80 he concludes that the provision of open space represents a suitable measure which will 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.
30. For the reasons given in sections 6.12 and 6.13 of IHRA 80, the Secretary of State considers that the provision of information to support the use of the local footpath network will serve to encourage new residents to utilise the existing public rights of way in the vicinity, and support the diversion of visitors away from the designated sites.

31. The Secretary of State further agrees that, for the reasons given in sections 6.14 and 6.15 of IHRA 80, the financial contribution towards 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. 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.
32. 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.
33. 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”
34. 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.
35. For the reasons given in sections 6.18 to 6.22 of IHRA 80, the Secretary of State concludes that the appeal proposal would not have any potential significant in-combination effects on the SAC / SPA / RAMSAR site. In addition to alternative sites in Hatfield Peverel, in combination effects can also be felt more widely.
36. The Secretary of State has therefore paid close attention to the emerging RAMS mentioned by several parties in relation to this issue. RAMS is a joint initiative between 11 Essex authorities to identify the recreational impacts new homes will have on the international and nationally protected sites along the Essex Coast.
37. A Monitoring Strategy will monitor recreational impacts at each of the protected sites, the delivery of mitigation projects, the amount of financial contributions collected and spent for each financial year. This will provide transparency and ensure that the RAMS is being delivered effectively. It will also provide the basis for future reviews of the Strategy.
38. The Secretary of State notes that the proposed mitigation for this scheme is compliant with the emerging RAMS strategy. He agrees with the assessment of the impact of the potential effects on the integrity of the European / international designated sites as set out in Table 7 of IHRA 80. For the reasons given in sections 6.29 to 6.32 of IHRA 80, he concludes that the appeal proposals would not adversely affect the integrity of the Essex

Estuaries SAC and Blackwater Estuary SPA / RAMSAR site when the development proposals are considered, either alone or in combination with other plans or projects.

Natural England's advice

39. 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 Recreational disturbance Avoidance and Mitigation Strategy (RAMS).
40. 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.

Procedural Issues

41. The Secretary of State has considered the point raised by SPMRG at paragraph 23 of their representation that article 6(3) of the Habitats Directive could require public consultation. He concludes that in the circumstances of this case, which has involved a Public Inquiry, and a reference back to interested parties on this issue, that it would not be appropriate to seek a further public consultation.
42. At paragraphs 24 and 30 of their response, SPMRG refer to the emerging Braintree District Local plan, and the emerging Hatfield Peverel Neighbourhood Development Plan. This matter is considered in the Decision Letter to which this Appropriate Assessment is attached, where the Secretary of State attaches limited weight to the policies of these plans.
43. Issues relating to Braintree District Council's 5 Year land Supply position, and to the presumption in favour of sustainable development are not matters for this Appropriate Assessment, and are dealt with in the Secretary of State's Decision Letter.

Consideration and Conclusions

44. 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 appeal be allowed.
45. The provision of public open space, and the financial contribution to the management of the Blackwater Estuary are both secured via the signed and dated Section 106 agreement of 18 January 2018 (Schedules 5 and 12).
46. The provision of information to support the use of the local footpath network is secured in Schedule 11 of the same S106 Agreement.
47. Accordingly, the Secretary of State is satisfied that if the appeal were allowed, the mitigation and avoidance measures he has deemed necessary to make the appeal 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.
48. 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 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 aAt 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

APPEAL BY

GLADMAN DEVELOPMENTS LIMITED

Inquiry Held on 12 December 2017

Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

File Ref(s): APP/Z1510/W/16/3162004

File Ref: APP/Z1510/W/16/3162004

Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

- 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 Braintree District Council.
- The application Ref 16/00545/OUT, dated 30 March 2016, was refused by notice dated 25 October 2016.
- The development proposed is 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. All matters reserved with the exception of the site access.
- This report supersedes the appeal decision issued on 24 July 2017. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: The appeal be allowed.

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 at the Howard Hall, Bocking End, Braintree. On 3 January 2018 I carried out both an accompanied visit to the Stone Path Drive site and an unaccompanied tour of the surrounding area 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 appeal listed in the summary details above; an outline application in the same terms but for up to 140 dwellings at the same address and submitted by the same applicant, Gladman Developments Ltd (GDL) (ref: APP/Z1510/V/17/3180725); and an outline application for the erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel submitted by David Wilson Homes Eastern (DWH) (ref: APP/Z1510/V/17/3180729).
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:
 - a. Policies in the National Planning Policy Framework (Framework) on delivering a wide choice of high quality homes;
 - b. The extent to which the proposed development is consistent with the development plan for the area; and
 - c. 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 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. After the close of the Inquiry sessions GDL drew attention to the publication of Historic Environment Good Practice Advice in Planning Note 3 (ID52) which superseded the earlier version referred to at the Inquiry. Mr Handcock provided a short note on what he viewed as the implications of the updated guidance. The views of the other parties were invited in a post-Inquiry sessions note (INSP4). The comments made have been taken into account.
 10. In the same note I 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. Again the clarifications provided have been taken into account.
 11. 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.'
 12. 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. Stone Path Meadow Residents' Group (SPMRG) prepared its own core documents. Those that are not included in the GDL prepared sets are listed separately in the two reports for the GDL schemes. The documents listed as being submitted during the Inquiry relate to all three schemes. It is perhaps

worth noting that only a very small proportion of the listed documents has been referred to in the written and oral evidence.

Matters specific to this appeal

13. The appeal decision dated 24 July 2017 (CD32.6 set C) was challenged pursuant to s288 of the principal Act on four grounds. In summary these were that the Inspector:
 - a. Misunderstood the judgement in *Suffolk Coastal* (CD31.2 set C) when assessing the weight to be given to policy CS5 of the Core Strategy (CD10.1 set B) in the context of the housing land supply position;
 - b. Erred in law by assessing the significance of the loss of Best and Most Versatile Agricultural Land by reference to the confines of the appeal site, contrary to the agreed position in the SOCG in the absence of discussion with the parties;
 - c. Failed to take into account material considerations including the fact that the Council had resolved to grant planning permission for a development of 140 dwellings on the same site; and
 - d. Gave opaque reasoning in respect of the weight, if any, given to market housing, affordable housing or both.
14. The Secretary of State conceded that the decision was unlawful and should be quashed on the basis of the second ground set out above. The Order of the court is set out in those terms. It also records that the claimant (GDL) believed that the Secretary of State should have conceded on all grounds cited. That was not agreed by the Secretary of State. The parties did however agree that in the light of the concession it was not necessary to proceed to a hearing. The court did not therefore consider argument in respect of the other three grounds cited.
15. Before the Inquiry the Planning Inspectorate agreed to the requests made by Hatfield Peverel Parish Council (HPPC) and Stone Path Meadow Residents' Group (SPMRG) to be made Rule 6 (6) parties.
16. The application was supported by a suite of documents which are listed in CD1.1 to CD1.25 in set A. Prior to the Inquiry opening GDL submitted a Soils and Agricultural Quality report (1/POE, Appendix 1) to provide further information about the matter which led to the Parker DL being quashed.
17. GDL also submitted a revised access plan (A095687-SK01 rev C), development framework plan (7015-L-02 rev J) and tree retention plan (7015-A-103 rev B) prior to the opening of the Inquiry. Through the determination process of the 140 dwelling scheme it became apparent that the highway authority no longer required the emergency access shown on the submitted application access plan. The revised access plan simply recognises this view with consequential changes being made to the other two plans. The parties confirmed that this technical alteration to the submitted application plans had no material bearing on the determination of the appeal. The plans formally before the Secretary of State for approval are therefore the location plan (7015-L-04 rev B) and the access plan (A095687-SK01 rev C).
18. GDL has prepared and submitted a SOCG with each of the Council, HPPC and SPMRG (SOCG1, SOCG2 and SOCG 3 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 issues that are listed. Although the precise terms of the agreement is different with each party, each agrees that the Council cannot currently demonstrate a five year supply of housing land.

19. The only matter on which GDL and the Council disagree is the level of harm which would be caused to the significance of nearby heritage assets as a result of changes to their setting.
20. Matters on which GDL and HPPC disagree include:
 - a. The weight that should be given to the conflict with the spatial strategy of the adopted and emerging development plans;
 - b. The extent of the harm that would be caused to: the rural character and landscape setting of the village; the enjoyment of the public when using the public right of way across the site; the heritage assets and their setting within the wider landscape as experienced by the local community and the weight that should be given to this;
 - c. Whether the provision of the Blue Land should weigh in favour of the development as a benefit rather than be considered as mitigation amenity land;
 - d. The weight to be given to the emerging Hatfield Peverel Neighbourhood Development Plan (NDP);
 - e. Whether the appeal site is sustainable;
 - f. Whether development of greenfield sites at Hatfield Peverel is necessary for the Council to meet its objectively assessed housing need (OAHN);
 - g. The weight to be given to the benefits and the harms associated with the scheme in the planning balance.
21. GDL and SPMRG disagree on 12 matters which can be grouped and summarised as follows:
 - a. Whether the 'Liverpool' or the 'Sedgefield' method should be used to spread any backlog in housing provision over the remainder of the plan period and, partly as a consequence, the extent of the shortfall in five year housing land supply;
 - b. Whether Core Strategy policies CS5 and CS8 are restrictive policies within the meaning of Framework paragraph 14, footnote 9 and thus whether or not the tilted balance is automatically engaged;
 - c. Whether the EIA screening for the 140 dwelling scheme can apply equally in respect of the appeal scheme since more developments have now come forward in the village;
 - d. The effect upon local education infrastructure and whether or not this is satisfactorily mitigated;
 - e. That the development of greenfield sites is inevitable for the Council to meet its housing requirement over both the five year and full plan periods;
 - f. The agricultural land quality and the implications of its loss in policy terms;

- g. Whether Hatfield Peverel is one of the more sustainable locations in the District and whether the site is sustainably located in relation to the services and facilities in the village;
 - h. The degree of harm caused in respect of heritage, landscape, flood risk, highways and ecology and the weight that should be afforded to any harm;
 - i. The weight that should be afforded to policies in the adopted and emerging development plans and the quantum of the benefits associated with the proposal in the overall planning balance.
22. A Unilateral Undertaking (ID57a) was executed and submitted in respect of the first appeal against the Council's refusal of planning permission and an addendum to it (ID57b) was submitted before the close of the Inquiry.
23. Although proofs of evidence were submitted by SPMRG as listed in Annex A, oral evidence was given only by Mrs Freeman, Mr East and Mr Dale in respect of landscape. There were a number of reasons for this but the main one was that much of the evidence duplicated that of Mr Renow who gave his evidence first. Ms Scott very fairly decided not to take up Inquiry time unnecessarily. In addition, Mr Kearns was unable to attend the Inquiry. Although in the event not called to give the evidence, his proof was adopted by Mr David Leaf who works in the office of The Rt Hon Priti Patel MP.

The Site and Surroundings

24. The site comprises some 4.57ha of agricultural land and is located on the western edge of Hatfield Peverel some 10km north east of Chelmsford and about 12km south of Braintree.
25. The site is formed of a single agricultural field delineated by hedgerow boundaries. The site also includes an additional area of land in the field to the west which is proposed for a SUDS attenuation basin and associated buried pipework. The topography of the site rises gently from the south west to north east.
26. The site is bounded by existing residential development beyond Stone Path Drive/Church Road to the north and north east, by open countryside to the west and south and by woodland and large individual dwellings beyond Crabb's Hill to the south east.
27. The application also includes an associated area of 'blue land' measuring some 3.54ha in extent which is to be used as public open space as mitigation against any potential recreational impact upon European designated ecological sites. The blue land lies generally to the west of the developable area and to the north and west of an area of retained agricultural land. To the west of the blue land lie the grounds of Hatfield Place, to the north a small pasture and to the east the existing residential development off Stone Path Drive/Church Road.
28. A public right of way crosses the site from east to west some 30m south of the northern boundary of the site. The path connects Church Road to the east with The Street to the north of the site boundary.
29. The site is located approximately 600m from the centre of the village which has a wide range of services and facilities including various stores four public houses, a

primary school (infant and junior), a GP surgery, dental surgery, pharmacy, library, two churches, post office, village hall and recreation ground.

30. Hatfield Peverel has good public transport links to larger employment centres including London, Chelmsford and Colchester. The closest bus stop to the development site lies about 350m to the north west on The Street opposite the William Boosey restaurant. The bus stop is currently served by some four buses an hour to Witham and Chelmsford during the daytime from Monday to Saturday and two buses an hour to Colchester. There are also six buses a day, Monday to Saturday, to Maldon.
31. The railway station is to the north of the village about 700m north east of the site. There is a service to London Liverpool Street via Chelmsford which operates approximately hourly with a journey time of about 45 minutes. A similar frequency service runs to Ipswich (45 minutes) via Colchester (25 minutes). At peak times there is more than one train per hour to London.
32. The main A12 runs just to the north of the village with limited movement junctions to either side of it which, nevertheless, together allow full access to and egress from the A12 in both directions.

Planning Policy

Adopted development plan

33. 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 SOCG1 is a lengthy list of what are termed policies relevant to the appeal. 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 appeal.

The LPR

34. 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.
35. 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.
36. Policy RLP 100 is listed as a relevant policy and has been referred to in evidence. However, although the title of the policy implies that development within the setting of a listed building is within the scope of the policy, read carefully it is clear that the policy is directed only at development that directly affects the listed structure. That is not the case here.

37. 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

38. 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 Key Service Villages (KSV); 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.
39. 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.

40. 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.
41. Policy CS9 is in many respects a general design principles policy. However, the first bullet requires new development to respect and respond to the local context where development affects the setting of historic or important buildings.
42. 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)

43. 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.
44. 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.

45. 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 Key Service Village (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.

46. 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.
47. Policy LPP 60 deals with heritage assets and their settings. It follows closely the wording of LPR policy RLP 100. It adds however a final paragraph which states that the Council will seek to preserve or enhance the immediate settings of heritage assets by appropriate control over development, design and use of adjoining land.
48. 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.

Hatfield Peverel Neighbourhood Development Plan (NDP)

49. 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.'

50. The NDP is subject to unresolved objections including those from GDL (CD33.2, set C) and DWH (SAV50 and SAV52).
51. 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.
52. Policy HPE8 addresses heritage. In essence this requires an appropriate assessment of the significance of any heritage asset including the contribution made by its setting when development is proposed. How the development could conserve and enhance the asset should be explained.

Relevant Planning History

53. An outline planning application for the development of 29 starter homes was withdrawn in July 2005. An outline application for the erection of 19 no. 2 bed houses, 8 no. 2 bed flats and 16 no. 1 bed flats as affordable housing was refused planning permission in February 2006.

The Proposals

54. The application is submitted in outline with all matters except access reserved for future determination. Up to 80 dwellings are proposed to be built with up to 40% being provided as affordable housing. The pedestrian and vehicular access to the site would be from Stone Path Drive.
55. The application was accompanied by a Design and Access statement (CD1.5, set A) which indicated how the development might be brought forward. A Framework Plan (CD1.3, set A) was also submitted which, although for illustrative purposes only and not therefore for approval, shows some important features such as a detention basin, a proposed play area and, in quite considerable detail, structural landscaping. This embraces the existing public right of way (FP43) as it passes through the developable area and shows this being retained on the southern edge of an area of proposed public open space to be laid out between the new development and the existing Stone Path Drive.
56. The Framework Plan was, in effect, superseded by the Green Infrastructure Strategy drawing (ID1.6a). This was submitted as part of a bundle of documents introduced by GDL at the start of the Inquiry. This shows essentially the same features although it also identifies the Blue Land broadly to the west of the developable area which is to be offered as public open space.

The cases put by the parties

57. 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. The issues raised by the 80 dwelling scheme and the 140 dwelling scheme are very similar. In the main the cases for GDL and SPMRG deal with both and are therefore set out in full except where the approach is slightly different, for example SPMRG's heritage case in respect of the William B public

house which relates only to the 140 dwelling scheme. The case for HPPC is presented in a slightly different manner and only that part relevant to this appeal is set out below.

58. DWH are not directly concerned with this appeal. However, Mr Tucker's case on housing land supply, an aspect of his case on important views and the case on the emerging NDP is adopted and relied upon by GDL. Those parts of his closing submissions are therefore recorded below.
59. 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 seen, both Mr Tucker and Ms Osmund-Smith respond to points made by other advocates.
60. It is fair to say that both are 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; and evidence rather than argument given.
61. 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 cases 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

62. 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.
63. 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 changes that position.
64. 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.
65. It is agreed that there is an immediate need for additional affordable housing.
66. There is no statutory consultee who has objected to the application scheme.
67. 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;

- 68. Requested contributions to infrastructure etc. are provided for in full in the s106 obligation.
- 69. The appeal 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

- 70. 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.

- 71. 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, 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.
- 72. 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.
- 73. 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.

74. 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.
75. 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.
76. 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.
77. 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 the 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.
78. 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 Sedgfield

79. 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 Sedgfield methodology is to be preferred.
80. 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.
81. 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.
82. 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.
83. 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.
84. 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 BNL P examination hearings.

85. 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.
86. 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 BNL P 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.
87. 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%

88. 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
89. This table compellingly illustrates the inescapable conclusion that there has been persistent under deliver 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.
90. 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.
91. 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 P target was somehow constraining delivery.
92. 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.
93. 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.

94. 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

95. 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.
96. 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.
97. 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.

98. 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.

99. 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".

100. 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.
101. 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 BNL P 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

An Important View?

102. 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.

103. 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 BNL P.
 - 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

104. 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.

Planning

- 105. 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.
- 106. 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.

107. 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.
108. 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.
109. 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.
110. Mrs Jarvis suggested that the emerging BNLP 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 BNLP 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.
111. 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.
112. 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.
113. 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.

114. 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).
115. 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.
116. 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".
117. 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.
118. Finally, on the NDP. Despite the misguided optimism of Mr Renow, this is a very long way from being made:
119. 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.

120. 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.
121. 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 was written before HPPC notified the parties that the document had in fact been submitted to Natural England [11]*)
122. 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 BNL. Nor can it simply piggy-back on the back of the SEA for the emerging BNL since that relates to a different plan with different considerations which will not be adopted until mid 2018 at the earliest.
123. 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 BNL 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 BNL 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.

124. 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.
125. 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.
126. 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.
127. 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.

The Case for Gladman Developments Ltd

Introduction

128. The closing submissions for GDL follow and consider the issues set out in INSP1. With respect to the issues of 5YHLS and the NDP GDL adopts the submissions of DWH. These are set out above in paragraphs 70 to 101 inclusive and in paragraphs 118 to 127 inclusive respectively and are not repeated here.

The effect of the development on the character and appearance of the area

129. The site is located on the south western edge of Hatfield Peverel and adjoins the residential development of the village at Stone Path Drive. The existing development provides an "abrupt edge" to the village and has a notable influence on the character of the site.
130. That is not just an observation by GDL, in fact three other expert landscape opinions exist in respect of the site and all find that development can be, or can

potentially be accommodated there. They represent a consensus of opinion and there is no other expert landscape evidence before the Inquiry to cast doubt on those opinions. They are addressed now.

The Landscape Partnership Studies, CD14.4 set B, and CD28.3 set C

131. These two studies do different things. The first study, in June 2015 was a Settlement Fringes Evaluation (SFE) for the Council to help determine which parts of the area could absorb new development "with appropriate mitigation measures and minimal impact on the landscape"; (paragraph 1.6, CD14.4 set B).
132. The second is the Local Landscape Character Assessment (LCA) (CD28.3 set C) for HPPC. The project brief is outlined at para.1.4 and explains the assessment is to assist the emerging NDP, to provide an assessment of landscape sensitivity and a set of guidelines to information opportunities for locating future green infrastructure and landscape enhancements.
133. It was not assessing capacity of individual parcels for new development in the same way as the SFE, and does not, and could not determine the acceptability of the appeal site for development.
134. The methodology of the SFE explains that a mixture of desk based and field study work was undertaken to identify broad parcels of land and then to drill down within the large units to identify even smaller parcels for assessment. It did apply a scoring system, but supported that with extensive commentary on the basis that no absolute conclusions could be drawn from the relevant scores. It is not "bizarre" as suggested by the HPPC (paragraph 144 ID48).
135. The parcels were then assessed on a 5-point scale from low landscape capacity to high landscape capacity.
136. The appeal site sits within Landscape Setting Area HP2, and broadly aligns with Parcel 2c (page 16 and associated plans), albeit not all of the parcel is proposed to be developed.
137. The overall capacity is medium, and the text on the parcel (paragraphs 4.20-4.21) explains that "the existing edge to the settlement is relatively abrupt and the houses have limited containment in local views, with boundaries to properties formed by an inconsistent mix of fencing and fragmented vegetation." The analysis also identifies that "there is good scope to provide mitigation to proposed development that is in keeping with the landscape pattern."
138. The SFE concludes that there is "an opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to development fringes. Public footpath routes should be protected with the opportunity to incorporate open space into potential extension to residential areas."
139. The appraisal form acknowledges the open views across the fields, as well as glimpses of more extensive views across the river valley to the south-west. Along with the views from adjacent residential properties, the study plainly did not regard those views as prohibitive of built development.
140. HPPC seeks to distance itself from the SFE on the basis that it was done without consulting the local community (paragraph 144, ID48). However, the

same applies to the studies HPPC does rely on - the criticism is not at all persuasive. Further, the author of the Study, the Landscape Partnership produced the LLCA for the Parish Council, a document on which it relies and which did not conduct a public consultation exercise either.

The Council's Assessment

141. The Council's own landscape officer upon reviewing the information submitted by GDL and the only LVIA carried out in respect of the proposals for this site, (CD4.15 set B) concluded that:

the proposed development if designed within a suitable setting could provide a more attractive settlement edge than the open and unsympathetic vistas currently on offer from the available viewpoints.

Independent Advice

142. The Council also approached Wyn-Williams Associates Ltd to provide independent landscape advice and a Report (CD4.14 set B) was produced. The Report assessed the existing context, the County and District Landscape Character Assessments and the two Capacity Assessments. The Report concluded:

- i) the site is not a valued landscape, despite being valued by local people. (paragraph 14)
- ii) the development would fit comfortably against the built-up edge of Hatfield Peverel and would strengthen the landscape at the fringe of the settlement (paragraph 15) ; and
- iii) there would be adverse impacts on the very local level which is a visual impact rather than a character impact. There would not be landscape harm (either character or visual) of sufficient magnitude to refuse the development on landscape grounds (paragraph 18).

143. There is no other LVIA before the Inquiry upon which weight can be placed. The evidence put forward by the Rule 6 parties does not include the sort of comprehensive transparent assessment required in line with GLVIA3.

Landscape Character Assessments (LCA)

144. The wider landscape character assessments make the following points:

- i) CD28.2 set C is the County wide study which explains at page 51 that the sensitivity level of the Central Essex Farmlands to small urban extensions is 'low'. That arises because of the moderate intervisibility of the landscape and the "possible opportunities to improve some existing visually poor urban edges."
- ii) CD14.5 set B is the District Character Assessment. Under the heading 'Sensitivities to Change', it concludes "Overall, this character area has low to-moderate sensitivity to change."

145. The analysis is therefore consistent, from the broad to the specific, that the site has capacity to accommodate change.

146. SPMRG seek to establish a conflict with the District LCA (CD14.5 set B) on the basis that the guidelines are for small scale development that respond to the historic settlement pattern. Mr Holliday confirmed that small scale can mean

different things in different places- but that in terms of the village as a whole and in landscape and visual terms the proposals are of an acceptable scale. The study itself does not define "small scale" and given the vast area covered by the LCA - in the context of up-to-date housing needs - such a requirement may be regarded as out of date.

147. SPMRG submissions also suggest that Mr Holliday agreed in cross examination that the proposals would not respond to the historic settlement pattern (paragraph 32, ID49). GDL's contemporaneous note of the exchange is as follows:

Question The historic settlement pattern is moving north and east of Church Road – it is quite a tight settlement ?

Answer I think my characterisation of it would be - it is historically a linear settlement along The Street and over the last 50 years, a larger settlement with larger areas of development – it is more nucleated than linear. And this scheme would be a continuation of this pattern

Question This is a south westerly thrust – a complete departure from the historic settlement pattern?

Answer No, the village has grown, and each time, development will have taken place within fields – it's expanded in different directions on the edges, and this is no different to that.

148. The submission that the proposals conflict with the historic settlement pattern is rejected.

149. HPPC in cross examination of Mr Holliday relied on the Chris Blandford Study (CD14.1 set B) that assessed a large area 'HP2' which includes the appeal / application site, and a significant amount of other land south, west, and east; (Fig HP0). The assessment of Area HP2 concludes that the landscape character sensitivity is 'Medium to high', with 'Medium' Visual sensitivity and 'Medium to high' Landscape value. The Landscape Capacity for the whole parcel is "Low to medium."

150. However Mr Holliday explained that the study is the outlier. It is out of date and has been superseded by the later Landscape Partnership work. The Blandford Study is now 10 years old and was carried out under the predecessor guidance to GLVIA3. Moreover, the document itself at section 5 'Conclusions', explains that 'levels of landscape capacity may not be uniform across any one landscape setting area' and that even areas with "low to medium, or even low, landscape capacity may contain locations that are suitable in landscape and visual terms, for limited development." A site specific analysis is obviously required and that is what is done in both the SFE (CD14.4 set B) and through GDL's LVIA work.

151. Mrs Jarvis does not agree with the level of harm identified by GDL, but does not provide an assessment of her own and nor has HPPC sought expert landscape advice on this particular site. Mrs Jarvis does not set out of the sort of reasoned and transparent judgements that are expected by GLVIA3, that consider value,

susceptibility to change, magnitude of change and, finally, overall effects at years 0 and year 10.

152. While adopting the conclusions of Inspector Parker in the quashed decision, Mrs Jarvis also disagrees with the parts of the decision she does not like and which do not suit her case. For example, Mrs Jarvis seeks to rely on the conclusion that the proposals would be unacceptable in terms of their impact on the character and appearance of the area, but rejects the Inspector's conclusions that:

In this case, the proposal would result in substantial harm to the character and appearance of the area, moderate harm to the landscape including as seen from the PROW (FP43)... (paragraph 56 CD32.6 set C)

153. Mrs Jarvis takes issue with the "moderate" impact on the footpath in particular (paragraph 5.23, HPPC2), but that is because she had not undertaken the correct assessment that needs to be carried out to understand visual effects objectively. Yes, there will be a change to the relatively short 230m route as it passes through the site, but the route is already influenced by housing development and, outside of the developable area, will change very little. The value of the route is "medium". It is not a route through valued landscape, not nationally promoted and does not take in any recognized viewpoints (save for the emerging NDP discussed below). Effectively, the route is from one road to another. There will be additional new planting that will soften the impact over time, as well as new recreational opportunities around and to the west of the site.
154. SPMRG in its Closing Submissions commends the findings of Inspector Parker that there would be a moderate adverse effect on the PROW and its users and also moderate landscape harm; (paragraph 38, ID49). The assessment is not very different from that provided by GDL; (CD1.6 set B Appendix B), save that the impact on the site and immediate context is minor/moderate at 10 years post completion. Inspector Parker accepted that there would be a moderate overall impact on the footpath in line with GDL's evidence (CD1.6 set A)
155. Mrs Jarvis and Mr Dale seek to rely on the fact that the land in which the site falls was previously designated as an area of special landscape value. However, Mrs Jarvis agreed in cross examination that we do not know the basis upon which the land was designated and we do not have the evidence base (if any) that supported the designation. We do not know the criteria that were applied in respect of different parcels, but we do know it applied to very large areas across the whole district.
156. It is not something the Council gives weight to and was replaced with CS policy CS8. The approach of Inspector Hill in the Coggeshall Inquiry is commended;

The Council drew attention to the fact that this area was formerly designated as an area of Special Landscape Value. However, that designation is no longer in force (it being dropped in 2011 with the adoption of the Core Strategy) and so I do not attach weight to it (paragraph 40, CD32.2 set C)

Special Views in the Neighbourhood Plan

157. The view from Church Road over the site has been identified as an important view in the emerging NDP (page 33, CD16.3 set C).
158. The evidence base that sits behind that is to be found (in part) at CD 18.6 set C and includes feedback from a workshop in December, following a photographic competition of views around the village. The feedback document warns that "views are subjective and may be coloured by the imminent threat of loss." That is relevant in respect of the proposals in relation to this site because both applications for the 80 dwelling and larger 140 dwelling schemes were before the Council at this time this document was produced.
159. The relevant view is viewpoint 7, labelled as "Crabbs Hill, Stonepath Drive & Land behind the William B." That is not the same as the view that eventually made it into the NDP from Church Road. In fact, it reflects the view from the Character Area Assessment (CD28.3 set C) looking west across the site, rather than out to the south and the south west. There are further anomalies; the Key Features of the view are listed as Hatfield Place and the William B, but those are not visible from the Crabbs Hill access and cannot be seen from the footpath through the developable area until the walker passes through the gap in the hedge into the fields adjacent to the A12.
160. Long distance views to the River Ter valley and the Baddow Ridge are not mentioned at all, either as a key feature or something of value to the community. That is to be contrasted with sites 1 and 4, which do make reference to the high quality views of the Chelmer Vale, Danbury - Little Baddow Ridge, and the River Ter Valley.
161. What is also curious about the document is that the evidence base is supposed to identify important views. On closer inspection, it is plain that the point of it is to act as a block on development because many of the views regarded as important by the community are removed because they are not likely to be developed in the plan period or are well outside of the development boundary. Accordingly, far from being an assessment of "special views", the evidence base is geared up to protecting only those views that might be expected to be impacted by new development; for example Views Near Termitt's Farm and St Andrews Church.
162. By the time the viewpoint made it into the NDP, it became a view from Church Road looking across the Meadow. That does not accord with the view in the Landscape Partnership Document (CD28.3 set C) and is also different to the description given in the evidence base which seems to reflect the Landscape Partnership view - 'Crabbs Hill - Stonepath Drive & Land behind the William B'. In the NDP, Hatfield Place is mentioned in the Key Features but it is not visible at all from that location behind belts of tree and hedgerow planting. The distant views are listed now as a key feature and the same is true for viewpoints 2 and 3, both of which are on footpaths to the south of the settlement. It is curious that the view is not taken from the footpath through the site since the existing view is a view over at least some private land, which could be planted by the landowner to screen the relevant view.
163. Looking at the plan on page 33 of the NDP, it is clear that important views have been identified around the village in every direction. Mr Renow agreed that

if the views were to act as a block on development, then policy HPE6 would be very restrictive of new housing. The policy however is not entirely restrictive of new development. The second part explains that proposed new development or alteration must ensure the key features of the views can continue to be enjoyed. Arguably the policy is met in this case:

- i) The proposals will not obscure views to Hatfield Place. By opening up the blue land more views will be available to people using the site for recreation purposes;
- ii) The distant views to the south from the footpath 43 are not the only views to the Ter Valley and Baddow Ridge; they can be achieved from the blue land and also viewpoints 2 and 3 in the NDP. Mr Dale explained that the view from viewpoint 3 is "exceptional".
- iii) The meadow and mature trees and hedgerows will be retained on site. There will be the new open space to the north of the developable area, and the blue land to the west which remain open and more accessible than previously.

164. In any event, the policy is part of a plan that is yet to be made. Further, to the extent that it seeks "protection" "preservation and enhancement", it sets a threshold for almost the entire landscape around the village that is not reflected in national policy for ordinary countryside. It is subject to objections, not least by GDL (CD33.2 set C), and is yet to be examined. Accordingly, even if there is conflict, little weight can attach to it.

165. Further, GDL supports and adopts DWH Closing Submissions at paragraph 104 above which are not repeated here.

166. In this instance the site:

- i) is not out of the ordinary and is not considered to be a valued landscape. No one has made the case that it has any demonstrable physical features that take the site out of the ordinary, as per the guidelines in *Stroud* (paragraph 13-18, CD 31.20 set C);
- ii) is not of unusual scenic quality;
- iii) is affected by the adjacent mid-late 20th century settlement edge which diminishes its sensitivity to new development;
- iv) does not contain any rare or unusual landscape features ;
- v) is not designated in any way for its landscape beauty or any other reason;
- vi) has some public access, but more would be provided over the blue land as part of the proposals;
- vii) is not designated for its ecological value ;
- viii) is not wild and has varying tranquility ;
- ix) has landscape components that are commonplace and the boundary hedgerows and trees that have some value will be retained.

167. Mrs Jarvis agreed in cross examination that so far as the site is concerned, it attracts the lowest level of protection commensurate with its status in accordance with Framework paragraph 113 - it is neither a valued landscape nor one that is internationally, nationally or locally designated.

The LVIA

168. Although neither has provided their own, both SPMRG and HPPC query the overall judgments arrived at in the LVIA. However, it is unclear as to which specific judgements within the LVIA, i.e. sensitivity, value or magnitude of effect, are disagreed with. There is a repeated assertion that the effects of the proposals could not be anything other than "major" but the approach demonstrates a fundamental misunderstanding of the process of assessing landscape and visual impacts which involves determining the sensitivity of the landscape receptor or visual receptor (through a combination of value and susceptibility to change) and the magnitude of change on the receptor.
169. SPMRG compounds the confusion in its Closing Submissions (ID49). Despite appearing to accept Inspector Parker's findings of moderate adverse at paragraph 38, "Major Adverse" is concluded at paragraph 36. It is unclear where the assessment comes from or how it has been arrived at. It is not in SPMRG's evidence before the Inquiry.
170. Further, a whole series of comments are made on the impact of the scheme on the wider character areas. The approach fundamentally misunderstands that overall effect is a product of the combination of sensitivity, susceptibility and the magnitude of change. Moreover, to suggest that Mr Holliday has left out of account an assessment of "this specific part of Essex" (paragraph 23 ID49) ignores vast swathes of Mr Holliday's evidence on the site and its landscape context. SPMRG's submission seeks to establish conflict with the wider character area; (paragraph 26) but the recital of key characteristics and overall character is partial and unhelpful. Such studies are not tick boxes, or even guidelines for new development - they simply provide a starting point for a site specific assessment as has been carried out in this case and to indicate what might be important and why.
171. The approach to landscape cannot be subjective. If it was and the views of local people provided an entire assessment on value of the landscape and views, then sites on the edge of settlements would never be built. That is because all people value the landscape in which they live and move around every day. New development will often curtail views; Stone Path Drive - the development that is home to the SPMRG - would have had a similar effect when it was built in the 1970s. It would have affected and curtailed the views of existing residents and people who enjoyed the allotments on which the new houses were built.
172. It is not uncommon for people to object to new development close to where they live for reasons that can broadly be described as visual and landscape objections. If that objection was to be avoided, there would be either lots of ribbon development to avoid encroaching on the views of others, or isolated countryside development where there was no one to object to the impacts. Neither consequence is desirable.
173. SPMRG's Closing Submission says the view from the footpath through site is "unrivalled anywhere else in the Parish." That might be so to Mr Dale; to people living elsewhere in Hatfield Peverel, the view they get from their homes, drive or street will probably hold the same value. On HPPC's evidence base for example, the view from Stonepath Drive was not voted as the top view from the village (HPPC1 Appendix MR28). In fact Mr Dale explained that viewpoint 3, towards the River Ter from Nounsley, is "exceptional".

174. The approach of HPPC and SPMRG in respect of the footpath fails to acknowledge that in terms of sensitivity there are differences, sometimes subtle and sometimes stark, between different footpaths and different views in different areas. The calibration of sensitivity is important. In this instance:
- i) The footpath is short - it does not provide a walk out into the open countryside but rather from one road to another and along the edge of existing development;
 - ii) The footpath is not part of a long distance or promoted walk. It is used as a dog walking route by many but is not the sort of the place, as Mr Holliday explained, that people would travel to in order to experience;
 - iii) There are no promoted views from the footpath. The emerging view from the NDP and the weight to be given to that is dealt with elsewhere;
 - iv) The highest sensitivity landscapes are those that are valued for the purpose of Framework paragraph 109 and/or those which are designated internationally or nationally for their landscape quality. The highest sensitivity footpaths and views are those that people will travel to go and see and walk. It is in those places that development will have the most significant impact and when understood in that context, the effects identified by GDL in this instance are entirely reasonable and appropriate.
175. HPPC's Closing Submission describe Mr Holliday's approach to the footpath as "misleading and inappropriate;" (paragraph 138 ID48). The criticism is entirely rejected. It would be completely inappropriate to judge the experience of a route - which is the assessment being carried out and the LVIA says as much - on the basis of one viewpoint. The approach taken is conventional and entirely in accordance with GLVIA3. Moreover, it is remarkable that HPPC should seek to criticize Mr Holliday's assessment in that way and then seek to rely on the conclusions of Inspector Parker (paragraph 142 ID48) who accepted GDL's assessment of harm on that very issue.
176. In short, there is no other evidence before the Inquiry to doubt the conclusions of the LVIA which do not assert no harm, but put the harm in a proper context through the use of appropriate and transparent methodology. The significant long term effects identified for the both schemes (CDs 1.6 set A, and 1.6 set B):
- i) Minor / Moderate Adverse effects on the site and immediate context;
 - ii) Moderate Adverse Impacts on the users of the PROW 43 within the site; and
 - iii) Moderate Adverse effects on residential receptors on Stone Path Drive albeit it is accepted that there is no right to a view and so the weight to be given to that harm is accordingly very limited.

Conclusions

177. In conclusion, the site is regarded as being capable of absorbing new, well designed residential development. In the long term, the development proposals will be well contained within the localised landscape area and will deliver benefits through implementation of robust green infrastructure on the site. The new planting and open spaces will provide recreational opportunities, mitigate the visual impact of the proposals and filter longer distance views to the

development. The proposals will also provide a better more sensitive edge to the village than that which presently exists.

178. In terms of visual impacts there will be some moderate adverse effects arising from the scheme in respect of those receptors that would be in very close proximity to the new development. Perhaps most importantly are users of the footpath within the site - the experience would change most noticeably along its length as it passes through the eastern field of new built development, but built development is not uncharacteristic of the route; the houses on Stone Path Drive are presently open to view and are unmitigated. The route does not offer a walk in an isolated rural setting.
179. There will be a loss of some views to the south from that footpath, but new views will be available on the blue land to the west of the new housing. It is intended that members of the public will have full access over that land which will be secured as public open space. Further, those new views will allow walkers to experience the River Ter Valley landscape that provide the primary setting to Hatfield Place. The proposals comply with policies RLP80 and CS8.

The effect on heritage assets

Introduction

180. Two assets are relevant in respect of the proposals; Hatfield Place and the William Boosey Pub, known as The William B. Mr Handcock has carried out a careful analysis of the potential for harm to those assets and concludes that there will be no harm. That assessment uses and applies Historic England's own guidance on the Setting of Heritage Assets (CD27.3 set C) and the staged approach to analysis set out therein.
181. There is no other assessment that has applied the same rigorous and policy compliant approach to the assessment of the assets. That is important because assessments such as this must take place within an objective framework to be meaningful. It is absolutely essential that where development in the setting of heritage assets is at issue the contribution of that setting to the significance of the asset is properly understood so that an accurate assessment of the effect of change can be made. It is not enough to say that development will be seen from an asset and there will therefore be harm - visual connectivity is not the exclusive consideration and nor can it be determinative of harm.
182. In respect of the 80 scheme, there is consensus that there will be no heritage harm - that is the view shared by the County, District and Parish Councils. Moreover, while Historic England requested further information in respect of that scheme, it did not positively identify harm. SPMRG's position is less clear, albeit the closing submissions on behalf of the group do not allege harm to the William B. Public House from the 80 dwelling scheme (paragraph 65 ID49) and the harm is reduced from "moderate to high" in respect of Hatfield Place, to "low to moderate" for the smaller scheme. In identifying harm to Hatfield Place from the smaller proposals, SPMRG, which has not submitted a Heritage Assessment for either scheme, is the outlier.
183. Oddly, in his Closing Submissions on behalf of HPPC Mr Graham - who confirms (paragraph 151 ID48) that HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme (and Mrs Jarvis

confirmed no harm in cross examination) - makes the point that the view to the south from NDP viewpoint 1 (to the eastern edge of the site) would be blocked with the implication that it gives rise to heritage harm. However, the effect arises with both the 80 dwelling and the 140 dwelling schemes. Given HPPC does not regard the 80 dwelling scheme as harmful, that specific impact, on HPPC's case, cannot amount to harm.

The assessment of impacts

184. The assessment of heritage effects through a change in setting requires an understanding of the significance of the assets and the role that setting plays in that significance. Once that is established, the role of the part of the setting that will be occupied by development in the significance of the asset must also be understood because setting is not a heritage asset (paragraph 9, CD27.3 set C) and not all setting makes an equal contribution to the significance of an asset, or at all. Moreover, change in the setting of a heritage asset does not automatically give rise to adverse effects; (Framework glossary). Inter-visibility between the asset and the proposals may be a matter of fact, but it does not necessarily lead to harm. If that were so, no assessment would be required.

185. The Framework glossary also defines 'Significance' for the purpose of heritage policy as:

The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.

186. There are conceivably assets where setting will make a very significant contribution to significance, such as in the case of battlefields for example. In other cases such as here, the core significance of assets will lie elsewhere and setting may be a secondary contributor to significance. For Hatfield Place, its core significance lies in the quality of its built fabric, as a fine example of a small Palladian house of the late eighteenth century, including its external detailing and arrangement and internal plan form and in its connection with individuals of local and national interest in their own right, principally John Johnson and John Tyrell, but also William Walford and George Sherrin. None of those elements will be harmed by the proposals.

187. The core significance of the former Crown Public House, now the William B, lies predominantly in:

- i) The age and quality of its historic fabric, with evidence of its fifteenth century form remaining legible alongside high quality sixteenth century alterations;
- ii) Its relative rarity and for its aesthetic value, both internally and externally, as a remaining example of a pleasing vernacular building of a great age; and
- iii) Its legible, long-standing historic use as a coaching Inn, related closely to The Street as an important historic route from London to East Anglia.

188. Setting does make a contribution to both assets but in a lesser way. The most important part of the setting for Hatfield Place is its immediate pleasure grounds

allowing views into the Ter Valley to the South and to the Danbury Ridge. The land to the southeast has been deliberately screened. In respect of the William B, its most important spatial relationship is with this historic thoroughfare, The Street; the proposed development site does not make any meaningful contribution to its significance.

Hatfield Place

189. Mr Handcock explained that the starting point of his assessment was to assume that the agricultural fields within the red and blue land made a contribution to significance. It is obvious Historic England have done the same thing, but as Mr Handcock made clear, it is the analysis of the contribution that the land makes to significance of the assets that is the relevant and necessary assessment to understand the impact of new development on the significance of the assets. The start point cannot therefore be the end point and it is the analysis in between that is lacking in Historic England's consultation response dated 6th February 2017 (CD27.4 set C).
190. It is acknowledged that Historic England have constraints in terms of resources and the time available to respond to applications such as this. No criticism is made of Historic England for not carrying out its own assessment in line with its guidance. However, Historic England's response (CD27.4 set C) is heavily focused on views, which cannot be determinative of harm to significance, and fails to explain why the appeal/application site fields "greatly contribute to the significance of the listed building." The response says that the fields provide an open, tranquil and rural setting to Hatfield Place but it does not go the stage further that it needs to, which is to say why that is important to the heritage significance of the building.
191. Historic England also says that the separation between the building and the village contributes to its significance suggesting that the distance between the House and the settlement was a deliberate display of wealth. However, no evidence is produced to demonstrate that is the case or why the existing separation that would remain would be inadequate. GDL disagrees with Historic England's position for the following reasons:
- i) While the presence of agricultural land around the House does allow its separation from Hatfield Peverel to be read on the ground, it does not rely on this land for its significance;
 - ii) Hatfield Place was not, as part of its *raison d'être*, associated with large landholdings, nor was it developed with rural isolation in mind;
 - iii) It was built directly adjacent to an important, turnpiked road and another, slightly larger house and estate (Crix) and just outside a reasonably sized settlement;
 - iv) Essentially, Mr Handcock explained, the House was squeezed between Crix and within close proximity of the village of Hatfield Peverel. The William B existed before Hatfield Place and is in very close proximity to it. Hatfield Place was not a 'country house' within the usual meaning of the word;
 - v) In any event, in respect of the 80 dwelling scheme, built development will come no closer to Hatfield Place than it already is. There will be no reduction of separation if that is important; and

vi) Development will not encroach on the pleasure grounds of Hatfield Place.

192. Fundamental to the understanding of the significance of Hatfield Place is that this is a residence the occupants of which have always valued privacy. Far from exploiting a relationship with the land to achieve views over it, the occupiers of Hatfield Place have always valued privacy from and visual disunity with that land - even when it was within their control.
193. That stands in stark contrast to the immediate pleasure grounds and the land to the south and west of the House. It is only in those directions that longer distance views are available and indeed encouraged through intentionally sparse planting. Accordingly, the land that contributes most to significance is that within the immediate Pleasure Grounds, allowing the open views south towards the Danbury Ridge. Glimpsed, screened views towards and from Hatfield Place to the site clearly make a limited contribution towards significance.
194. The contention is supported by GPA3 'The Setting of Heritage Assets' (CD27.3C) which addresses views and settings at page 3. It lists at paragraph 3 the sorts of views that could be considered to contribute more to an understanding of significance of assets. The glimpsed and incidental views through the trees to the appeal site from Hatfield Place are not those sorts of views.
195. There will be glimpsed views of the 140 dwelling scheme and not significant inter-visibility as suggested by HPPC (paragraph 175 ID48). However, seeing development does not equate to harm. There will be even less of an impact in summer when Hatfield Place's only boundary is in full leaf and, in time, so too would be the site boundary. There will also be views from the House itself but Mr Handcock, who has been and looked out of the windows, explained that the angle is such that it is necessary to look obliquely to see it. The House was not built to overlook the proposed development land in question and the views are plainly not significant.
196. It is peculiar that Historic England in its response considers that "the presence of vegetation should not be a determining factor in terms of impact." It may not be determinative, but it is certainly important. First, the boundary planting to Hatfield Place is historic and has always been in situ, as Mr Handcock explains, to filter views to the east and promote the privacy of the immediate pleasure grounds. Secondly, Historic England's own guidance, expressly provides for the assessment of tree cover and vegetation when considering both how and to what degree settings make a contribution to the significance of the heritage asset and in assessing the effect of the proposed development (pages 9-11 CD27.3 set C). Importantly, paragraph 29 of the guidance also confirms that screening may also be relevant to mitigation.
197. Historic England appears therefore to have had little regard to its own guidance in formulating the response. No one is proposing that the boundary treatment at Hatfield Place should change and, indeed, significant additional planting is proposed that will provide screening to the new housing from Hatfield Place.
198. However, visual connection is not the only way in which the site may contribute to significance and Mr Handcock has assessed the spatial and

experiential contribution of the site to the significance of the building (paragraph 5.50, 3/POE). He has not simply focused on the narrow approach of intervisibility which was the complaint in *Steer v SSCLG* [2017] EWHC 1456 (Admin), alighted upon by SPMRG (paragraph 54 ID49).

199. There was a great deal of cross examination by both HPPC and SPMRG about the potential for there to be some communal value associated with Hatfield Place that would be harmed by the proposals. Mr Handcock explained that he had considered communal value but concluded that it did not make a significant material contribution to the significance of Hatfield Place. It has not really been articulated what the communal value, if it exists, actually is. Communal value derives from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory (paragraph 54, CD27.1 set C). Mr Handcock explained the sorts of assets Historic England has in mind when looking at communal significance as a potentially important consideration with regards to significance; Brixton Market is an example, which is listed because of its historic and cultural importance to the Caribbean Community as a whole
200. In this instance, Mr Handcock confirmed that he does not assess Hatfield Place as having communal value albeit he recognised the association between the building and County-level figures; that would remain unchanged by the development. On behalf of SPMRG Mrs Freeman made the case that the footpath has communal value. The footpath however is not a heritage asset and neither is it proposed to change the route of the footpath. To the extent that residents of Hatfield Peverel are able to meet on the footpath (both inside and outside of the area for built development) and discuss the history of the village, that opportunity will still remain post development. Further new houses would not obscure any views to Hatfield Place that are presently available from the footpath.
201. Hatfield Place is not visible from the footpath as it runs through the east of the site as will have been seen on the site visit. The experience that is important to Mrs Freeman, articulated in SPMRG's Closing Submissions (paragraph 45 ID49), will remain; Hatfield Place does not emerge from behind the trees on the footpath until the walker has left the area of built development on either proposed scheme. That experience will therefore remain the same.
202. Insofar as it is alleged that Mr Handcock should have consulted with local residents about the scheme:
- i) Mr Handcock did not assess that the building had or could have any communal value that would be adversely impacted by the scheme and thus it was not necessary to consult further with local residents;
 - ii) Such an exercise would be impractical and disproportionate in respect of every heritage asset assessed and would not be done unless there was a good reason to do it; and
 - iii) Mr Handcock has seen the various objections to the proposals and has read the heritage evidence of SPMRG. He confirmed that it does not change his conclusions as to the effects of the scheme on communal value, or at all.
203. It was put to him in cross examination that the new development would harm the tranquility of Hatfield Place but he confirmed that there is not a great deal of tranquility at Hatfield Place generally as a result of the A12. Tranquility is not

fundamental to the significance of Hatfield Place and neither would the existing situation be fundamentally changed by the development.

204. SPMRG regard it as highly important that the land has remained undeveloped (paragraph 50 ID49). It is said that whether that was deliberate or fortuitous "is not relevant". It plainly is relevant. If it had been the intention of the owners to keep the land open for some special reason, or to create a designed view, then that may contribute to the understanding of the asset and its historic relationship with the land in question. That is not the case here.
205. Mr Handcock explains the chronology of the relationship between Hatfield Place and the site from paragraph 5.27 (3/POE) and detailed in his appendices at A2 (4/POE).
206. The earliest maps of 1777 and 1805 shows that the site "Ponds", as it was known, was at that time part of a scattered rural settlement rather than being in rural isolation. Mr Handcock explained in cross examination that where the decision was taken by the cartographer to show curtilage on the maps - and that was not a decision taken lightly - it would indicate a physical and visual boundary between the site and Hatfield Place as early as 1777.
207. The idea that large grounds should surround the house, as with other landholdings such as Boreham House nearby, was never part of the conception of Hatfield Place. Rather it has always had distinct boundaries drawn tightly to the north and east which have been strengthened over time to retain privacy and shut out wider views north and east;
208. In 1841, the tithe Map excerpt A2.3 shows the pattern of screening along the eastern boundary of Hatfield Place that has remained to this day;
209. At that time, part of the application site for the 140 dwelling scheme was within the ownership of William Walford in common with Hatfield Place, but all of the land to be developed for housing as part of the 80 dwelling scheme was in the ownership of Peter Wright. There was therefore a limited relationship between the site and Hatfield Place;
210. By 1917 (A2.5) the house was marketed for sale by the Tyrell family and had grown to encompass a lot of 40 acres. This covered the whole of the site and the open land to its south. Crucially however, this land was offered as a plot either together with the House and Pleasure Grounds or separately. This land was in an agricultural use and mostly lay fallow at the time of the sale.
211. Mrs Freeman sought to suggest that the conditions of sale (F21.e) demonstrate a desire of the owner of Hatfield Place to retain control over the adjacent land. It does no such thing - it simply provides that custody of the documents for Lot 2 (including part of the proposals site) would remain with the purchaser of Hatfield Place (Lot 1) until requested by the purchaser of Lot 2. No element of control of the use of the land was to be retained at all. Mrs Freeman accepted that it could have been by way of restrictive covenant for example.
212. Thereafter, Mr Handcock explains that much of the landholding to the east and west of Hatfield Place was leased to Lord Rayleigh's Farms and held by that firm between 1932 and 1957.

213. The site was again offered for sale separately in 1956 (A2.6), demonstrating once more the willingness of the then owners to part with control of the land.
214. In terms of the historic relationship between Hatfield Place and the appeal site, it is correct that, at times, some of the land has been in one ownership but it has not been consistent and at various points the owners of Hatfield Place have attempted to sell land encompassing the proposals site separately from the house and have leased it to different landowners. A disjointed picture emerges that suggests a regular transference of land (both in terms of ownership and tenancy), much of it under the overall control of Peter Wright. The House and the proposals site are now in entirely separate ownership and the link, such as it was, has been completely severed.
215. SPMRG suggested in cross examination of Mr Handcock that the views back towards the House from the south were important to the significance of Hatfield Place. He fundamentally disagreed that the views back to the House share the same significance as the view looking out. The views back are incidental and not views over which the owners of Hatfield Place have any control. They are at some significant distance and the fundamental character of the view - Hatfield Place within an immediate tree setting - would continue to be appreciated with the new development. Mr Handcock confirmed that the ability to see more of the village in the view would not erode the sense of separation between the House and village and would not harm the sense of Hatfield Place as a separate entity in its own pleasure grounds.

William B

216. Historic England's consultation response concludes that although there is no particular historic connection between the William B and the appeal site, the proposals would "erode even further the rural setting of the William Boosey to the east, with views becoming more urban in nature rather than rural. The existing setting of the William Boosey PH will therefore be harmed."
217. However:
- i) The assessment is not about whether the setting will be harmed, but how change in the setting affects the significance of the asset. It is surprising that Historic England conflates the two concepts, despite its own clear guidance as to how the assessment should be carried out;
 - ii) Historic England say nothing about what the site contributes to the significance of the William B or why a change in the setting will adversely effect the significance of the asset and the ability to appreciate the William B.
218. In views from behind the William B in the direction of the appeal site, there is already a presence of modern built development (CD27.5 set C, viewpoint 1). The wider rural landscape to the south of Hatfield Peverel towards the Ter Valley which is beyond the tree line is neither obvious nor important. The views are enclosed by existing housing development and new homes will have an extremely limited impact on the view.
219. Further, the William B's significance relates primarily to its fabric, its aesthetic qualities and its lengthy use as a coaching inn. The building's setting relates almost entirely to The Street as the thoroughfare towards which it is oriented and which has always been the source of its income. Neither area for development

have been identified as having any historic or functional relationship with this asset and makes no material contribution towards its significance as a village-edge coaching inn, partially of a fifteenth century date. It is therefore concluded that the scheme, largely screened and viewed within the context of existing housing, would not generate an impact on the asset's significance.

Level of Harm

220. None of Historic England, SPMRG or HPPC identify in evidence where the level of harm lies on the less than substantial harm scale. SPMRG has done that within its closing submissions (paragraphs 64 and 65 ID49), but on the basis (it can only be assumed) of Miss Scott's own assessment. That is beyond the remit of counsel and does not remedy the absence of a full and proper assessment of the impact of the schemes on heritage assets.

221. The level of harm is important because the category of 'less than substantial harm' covers all levels of harm from negligible to something just below substantial harm. The calibration is important when it comes to weighing the public benefits pursuant to Framework paragraph 134. That is not an exercise that has properly been carried out by anyone other than the Council, who on the advice of Essex County Council (CD27.4 set C) place the harm at the lower end of the spectrum, and Mr Lee, who provides a 'precautionary balance' on the basis of the Council's identified harm having regard to the statutory duty to have special regard to the desirability of preserving the setting of heritage assets. Both exercises demonstrate that the public benefits of the scheme outweigh the limited harm. The same conclusion was arrived at in both the Coggeshall (CD32.2 set C) and Silver End (CD32.7 set C) appeals in this District.

222. It is acknowledged that Historic England is the statutory consultee and that as confirmed in *Steer*, cited by both HPPC and SPMRG, decision takers are entitled to give great weight to Historic England's view. However, as always, weight is a matter for the decision taker and the decision taker is also entitled to disagree providing that cogent and compelling reasons for doing so are provided. It is submitted that there are good reasons for departing from the view of Historic England in this instance:

- i) Historic England has not carried out a detailed assessment. That is not a criticism of it but it does go to the weight that can be given to their assessment as opposed to Mr Handcock who has carried out a detailed heritage impact assessment and presented as a credible and knowledgeable witness at the Inquiry;
- ii) The views of Historic England have not been subject to cross examination. They did not appear at the Inquiry. Again, no criticism is made but the evidence they produce in contrast to Mr Handcock's is untested. It is obvious from the preceding analysis that some of the views expressed in the consultation response do not withstand scrutiny and/or require further exploration;
- iii) Historic England has not identified why and to what extent it disagrees with the assessment provided by GDL. Mr Handcock is rightly disgruntled that having provided a thorough assessment and addendum Historic England appears to have had little regard to the substance of his assessment, concentrating apparently upon a visual analysis of the impact of the scheme. It is too simplistic an approach

that fails to grapple with the concept of heritage significance. It is the narrow focus that was rejected by Mrs Justice Lang at paragraph 61 in the *Steer* case.

223. GDL agrees that if harm were to be found in respect of either listed building, then s66 would be engaged and great weight would need to be given to the conservation of the asset. GDL does not disagree with the High Court decision (*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22) cited in HPPC's Closing Submission (paragraph 179 ID48). It is important however to have regard in this instance - where the harm is less than substantial - to the recent Court of Appeal case of *Palmer v Herefordshire CC*, [2016] EWCA Civ 106 (CD31.4 set C) in which the Court indicated that when according 'great weight' to such harm (as per the wording of Framework paragraph 132) the degree of harm remains highly relevant.
224. The court agreed in that case that "the duty to accord 'considerable weight' to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight." (paragraph 34).

Whether the development site is best and most versatile agricultural land and the policy implications if it is

225. Following the conclusions of the previous Inspector (Parker) in respect of the proposal (CD32.6 set C), GDL commissioned an independent consultant to undertake an invasive survey of the site. This report was circulated to all parties to the Inquiry and Mr Lee included it in his evidence (1/APP, Appendix 1). The report concludes that the site consists purely of subgrade 3b agricultural land. As such the site is not formed of best and most versatile agricultural land. It is clear that the proposals comply with policy CS8 in respect of protecting best and most versatile agricultural land.
226. SPMRG do not return to the issue in its Closing Submissions which is unsurprising given Mr Dale's concessions in cross examination. HPPC now however decide to allege a policy conflict, despite neither of its witnesses taking the point. Having raised the issue in oral evidence, Mrs Jarvis was cross-examined on the basis that the appeal site is not best and most versatile agricultural land to which she agreed. She also agreed that the site was "poorer quality land" for the purpose of Framework paragraph 112. Framework paragraphs 110 and 111 do not treat the loss of non- best and most versatile agricultural land as harmful unless the loss is 'necessary' as asserted by HPPC in closing (paragraph 159 ID48). The submission is just wrong.

Effect on Biodiversity

227. Overall, the schemes would have a significant net benefit for biodiversity. Significant enhancements are proposed and through sensitive design, the site is capable of assimilating new development successfully while maintaining and enhancing the ecological status of the site and connectivity to the wider landscape.
228. It is acknowledged that there is potential for the survey area (land encompassing both schemes and associated green space) to support breeding and foraging farmland bird species. However given the small size of the area,

- the restricted range of habitats present and the changeable arable management regime, it is considered that the survey area is only likely to support these species in low numbers and on an intermittent basis.
229. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark. Moreover, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnoek, starling and house sparrow.
230. Once established, green infrastructure proposals such as tree planting, grassland within public open space and the attenuation pond will increase the diversity of available habitats that are present on-site. Favourable management of these habitats over the long-term will ensure that the site continues to provide benefits for a wide range of species that are known to occur in the local area.
231. Mr East spoke on behalf of SPMRG against the scheme and concluded that the scheme would be harmful to ecological interests on site. He relies on surveys undertaken by others and confirms that he is not an ecologist. No formal ecology or bird surveys in accordance with published guidance or criteria have been undertaken by SPMRG to contradict the assessments submitted on behalf of GDL (CDs 1.9 set A, 1.24 set A, 1.9 set B, 3.23 set B and 26.2 set C).
232. The following are further submissions in relation to the evidence of Mr East and ecology matters generally.
233. Mr East accepted that achieving net gains in biodiversity where possible is supported by the Framework and is to be regarded as a good thing, but he has not taken any of the benefits into account when commenting on the scheme. Mr East confirmed that he does not see how it is possible to conclude a net benefit in biodiversity terms when changing an agricultural field into built development. That narrow and frankly wrong view has coloured his opinion and is not borne out in the evidence.
234. Mr East accepted that the County Council's Principal Ecologist is content with the scheme and the mitigation measures offered (ID16). The email confirms that should permission be granted, there can be confidence that the section 40 biodiversity duty under the Natural Environment and Rural Communities (NERC) Act 2006 has been met.
235. Mr East confirmed that he commissioned a Bird Survey Report from Mr Hawkins (F7b). However, the Report does not accord with any formal bird survey criteria, was taken over just one day, does not conform to any set or described methodology, recorded birds both off and on site without describing the context of the site at all and recommended that a Breeding Bird Survey be done. Multiple surveys are necessary however given that one survey may either not pick up all the birds present on site or give the impression of a better bird assemblage than there really is.
236. A Breeding Bird Survey has now been done (CD26.1 set C) and in all cases but two, found that the impact would be locally beneficial in the mid to long term. In the case of Linnet and Skylark the impacts are judged to be locally adverse and negligible respectively. However, neither of those species is considered to be

nesting on site and, as Dr Mansfield explained, the site provides only an inconsistent resource with low habitat suitability.

237. Overall, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnock, starling and house sparrow.
238. Mr East also provided lists of evidence from Mr Thurgood (RG1, Appendix 1) and Highways England (F18e). In respect of the first, it is self confessedly a list produced for pleasure and amusement and not for scientific survey. It takes in an area much wider than the site. It was also taken over a period of 15/16 years and provides little information on the context of the area or what the birds were doing on site.
239. The Highways England email urges caution in the use of the information provided and plainly provides a list of many species that could not possibly be seen on site. Mr East has transposed his view of the area covered onto a plan (RG1, Appendix 2) but has not sought to verify this with Highways England. There is no evidence that any of the surveys were taken on site and again crucial information is lacking which means that no conclusions at all can be drawn from that study in relation to the proposals site.
240. Mr East agreed that he would urge the Inspector to exercise caution when reviewing the surveys, given their limitations.
241. Mr East also raises a question about the use of a butane cannon interfering with the surveys. Dr Mansfield confirmed that if cannons were used during the hours that ornithologists were on site to carry out the survey, it would be recorded as a limitation. None were firing when any of the surveys were taken. One was recorded on the 3rd May 2017 which was when (as Dr Mansfield explained) a general habitats survey was being taken to validate the result of the earlier survey.
242. Dr Mansfield explained in evidence that while long lists of species are interesting, they do not provide context. The context of any site and the type and quality of habitats it provides to a range of species is fundamental in understanding the impact of the proposals. Dr Mansfield confirmed that there was nothing in the evidence submitted by SPMRG that would change her conclusions on the type and number of species present on site and impacts of the scheme on them.
243. It can safely be concluded that the proposals do not lead to unacceptable effects on biodiversity. There will in fact be net gains for both flora and fauna as a result of the green infrastructure proposals through the creation of new habitats for a diverse range of species.
244. It is said that the provision of additional planting on the blue land cannot of itself amount to a benefit because it is provided as mitigation. However, the simple fact here is that the provision of significant new planting and the provision of habitats is a significant improvement in biodiversity terms over the baseline as it presently exists. They are benefits that flow from these particular schemes and are benefits that would not be realised without the development of the proposals site for housing. The proposals comply with policies RLP80, RLP84 and CS8.

The effect of the development on the community and social infrastructure of Hatfield Peverel, Air Quality and Highways

245. 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.
246. 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.
247. 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 business give rise to employment opportunities for people working in the village.
248. 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.
249. 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.
250. Where there are identified capacity constraints, such as with the medical practice, all the schemes before the Inquiry are providing a contribution to mitigate its impact.
251. In respect of education, Essex County Council - as the Education Authority - has decided not to seek a contribution towards primary education. That is a matter for the Authority having regard to its own infrastructure planning and the constraints imposed by law. If a contribution had been requested it would be paid but it is not for GDL to make contributions that are:
- i) not asked for; and
 - ii) which might put the Education Authority in difficulty in terms of pooling contributions in future.
252. Moreover, without a specific request to be spent on a particular school or schools a contribution could only ever be generally to "education" to avoid pooling constraints and contributing to schools that would not be able to use the

- money. Such a contribution is unlikely to meet the statutory or policy tests because there is no way of showing that such a contribution would be directly related to the particular scheme for determination.
253. A SOCG has been agreed with the Education Authority confirming the position (ID1.8). There can be no doubt that there will be sufficient school spaces for children living in the new houses in line with the County Council's statutory duty to secure sufficiency and diversity of provision for its area.
254. First, Essex County Council has a statutory duty to secure sufficient school places for the children in the area. How it does that is entirely within its control and remit. There is no evidence that its position in respect of the schemes at this Inquiry would result in an additional burden on the tax payer as asserted by HPPC (paragraph 127 ID48).
255. Second, Essex County Council must be content that it can meet the duty without contributions from these proposals. If it would not, it would object to the schemes on the basis that the impact, which was not mitigated, was unacceptable. The Council may then have decided to identify an insurmountable policy conflict; it has not.
256. Third, Essex County Council accepts there is not presently capacity within the school at Hatfield Peverel to accept children from all of the proposed developments but also makes the point that 35% of children presently attending a Braintree Group 10 school live in the priority admission for other areas. Those are children that are having to travel to Hatfield Peverel (by whatever means) on a daily basis. That is their parents' choice and they are shouldering exactly the burden that HPPC complains about (paragraph 128 ID48). Eventually, the children from Hatfield Peverel who have priority because of proximity to the school and who want to attend there will displace those children back to their own priority areas.
257. Fundamentally, where children go to school is a far more nuanced question than proximity. It will depend on factors such as parental choice and convenience, how good the local school is and a whole host of other reasons that no formula could account for.
258. Mr Renow accepted that there were safe walking routes to and from the proposed developments and the school at Hatfield Peverel. In respect of the schools at Witham it is possible for them to be accessed by bus. There is a footpath to Witham but it is acknowledged that is along the dual carriageway and that most parents would regard it as undesirable.
259. There is complaint that the Surgery in the village is also under pressure and would have difficulty accepting new patients. A letter has been referred to from Beverly Jones, Practice Manager, voicing concerns that the money provided by way of s106 may not benefit the two surgeries (F29b).
260. However, that is precisely the way the obligations in these matters are drafted. They mirror the request by the NHS for money to be paid to Sidney House Surgery to provide increased capacity. If it cannot be extended the money can be used in other ways - for example, to refurbish, or to reconfigure the surgery. It is not necessary to extend a building to improve capacity and enhance the way

it is used. The specificity of the contribution addresses directly the concerns of the Practice Manager that the money might be spent elsewhere.

261. There can be no allegation that GDL is not providing all that has been asked for by the statutory consultee. Both SPMRG and HPPC submit that the money cannot usefully be applied to Sidney House. However, the NHS is clearly best placed to determine the capacity of its own resources and must be confident that the money is both required and can be usefully applied at Sidney House.
262. Further evidence was given that the surgery had applied to close the list to new patients. That request was refused and thus the deciding body must be of the view that the Practice is not operating at capacity. Further, if the list is closed, people will have to go elsewhere. It is difficult to see how that gives rise to harm - it is not a facility that most would need to access on a daily basis and public transport links to nearby settlements are so good that people could access doctors by sustainable transport modes, or as part of linked journeys.
263. Further contributions are provided in respect of:
- i) outdoor sport
 - ii) allotments
 - iii) affordable housing
 - iv) education - early years
 - v) ecology
 - vi) upgrading of bus stops on The Street (£40,000)
 - vii) Blackwater Estuary Mitigation Contribution (£15,000)

Transport, Air Quality and Protected Lanes

264. The Closing Submission for HPPC and SPMRG appear to abandon the points made by those parties in relation to transport, air quality and protected lanes and no harm is said. A summary of the position is set out below for clarity.
265. The transport assessment submitted with the 140 dwelling application (pages 35-37, CD1.7 set B) demonstrates that the proposals are at worst likely to generate 78 additional vehicle movements in the AM peak and that of these, 52 of the outbound vehicles would be expected to turn left out of Stone Path Drive onto Church Road northbound based on current traffic distribution behaviour.
266. This would leave a maximum of 4 vehicles in the AM peak hour which would be expected to turn right onto Church Road southbound. Even if all of these vehicles were to turn right onto Crabbs Hill towards the protected lane at Sportman's Lane, this would work out as one additional vehicle every 12 minutes. The trip generation would be even less in respect of the 80 dwelling scheme.
267. It also means that 26 vehicles - or less than 1 every two minutes - will turn right on Church Road towards the B1019 Maldon Road/The Street junction. The impact of the development proposals on that junction was not raised as an issue by the Council or the Highway Authority but the cumulative assessment by Martin Doughty demonstrates that the impacts of the proposals before this Inquiry would be acceptable either individually or cumulatively.
268. The Air Quality assessment submitted with the larger Scheme (CD1.13 set B) found that the development would not lead to an unacceptable risk from air

pollution. The same is true in combination with the Gleneagles Way scheme, with the cumulative air quality impact on local air quality being considered to be "negligible" (ID1.4).

269. George Boyd Ratcliff on behalf of SPMRG appends a number of Reports to his proof (RG8) that are said to go to the issue of transport impact and Air Quality. Mr Boyd Ratcliff was not called to give evidence as matters were considered to be dealt with already but the documents he appends to his proof are worth a mention. Appendices H1 and H2 demonstrate that both the Council and Essex County Council - both of which have commented on the transport implications of the proposals - are fully aware of the nature of traffic leaving Maldon and entering into the B1019/The Street junction at Hatfield Peverel. The information is not new (it dates back to 2014) and was within the knowledge of both the Council and Essex County Council when determining the proposals before this Inquiry to be acceptable.
270. No transport assessment has been submitted by either HPPC or SPMRG to demonstrate that the impacts of the schemes in highways terms would be unacceptable and it is not alleged that the impacts of either or either scheme in combination with the DWH proposal would be severe within the meaning of Framework paragraph 32.
271. The Air Quality Annual Status Report (August 2016) (Appendix 3) is now of some age and is superseded by the site specific assessments provided to the Inquiry. Nonetheless, the Report needs to be treated with some caution given that the relevant data for Hatfield Peverel (page 26) which shows a NO₂ concentration level of 46 µg/m³ is not the NO₂ level at the receptor, which is the relevant level, and is 30.9 µg/m³. The Report therefore concludes that the monitoring is not identifying any exceedances of the air quality objectives (page 10).
272. No Air Quality Report has been submitted by SPMRG to demonstrate that the impacts of the schemes, either individually or together, would be unacceptable.
273. For the reasons set out above there is no conflict with policy CS11.

The quashed decision

274. Neither SPMRG nor HPPC address how the Inspector and the Secretary of State are to treat the quashed appeal decision (CD32.6 set C) despite seeking to rely on it in respect of those parts which suit their case. These submissions seek to provide assistance in that respect.
275. The quashed decision has been addressed in the evidence of the parties to the Inquiry but GDL do not seek to rely on the conclusions of Inspector Parker. The appeal is to be determined afresh and neither the Inspector nor the Secretary of State is bound by the judgements expressed in that decision. That is so whether or not circumstances have materially changed. The decision was quashed in its entirety and the relevant case law cited in GDL's response to the Inspector's first note (INSP1) and provided at the opening of Inquiry (ID1.1 & 1.2) confirms:
- i) the previous appeal decision cannot be determinative or even indicative of how the planning judgements in respect of the schemes before this Inquiry should be reached. The decision was quashed in its entirety and is of no legal effect;

- ii) the Inspector and Secretary of State are bound to consider the appeal afresh and are entitled to reach different judgements and conclusions on the evidence than those reached by the first Inspector.

276. There is case law that suggests it may be desirable to explain as part of the reasons for a second decision how the judgements differ (if at all) to the first decision taker's findings, but there is no potential difficulty with inconsistency if different judgements are arrived at as made clear in the case of *Arun District Council v Secretary of State for Communities and Local Government* [2013] EWHC 190 (Admin) because the previous decision has been quashed and is of no legal effect (paragraph 20 ID1.1).

277. It is not right to suggest that certain judgements that were not challenged or conceded as part of the process which led to the quashing (see paragraphs 13 and 14 above) remain intact. That very issue was also addressed in *Arun* at paragraph 19.

In my judgment, the statutory framework is that the role of the new Inspector is one of redetermination, not one of review. The second Inspector was correct in the statement of her role at paragraph 4 of her decision letter, which I have read above. I respectfully consider further that it would lead to potential confusion and complexity for Inspectors on remitted appeals if as a preliminary step they have to consider which part or parts of a quashed decision might or might not be capable of being revived as a material consideration in its own right. As a minor, but perhaps relevant, consideration any different approach might, as Mrs Townsend submits for the interested party, at least in some cases inhibit sensible settlement of a challenge, since a party might rather see a claim through for decision on appeal under section 288 if case findings which it had challenged in that very claim [as the Interested Party had sought to do here]) were to be taken as having survived the quashing.

278. It is not therefore permissible to argue that certain parts of the decision that were not challenged (for whatever reason), should still attract weight in the determination of these proposals.

Planning policies and approach to the planning balance

279. It is trite to say that the determination of these applications begins with s38(6) of the 2004 Act. That is the statutory starting point and whatever impacts the Framework may have, it is never more than a material consideration. It is however an important material consideration against which the relevant development plan policies will have to be assessed.

280. Equally important, because it is the second part of the statutory test, is to consider all the material considerations that relate to the scheme - the benefits and disbenefits - and to consider whether any policy conflict is outweighed. In this instance, it is acknowledged that there is a conflict with RLP policy RLP 2 and CS5, because this site is outside of the settlement boundary. It is not a proposed allocation and does not meet with the exceptions set out in those policies. However, the conflict can be given little weight for the reasons explained below.

281. Where a local planning authority cannot demonstrate a 5YHLS Framework paragraph 49 operates to render relevant policies for the supply of housing out of date. However, the Supreme Court in *Suffolk Coastal* has recognised that it is

Framework paragraph 14 and not Framework paragraph 49 that provides the context for decision taking and if there is not a 5YHLS it matters not whether the failure is as a result of "policies for the supply of housing" or other policies (paragraph 59 CD31.2 set C).

282. If there is not a 5YHLS then the categorisation of the policy is "inappropriate and unnecessary" (paragraph 65); Framework paragraph 14 applies in any event. Thus, the Court accepted the Inspector (in the *Richborough* case) had been entitled, as a matter of planning judgement, to reduce the weight given to the development plan's restrictive policies protecting the open countryside and the green gap to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements;" (paragraph 63).
283. Even where Councils can demonstrate a 5YHLS it does not mean the policies are automatically up-to-date or that proposals that are otherwise acceptable should be refused. Development plan policies will have to be assessed for consistency against the Framework as part of the Framework paragraph 215 exercise. The *Daventry* case cited by the Council in closing makes clear that the policies should be assessed against the totality of the Framework to ascertain consistency. Relevant policies may also be out of date for other reasons; because the plan is time expired or because there have been changes in local circumstances or significant changes in planning policy or guidance; (*Daventry*, paragraph 40 and *Suffolk Coastal*, paragraph 55).
284. The following are all relevant when considering the weight to be given to extant development plan policies in this matter:
- i) The policies here were conceived in a policy environment that sought to protect the countryside for its own sake. The position of the Framework is to "recognise" the intrinsic beauty of the countryside, and to protect valued landscapes (Framework paragraph 109). The level of protection is to be commensurate to the particular interest (Framework paragraph 113). The point is taken up by Lang J in the High Court decision *Telford and Wrekin v SSCLG* (paragraph 47, CD31.3 set C):

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.

- ii) The present national policy context is radically different and promotes a boost in housing land supply. The previous CS target was 273 dwellings per annum. The up to date OAHN is 716 dpa. That is a significant increase that cannot be accommodated within the policy constraints of the existing development plan;
- iii) The Council agrees the development plan is not founded on an up-to-date and robust housing requirement as required by Framework paragraph 47. It is proposing a new requirement advanced through the emerging BNL. The figure is significantly higher than the previous requirement. It will require a step change in housing delivery in order to meet it;
- iv) To meet the housing need, the Council is proposing to allocate significant land beyond the settlement boundaries and granting permission on greenfield sites for development beyond the settlement boundaries. That, if nothing else, demonstrates that the boundaries have served their purpose and are out of date.
- v) The policies are therefore inconsistent with the key Framework objective of 'providing the supply of housing required to meet the needs of present and future generations' (see *Daventry*)

285. Importantly, Framework paragraph 12 stresses the importance of having an up-to-date plan. It is regarded as "highly desirable". Framework paragraph 17 explains that plans should be kept up-to-date so that they "provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency."

Policy CS1

286. GDL does not accept the position advanced by HPPC that there is a conflict with this policy. GDL has seen the submissions of DWH on this matter (paragraphs 108 to 113 inclusive above) and adopts the arguments there set out.

Policy CS5

287. 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).

288. 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".

289. 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.
290. 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.
291. 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

292. 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.

Heritage policies

293. The policies in the development plan are out of date in respect of heritage. They do not provide for the weighing of benefits as against the harm - the approach adopted by the Framework - and thus set the threshold too high in respect of the development proposals. That applies in respect of both RLP 100

and CS9. It should be noted that while RLP 100 is referred to by SPMRG it is not relevant to this scheme. Read *prima facie*, the policy appears only to apply to development involving internal or external alterations, extensions and partial demolitions to a listed building or structure (including any structures defined as having equivalent status due to being situated within its curtilage) and changes of use. None of those are proposed. However, if it does apply - the points below are relevant.

294. *Colman* is a case in which policies relating to heritage assets that failed to reflect the policy approach of the Framework were regarded as being inconsistent with the Framework and thus out of date. As is the case here, the policies (paragraphs 25 and 26 CD31.6 set C), required that the historic buildings and their settings be preserved. There was no balancing exercise against the public benefits provided for in the policies. The Judge's observations were as follows:

29. The NPPF also applies a threshold of "substantial harm" and provides different tests where the impact of a development is above or below that threshold. Harm or loss can be allowed where there is clear and convincing justification (paragraph 132). Substantial harm should be exceptional (paragraph 132) but can be allowed where it can be demonstrated either that it is "necessary to achieve substantial public benefits that outweigh that harm" or where certain criteria apply (paragraph 133). Where there is less than substantial harm, the "harm should be weighed against the public benefits of the proposal" (paragraph 134).

31. It is clear from the foregoing that, unlike the highly restrictive relevant development plan policies, the NPPF takes a far more balanced approach, allowing an analysis of the significance or, where appropriate, of the substantiality of harm to the identified cultural interests, and a weighing of the identified harm against the actual benefits that could be expected to result from the benefits...?

295. It is right, as Lindblom J (as he then was) said in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 that Kenneth Parker J's Judgment in *Colman* is not authority for the proposition that every development plan policy restricting development will be incompatible with 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. Plainly not all policies in the Framework themselves contain such a balance. But in the particular example of heritage policies, the Framework takes a specific approach and requires that the public benefits of the proposals are weighed against the harm which is a more permissive approach than the development plan in this instance. There is therefore an inconsistency and if the Framework is to operate in the way it intends, it would be frustrated by the strict application of heritage policies within a development plan that allows for no harm at all, as is the case here.

296. The approach of the Inspector in the Silver End Inquiry (paragraph 94, CD32.7 set C) in this District is commended to the Inspector and Secretary of State.

Policies RLP 80 and CS8

297. These two policies are broadly consistent with the Framework and for the following reasons the proposals comply with them.

298. Ecological Appraisals (CD1.9, set A&B) and Arboricultural Assessments (CD1.10, set A&B) have been undertaken to support the applications. They confirm that existing important boundary hedgerow features will be retained as part of the development, with the exception of small sections of hedgerows required for access which will need to be removed. Any loss will be more than mitigated for by additional planting and would not result in any significant harm in landscape terms.
299. Mr Holliday's evidence is clear that the development would successfully integrate into the local landscape. The design proposals allow for the retention of existing landscape features which includes boundary hedgerows with some trees. These features will be incorporated into Green Infrastructure enhancements to include additional infill hedge planting, tree planting and the creation of a water body within an area of grassland which will therefore enhance the overall Green Infrastructure and help to integrate the scheme into the local landscape. Planting will consist of native tree species with shrub species chosen to provide benefits to local wildlife in the form of berries and foraging habitat.
300. The additional land adjacent to the site will be offered as public open space to be managed in perpetuity in its current state which will protect the existing grassland and mature hedgerows currently within this area of land. The proposals are not therefore considered to be detrimental to the landscape features of the site and the proposed Green Infrastructure will effectively mitigate ecological effects. Details of exact planting types and species mixes will be addressed at reserved matters and the proposal does therefore comply with this policy.
301. Ecological mitigation against any impact upon protected species is detailed in the submitted Ecological Appraisal (CD1.9, set A&B) and subsequent Breeding Bird survey report (CD26.1, set C). Any such mitigation can be secured by condition/obligation.

The emerging development plans

302. The compliance of the schemes with the policies of the emerging BNLP and NDP is dealt with by Mr Lee (section 9, 1/POE). However, it is agreed between GDL and the Council that only limited weight can attach to the emerging plans at this stage due to the fact that both plans are at a relatively early stage in the process. In light of Framework paragraph 216 the position of Mrs Jarvis for HPPC that the BNLP should attract "fairly significant weight" is entirely inexplicable and in conflict with the "moderate weight" in her proof (paragraph 2.29 HPPC2).
303. As set out at paragraph 128 above GDL adopts the submissions made by DWH with respect to the weight to be given to the NDP. Those submissions are not repeated here.
304. It is worth perhaps however, summarising two particular policies of the emerging NDP. The first is policy HO1 that requires development should come forward for no more than 30 houses. The policy itself conflicts with the Council's aims for the comprehensive redevelopment area which Mr Renow accepted is likely to require modification of the NDP.
305. Moreover:

- i) There does not appear to be an evidence base to support the apparently arbitrary maximum figure of 30 dwellings proposed in this policy;
- ii) Such a policy does not accord with the emerging BNL P which identifies Hatfield Peverel as a Key Service Village which has the ability to host a considerable amount of residential development; indeed, the emerging BNL P currently proposes that sites which will provide 285 dwellings are allocated; and
- iii) The limit on the number of dwellings on a single development would not prevent, theoretically, a series of separate schemes for 30 dwellings being brought forward the cumulative impact of which would be identical to that of, for example, a single large development of 140 dwellings.
- iv) There is fierce opposition to policy HPE6. The means by which the views were selected is questionable and the evidence base is controversial - it has been addressed in other parts of these submissions. The examiner will have to give very careful consideration to whether a policy which seeks protection of important views in almost every direction from and to the settlement meets the basic conditions.

Silence

306. It is GDL's case that the development plan is silent in relation to the location of sites necessary to meet the CS housing requirement following the abandonment of the Site Allocations DPD. GDL relies on *South Oxfordshire* (CD31.7 set C). However, it is not necessary for the plan to be "silent" to trigger Framework paragraph 14; it is simply another route there. Framework paragraph 14 is triggered here because there is not a 5YHLS and the plan is out of date in any event.

307. HPPC raise the case of *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (paragraph 29 ID48) but do not explain that paragraphs 97, 101 and 103 of the Judgment endorse the *South Oxfordshire* Judgment. The distinctions relied on at ID48 paragraph 32 and the comparison with Green Wedge policy at paragraph 33 is erroneous.

Framework Footnote 9

308. It is only in respect of heritage policies that Framework footnote 9 is potentially triggered. The Council's position is that there is some heritage harm, but when the considerable public benefits associated with the 140 dwelling scheme are weighed against that harm pursuant to Framework paragraph 134, the benefits clearly outweigh the harm. Thus the Framework paragraph 14 tilted balance is engaged in the final planning balance. The Council does not identify harm from the 80 dwelling scheme. Either way therefore, the schemes benefit from the tilted balance at Framework paragraph 14 in the overall planning balance. GDL agrees with the process set out by the Council (paragraph 41 ID47) if some harm to Hatfield Place is found to arise from the proposals.

309. If harm was identified :

- i) A balancing exercise weighted in favour of the heritage asset should be undertaken. The harm to the asset(s) should be weighed against the

public benefits of the scheme, including the provision of market and affordable housing, the net gains in biodiversity and the economic benefits that would arise;

- ii) If the harm to the asset(s) were outweighed then the tilted balance would be re-engaged and permission should be granted unless the totality of the harm significantly and demonstrably outweighed the totality of the benefits. The harm to heritage assets of course features in the overall planning balance, as do all of the benefits. There is therefore no double counting.

310. The approach is endorsed in *Forest of Dean* (paragraph 37, CD31.5 set C).

Restrictive Policies

311. Paragraph 37 of HPPC's Closing Submissions (ID48) is confusing. If it is suggested, as was argued at the Inquiry, that any policy with the potential to restrict development should be regarded as a restrictive policy for the purpose of footnote 9 of the Framework (i.e. policy CS5), the argument is rejected. No other party to the Inquiry supports it. It would mean that in almost all cases proposals were deprived of the benefit of the tilted balance at Framework paragraph 14, which cannot have been the intention.

312. The tilted balance is engaged in this case. Unless the heritage harm outweighs the public benefits of the scheme then, contrary to what Mr Graham suggests in that paragraph, if permission is to be refused, the Secretary of State will have to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The need for Housing

313. Whether the supply is one side of the 5YHLS threshold or the other is not an end to the matter; case law makes it clear that the extent of the deficit is a relevant material consideration in the determination of appeals/applications such as this. It provides the context both in which relevant development plan policies should be judged and how the harm should be viewed because the simple fact of the matter is this; for too long, we have not built enough houses; see Housing White Paper (CD29.11 set C). That is not just a statement of academic interest, but one of real consequence that this Government is at pains to grapple with.

314. It means that homes are becoming increasingly expensive and home ownership is unlikely to become a reality for many. It means that people are forced to live in shared accommodation or with their parents for longer than is desirable. It means that many in need of affordable housing do not have access to adequate housing and, in some cases, no housing at all. It is unsurprising that the Secretary of State, now the Secretary of State for Housing, Communities and Local Government, regards the issue as fundamentally important so that everyone involved in politics and the housing industry has a moral duty to tackle it head on.

315. It is the reason why Framework paragraph 14 tilts the balance in favour of permission and explains that some harm may have to be accepted in the pursuit of sustainable development and that permission should only be refused where the adverse impacts of the scheme significantly and demonstrably outweigh the

benefits when assessed against the policies in the Framework taken as a whole. The Government is not committed to making home ownership a reality for the sake of it - there are real and tangible social and economic benefits that flow from the provision of new housing.

Need for Affordable housing

316. There is an acute need for affordable housing in Braintree District. The Council's affordable housing delivery over the last 4 years (2013 - 2017) stands at just 398 affordable dwellings. The identified affordable housing need for the emerging Plan period (2013 - 33) is 212 dpa- so there is already an accumulated shortfall of 450 affordable dwellings. In this instance the vast majority, if not all, of the dwellings would be built out and occupied within five years (paragraph 8.2.24, 1/POE)

Delivery from this site

317. HPPC takes a point about delivery of the site given that GDL is a land promoter and not a developer (paragraphs 152 -156, ID48). With respect, it is a bad point. GDL is a commercial entity which, as Mr Lee explained in evidence, foots the bill for the application and the appeal and only recovers those costs when the land is sold to a developer. That is not just a powerful incentive to procure the sale of the site as quickly as possible post planning permission, but also demonstrates that GDL, with extensive experience of land promotion and sale up and down the country (having secured permission for over 15,000 homes) must have confidence that the site will be bought and developed. Logic dictates that GDL would not go to the expense of promoting a site it could not sell.

318. Contrary to HPPC's submissions at paragraph 153, the issue was not addressed for the first time in Mr Lee's oral evidence. Paragraphs 10.5.2-10.5.5 of Mr Lee's proof explains the position. Further, the suggestion that a housebuilder would then acquire the site (paragraph 156 ID48) and do nothing with it when there is a time-limited permission is incomprehensible and not supported by any evidence whatsoever. Housebuilders invest millions of pounds acquiring sites and would not play fast and loose with an extant planning permission for some speculative future gain.

Conditions, Unilateral Undertaking and Green Infrastructure plan

319. Conditions and the obligation were discussed at the Inquiry. Financial contributions and other obligations have been provided to satisfy the District and County Councils that the impacts of the development can be effectively mitigated. The changes proposed by the Rule 6 parties have been taken into account and changes made where the requests were appropriate. No wording was provided by either Rule 6 party to GDL after the close of the Inquiry sitting days but both GDL and the Council agree the obligations are CIL compliant and ensure that the proposals are not unacceptable in planning terms.

320. Unfortunately, the changes could not include any of those proposed by SPMRG in relation to the blue land. The Parish Council has indicated a willingness to take on the management of that land if permission is granted but it is not within the power of GDL to designate the area for its ecological value such as it presently is.

321. Green Infrastructure Plan (ID1.6a) was provided at the Inquiry to provide confidence that the scheme will come forward as anticipated to provide a high quality development.

Planning Balance

322. Hatfield Peverel is identified as being one of the more sustainable locations within the District in the adopted and emerging plan. It is a KSV which on page 31 the CS explains are "large villages with a good level of services, including primary schools, primary health care facilities, convenience shopping facilities, local employment, frequent public transport to higher order settlements and easy access by public transport to secondary schools".

323. The appeal proposals are in full accordance with the spatial strategy of the existing plan as well as the emerging BNL P which directs growth to Hatfield Peverel as a KSV situated on the A12/Great Eastern Mainline corridor (paragraph 3.3, CD16.1 set C).

324. The appeal proposals constitute sustainable development and will contribute to enhancing the vitality of Hatfield Peverel and the surrounding area. The proposals will deliver new homes of the right type, at the right place and at the right time to support the Council's growth aspirations in line with their adopted and emerging spatial strategy. The development accords with these principles in the Framework.

325. The benefits of the scheme are vast and cover all three dimensions of sustainable development. In terms of economic benefits they include, but are not limited to, millions of pounds of spend on the construction of the site and household expenditure of new residents that would amount to millions of pounds annually.

326. The social dimension of sustainability would be fulfilled not just by the provision of market housing but also affordable housing for which the need is acute. It cannot sensibly be argued that the weight to be given to those benefits is anything other than significant. Further, there are benefits to the sustainability of the settlement and the new green infrastructure and play area will be available for use not just by residents of the new development but existing residents too.

327. The scheme provides environmental benefits through proposed green infrastructure and planting. There is potential for site-wide biodiversity gains through new hedgerow tree planting and the SUDS pond which will strengthen habitat linkages across the site and into the wider area.

328. When completed, the scheme will be an attractive built environment that can be successfully assimilated into its environmental and landscape context. It will be a place where people want to live.

329. SPMRG make a point that where mitigation is provided as part of the scheme that cannot amount to a benefit. That is conceptually and factually wrong; there is no reason why something cannot be both. Mr Lee gave the example of the bus stop real time information that will be provided as part of the scheme. Yes, it mitigates an impact related to the scheme, but it will not be used exclusively by residents of the proposals. Other residents of Hatfield Peverel will receive the benefit.

330. SPMRG argues that the benefits that could arise from the proposals could be achieved with housing development elsewhere. The argument is sometimes called the “generic benefits” argument and is misconceived. They are benefits that attach to this scheme and the scheme is not being promoted as an alternative to housing elsewhere. There is a national housing crisis and the benefits of new housing development are not being realised as they should be.

331. In respect of a similar complaint elsewhere Inspector Felgate in the Blean decision (CD32.1 set C) stated:

The Council acknowledges these as benefits, and does not challenge the figures, but sees them as modest in scale, and argues that they should carry limited weight. To my mind this seems a somewhat grudging response. The NPPF makes it clear that building a strong, responsive and competitive economy is a key element of sustainable development, and that housebuilding is to be seen as an important contributor to this aim. On this basis, I see no reason not to give significant weight to the economic benefits.

Summary of benefits

- i) Market housing
- ii) The provision of 40% affordable housing (up to 32 dwellings)
- iii) The proposals provide a considerable amount of open space (totalling 5.35ha), including areas of amenity open space, a locally equipped area of play, structural planting, and an extensive green infrastructure network (including perimeter footpaths) It is agreed that the scheme provides an opportunity for net gains in biodiversity.
- iv) An investment in construction of circa £ 8.5 million.
- v) Around 76 FTE construction jobs per annum on average throughout the construction period and an additional 83 FTE indirect jobs in associated industries. (CD1.20A)
- vi) Up to 80 residential dwellings which could be home to 192 residents, 96 of which will be expected to be economically active.
- vii) Annual household expenditure of £ 1.9m supporting up to 7 jobs.
- viii) The implementation of the agreed scheme of off site highways works on Stone Path Drive (including signing and double yellow lines) will help to address an existing concern of local residents regarding the use of Stone Path Drive by commuters using the train station.
- ix) Improvements to bus stops on The Street to include shelters and Real Time Information.
- x) Enhancements to the PROW connecting the site with The Street
- xi) Biodiversity enhancements in line with NPPF Chapter 11

332. It is accepted that there will be some harm arising from the development - that is almost inevitable when open countryside is built on - but that does not make the proposals unacceptable, particularly when the Council is relying on such sites to come forward to ensure its housing land supply meets the housing needs going forward. The harm is in respect of landscape and the acknowledged policy conflict with policies CS5, and RLP2 of the development plan.

Conclusion

333. In conclusion it is abundantly clear that there is only a very limited impact to be weighed against a number of very significant benefits. Chief among them, but certainly not exclusively, is the provision of market and affordable housing. There are however many and wide ranging benefits in all three dimensions of sustainability. The development and the people that live there will have the potential to contribute to Hatfield Peverel and enhance the village in a number of ways. They will become active members of the community and contribute to existing services and facilities and perhaps stimulate the provision of new ones. The site is entirely suitable to accommodate residential development, in principle and of this scale; there is no good reason upon which to resist the grant of planning permission on the site.
334. Accordingly, GDL invites the Inspector to recommend that the appeal be allowed and the Secretary of State to grant planning permission, subject to appropriate conditions and the terms of the s106 Obligations.

The Case for Hatfield Peverel Parish Council

335. 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

336. 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.
337. 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'.
338. 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'."

339. 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.
340. 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).
341. 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.
342. 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.

343. 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.
344. 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

345. 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

346. 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 Sedgefield methods.
347. 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.

348. 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.
349. 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.
350. 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.

351. 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

352. 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'.
353. 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.
354. 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.
355. 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.
356. 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

357. 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.

358. 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

359. The question of 'updatedness' does not depend on chronological age in itself (Framework paragraph 211) but on changes in circumstances and/or planning policy.

360. 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.

361. 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

362. 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).

363. 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".'

364. 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).

365. 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'

366. 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 39).
367. 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 BNLDP, and emerging NDP. Furthermore, the question of how much development is intended in Hatfield Peverel matters as well as where that development is located.
368. 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).
369. 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

370. '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.

371. 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).
372. 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

373. 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).
374. 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.*
375. 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.
376. 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).

377. 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.
378. 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.
379. 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

380. 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.
381. Both the adopted CS and the emerging BNLPA 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.
382. 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.
383. 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

384. 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.

385. 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.'

386. 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'.

387. 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).

388. 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).
389. 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.
390. 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'.

391. 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.

392. 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.

393. 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

394. 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).

395. 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'.

396. 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.

397. 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.

398. 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.'

399. 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.

400. 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).

401. 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.
402. This also accords with the Guidelines on Landscape and Visual Impact Assessment (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

403. 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

404. 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 (paragraphs 44 and 45).
405. 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).
406. 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.
407. 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 BNLP 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.
408. 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 QC 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.*
409. This is evidently linked to the assessment of constraints. Paragraph 5.7 of Section 2 of the emerging BNLP supporting text explains that 'Development may be considered sustainable within a KSV, subject to the specific constraints and opportunities of that village' (emphasis added).
410. 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 45 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.

411. 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.
412. 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

413. 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

414. 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.
415. 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.
416. 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 BNL, 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.
417. 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

418. 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 sub-paragraph (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.
419. 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.
420. 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

421. 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.
422. As Mr Renow explained in his evidence (pages 12-13, HPPC1), Section 2 of the emerging BNLDP 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.

423. 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 14320 dwellings as well as employment development and other development.

424. 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).

425. 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.

426. 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).

427. 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

428. 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.

429. 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'.
430. Whether potential environmental effects are 'significant' is a matter of judgment for the planning authority, subject to review on grounds of reasonableness.
431. 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.
432. 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.
433. 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.
434. 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

435. 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.

436. 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.
437. 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.
438. 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

439. 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).
440. 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.
441. 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.
442. 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.

443. 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.
444. 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.
445. 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.
446. 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

447. This point is relevant only to the Gleneagles site and is not therefore set out in full.

Housing delivery

448. 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.

449. 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

450. There would be conflict with Policy SP5 of the emerging BNLPP ('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).

451. 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).

452. 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).

453. 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.

454. 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).

455. 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.

456. 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).

457. 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.
458. 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.
459. 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.
460. 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 80 dwelling scheme

Conflict with the spatial strategy

461. 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 s38(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 Local Plan. This conflict should be given great weight.

Landscape and visual harm/harm to the character and appearance of the area

462. The scheme would result in harm to the distinctive character of Hatfield Peverel at the countryside edge. The character of the open field/meadow would be irreversibly harmed by its replacement with a housing estate.
463. The development would almost totally block and ruin the highly attractive unspoilt open view from Viewpoint 1 shown in the table accompanying draft NDP Policy HPE6 and illustrated for instance by Mr Renow's photographs (ID13). This would conflict with emerging NDP policy HPE6.
464. The view is enjoyed by people whom the Guidelines for Landscape and Visual Impact Assessment 3rd Edition, (paragraph 6.33) indicate are most susceptible to change, namely residents at home (along Stone Path Drive), 'people, whether residents or visitors, engaged in outdoor recreation including use of public rights of way, whose attention or interest is likely to be focused on the landscape and on particular views' (pedestrians along Stone Path Drive, walkers along Footpath 43); 'visitors to heritage assets... where views of the surroundings are an important contributor to the experience' (visitors to Hatfield Place); and 'communities where views contribute to the landscape setting enjoyed by residents in the area' (Hatfield Peverel) (paragraph 5.10, HPPC2).
465. The view stretches across the Ter valley- an unusual feature in this part of Essex - to the Baddow Ridge beyond. The table in the NDP describes the key features of the view: 'foreground is a meadow with mature trees and hedgerow, with a distant view over the Ter Valley towards the Little Baddow Glacial Ridge (rising to the highest point in Essex)'.
466. Furthermore, it would block that open view to the south for persons travelling through the housing estate along the well-used Footpath 43.
467. The GLVIA3 advice (para 5.32) that in making the assessment of landscape value, it is important where possible to draw on information and opinions from consultees, including local people. The community values the view, which is why it was designated in the emerging NDP, as already explained. As GLVIA3 advises (paras 6.37 and 6.44), effects on people who are particularly sensitive to changes in views and visual amenity and large-scale changes which introduce new, non-characteristic or discordant or intrusive elements into the view are more likely to be significant.
468. According even to GDL's own original LVIA assessment criteria this qualifies as a 'major' adverse impact (paragraph 2.23, CD 1.6 set A):

Major: An effect that will fundamentally change and be in direct contrast to the existing landscape or views.

It should be noted that by the time Mr Holliday had come to produce his Proof of Evidence for this Inquiry, he had produced, at Appendix 3, a different set of definitions which was entirely circular (major being defined as 'a major landscape or visual effect'). That set of definitions included the following definition for 'high magnitude' change which clearly applies: 'The proposal will result in a large and immediately apparent change in the view, being a dominant and new and/ or incongruous feature in the landscape.'

469. Mr Holliday conceded that this harm to the view was an adverse effect, but he had not assessed it as a 'major' effect on the basis that he had looked at the whole route of Footpath 43 (including 'blue land' to the west where there was not currently an open view because of enclosure by trees and hedgerows and the view back to the north), and had, in effect, 'averaged out' the change to the view at Viewpoint 1 across the whole length of the footpath. That was a misleading and inappropriate approach. Travellers' eyes would naturally be drawn to the south, and they would naturally most appreciate the most enjoyable and distinctive open views. The expansive, picturesque open view across the valley from Footpath 43 would be lost precisely at the points where it could be enjoyed.
470. Mr Holliday sought to downplay the attractiveness of the view and the rural character of the site by reference to the homes at the edge of the settlement which were characterised as 'defining' the site and as being unsightly or untidy.
471. Currently, the homes along Stone Path Drive are either bungalows or 2 storey, and are set back some distance from the application site on relatively flat land, such that their built form appears low and unobtrusive in views from Viewpoint 1 and along the footpath. It would be wrong to treat them as in any sense 'defining' or dominating the pastoral character of the meadow site. The current relatively open, low-rise interface with the surrounding countryside is locally distinctive (uncharacteristic of the wider landscape – CD18.4, set C referenced at paragraph 5.13 HPPC2)) and would be lost. The higher-rise development up to 2 storeys on the application site would result in a suburbanisation of the edge-of-rural character and feel of Stone Path Drive, which currently has views out across the open land.
472. The suburbanising effect would result not just from the visual effects but also the noise, traffic and activity on the estate and on the 'blue land' as it became used for general recreation. This location is a relatively tranquil spot both in terms of peaceful views across the valley and in terms of noise, certainly compared to the northern part of the village along the railway and A12. The 'peaceful and rural qualities of the valley landscape' were rightly identified by the Local Landscape Character Assessment of October 2015 (character area 2 section, CD28.3, set C).
473. In this regard, Inspector Parker was right to identify harm by reason of visual jarring, detrimental change to the fundamental character of the field, erosion of the distinctive landscape of the area, and loss of the tranquil farmland scene both visually and aurally (paragraphs 19, 26 and 27, CD5.1 set A).
474. There would also be visual harm by virtue of the intrusion of built development into the views towards the village from the south, such as for those travelling up the road named Crab's Hill.
475. Some reliance was placed by Mr Holliday on the Braintree District Settlement Fringes Study (CD 14.4 set B). However, this was done without consulting the community, on the basis of lumping the 'blue land' in with the 'red-line' area and adopting a highly subjective scoring system that made some bizarre assumptions (for instance, ignoring views out and looking only at views in, assigning points for 'complexity', and weighting vegetation (a transient feature) as a 'primary' feature which is supposed to be permanent).

476. Mr Holliday suggested that the proposed planting would mitigate the visual harm. In fact, insofar as the loss of open views constituted the harm this would only be exacerbated by planting and certainly would not be remedied. Thickened screening would create a very different and less attractive feel; rather than settling and integrating the built development gently into the countryside, it would create an apparent sharp edge defined by the planting. It would block future residents of and visitors to the housing estate from enjoying the open views of the countryside setting, as well as existing residents along Stone Path Drive.
477. Retention of existing hedgerows and field boundaries, and planting of a small new area of meadow at the entrance to the site, would not make up for the fundamental harm caused by loss of the meadow to residential development.
478. There would be conflict with LPR Policy RLP80. This requires that development 'should not be detrimental to the distinctive landscape features and habitats of the area such as trees, hedges, woodlands, grasslands, ponds and rivers. Development that would not successfully integrate into the local landscape will not be permitted.' Plainly, there would be detriment by reason of loss of open grassland and the development would not integrate into the existing local landscape. Emerging Policy LPP71 is expressed in similar terms.
479. There would be conflict with CS policy CS8 which says, so far as relevant:
- where development is permitted it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment... The natural environment of the District... will be protected from adverse effects.*
480. There would be conflict with Framework objectives to recognise the intrinsic character and beauty of the countryside (Framework paragraph 17) to conserve and enhance the natural environment, promote local character and distinctiveness (Framework paragraphs 60 and 131) and to protect areas relatively undisturbed by noise and are prized for their recreational and amenity value (Framework paragraph 123).
481. The visual and landscape harm, and policy conflict, should be given great weight.

Heritage harm

482. HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme.

Evidence regarding delivery

483. GDL were put on notice (paragraphs 29 and 40, INSP2) before the Inquiry opened regarding reservations about delivery within 5 years on the Inquiry sites. The Note says that 'This is especially the case with the GDL site as this is one step removed from a housebuilder having an interest.' This issue was of course critical to GDL's case from the outset, which rested on a putative shortfall in 5YHLS.
484. Only in Mr Lee's evidence-in-chief did GDL provide any evidence addressing this critical issue. His evidence was that GDL makes its money when the

landowner sells the site (with permission secured by GDL) to a housebuilder. In terms of 'track record', Mr Lee was unable to provide any evidence as to the proportion of units delivered within 5 years of permission, stating that the firm had not been sufficiently long-established and he could only give figures relating to commencement of development and erection of the first home which he said took an average of 18 months. No records were produced to substantiate this claim in order that the Secretary of State could examine the predictive value of the record in predicting future likelihood of delivery on this site.

485. Mr Lee provided a one-line e-mail from a Mr Church of Linden Homes dated 15 December 2017 (ID32) stating, 'Further to our recent discussion...I confirm that should you be successful with your planning application then Linden Homes would be interested in acquiring the site'. Even on its face, the e-mail could provide no certainty even that Linden Homes would bid for the land, let alone shed light on the likelihood of actual delivery. The author of the e-mail and its recipient a Mr Alex Cox were not tendered for cross-examination. It was entirely unclear what discussions and leading questions had been asked or inducements offered or exchanged for this message. No weight or reliance can be placed on it.
486. Mr Lee also produced a letter dated 12 December 2017 to Mr Alex Cox from a Mr Reeves of Cala Homes (ID31). This claimed to be a letter 'in support of the above application which it is understood has been called-in by the Secretary of State'. It stated that Cala had 'expressed to the Landowner an interest in the acquisition of the site' and asserted that 'we would look to implement the consent and build out the development as a priority to ensure the immediate delivery of housing'. Even taken at face value, there could be no certainty that Cala would bid, let alone make the highest bid and be sold the site. Once again, the authors were not tendered for cross-examination, and the document was submitted too late for HPPC to investigate Cala Homes' track record or circumstances to provide a rebuttal. As such no weight can safely be placed on this letter.
487. In reality, it could well be the case that a patient developer wished to acquire the site and wait to commence development, or indeed submit further alternative planning applications, in the expectation that land values or house prices would increase, or planning policy would become less restrictive. In a rising market, there could well be an incentive to delay.

Unsustainability/ demand for services

488. As regards medical services, the occupiers would generate demand for primary care that could not be met within the village. The issues identified by Mr Renow relating to unsustainability, namely insufficient medical staff on site to cope with patient numbers and insufficient accommodation for such additional staff, could not be addressed by the £26,340 offered in the Unilateral Undertaking of 17 May 2017 for refurbishment, extension or reconfiguration of the surgery since, for reasons he explained, it would not be possible to physically extend the surgery. There was no evidence provided on behalf of GDL to the effect that refurbishment or reconfiguration achievable with this sum would resolve the issues and meet the extra demand placed on the service by occupiers of the 80 dwellings. This extra strain on services would conflict with the objectives of ensuring healthy, inclusive communities with sufficient healthcare facilities to meet demand (Framework paragraphs 7, 17 final bullet, 69, 156, 162, 171).

489. There would be further stress placed on schools for the reasons set out previously. In this case, the development has been assessed as generating an assumed 24 primary pupils, and Essex County Council originally requested a financial contribution of £293,232 to meet this additional demand (CD3.6 set A), in addition to provision of a safe walking route to Witham. The request was withdrawn not because the issue of school places and transport costs had gone away, but purely because of the perceived strictures of the CIL regulations. For the reasons set out above, great weight should be given to this planning harm.

Loss of agricultural land

490. Although not best and most versatile agricultural land, the development would still entail significant loss of greenfield agricultural land which the Framework treats as undesirable unless the loss is 'necessary' (Framework paragraphs 110, 111 and second sentence of Framework paragraph 112). The developable area would be about 2.73ha plus areas of proposed planting and 'detention basin' in a red line area of approximately 4.57Ha. This is harm that should be weighed in the planning balance.

5YHLS/weight attaching to provision of housing

491. 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 80 dwellings at this location.

Conclusion of HPPC case to the Inquiry

492. 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

Introduction

493. 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.

494. 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.

495. 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. Should it be found that nevertheless it does, SPMRG consider that the operation of Framework paragraph 134 indicates that development should be restricted applying Framework footnote 9 (SPMRG accepts that this is the only relevant restrictive policy that falls to be considered). In the event that the Secretary of State does not agree with that analysis, SPMRG considers 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 in respect of both the 80 and the 140 schemes.

496. Under part 3 SPMRG submit that the planning balance weighs against both schemes in the light of the identified harms and the weight that ought to be given to the benefits identified.

497. Each of these points is now developed in further detail.

Part one

498. 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 RLP80: Landscape Features and Habitats;
- iii) Policy RLP100: Alterations and Extensions and Changes of Use to Listed Buildings, and their settings;
- iv) Policy CS5: in relation to the countryside and development outside village envelopes;
- v) Policy CS8: the character of the landscape and its sensitivity to change; the enhancement of the natural environment and maximising opportunities for creation of new green infrastructure;
- vi) Policy CS9: regarding the built and historic Environment and the preservation of the setting of Grade II* Listed buildings;
- vii) Policy CS11: in relation to infrastructure and facilities.

499. These breaches militate strongly against the grant of planning permission.

Development Boundaries: RLP2 and CS5

500. Both application schemes 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. 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 45).

501. 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.

502. 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).

503. 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.

504. 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.

Landscape and Visual Impact: Policies RLP80 and CS8

505. SPMRG submits that both schemes would breach policies RLP80 and CS8, which should be given significant weight. In particular, RLP80 provides that "development that would not successfully integrate into the local landscape will not be permitted"; CS8 provides that "development must have regard to the character of the landscape and its sensitivity to change and where development is permitted it will need to enhance the locally distinctive character of the landscape...". SPMRG submits that it is plain that neither scheme (despite the Green Infrastructure plans (ID16a and ID16b) submitted at Inquiry) would comply with these policies.

506. The relevant BNLP policy is LPP71, which provides that "Development which would not successfully integrate into the local landscape will not be permitted". The Hatfield Peverel NDP emerging policy HPE6 "seeks to protect the landscape setting of the village through preservation and enhancement of views identified by the community and the [HPLCA]... Any proposed development... must ensure their key features can continue to be enjoyed, including distant buildings, areas of landscape and open agricultural area." These policies would also be engaged, as referenced below in the consideration of the tilted balance.

507. It is SPMRG's case that either scheme would result in a significant and unacceptable impact on the intrinsically rural and open character of the site, destroying the much-valued south-western rural fringe of the village. There would be a departure from the historic settlement pattern of Hatfield Peverel in this thrust into open and undeveloped countryside, a loss of farmland and a

significant erosion of "the peaceful and rural qualities of the valley landscape [which] provide a green corridor" identified in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). These factors, coupled with the loss of much valued views and the intrusion of the site into views across the valley towards Hatfield Peverel, combine to result in unacceptable harm to the landscape character of the site.

508. As described by Mr Dale in his oral and written evidence, the landscape of and views from Stone Path Meadow (particularly from the corner of Church Road and Stone Path Drive) are highly valued and cherished by local residents: the views across Stone Path Drive from the corner of Church Road and from the footpath are "unrivalled anywhere else in the Parish". He described how, when walking along the footpath alongside Stone Path Drive, "the eyes are always drawn to the open vista", to the distant views across the Chelmer vale and the Ter valley and towards Baddow Ridge. Whilst Stone Path Drive is physically present for footpath users and those moving along Stone Path Drive itself, "that is not where the eyes are drawn, and you would forgive that edge anything for the views that it gives".
509. Mr Dale's evidence also addressed the loss of the views from Church Road and the footpath in the context of breaching the emerging policy in NDP policy HPE6 (as did Cllr Renow on behalf of HPPC), referred to below in relation to the tilted balance.
510. In terms of the schemes' impact on the rural setting of the village, it was suggested on behalf of GDL that, although Hatfield Peverel would expand into open countryside as a result of the development, the new housing estate would remain surrounded by countryside on three sides, such that Hatfield Peverel's rural setting would be retained. Mr Dale's evidence in chief on this point was that from the point of view of Stone Path Drive, the rural setting would be "destroyed" through the loss of the open views and the presence of housing. From within the new housing estate, Mr Dale noted that residents "would not see the tranquil views; those views would be gone". Finally, he described how the site would be visible in views across the valley and noted that the village's rural setting would be damaged by the intrusion of urban development into the countryside.
511. So from an aerial and cartographic viewpoint, Hatfield Peverel would retain a rural setting, as neither scheme would mean physical coalescence with any other urban development. However, SPMRG submits that this is essentially irrelevant: the point is that the current rural setting of the village is open and visible. At present, one has views out from this fringe of Hatfield Peverel and, looking back towards the village, one can just make out the edge of Church Road and Stone Path Drive in views from across the valley, as noted in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). On both schemes, the housing and the significant amount of proposed planting around the edges of the development - expressly included to shield the housing from view - would mean that neither current nor future residents of the housing estate would be able to see the rural setting of the village. Further, as described by Mr Dale, the slope of the site and the relative flatness of Hatfield Peverel mean that either scheme would be visible from views across the valley to a greater extent than at present, detrimentally impacting on the rural setting of the village.
512. In terms of mitigating the impact on the site, Mr Dale reasonably agreed that the proposed planting and landscaping at the northern edge of the site adjoining

Stone Path Drive might improve the views from the site towards Stone Path Drive. However, he maintained that this would not make the price of development worth paying: "to take away our panoramic vista across the valley and replace it with a small suburban park with trees would not be a major step forwards".

513. In terms of the Blue Land which would be available to residents and the public, Mr Dale noted that the majority of the Blue Land is next to the A12: it "lies in less tranquil settings up near the A12, with constant road noise and with no window onto the valley landscape." He suggested that, in landscape and visual impact terms, the Blue Land was "no mitigation" for the losses that would be suffered. In particular, he explained that this was because the Blue Land is some ten metres lower into the valley than the northern edge of the site such that, although one could still see the River Ter and the views are pleasant, these views are no mitigation for the loss of the views from the top of the site.
514. Mr Holliday gave landscape and visual impact evidence on behalf of GDL. Mr Holliday's evidence discusses five landscape character assessments ranging from a national level down to site level: the National Character Area assessment (CD28.4 set C), the Essex Landscape Character Assessment (CD.28.2 set C), the Braintree Landscape Character Assessment (CD 14.5 set B), the Hatfield Peverel Local Landscape Character Assessment (CD.28.3 set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B).
515. It should be noted that Mr Holliday was content to pick up on the small details of the illustrative masterplans and Green Infrastructure Plans - such as the retention of existing individual hedges onsite - and point to these as positive evidence of the schemes' compliance with these larger landscape character assessments. His written evidence, however, failed to assess and he was reluctant to agree in his oral evidence that there were other, broader aspects of these character assessments which would be breached or detrimentally impacted upon by either scheme.
516. In relation to the National Character Area Assessment ("NCAA"), Mr Holliday noted that the schemes' provision of "new planting and... conserving trees and hedges" meant that the schemes chimed positively with the NCAA (at 2/POE paragraph 6.2). He then found that the development of the site "would have a negligible effect on the wider character area at this broad geographic scale" (at 2/POE paragraph 6.3).
517. Of course, Mr Holliday is correct to say that a 4.57ha or a 6.35ha site would not alter the county of Essex. He did not, however, mention any ways in which the schemes might negatively impact on this specific part of Essex.
518. The NCAA gives a number of Key Characteristics for this Character Area, which include "agricultural landscape [which] is predominantly arable with a wooded appearance... Field patterns are irregular despite rationalisation" and "A strong network of public rights of way provides access to the area's archetypal lowland English countryside" (cited in Mr Holliday's proof at 2/POE paragraph 3.23). Stone Path Meadow is a perfect example in miniature of these key characteristics of Essex and therefore, it is submitted, makes a strong contribution to the character of the surrounding area as classic Essex countryside. This contribution would be destroyed by development of the site with the loss of arable landscape, the loss of the irregular field pattern through housing and the loss of the

footpath's rural setting. Yet, despite Mr Holliday's having identified specific ways in which the schemes would positively chime with the NCAA, he did not identify or choose to take into account the ways in which the character of the site, as relevantly described by the NCAA, would be negatively impacted.

519. The Essex Landscape Character Area Assessment (ELCAA, CD.28.2 set C) describes the character area containing Stone Path Meadow as the "Central Essex Farmlands" character area. Mr Holliday again picks up on the substantial proposed planting around the development as assisting with the key landscape sensitivity of "moderate inter-visibility of the landscape" identified by the ELCAA (2/POE paragraph 6.5). He then assesses that developing the site would result in a "negligible effect" on the Central Essex Farmlands character area.

520. Whilst this is true at a Character Area level, Mr Holliday again omits to assess how this particular bit of the Central Essex Farmlands would be impacted upon. The Key Characteristics of this area include:

Key Characteristics:

Irregular field pattern of mainly medium sized arable fields, marked by sinuous hedges and ditches.

Mostly tranquil character away from major roads...

Overall Character:

The Central Essex Farmlands is an extensive area of gently undulating arable farmland bisected by the Chelmer Valley. Irregular fields are enclosed by thick but intermittent hedgerows...

Away from the A120, A130, A12, M11 road corridors... large parts of the area have a tranquil character, embracing tracts of fairly secluded countryside

521. Again, SPMRG submits that the description fits Stone Path Meadow exactly and that the site currently makes a very strong contribution to these aspects of this area around the edge of Hatfield Peverel as an area of Central Essex Farmland. Again, SPMRG submits that the development of this site for housing would destroy that contribution and that therefore there would be a significant impact on this portion of the character area described in this assessment. Indeed, Mr Holliday accepted in cross-examination that, insofar as there would be a loss of farmland through developing the site for housing, that was "obvious".

522. The Braintree Landscape Character Assessment (CD14.5 set B) describes the area as "gently undulating landscape (which) is fairly densely populated... Surrounding the settlements, pastoral fields tend to be small to medium with their boundaries delineated by gappy and fragmented hedgerows" (page 93). The Suggested Landscape Planning Guidance recommends that planners "ensure that any new development is small-scale, responding to historic settlement patterns, landscape setting..." (page 95).

523. Mr Holliday notes that the area has a "low to moderate sensitivity to change overall" (2/POE paragraph 6.10) and that the Suggested Land Management Guidelines recommend conserving and enhancing the hedgerow pattern. He again identifies that the schemes include green infrastructure proposals, which he describes as "these benefits", but the effects of "these benefits" will be contained within a localised area, such that the impact on this character area is negligible.

524. In the first place, SPMRG submit that the benefit of retaining the hedges onsite can only be minimal where they are either contained within a housing development (as can be seen on the Green Infrastructure plan for the 140

scheme), or where they merely form the perimeter for the development. This is because, it is submitted, the hedges are mentioned in the landscape character assessments under discussion in the context of rural arable farmland, of fields divided and subdivided by hedge structure: the loss of that context of the open arable fields makes the mere retention of the hedges somewhat pointless.

525. Secondly, SPMRG again suggest that Mr Holliday has not included in his analysis other aspects of the schemes which do not comply with the Suggested Landscape Guidelines, namely the "small-scale" development or "responding to historic settlement patterns". A development of 80 or 140 houses would be a significant expansion in Hatfield Peverel, a village of 1,815 households. It should also be borne in mind that the emerging NDP policy HO1 provides that "development on unallocated sites should be for small numbers of houses of up to 30 dwellings".
526. Moreover, as suggested to Mr Holliday in cross-examination, developing Stone Path Meadow for housing would not respond to the historic settlement pattern. This is visible in the series of maps dating from 1777 which are appended to Mr Handcock's proof of evidence (3/APP Appendix A2). It is submitted that it is clear from these maps that the historic development pattern of the settlement was to fill out a linear settlement along the Street, heading north and east of Church Road and coalescing in a relatively tight knot around a centre focused on the Street, north of Church Road and around the Strutton Memorial Ground. The development of the significant Stone Path Meadow site would constitute, it is submitted, a departure from that pattern, as well as detrimental impact on the landscape character of the site and its surrounding area.
527. Again, SPMRG submit that, contrary to Mr Holliday's assessment of the impact of the site's development on this character area as "negligible", there would be a significant and detrimental impact on this portion of the landscape character area, as described in the Braintree Landscape Character Assessment.
528. In terms of the site-specific assessments (Hatfield Peverel Local Land Character Assessment (CD28.3, set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B), Mr Holliday considers that there would be a medium/high magnitude of change "given the adjacent settlement context of the site" (2/POE paragraph 6.17). It is submitted that the fact that Stone Path Meadow forms the rural setting to Hatfield Peverel does not lessen the magnitude of change on the site from its proper classification as "high"; indeed, if anything, it should increase the significance of this change. Further, it is submitted that Mr Holliday's characterisation of the site as "a relatively small area of agricultural land... characterised by the existing open settlement edge" overstates the matter. Stone Path Drive is formed of low, modest houses, set back beyond a road and pavement and partially screened by trees and hedges on the edge of Stone Path Meadow and by the properties' own hedges. It is submitted that a far greater influence on the character of the site is the rural nature of the land surrounding three sides of it and the rolling views visible from the footpath.
529. Mr Holliday's assessment is that the landscape effect upon the local landscape character of the site and surrounding area would be "Moderate Adverse" at Year 1 and "Minor/Moderate Adverse" at Year 10 (2/POE paragraph 6.18). In cross-examination, Mr Holliday agreed that the appropriate comparison for identifying the impact is between what the site looks like "now" and at Year 1, and between

the site "now" and at Year 10: it is not a question of becoming accustomed to the development or "time easing the pain". He also explained that his reason for judging that the impact reduces to Minor/Moderate is the "settling in" effect as the planting infrastructure matures and the colours of the buildings "settle down".

530. In the first place, SPMRG submits, however, that the appropriate landscape impact would be "Major Adverse", for the reasons set out above about the scale and nature of the impact that development would cause. Secondly, it is submitted that the mere growth of plants and the mellowing of buildings is not sufficient for a comparison between the site as it is now and the site at Year 10 to have decreased in magnitude as suggested by Mr Holliday: there would be an undeniable magnitude of change caused by this development which cannot justify a conclusion of reducing "Moderate Adverse" to "Minor/Moderate Adverse". It is therefore submitted that the impact would remain at "Major Adverse" for Year 1 and Year 10.
531. SPMRG therefore submits that there would be a much greater impact on the landscape character of the area and this specific site, as described by these assessments, than Mr Holliday allows in his analysis.
532. Inspector Parker took the correct approach to assessing landscape character impact in his Decision Letter of 24th July 2017 (CD32.6 set C), particularly paragraphs 19 and 25-27:

"19. The proposed scheme would see the complete redevelopment of the appeal site. Its intrinsically rural farmland character, abutting the established settlement, would therefore be altered into a purposely laid out housing development. The result would be a development that would visually jar with the existing settlement given that the field forms a distinct separation between the built-up areas of the settlement to the north and east and the countryside lying to the south and west of the appeal site. Whilst I note that various landscaping schemes could be employed to reduce this impact, given that only one side of the site is currently bounded by any significant built form, the fundamental character of this agricultural field, and its contribution to the intrinsic beauty of the countryside, would detrimentally change.

25. Returning to character and appearance more widely, my concerns are further reinforced when one considers the Landscape and Visual Impact Assessment (LVIA) submitted by the appellant, which found that the proposal would result in a 'minor-moderate adverse' effect, and that there would specifically be a long term 'moderate effect' on users of the PROW (FP43). There is an existing mature landscape structure along many of the boundaries to the site which provides an element of containment for any development within the field.

26. Nevertheless, the landscape harm here would be through the erosion of the distinctive landscape of the area, including the loss of the tranquil farmland scene. The Local Landscape Character Assessment undertaken by Landscape Partnership in October 2015 found that 'the peaceful and rural qualities of the valley landscape provides a green corridor'. From this, the Parish Council developed emerging Policy HPE6 of the NP, which seeks to 'protect the landscape setting of the village through the preservation and enhancement of views...any proposed development...must ensure key features can continue to be enjoyed including...open agricultural countryside'.

27. The sense of tranquillity both visually and aurally - which is important in the settlement owing to the noise and bustle created by the A12 - would be detrimentally eroded, with the open footpath bounded on one side by a large housing estate. In this respect, I concur with the findings of the LVIA which identified a moderate adverse effect on the PROW and its users. For similar reasons, I also find that the proposal would result in moderate harm in landscape terms."

533. This approach is commended to the Secretary of State. SPMRG note that the Secretary of State did not agree that this particular element of Inspector Parker's decision was flawed and so, whilst the decision itself was quashed in its entirety, SPMRG do not accept that this aspect of his analysis is wrong in law or policy. The Secretary of State could (and SPMRG submit that he should) lawfully come to the same conclusion as Inspector Parker in respect of landscape harm.

534. SPMRG therefore submit that policies RLP80 and CS8 would be breached, in that there would be unacceptable landscape character impact and the development would not integrate into the landscape. Further, these breaches should be given significant weight. Emerging policy LPP71 would also be breached, which is relevant when considering the tilted balance below.

Heritage: Policies RLP100 and CS9

535. SPMRG's case is that policies RLP100 and CS9 are engaged and would be breached if development were to be permitted. In respect of CS9 this would be because there would be a failure to "protect[] and enhance[...] the historic environment in order to respect and respond to the local context, especially in the District's historic villages, where development affects the setting of historic or important buildings...". In respect of RLP100, the breach would be because there would be a failure to "preserve and enhance the settings of listed buildings by appropriate control over the development, design and use of adjoining land".

536. In this context SPMRG note that in determining the Steeple Bumpstead appeal, the Inspector said:

"...although RLP100 mostly refers to alterations, extensions and changes of use to listed buildings, it does include reference to their settings. It specifies that the Council will preserve and enhance the settings of listed buildings by appropriate control over development design and use of adjoining land. It is therefore relevant" (paragraph 29, CD32.10 set C)

537. LPP60 in the emerging Local Plan, Section 2 similarly provides that the Council will seek "to preserve and enhance the immediate settings of heritage assets by appropriate control over the development, design and use of adjoining land". Emerging policy HPE8 in the NDP requires "respect the [heritage asset(s) in the Parish] ... and to ensure that no harm comes to them as a result of their plans. This will include the setting of the asset." These emerging policies would be breached in the same way as RLP100 and CS9 above.

Hatfield Place

538. As explained by Mrs Freeman in her written and oral evidence, Hatfield Place is of great significance to the residents of Hatfield Peverel and locals in the area: this significance draws heavily on Stone Path Meadow as part of the setting of

Hatfield Place. Her evidence addressed the longstanding historic and social links between Stone Path Meadow and Hatfield Place, and particularly the ancient link between the two provided by the footpath, Public Right of Way (PROW) 43, as first marked on the Tithe Map of 1841 (F21c). She explained how these historic and social links find their expression in local lore and stories told by residents and locals about Stone Path Meadow, the owners of Hatfield Place and events that took place on Stone Path Meadow.

539. Mrs Freeman described in detail the experience of walking along PROW 43 towards the asset and the building anticipation as one journeys along the footpath, waiting for Hatfield Place to emerge amongst the trees, the "jewel in the crown of Hatfield Peverel", as she called it. It is submitted that this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance.
540. The historic maps appended to Mr Handcock's evidence (3/APP) also provided proof of longstanding links of ownership between Hatfield Place and Stone Path Meadow. As discussed with Mr Handcock in cross-examination, much of the site for both the 80 scheme and the 140 scheme was in the ownership of Hatfield Place for significant periods since the construction of the house in the late 1700s. The evidence also suggests that Stone Path Meadow has been in use as agricultural land for most of that period.
541. Mr Handcock agreed that there were functional and economic links between Stone Path Meadow and Hatfield Place, notwithstanding the fact that the land had never been included as part of the house's ceremonial formal pleasure gardens. Hatfield Place may not have been, as explained in detail by Mr Handcock, a "country house" set in acres of parkland like Boreham House, nor was Stone Path Meadow part of Hatfield Place's pleasure gardens or crafted views: Stone Path Meadow was therefore not significant in understanding that particular aspect of Hatfield Place. Nevertheless, it is submitted that it is not appropriate to ignore any other types or manifestations of significance that the setting of Hatfield Place might make to the asset. SPMRG therefore submits, contrary to Mr Handcock's assessment, that these more practical links between land and house - of ownership, economic and functional reliance - are of value in understanding Hatfield Place's heritage significance and place in the landscape.
542. A further contribution of Stone Path Meadow to the significance and understanding of Hatfield Place is its intrinsically rural, open nature. In the first place, as noted by Historic England, this open, undeveloped space contributes to the physical division between Hatfield Peverel and Hatfield Place and, consequently, to an appropriate understanding of Hatfield Place as a separate residence of greater wealth, social status and significance from houses in Hatfield Peverel (CD4.5b set B and CD27.4 set C).
543. Again, notwithstanding Mr Handcock's assessment of Hatfield Place as an "edge of settlement" residence which is within the experiential orbit of Hatfield Peverel, it is clear from an examination of the historic maps provided (3/APP Appendix A2) that Hatfield Place has always been demonstrably and clearly separate from the village itself, from the 1777 map to the most recent OS map of 2002. Whilst the land to the north of the Street has been heavily developed in the centuries since Hatfield Place's construction, it is obvious from these maps the land to its east and south has remained undeveloped, save for the sole

incursion into that open space of allotments, followed by the anomalous development of Stone Path Drive. This, in Mrs Freeman's words, is a "neat and discrete development that nestles unobtrusively in the landscape" and, it is submitted, most unlike the present applications, which jut out strongly into historically undeveloped countryside.

544. Further, the fact that Stone Path Meadow, the "Blue Land" and the land which became Stone Path Drive, has been in the ownership of Hatfield Place for much of the house's history and yet remained undeveloped (until the late 1980s in the case of Stone Path Drive) strongly suggests that this separation from the village was preserved by the owners of Hatfield Place. SPMRG submits that it is plain that Stone Path Meadow makes a significant contribution to the significance of Hatfield Place in this regard.
545. Secondly, it is submitted that the mere fact that the land has remained undeveloped and in agricultural use ever since the house's construction is of significance. Historic England's "Setting of Heritage Assets" guidance notes that where part of an asset's setting remains as it was when the asset was constructed, this can create significance (page 4 onwards, CD27.3 set C). Further, whether this is a deliberate preservation or is simply "fortuitous" is not relevant: it is the fact that the land has remained as it has always been which is of importance. It is submitted that, here, the fact that Stone Path Meadow has never been developed and remains in its historic agricultural use means that, as part of the setting of Hatfield Place, it contributes to the significance of that asset. This land provides a fast-narrowing window onto the surroundings of Hatfield Place as they have always been. Even if the land had never been owned by Hatfield Place, therefore, it is submitted that this would be significant to its setting. The fact that the land has been owned by Hatfield Place, and that it contributed to the financial maintenance of Hatfield Place through its functional, agricultural links with the house, only increase that contribution of significance.
546. Thirdly, it is submitted that the contribution made by Stone Path Meadow to the significance of the asset has increased over the 20th century, with the rapid advance of modernity on Hatfield Place. It is acknowledged in the Historic England guidance that the contribution made by setting to an asset may change over time (page 2, CD27.3 set C). As Hatfield Peverel has expanded over the centuries, as development to the north of the Street and along Church Road has intensified and, particularly, once Stone Path Drive was built, there has been an inevitable build-up of pressure on the remaining undeveloped rural land surrounding Hatfield Place, protecting it from the encroaches of suburbia and modernity. Stone Path Meadow plays a vital role in relieving that pressure, ensuring that Hatfield Place remains aloof from Hatfield Peverel, and providing a source of tranquillity in strong contrast to the A12 road to the immediate north.
547. It is SPMRG's case that the links and contributions described above between Stone Path Meadow and Hatfield Place mean that Stone Path Meadow contributes heavily to the significance of Hatfield Place as a Grade II* Listed Building - both in terms of when it was built and in its modern context. It therefore follows inevitably that the development of the site for housing (whether under the 80 or the 140 scheme) and the intrinsic destruction of its open, rural nature would result in the destruction of those links and the consequential damage to the significance of Hatfield Place.

548. In terms of the mitigation offered by GDL, as explained by Mrs Freeman in her evidence, the mere preservation of the footpath route through a housing development would not prevent a severely detrimental impact on the experience of journeying along the footpath. Further, it is submitted that the new planting proposed will not mitigate in any way the kind of impacts described above.
549. The recent case of *Steer v SSCLG* [2017] EWHC 1456 is of relevance to a proper assessment of Mrs Freeman's evidence on the experiential significance of the site to Hatfield Place. In this case, the High Court held that an inspector had erred by failing to consider that the existence of a historical, social and economic connection between a Grade 1 listed asset and agricultural land between 550m and 850m outside the boundary of its Park could bring that land within the setting of the heritage asset and could contribute to its significance. In particular, the Court considered at [69] that "the Inspector adopted an artificially narrow approach to the issue of setting which treated visual connection as essential and determinative".
550. SPMRG therefore submits that the contribution of Stone Path Meadow described by Mrs Freeman to the significance of Hatfield Place, and in particular the experiential element of that contribution, is sufficient to base a finding of heritage harm, even if no visual links could be identified between the site and the asset.
551. Further and in addition to the impact on Hatfield Place already set out above, there would be also a visual impact on Hatfield Place in that there would be clear inter-visibility between the site and the asset during the winter and early spring months when there are no leaves on the trees, and potential co-visibility of both schemes throughout the year.
552. It is clear from photographs provided at Mr Handcock's 3/APP, Appendix A.4, CD 27.5, set C and Mrs Freeman's proof that during the winter months, when the trees bordering Hatfield Place have lost their leaves, there is clear inter-visibility between the sites of both the 80 scheme and the 140 scheme and the heritage asset. Mr Handcock agreed in respect of his photograph from the point marked as A.4.11 (Appendix A4) that there is inter-visibility between the 80 scheme and the asset, and that even one-storey buildings would be visible from Hatfield Place, particularly from the higher-level windows.
553. Further, the photographs at F28B clearly demonstrate, as Mrs Freeman explained, the "extent of the intrusion and encroachment into the setting of Hatfield Place" that the 140 scheme would represent. This greater degree of inter-visibility of the 140 scheme is supported by the photo montages provided by Icen Heritage at Viewpoints 3A and 3B of Figure 4, which make it plain that the development would be visible from the grounds of Hatfield Place (CD27.5 set C). SPMRG does not accept Mr Handcock's characterisation of this as "heavily filtered and difficult to appreciate" (3/POE paragraph 5.48) and submits that the inter-visibility would be far more significant than this, as the Inspector will have seen on his site visit.
554. It is submitted that inter-visibility of suburban development would impact detrimentally on the significance of Hatfield Place by visually undermining the separation between village and house and introducing a discordant element of modernity detracting from the pleasant and rural setting of Hatfield Place to its south and southwest. Historic England also noted in its letter of 6th February

2017 (CD4.5b set B) that this inter-visibility would detract from Hatfield Place's significance.

555. SPMRG note that Historic England is a statutory consultee and "a decision-maker should give the views of statutory consultees... 'great' or 'considerable' weight. A departure from those views requires 'cogent and compelling reasons'" (*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) at 72). The views expressed in Historic England's letters of 6th February 2017 should therefore be given significant weight.

556. In terms of co-visibility, SPMRG relies on the photograph taken by Mr John Warrant from PROW90-13 to the south-west of Hatfield Place (page 7, RG2). It was Mrs Freeman's evidence that both the 140 scheme and the 80 scheme would be visible from this point (she pointed out that "no one has yet invented an invisible house"). This evidence was not challenged by Mr Handcock (although he disagreed with the significance to be attributed to co-visibility).

557. As Mr Handcock explained in cross-examination, in this photograph Hatfield Place has a commanding position of its views across the valley and "appreciating it topographically in this way creates the impression that it has greater isolation from the village than is actually the case". Further Mr Handcock's own analysis of Hatfield Place's significance draws heavily on the views of its immediate pleasure grounds and the way in which longer views across the valley to its south and south-west have been designed to create an impression that the house has a far larger landholding than is the case. It is submitted that views back along the same axis also contribute to an understanding of Hatfield Place's significance and separation from the village.

558. It is therefore submitted that co-visibility of the development with Hatfield Place from this viewpoint would detract from the significance of Hatfield Place: it would represent a significant visual incursion into the setting of Hatfield Place and significant dilution of its separation from Hatfield Peverel.

559. It is therefore submitted that harm would be caused to Hatfield Place by either scheme: this harm would be "less than substantial" and Framework 134 would apply. On the spectrum of harm within the "less than substantial" category the 140 scheme harm would be moderate to high while that of the 80 scheme would be low to moderate given its reduced incursion into the setting of Hatfield Place and reduced visual impact compared with the 140 scheme.

William B. Public House

560. It is not part of SPMRG's case that there would be harm caused to the William B Public House by the appeal scheme.

Conclusions on Heritage Policies

561. Policies RLP100 and CS9 would therefore be breached should planning permission be granted for either development, given the harm that would be caused to heritage assets by development of a part of their rural setting. The breach would be more significant in terms of the 140 scheme, given that the William B. would be affected as well as Hatfield Place.

562. In terms of the weight to be given to those breaches, SPMRG submit that the weight should be significant. In the very recent planning appeal in Land off

Finchingfield Road, Steeple Bumpstead (paragraph 29, CD.32.10 set C), an Inspector addressed the same policy context and the same policies in discussing the impact that a residential development would have on the setting of a Grade I listed church. The Inspector found that:

CS Policy 9 and saved LP policies RLP 90... and RLP 100 all seek to conserve local features of architectural, historic and landscape importance, including the setting of listed buildings... Whilst these policies do not contain the balancing requirement of the Framework contained in paragraph 134 they reflect the statutory test and therefore, unlike my colleague in the Silver End case, I consider that they should be afforded considerable weight.

563. Policies RLP100 and CS9 are therefore both relevant and would be breached by both development proposals. These breaches should be given considerable weight, as they were in the recent Land off Finchingfield Road case. Emerging Policies LPP60 and HPE8 would also be breached, which is of relevance to the tilted balance analysis.

Infrastructure: Policy CS11

564. Policy CS11 relates to the Council's duty to ensure that "infrastructure services and facilities required to provide for the future needs of the community... are delivered in a timely, efficient and effective manner". Emerging NDP policy F13 regarding "Education and Health Infrastructure" is also engaged: it provides that the "loss or degradation of education or healthcare services will be resisted", which is relevant given that the capacity of Hatfield Peverel's current educational and health facilities would be exceeded by either the 80 or the 140 scheme.

565. Cllr Renow gave evidence on behalf of HPPC in respect of the impact on infrastructure and community services, in particular on health services, education and traffic. As explained above (paragraph 23) Mr Boyd Ratcliff, Cllr Lewis and Cllr Bebb were not called to give oral evidence. It was made clear, however, that SPMRG continues to rely on their written evidence, although untested in cross-examination.

566. In respect of the impact on Hatfield Peverel's schools, the reasons why Essex County Council has not asked GDL for the original significant contributions to primary school places mentioned in its initial correspondence were made clear at Inquiry (CD 3.6 & CD3.7 set A, CD4.6 & CD4.9 set B). Mr Lee accepted in cross-examination that there was nothing in the Education Statement of Common Ground (ID8) to suggest that Essex County Council no longer needed the money or would not seek a contribution if able to. He also accepted that the cumulative impact of the four development sites mentioned in the letter to Priti Patel MP (Appendix 8 to ID8) would mean that there would be an estimated 81 children for whom there would be no school places in Hatfield Peverel.

567. Evidence emerged at Inquiry that there are no concrete local plans for expanding education capacity in the area. The Lodge Farm school discussed by Cllr Renow and Mr Lee is clearly at a very early stage and, in any event, is clearly intended to provide capacity for that development and the other significant development taking place in Witham: relying on such putative projects to mitigate the impact on Hatfield Peverel is speculative at best.

568. It was suggested to Mr Lee in cross-examination that, given there would be a cumulative impact as a result of the Stone Path Meadow schemes and that GDL was not making any financial contribution to ease the situation, it would be more accurate and credible to acknowledge that either scheme would contribute to a negative impact on education provision which should be weighed in the planning balance, even if GDL was unable to mitigate that impact. He agreed that there would be a "short term impact" on Hatfield Peverel schools, although he suggested that Hatfield Peverel-based pupils could attend unidentified schools in Witham (notwithstanding his own point that 35% of children in Hatfield Peverel schools live in other areas such as Witham), and agreed that this fact should be weighed in the planning balance (although he only suggested it should be given limited weight).
569. SPMRG submit that it is clear that, cumulatively, the 80 scheme or the 140 scheme would exceed the capacity of Hatfield Peverel's schools and this would constitute a planning harm, as per the evidence of Cllr Renow and the written evidence of Cllr Louis (on behalf of SPMRG). This impact engages CS11, as it is clear that the necessary facilities for the children of Hatfield Peverel are not being planned for in an efficient and timely manner. Mr Lee suggested that because Essex County Council and the Council have "worked with" GDL and will work with other developers in respect of other proposals, there is no conflict with CS11 overall. SPMRG does not accept this: part of the cumulative impact on education provision springs from this development, so the failure of this development to contribute in any way to ease the situation must mean that there is conflict with CS11.
570. In respect of the impact to local GP services, Cllr Renow's evidence was clear that there is no physical capacity to expand at either the Laurels or Sydney House practices: they are "landlocked". SPMRG's case is that the financial contribution of £52,992 will do nothing to ease the actual and significant problems experienced by the Hatfield Peverel services: namely, lack of funding, lack of staff and patient numbers which exceed suggested safe practice. Cllr Bebb's written evidence and the Practice Manager's letter (CD20.1 set C) make clear the deeply felt frustrations and concerns of both the community and the medical staff.
571. Again, SPMRG submit that although GDL are paying the contribution requested, given that this will not address the actual issues, a negative impact will nevertheless result from either the 80 scheme or the 140 scheme which constitutes a planning harm and engages CS11. It does not matter that GDL are unable to do anything further to mitigate the issue: there is still a negative impact and it would be wrong to ignore it and the residents' deep concerns.
572. SPMRG therefore submit that CS11 is engaged and breached: community services will be negatively impacted by further development in the village and the actual impact is not being effectively mitigated. In the alternative, should these impacts on community services not be found to constitute a breach of CS11, they should be considered as standalone considerations in the planning balance (as accepted by Mr Lee in respect of the impact to education services).

Conclusions on Development Plan Policies

573. SPMRG therefore submit that both proposals breach the adopted development plan and the seven specific policies identified above. These policies should be

given their full weight as adopted development plan policies on a proper application of Framework paragraph 215.

Part two:

574. 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.

575. 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.

Does the Fourth Bullet Point Apply?

Five Year Land Supply

576. 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.

577. 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

578. 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.

579. 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 Sedgfield 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.

580. 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 Sedgfield 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).

581. 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.

582. 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.
583. 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

584. 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.
585. 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.
586. 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.
587. 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.

588. 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."
589. 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

590. 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.
591. 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.
592. SPMRG makes the following submissions in response to the Statement of Common Ground between GDL, DWH and the Council (ID39).
593. 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.
594. The figure for Sorrells Field was adjusted down from 52 dwellings to 50 on the understanding that the application was being revised down to 50 units.
595. Contrary to the penultimate paragraph of the SOCG, the Gimsoms 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".
596. 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).

Is the Core Strategy and Local Plan Review otherwise out of date, absent or silent?

597. GDL have suggested that the adopted development plan is silent because of the lack of a Site Allocations Development Plan Document: it is suggested that this means that the development plan is silent on where to locate development outside the strategic areas.

598. SPMRG disagrees that the development plan is either "silent" or "absent" for the purposes of Framework paragraph 14. The relevant question is whether there are adopted policies which enable a decision-maker to determine whether or not to grant permission, as per the test set out in *Bloor Homes East Midlands Ltd v SSCLG & Or [2014] EWHC 754*. The Court held that:

50. ...I do not think a plan can be regarded as "silent" if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle.

51. A plan may or may not be "silent" if it does not allocate the particular site in question for a particular use, whether on its own or as part of a larger area, or if it does not contain policy designed to guide or limit or prevent development of one kind or another on that site or in that location. In Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 , para 18 Lord Reed JSC observed that the development plan is "a carefully crafted and considered statement of policy", whose purpose is to show how the local planning authority will approach its decisions on proposals for development unless there is a good reason not to do so. This is an essential principle of the plan-led system.

599. It is submitted that the CS and the LPR plainly contain numerous policies which show how the Council will approach a decision on a proposal for development on Stone Path Meadow. It is submitted that it is irrelevant, therefore, that there is no adopted Site Allocations Policy document allocating land for development. Further, SPMRG note that, even if such a document existed in adopted form, it would not include this site for allocation, as set out in detail in the Statement of Case (paragraphs 83-86).

600. Further, in the light of *Gladman Developments Limited v Daventry District Council [2016] EWCA Civ 1146 (F6f)*, it is submitted that the development plan policies' relative age is irrelevant to their weight in the planning balance, given their overall consistency with the Framework.

601. SPMRG therefore submits that the development plan is neither out-of-date in the relevant sense, nor absent nor silent in respect of policies relevant to this site.

Limb 2 of Framework paragraph 14: Restrictive Footnote 9 Policies

602. As set out under 'Heritage' above, SPMRG submit that the 140 scheme would cause moderate to high harm which is "less than substantial" under Framework paragraph 134 to Hatfield Place and low levels of "less than substantial" harm to

- the William B. The 80 scheme would also cause moderate to high levels of "less than substantial" harm to Hatfield Place.
603. Applying the appropriate unweighted balance under Limb 2 of Framework paragraph 14 in respect of restricted policies, it is submitted that the heritage harm caused by either the 140 and the 80 scheme is not outweighed by the benefits of the relevant scheme when the heritage harm is given the appropriate "considerable importance and weight" under the duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding the desirability of preserving the settings of listed buildings (paragraph 38, CD31.5 set C).
604. Further, Framework paragraph 132 makes it clear that "As heritage assets are irreplaceable, any harm of loss should require clear and convincing justification". SPMRG submits that none of the public benefits of either the 140 or the 80 scheme provide the necessary justification for harming Hatfield Place, highly valued by residents, or the William B (in respect of the 140 scheme alone).
605. In terms of the weight to be given to the benefit of housing: on SPMRG's primary case there is a 5YLS surplus, such that the weight that can be given to the provision of housing is limited. Even if there is a 5YLS deficit, the provision of either 80 or 140 dwellings should nevertheless be given no more than moderate weight in the circumstances of this particular District and the steps being taken by the Council to remedy the deficit, as set out above. Moreover, as submitted in Opening (paragraphs 10 to 11, ID6), the significant amount of development planned for Hatfield Peverel must reduce the weight that can be given to this proposal. The provision of housing alone cannot outweigh the permanent harm to irreplaceable heritage assets.
606. In terms of the economic benefits of construction jobs and residents' spend cited by GDL, it is submitted that such results would flow from any housing development and do not provide specific justification for the proposed development on this site.
607. Regarding the Blue Land public open space, SPMRG does not accept that this is as significant a benefit or as effective a piece of mitigation in terms of landscape and visual impact, heritage, ecological or biodiversity matters as has been suggested. In the first place, the Blue Land is clearly inferior in landscaping and visual terms to Stone Path Meadow: the views from the southern portion of the Blue Land (near the detention basin) are inferior to those from the top of Stone Path Meadow and non-existent from the Blue Land adjacent to The Street. The Blue Land adjacent to The Street is markedly less tranquil than the site itself, which undermines suggestions that this land would be suitable ecological mitigation and also the value to be derived from this land in landscape character terms and in its use by the public.
608. In heritage terms, as discussed with Mr Handcock in cross examination, it is submitted that preserving the Blue Land as open space is an empty gesture as mitigation for the heritage harms, given that development on the Blue Land would have such a noticeable impact on the setting of Hatfield Place and the William B that it is not likely to be developed on heritage grounds.
609. In terms of the Blue Land's improving the ecology and biodiversity of the area, it is not accepted by SPMRG that any wildlife benefits will be realised: the Blue

Land is to be heavily used by dog walkers and members of the public; much of the Blue Land is located very close to The Street and the A12; and there will be a significant increase in human presence and disturbance caused by the housing development, as per the evidence of Mr East in examination in chief and cross-examination.

610. Finally, it was suggested that the Blue Land could be ploughed up at any moment, such that ensuring its continuation as meadowland constitutes a benefit. This alleged risk, however, is pure speculation. Mr East's unchallenged evidence was that the land has not been ploughed at any point over the last two decades and does not seem likely to be ploughed up given its size and difficult access points. SPMRG also notes Inspector Parker's conclusion in respect of the Blue Land offered with the original 80 scheme: "as this land is sought to mitigate an impact arising from the development, it cannot be considered to also be a benefit" (paragraph 47, CD32.6 set C). If any weight at all to be attributed to the public benefits of the Blue Land, it clearly must be no more than very limited.
611. Similarly in respect of the children's play area and wider biodiversity benefits from increased planting, these are benefits commonly attached to housing developments, provide no specific justification for this harm and, in any event, must be balanced against the inevitable loss of open greenfield agricultural land. The alleged wider social benefits of additional residents in Hatfield Peverel must also be balanced against the impact on community services and infrastructure set out above. Finally, the minor and cosmetic benefits offered such as bus stop improvements, allotments and sporting facilities contributions do not constitute benefits capable of providing "clear and convincing justification" for causing irreversible heritage harms.
612. There is nothing special or specific whatsoever about developing Stone Path Meadow or these generic benefits that might flow from that development which warrants the harm described above to the highly valued heritage assets of Hatfield Place or the William B. The Finchingfield Inspector reached similar conclusions in that case (paragraphs 36 to 38, CD32.4 set C).
613. In respect of the 80 scheme, it is clear that moderate to high "less than substantial" heritage harm to the designated heritage asset of Hatfield Place is not outweighed by the scheme's public benefits.
614. On a proper application of Framework paragraph 134 therefore, Limb 2 of Framework paragraph 14 indicates that development should be restricted. Consequently, the presumption in favour of sustainable development is not available to either application through this route.
615. Should the Secretary of State disagree with this assessment, it would be necessary to apply the first Limb, or "the tilted balance", as is set out below.

Limb 1: the Tilted Balance:

616. Should the Secretary of State find, contrary to SPMRG's case, that the harm caused to the listed buildings is outweighed by the public benefits of the scheme, it is nevertheless submitted that the adverse impacts of granting either scheme permission outweigh the benefits of that scheme when judged against the policies of the Framework as a whole.

617. Even if these proposals are considered only in the context of the "tilted balance", this does no more and no less than apply a presumption in favour of sustainable development - defined in the Framework as consistency with the Framework itself.
618. As recognised by Lord Carnwath in the *Suffolk Coastal* decision, "The Framework itself ...is no more than "guidance" and as such a "material consideration" ...It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme" (paragraph 21, CD31.2 set C).
619. The benefits of the scheme have already been assessed in respect of the Limb 2 unweighted balance. The concerns raised above in relation to the conflict with development plan policies must therefore still be given significant weight in the assessment of the suitability of either of the proposed schemes.
620. In terms of the adverse impacts "assessed against the policies in this Framework taken as a whole", the harm in terms of the impact on heritage assets (which retains its "considerable weight" under the s.66 duty), the moderate landscape character and visual impact harm and the impact on local infrastructure have been set out above.
621. An additional, further source of harm is that caused by breaches of the emerging policies on development boundaries, heritage, landscape and visual impact, infrastructure and design of new developments in the NDP and BNLP Section 2 set out above; specifically policies HPE6, HPE8, F13, HO1, LPP 1, LPP 71 and LPP 60. Framework paragraph 216 provides that decision-takers may give weight to the policies in emerging plans according to the stage of preparation, the extent of unresolved objections and the degree of consistency between the emerging plan and NPPF policies.
622. SPMRG submits that moderate weight should be attributed to the breaches of emerging policies in the BNLP and the NDP. Significant amounts of work and consultation have been done on both plans - which have both been submitted for examination - and the policies are consistent with the Framework, as per the evidence of Ms Jarvis. SPMRG does not accept that the additional work suggested by the Examiner into the NDP warrants a conclusion that no or very limited weight can be given to the plan. First, as set out in HPPC's opening submissions, no substantive findings have been made on the NDP's ability to meet the basic conditions by Mrs O'Rourke (ID5). Secondly, any additional SEA or HRA work that needs to be done in respect of the Arla Dairy allocation will have no impact whatsoever on the policies relied on by SPMRG (in respect of landscape character, views, heritage, infrastructure or limits on unallocated housing developments).
623. To permit development on Stone Path Meadow in contravention of these emerging policies would constitute a planning harm in the context of a plan-led system, given the weight that may be attributed to these policies under Framework paragraph 216.
624. Taking these sources of harm together, it is submitted that they must significantly and demonstrably outweigh the benefits put forwards by GDL in respect of either the 80 or the 140 scheme, looking at the Framework as a whole.

The Framework does place significant emphasis on the need for housing, but this cannot constitute a silver bullet here given the scope and breadth of harm that would be caused by these proposals to a village which is already accommodating a significant amount of development.

Part 3: The Planning Balance

625. It is plain from the above submissions that, on SPMRG's primary case, the planning balance tips firmly against both applications given the harm identified from the breaches of seven separate adopted development plan policies, the harm caused to heritage assets, the presence of a 5YLS, the weight to be given to emerging BNLP and NDP policies and the limited weight to be afforded to the generic benefits offered by the proposals.

626. As previously submitted in the Statement of Case, there are no other material considerations sufficient to justify a decision other than in accordance with the adopted development plan, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004.

Conclusions

627. As set out in Opening, the residents who live in Hatfield Peverel attach real significance to this site. As was made abundantly clear throughout the Inquiry, they deeply care about the views, the wildlife, the landscape and the heritage connected with Stone Path Meadow and the surrounding area. They are also deeply concerned about the impact that this development will have on services in Hatfield Peverel and the local area: these cares and concerns are genuine and should be listened to.

628. It was also obvious throughout the Inquiry that localism is alive and well in Hatfield Peverel: the residents have clearly placed their trust in the principles of localism through their sustained and significant engagement with the emerging NDP. The development of this site would wholly undermine that engagement and the views and values expressed in the NDP.

629. SPMRG closes these submissions by repeating that these proposals are contrary to both adopted and emerging development plan policies; the Council has a 5YLS and the site is much loved and valued. Stone Path Meadow should be preserved for future generations to cherish. Neither proposal is acceptable in planning terms and the appeal in respect of the 80 scheme should be refused and the application in respect of the 140 scheme should be rejected.

The Case for Braintree District Council

Introduction

630. 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.

631. 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.

632. 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.

633. 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

634. 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.

635. 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.

636. 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.

637. 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.

638. 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.
639. 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.
640. 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

641. 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.
642. 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

643. 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.
644. 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.

645. 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.
646. 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.
647. 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

648. 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.
649. 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.
650. 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.

651. 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.

652. For those reasons a 5% buffer is appropriate. Mrs Hutchinson's evidence makes clear that Braintree has not persistently under-delivered.

Supply

653. There is (now) an immaterial difference, some 68 units, between GDL/DWH and the Council on the quantum of supply.

654. 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.

655. 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.

656. 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

657. 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

658. 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.
659. 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.
660. 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.
661. 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).
662. 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).
663. 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.
664. 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).

665. 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.
666. 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.
667. In terms of heritage policies - only relevant to the GDL 140-unit scheme because that is the only scheme for which any heritage harm is alleged by the Council - there is no basis for reducing the weight to the conflict with policy CS9 (and/or policy RLP100) on account of inconsistency with the Framework (the only basis on which any reduced weight is alleged by Mr Lee). The absence of the 'balancing exercise' is not by itself sufficient to render the policy inconsistent with the Framework - see *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) - and in any event the Council has applied it as if that balancing test was incorporated. This policy should attract considerable weight. This was the conclusion reached in the Coggeshall (at paragraph 92), Steeple Bumpstead (at paragraph 29), and Finchingfield (at paragraph 33) decisions.
668. That said, it is the Council's case that because there is some 'less than substantial harm' caused by the GDL 140-unit scheme to the two heritage assets, the 'balancing exercise' of weighing that harm (to which considerable weight should be afforded) against the public benefits of the scheme must be carried out. In this case those benefits are considerable. Most importantly is the substantial contribution of needed new housing to contribute to the District's supply, helping it to meet its needs arising in the next five years. The outcome of this balancing exercise does not require refusal of the scheme. The 'tilted balance' in Framework paragraph 14 is therefore engaged. There is no impermissible 'double counting' of either harms or benefits in this approach which is, in any event, effectively prescribed by recent case law. Both the benefits and

the heritage harm are re-weighed in this overall balance, notwithstanding that they have already been weighed against one another in the Framework paragraph 134 balance.

669. 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.

670. 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.

671. 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

672. 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.

673. 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

674. The conclusions reached by the Officer's Reports in respect of each scheme are sound and should in effect be confirmed.

The Case for the Interested Person

675. **Kenneth Earney** spoke in relation to the footpath crossing the site and asked whether the historic line of the path would be preserved and if the stones would be lifted and set into the new pathway. 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 who made representations in respect of the DWH Gleneagles Way scheme only.

Written Representations

676. At application stage the Council received objections from 102 residential addresses with more than one representation from some. The main material and non-material reasons for objection are summarised in the report to Committee (CD5.1, set A). The main headings under which they are grouped are infrastructure in the area to sustain further development; highway/access problems; impact on wildlife/ecology/landscape; alternative sites; and general points. Most, if not all, of these issues have been raised by either or both HPPC and SPMRG in their evidence to the Inquiry.

677. A further nine representations were received by the Planning Inspectorate. These generally refer to both this scheme and the larger scheme on the same site that is subject of a separate report. No new issues are raised.

Conditions and Obligations

678. These were discussed at a round table session on the final sitting day of the Inquiry.

Conditions

679. 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.

680. Conditions 1 to 5 inclusive are standard outline planning permission conditions which define the reserved matters that will be subject of further approval and ensure that these will be considered in the context of the green infrastructure plan and the development framework plan both of which have had an important influence on the assessment of the development in LVIA terms and which set out various mitigation measures.

681. 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. Condition 5 secures the access arrangements which are for approval now.

682. 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 restriction is necessary to integrate the current abrupt settlement edge into the setting of the village.

683. Conditions 8, 9 and 10 are required to ensure that in bringing forward the reserved matters applications the amenity of the future residents is protected and the development is landscaped in accordance with the parameters set out and maintained thereafter as specified.
684. 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 11 and 12 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 14) arises for the same reason.
685. 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 15 (contamination), 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 in the PPG
686. 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 a number of reviews of already submitted surveys if the development is delayed or suspended such that circumstances might have changed (conditions 25, 26 and 27). Condition 13 (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.
687. Conditions 28 to 31 secure a number of highway/transport matters that are designed to secure sustainable transport measures (conditions 28 and 29) or address highway safety issues that may otherwise arise from the development (condition 31). Condition 30 is a requirement of the highway authority and will, as I understand it, secure an upgrade of the surface of the PROW to allow, among other things, surface water drainage appropriate to a path running through a residential area.
688. Finally, 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.
689. 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.

690. Two other conditions were suggested by the Council and these are included within Annex C as conditions 32 and 33. 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.
691. Condition 32 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.
692. The Council explained that condition 33 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.
693. 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.

Obligations

694. A planning obligation in the form of a Unilateral Undertaking has been submitted by the landowners to the Council and ECC (ID57a and b). The first obligation was entered into on 17 May 2017 and the second is in the form of an addendum to it dated 12 January 2018. The May 2017 Obligation is appended to the latter Obligation for convenience. Both are signed by all parties and dated and are 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.
695. Together, the Obligations secure a number of matters through the schedules. These make provision either in the form of financial contributions or other mechanisms for ecological mitigation (schedule 2 addendum), progress of the development and payment of the education contribution (schedule 3 addendum), habitat, healthcare, allotments and outdoor sport contributions, open space works and transfer, blue land transfer and maintenance, affordable housing provision (schedule 2 May 2017), open space transfer (schedule 3 May 2017) and blue land transfer (schedule 4 May 2017). Schedule 1 in both is procedural and relates to the owner's title and site description.
696. The Council has submitted a statement of compliance with the CIL Regulations (ID28) setting out the policy justification for each of the obligations provided.

697. 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.
698. During the discussion SPMRG and, to a lesser extent, HPPC put forward a number of other matters which the local community would wish to see included in the agreement. Ms Osmund-Smith explains GDL's position on this [319 to 320] and I agree with her analysis.

Conclusions

Introduction

699. The reason the Secretary of State recovered the appeal for his own determination is set out above [5]. In short, this was so that he could consider the appeal and the called-in application on the same site at the same time.
700. The called-in application is the subject of a separate report. While that proposal is for a greater number of dwellings (140 rather than 80) and the developable area is consequently larger in extent, the considerations are the same. In my view, although on some of the considerations the harm caused by the appeal scheme is slightly less, the benefits (which are, in the main, driven by and proportionate to the dwellings to be provided) are also quantitatively and qualitatively smaller. In my judgement, there is no material difference between the schemes in terms of their mitigated impact.
701. Having come to the conclusion that I should recommend to the Secretary of State that the called-in application should be granted planning permission subject to conditions, I do not believe it would reasonable to come to the contrary view in relation to this appeal. That was the Council's conclusion as set out above [631].
702. Accordingly, the conclusions set out below are not materially different from those that I have come to in respect of the called-in application.
703. 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

704. This was the first reason for the application being called in by the Secretary of State [4]. It is also a material consideration in respect of this appeal. Save for one element, this was not really addressed by any party in the evidence.
705. Schedule 2 of the s106 obligation entered into in May 2017 by GDL (ID57a) 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.
706. 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 Green Infrastructure Plan

(ID1.6a) sets an important context for the development and is therefore secured by condition 4. The Design and Access Statement (CD1.5 set A) also establishes some important principles that will no doubt guide the Council's development management process at reserved matters stage. Although the evidence before the Inquiry is at that conceptual level there is no reason to believe that Ms Osmund-Smith's confidence [321] is misplaced.

The extent to which the proposed development is consistent with the development plan for the area

707. The appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. What are the main considerations upon which the decision should be based were set out in my first pre-Inquiry note (INSP1) and have been developed in the light of the written and oral evidence given.
708. However, before considering the appeal scheme against the policies of the adopted development plan I shall address the weight that I consider should be given to the emerging BNLP and NDP.
709. Turning first to the BNLP, the SOCG between GDL and HPPC records that the weight to be given to the emerging plan policies should be determined in accordance with Framework paragraph 216 (paragraph 4.3.9, SOCG 2). In closing submissions HPPC has revised its position and argues that the emerging BNLP can be given significant weight as it has progressed to examination stage [403]. That however is only one of the three considerations in Framework paragraph 216 that have to be taken into account.
710. The SOCG between GDL and SPMRG simply says that the appropriate weight should be given to the BNLP (paragraph 3.3.8, SOCG 4). That too has been refined by SPMRG in closing submissions to a position that moderate weight should be attributed to the breaches of emerging policies in the BNLP [622].
711. GDL and the Council agree that only limited weight should be given to the BNLP (paragraph 3.3.10, SOCG 1). That position had not changed by the close of the Inquiry [302]. 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 (SP 2, LPP 31, LPP 60 and LPP 71) referred to above [44 to 48].
712. The stage reached remains as set out above [43]. 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 the Council that only limited weight should be given to the BNLP.
713. The weight that should be given to the NDP is a matter of legal dispute between DWH [118 to 127] and GDL (adopting the DWH position [128]) and HPPC [414 to 434]. 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.

714. In my view, the position is actually quite straightforward. The NDP has been submitted for examination [49]. 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.
715. Both GDL and DWH have objected to the submission version of the NDP (CD33.2 set C and SAV50 and SAV52 respectively). Among the policies objected to are HPE1, HPE2, HPE6 and HPE8 [51 and 52]. 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. In my view, the information provided by HPPC after the Inquiry sessions had ended and closing submissions made [11] does not alter that position. 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?

716. The CS spatial strategy is set out in policy CS1 [38]. 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 [45]; Hatfield Peverel lies within that corridor.
717. 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.
718. 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).
719. 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 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.

720. 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.

721. I therefore agree with GDL that the development proposed would be in accordance with the spatial strategy [323]. There is no evidence to support the contention by HPPC that development in any settlement needs to be 'proportionate' [373]. 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 [378 and 379] 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?

722. These two development plan policies are summarised at [34] and [39] 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.

723. 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 GDL [280 and 332]. The point in issue is the weight that should be given to this conflict in the overall planning balance.

724. There are two aspects to this. First, whether the policy is inconsistent with the Framework; that argument applies only in respect of policy CS5 [287 to 291]. 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 [109, 110 and 284].

725. 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'.

726. 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).

727. 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.
728. 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 [665] three previous Inspectors have considered the same policy in relation to other 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.
729. 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 [110]. 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, GDL contends (by virtue of adopting the case of DWH [128]) and the Council accepts [657] 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 [114]. That is also the view of the Council and the reason for it with respect to policy RLP2 [662] and, by inference, policy CS5 [665].
730. That was also the view taken by the three Inspectors in the decisions referred to above [665]. 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.
731. For completeness, the wording of BNLP policy LPP 1 is set out above [45]. It is not materially different from policy CS5. For the reasons set out above [709 to 712] 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

Context-landscape character

732. In my view, it is necessary to take into account the context of the application site which lies on the edge of the settlement. The historic maps in Mr Handcock'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 until, 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.

733. Ms Osmund-Smith sets out GDL's note of an exchange between Mr Holliday and Ms Scott [147]. My note is not materially different. He confirmed his view that 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 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 development proposed would be no different.
734. 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.'
735. 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.
736. 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 much larger study area (HP2) to the west and south of the settlement.
737. The conclusion drawn for this broad area was that its landscape capacity to absorb development was low to medium (Table 4.1). Notwithstanding this general finding it noted that a certain amount of appropriately located and well-designed development may be acceptable even in a moderately sensitive and highly valued landscape. However, potential opportunities for accommodating new built development around Hatfield Peverel were considered to be limited (paragraph 4.5). It further stated a view that any necessary residential and employment development opportunities would need to be informed by more detailed studies and were likely to be along the eastern edges of the settlement or along the western edge but north of the A12 (paragraph 4.5). This document does not therefore provide a great deal of support for the development proposed although I note the appellant's view that it is out of date, not being based on GLVIA3 [150].
738. The Landscape Partnership prepared CD14.4 set B for the Council. This followed and built upon the earlier Chris Blandford Associates document (CD14.1) and has the same broad objective for Hatfield Peverel but at a finer grain of analysis. The appeal site is substantially the same as study area 2c. Arguably, it is a more detailed study of the type envisaged in CD14.1.

739. This parcel is assessed as having a medium landscape capacity to accommodate residential or commercial development. At this finer grain therefore the capacity of the landscape to accommodate development is considered to be slightly higher. Of the 23 parcels studied only one had a higher capacity rating and all but five others had a lower capacity. In context therefore if development areas were to be sought, it could be said that this would be one of the first to be looked to.
740. In detail, the relatively abrupt settlement edge is remarked upon (paragraph 4.20) while '...the good scope to provide mitigation to proposed development that is in keeping with the existing landscape pattern' is noted (paragraph 4.21). In the same paragraph it is suggested that development should be aligned with existing residential development areas to the north east of the parcel and comments upon the opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to the development fringes. These comments and others including the need to both protect public footpath routes and take the opportunity to incorporate open space into extensions to residential areas are set out in 'guidelines for development and mitigation measures' for this parcel later in the report.
741. 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 appeal site is within local landscape character area 2 – river Ter south – which is much more extensive than area 2c in the CD14.4 study.
742. 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.
743. Of relevance from the general commentary are the slopes that fall gently from Stone Path Drive in the north; the absence of vegetation to the Stone Path Drive development providing an uncharacteristic open edge between the village and the adjacent countryside; public access from Church Road to Hatfield Place; and views in and around the area being limited to those from footpaths and unenclosed sections of roads such as the open field boundary to the south of Stone Path Drive.
744. In my judgement, these studies establish an important context for an assessment of the effect of the development proposed on the character of the landscape. The study that is closest to the appeal site in terms of area (CD14.4, set B) is the most positive about the capacity of the local landscape to accommodate development subject, of course, to the suggested guidelines being followed. However, none of the other studies suggest that suitably designed development could not be accommodated.

The effect on landscape character

745. The appeal site is an area of agricultural land bounded by hedgerows and trees for the most part. However, along its boundary with Stone Path Drive it is

- largely open with the most visible feature being the chain link fence. Although there is a PROW across the land, several notices around the site boundaries make it perfectly clear that it is private land. Apart from enabling the public to walk through the site from Church Road and carry on towards The Street the appeal site has no other recreational value. At the time of my site inspection a dog was running free in what would become the area of public open space between the built development and the Stone Path Drive boundary. In exercising the dog the owner of the animal may, or may not, have been doing so with the permission of the landowner or, indeed, may have been the landowner. There is however no evidence that such activity is generally encouraged or even allowed.
746. The principal characteristic of the application site that is found elsewhere in the county (CD28.2 set C) and in the Farmland Plateau Landscapes - Boreham Farmland Plateau Landscape Character Area (CD14.5 set B) is the fact that it is a medium sized arable field marked by hedgerows, banks and ditches.
747. In my judgement, the application site has no particular landscape features of note. Its value is its openness as it is this that allows the views of the far more attractive landscape beyond to be appreciated. Having regard to the *Stroud* judgement (paragraphs 15 to 18, CD31.20 set C) the application site cannot be considered a valued landscape for the purposes of Framework paragraph 109 although it can be and clearly is valued by the local community. In coming to this view I have taken the 'subjective question of judgement' approach commended by Mr Graham [401].
748. Having considered the evidence of SPMRG and Mr Dale in particular I am not convinced that the local community values the site itself for its landscape quality in any event. Careful reading of Ms Scott's presentation of Mr Dale's written and oral evidence shows that it is the effect on the views across the site that is of most concern, not the effect on the landscape character of the site itself [508 to 510]. In his evidence Mr Dale emphasises that it is '...the longer or more distant view across the Chelmer vale that makes the landscape setting of the site significant to our community – unrivalled anywhere else in the parish'(RG3) (emphasis added). The development proposed would have no effect on that landscape setting since, as described by Mr Dale, the site does not form part of it.
749. Early in his cross examination by Ms Scott, Mr Holliday helpfully described GLVIA3 as an objective framework within which subjective judgements can be made. The applicant's LVIA has been prepared 'based upon' (paragraph 5.2, 2/POE) GLVIA3. As part of that framework a matrix is commonly used to assess the overall effect of a proposal in landscape character and visual impact terms. The terminology used for each element in the matrix (value, susceptibility to change, etc.) is defined (Appendix A, CD1.6 set A). Ultimately however the term chosen to reflect both the baseline position and the effect of the proposal upon it is a subjective judgement. It is unsurprising therefore that the appellant and the local community take a different view about the precise terms that should be used for both.
750. The LVIA takes into account the green infrastructure plan proposals (ID1.6a). These include a new woodland copse and woodland edge on the southern boundary of the site, some woodland edge planting on the western boundary of the developable area, meadow grassland in the blue land to the north and west

of the retained agricultural land and amenity/mown grassland and individual trees in the frontage open space area adjoining Stone Path Drive.

751. Self-evidently the development proposed would replace an area of agricultural landscape with a housing estate. Applying GLVIA3 analysis the appellant assesses the effect of the proposal at national, county and District level as 'negligible' at both years 1 and 10 (paragraphs 6.3, 6.7 and 6.11 respectively 2/POE). Given the imperceptible impact that the removal of this small parcel of a wide-spread landscape type would have at this spatial level that judgement must be right.
752. The proposals would create, in effect, a new settlement edge for this part of the village. That new edge would be set the depth of the appeal field further to the south. This new edge would be planted and, in landscape terms, would address and integrate the slightly abrupt urban edge as the various guidelines discussed above suggest should be achieved taking advantage of any development that takes place [740 to 743]. At paragraph 6.18 (2/POE) Mr Holliday judges the landscape effect on the very local landscape character as 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10.
753. Having regard to the definition of terms in the submitted LVIA (Appendix A, CD1. 6 set A) it would be possible to argue that the 'moderate' assessment at year 1 should be 'major'. However, since either would lead to some harm (which is acknowledged [176]) little is to be gained from pursuing this point, in my judgement.
754. Neither SPMRG nor HPPC has produced its own LVIA. Instead, both relied upon their cross examination of Mr Holliday to develop their case on landscape grounds. The Council officers assessed the application and commissioned independent advice [141 and 142].
755. On the totality of the evidence before me and on the basis of my visit to the site and the surrounding area, I see no reason to disagree with the appellant's assessment of the effect on landscape character.

The visual impact that the development would have

756. There are two aspects to this consideration; views across the site to the landscape beyond and views back towards the settlement edge from distance. Both aspects have been illustrated by photographs taken from representative viewpoints. The so-called photomontage (F16b) introduced by SPMRG has not been produced by the generally accepted methodology for such images and has not therefore been taken into account. The general point being illustrated is nevertheless appreciated.
757. Looking at the views across the site first, residents of the properties on Stone Path Drive and Church Road who have either a direct or an oblique view from their properties will experience a complete change to their view. Initially it will be of the new dwellings; later this view will be filtered as the planting on the edge of the development and within gardens begins to mature. Although the appellant puts the number of properties affected at no more than 20 or so (paragraph 7.2, 2/POE) it is nevertheless correct in my judgement to describe the impact as 'moderate/major adverse' at year 1 and 'moderate adverse' at year

10. It is not possible in my judgement to mitigate this effect in any meaningful way.
758. The view across the site to the south from both Stone Path Drive (looking across the chain link fence) and from footpath 43 as it crosses from Church Road to the point where it meets the edge of the Stone Path Drive development especially is that to the Baddow Ridge which Mr Dale explained is of particular value to the local community [749]. This view would also be replaced from these viewpoints by a view of the development. Again, I believe Mr Holliday is correct to categorise the effects as 'moderate/major adverse' at year 1 and 'moderate adverse' at year 10.
759. To some extent, this effect might be mitigated through the provision of the surfaced footpath around the edges of the development from where the view could still be obtained. On the southern edge the land is slightly lower however which would have an impact on a like-for-like replacement of the view. Of more concern would be the strength of the proposed woodland edge. The intention of this is to give effect to the guidelines referred to above [752]. A consequence of that however would be to block or at best filter any views available to the south. A careful balance would therefore need to be struck between these two potentially incompatible aims at reserved matters stage.
760. Although not strictly mitigation since it is unrelated to the development itself, I saw that a similar view to the south is also available from elsewhere on the southern edge of the village and, in particular, from footpath 90-7 which runs south from Church Road across the Ter valley to Mowden Hall Lane.
761. Other views across the site are available from The Street where footpath 43 meets it; from footpath 43 itself as it passes through what would become the blue land; from the William B car park; and, for pedestrians and other road users, from the highways immediately adjoining the site. In most cases, direct views across what would be the development in year 1 and the development filtered by structural framework landscaping as it matures in year 10 are limited to gaps, such as gateways, in the boundary and hedgerow planting that otherwise screens the view even in the winter months when I conducted my site visit. In addition such views are often transitory.
762. Generally, the effect from these viewpoints is assessed by Mr Holliday as 'minor/moderate adverse' at year 1 and 'minor adverse' at year 10; I consider that judgement fair.
763. Dealing briefly with the views back towards the settlement edge, these are very much influenced by the distance over which they are gained. Although the view on the ground is much clearer than that shown in the photographs (2/APP) it is nevertheless quite difficult to pick out the settlement edge from any of viewpoints 5, 6 and 10 to 14 (Figure 6, 2/APP). As can be seen from that Figure, woodland intervenes between the viewpoint and the settlement in some views. Indeed the photograph from viewpoint 14 is taken at one of the very few spots along that footpath where there is a gap in the planting alongside it.
764. The development would simply move the settlement edge slightly (at the distances involved) closer. The extent to which built development would be perceived would depend on the nature of the structural planting approved at reserved matters. In my judgement the change would generally be imperceptible

and the effects at either year 1 or year 10 negligible. There is the potential to soften the existing abrupt edge hereabouts and, to that limited extent, there would be an enhancement of the settlement edge.

Conclusion

765. An adverse effect equates, in my view, to harm. GDL acknowledge that [176]. That harm has to be seen in context however.
766. A small parcel of countryside landscape that has no distinctive features and therefore no inherent quality that is out of the ordinary would be replaced by a residential settlement edge landscape. Some of the studies discussed anticipate such a change and suggest guidelines that, if followed, would integrate that development into the local landscape.
767. In my judgement the green infrastructure plan that would be subject to a condition to ensure that the broad principles are carried through at reserved matters stage follows the guidelines established by the various landscape studies discussed above [735 to 741]. The development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape. It has been designed to retain existing features and proposes additional landscaping including planting of native species of trees and other flora to maintain and enhance these features. There would therefore be no conflict with the landscape elements of policy RLP 80.
768. 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 appellant 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. That is regarded as being out of date by GDL [737] and, in detail, 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.
769. Neither of these policies explicitly deal with the visual impact of proposed developments although these are the only two development plan policies that are referred to by the parties as being breached in respect of this overall consideration [see for example 505]. I have found that there would be harm caused by the development with respect to visual impact. To the extent that weight can be attached to the policies of the emerging NDP [715] 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 [157 to 162]. Mr Graham addresses this but mainly in the context of the DWH development [439 to 446]. This is 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 footpath 43 over a length of some 230m only [153]. While this harm needs to be weighed in the overall balance, it attracts limited weight in my view.

The effect of the development on the enjoyment of users of the public right of way crossing the application/appeal site

770. Although this is strictly an 'other material consideration' I shall address it here as it flows directly from the previous discussion and, to a degree, is relevant to the following discussion of heritage.
771. This consideration has been addressed by the parties principally from the perspective of the views across the landscape that footpath users enjoy. While that is part of the experience and has been addressed above [758 and 761] there are, in my view, other ways in which the experience of users of the path would change as a direct result of the development.
772. At present, the footpath is along a worn grass track through the fields. In places but off the track as now marked by usage what may be remnants of the stone path can be seen. To one side there are views of the Stone Path Drive development while to the other are views across the countryside. Even though it was very windy on the day of my site inspection, the sound of both traffic on the A12 and trains on the main line could be clearly heard above the sound of the wind. To describe the area as tranquil overstates it in my view. Nevertheless, on any measure the experience is one of a walk, albeit fairly short, through the countryside between two roads.
773. That would fundamentally change in my view. Although the path would be retained on its current line, from the Church Road end the first 200m or so would have an area of public open space to one side and housing to the other. While both the new housing and the existing development on Stone Path Drive would eventually be screened to a degree by the proposed planting, in my view the walk would be perceived as one that passes through a housing estate.
774. That perception would be reinforced by the presence of the proposed play area near Church Road, the surfacing of the path itself to accord with the Highway Authority's requirements [687] and the use that may be made of what would be an area of mown amenity grassland.
775. Moving further along towards The Street and beyond the developable area, the path would pass through what is proposed as the blue land. While this would be maintained as meadow grassland, GDL envisage this becoming a significant recreational resource for the village as a whole [for example, 179]. The nature of the use would therefore alter and the current experience would change.
776. Although clearly a matter of judgement, I consider that the experience of walkers along this relatively short length of PROW would be harmed by the development proposed.

The effect that the development would have on the significance of designated heritage assets

Introduction

777. Before turning to the substance of this consideration it is helpful first to review the development plan policies that SPMRG considers relevant and then to briefly consider the nature of the evidence presented. The heritage assets affected are then identified.

778. Dealing first with policy, Ms Osmund-Smith does not consider that policy RLP 100 can apply [293]. Neither do I [36] or Inspector Hill in the Coggeshall appeal decision (paragraph 91, CD32.2 set C). However, other Inspectors have taken a different view [536 and 562]. In addition to the Steeple Bumpstead appeal decision referred to by Ms Scott, Inspector Fagan took the view that, although poorly worded, it was relevant (paragraph 31, CD32.4 set C). Inspector Prentis (Silver End) also took the view that listed buildings and their settings were protected by the policy although for other reasons he felt it was inconsistent with the Framework (paragraph 63, CD32.7 set C).
779. Policy CS9 was written before the Framework was published. Its wording is somewhat cumbersome in my view and CS paragraph 8.21 does not assist. Even assuming Ms Scott's understanding of the meaning is correct [535], the policy is some distance from the requirements generally of Framework section 12 and of Framework paragraph 134 in particular. These require an assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits.
780. The way that policy should be interpreted is ultimately a matter for the court and the Secretary of State may wish to seek his own legal advice on the interpretation of these two policies. I however shall assess this consideration against the policies in Framework section 12 which post-dates both development plans.
781. To the extent that it pursues a heritage case at all the position as I understand it of the Council is that it relies on the findings of Historic England [667]. Only GDL and SPMRG give expert evidence.
782. The two heritage assets in issue are Hatfield Place and what is now known as the William B. Both are grade II* Listed Buildings.

Hatfield Place

783. The List Entry Summary is provided by Mrs Freeman (Appendix (vi), RG2). The description of Hatfield Place given by Ms Osmund-Smith [186] is drawn from the submitted Heritage Statement (CD1.16, set A). It is similarly described by Essex Place Services in its letter dated 9 December 2016 (within CD27.4, set C). This notes that it is the substantial architectural merit of the building itself, its associations with John Johnson, Colonel John Tyrell and George Sherrin and the consequent historic significance in relation to important historic associations in the county of Essex that cause it to be listed at grade II*. The house is in private ownership and is not open to the public.
784. It is not in dispute between the parties that the above represents the core significance of the heritage asset. Nor is it in dispute that the appeal site is within its setting. What is in dispute is the contribution that the appeal site as part of the setting makes to the significance of the heritage asset.
785. Mrs Freeman gives substantial and clearly well-researched evidence about Hatfield Place and the people and events associated with it. In particular she describes the lore associated with Hatfield Place and the importance of footpath 43 as a place where people can experience the various heritage buildings and exchange stories about the past events. This is reflected by Ms Scott in her submissions [579 and 580]. However, almost of all this evidence in my view

goes to the significance of Hatfield Place to those in the village for whom it is of interest. It says very little about the contribution of the appeal site, as opposed to the footpath that passes through it, to the significance of Hatfield Place as a heritage asset.

786. What I cannot find either in her written evidence or my notes of her evidence in chief and cross examination is the attribution implied by Ms Scott to Mrs Freeman ('this significance draws heavily on Stone Path Meadow as part of the setting of Hatfield Place' [538]). As Ms Scott acknowledges, the statement 'this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance' [539] is her submission and inference from the evidence rather than the evidence that Mrs Freeman gave.
787. In any event, I do not consider that the communal experience described would be affected by the development proposed. As I was able to confirm during my site inspection, it was not until I had passed through what would be the developed area before the footpath bears north west that, even in winter, I was able to see Hatfield Place. That was also the evidence of Mrs Freeman [539] who said in cross examination by Ms Osmund-Smith that when walking through the red land (the developable area) anticipation was already forming looking at the Methodist church and the Marconi tower. Although the experience reached a crescendo in what would be the blue land as Hatfield Place came into view, the build-up was in the red land.
788. I fail to see why that experience should change as a result of the development. While I have already found that the experience of the short journey along the footpath through the developed area would alter [773] no evidence was given to explain why the anticipation of a building that cannot be seen at that point should be reduced or otherwise affected.
789. There may even be the opportunity to enhance that anticipation as a result of the development. It may be that during the archaeological works required by suggested condition 16 the historic flag stones are found. It may be appropriate for them to be lifted and set into the new pathway as Mr Earney suggested [675]. That will be for future review. Although not discussed at the Inquiry, it seems to me that there would also be scope for some interpretive material to be provided along the footpath within the development. This could help new residents appreciate the history of the area and would remove the chance element of meeting someone on the path with whom to discuss these things. That however would be a matter for the Council and the ultimate developer.
790. Turning to other points in Mrs Freeman's evidence, there appears to be only one event taking place in Stone Path Meadow that can be directly related to Hatfield Place. That is the gymkhana which was held in 1930 (F21h). My note of Mrs Freeman's evidence in chief is that the two-day pageant that was held in 1924 and which ended with a torchlight procession along footpath 43 (F21c) was held in Hatfield Place, not Stone Path Meadow. Mrs Freeman agreed in cross examination that the conveyance (F21e) did not indicate retained control over the land (the appeal site); it merely denoted control over documents [211]. Finally, much of what Mrs Freeman says about the contribution of the application site to the significance of the heritage asset draws on the letters from Historic England.

791. Turning to those letters and those from Essex Place Services, both consider that the development would cause harm to the significance of Hatfield Place [Historic England 6 February 2017; Essex Place Services 9 December 2016, CD27.4 set C). Historic England does not quantify the level of harm. Essex Place Services puts the harm at the lower end of the 'less than substantial harm' spectrum. SPMRG assesses the level as 'less than substantial' (although Ms Osmund-Smith considers this to be Ms Scott's evidence rather than that of her witness [220]) as does the Council [668]. These conclusions place the assessment of this consideration for Hatfield Place within the scope of Framework paragraph 134.
792. GDL's primary case is that there would be no harm at all to the significance of the heritage asset and I shall come to that shortly. However, anticipating that the Secretary of State may conclude that there is less than substantial harm, irrespective of any recommendation in this report, a precautionary balance has been undertaken by Mr Lee [220]. What GDL regard as the benefits of the proposal is set out [331].
793. Having regard to the clarification in the PPG as to 'what is meant by the term public benefits?' I consider that all of these are capable of being so characterised. Some, such as the provision of both market and affordable housing are very much in accordance with Government policy and go to the heart of the social role set out in Framework paragraph 7; they should be afforded great weight. Others, such as highway works to Stone Path Drive to address an issue that causes inconvenience rather than a highway safety concern attract considerably less weight in my judgement. However, in my judgement the totality of the public benefits in this case outweigh the harm to the heritage asset that has been identified and, as such, there is no conflict with Framework paragraph 134 in respect of Hatfield Place.
794. In coming to this conclusion I have had regard to s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that special regard shall be given to the desirability of preserving the building or its setting when considering whether or not to grant planning permission. The court has also held that in context 'preserving' means 'doing no harm'. However, the Court of Appeal (CD31.4 set C) has also held that the level of the harm must be taken into account. Any harm, however slight, does not have to outweigh any benefit [223]. I have followed that approach in coming to my conclusion.
795. Returning to GDL's primary case, Essex Place Services and Historic England have relied on the same evidence as Mr Handcock. They disagree about the way that evidence should be interpreted. Only Mr Handcock's evidence was tested at the Inquiry; it therefore carries more weight.
796. In his proof (paragraphs 5.18 to 5.23, 3/POE) Mr Handcock explains that he has followed Historic England's best practice guidance (CD27.1 set C) in undertaking his assessment. It would be unreasonable in my view to presume other than that Historic England had done the same.
797. Historic England will have seen the submitted Heritage Statement (CD1.16 set A), all the correspondence within CD27.4, set C except the letter from Icení dated 9 March 2017 and the additional statement supplied (CD27.5 set C) prior to formulating its February 2017 response. The reasons for coming to the view

that there would be harm to the significance of the heritage asset are set out in two paragraphs.

798. First, it is stated that the appeal site fields ‘...greatly contribute to the significance...by providing an open tranquil and rural setting to the south and west of Hatfield Place. Furthermore, the degree of separation between (the house) and the rest of...Hatfield Peverel does make a strong contribution to the historic understanding of the building as its clear separation from the main body of the village along with its spacious grounds illustrate a deliberate display of the wealth and status of the historic owners.’
799. Second, it says that the encroachment of suburban development into the setting would diminish the ability ‘...to experience the heritage values of the building...by the proximity of modern development, lack of separation, erosion of views and the associated noise, lighting and movement.’
800. It is not clear whether or not Essex Place Services has seen the exchange of letters between Icen and Historic England. Nevertheless, Essex Place Services also concludes that the setting of the house is partially defined by its isolated nature in so far as it is distinctly and deliberately separated from the village. The separation makes a contribution to the historic understanding of the building since its setting within large grounds is an intentional display of the wealth and significance of the owner. The sense of separation is also important to the way that the building is experienced. The visibility of the proposed development from within the grounds and, it is assumed, the upper floors of the house, would affect this separation although that would be less apparent in Spring and Summer when the intervening vegetation is in full leaf. It should be noted however that Essex Place Services does not consider that there is any formal association between Hatfield Place and the appeal site, ‘...as the strong tree boundary which runs along the eastern edge of the access track and grounds of the house would seem to be evident on the 1st Edition OS map.’
801. Why GDL disagrees with this analysis is summarised by Ms Osmund-Smith [191].
802. In short, based on his experience of assessing the type of mapped and documentary evidence available, which he said was excellent, Mr Handcock comes to the view that Hatfield Place was a gentry residence, not a country house, whose owners valued their privacy. In his view, the strong planting on the boundary referred to by Essex Place Services is evidence of this. It is also evidence of the proximate pleasure grounds being the most important part of the setting along with the orientation of the building which allows extensive views to the south over land not owned by the residents of Hatfield Place. He does not consider that separation from the village was of importance and the proximity of other buildings such as Crix is evidence of this. Furthermore, there is little clear evidence of any functional relationship between the appeal site and the house in the sense that the land was used or controlled in any way to achieve and maintain the separation claimed by Historic England. In summary, his evidence is that the appeal site makes very little contribution to the significance of Hatfield Place as a heritage asset and, as such, the development will have no impact on that significance.
803. This difference between the appellant, Historic England and Essex Place Services is difficult to resolve, primarily because neither of the latter explains

why they disagree with the views of Mr Handcock which were clear to both when they formulated their consultation responses to the application. As far as can be told from their responses they have simply not engaged with his arguments at all and have looked at the matter in fairly simplistic terms, emphasising the extent to which there would be inter visibility between the application site and the heritage asset.

804. Mr Handcock was robustly questioned by both Mr Graham (who did not distinguish between the two schemes in doing so in my view) and Ms Scott. In my view, his evidence on Hatfield Place was not undermined at all. I consider that his evidence should be preferred to that of Historic England and Essex Place Services. I therefore conclude that the development proposed would not harm the significance of Hatfield Place.

The William B

805. The former Crown Public House is a 15th Century coaching inn that has been altered in the 16th, 18th and 19th Centuries (Appendix (v), RG2). Its significance derives from physical fabric and architectural features noted in the Listing. Its functional and economic association is with The Street which it fronts onto [188].

806. Neither HPPC [482] nor SPMRG [560] has given evidence about the impact of the appeal scheme on the significance of the William B.

807. The consultation responses from Essex Place Services to the application make no reference to the William B (CD3.8 and CD3.9 set A). The response from Historic England (CD3.14 set A) references several listed buildings including the William B but comments only that the setting of Hatfield Place may be eroded. It requested further information but the assessment of that is in the context of the subsequent application for 140 dwellings.

808. It is my understanding therefore that there is no evidence before the Inquiry of any harm to the significance of the William B. Nevertheless, I set out below that part of my conclusions in the report on the called-in application in the event that those responses from Essex Place Services and/or Historic England can be construed as also relating to the appeal scheme

Essex Place Services observe that while there may be limited inter visibility between the appeal site and the William B there is no particular historic association between the two and thus no harm to the setting of the listed building (letter dated 9 December 2016, CD27.4 set C).

Historic England makes the same basic observation as Essex Place Services. However, the conclusion drawn from the same observation is that the setting would be harmed because '...as an Inn on the edge of the village...this building has always enjoyed a semi-rural setting enjoying views of open countryside to the rear and the side.' Since the proposal would erode even further the rural setting with views becoming more urban in nature, Historic England is of the view that the existing setting would be harmed (letter dated 6 February 2017, CD27.4 set C). SPMRG make a similar case and relies on the view of Historic England.

It seems to me that Historic England and, by extension, SPMRG have not applied the correct test. As is clear from the Glossary to the Framework where significance for heritage policy is defined, whatever the effect on the setting might be, in the absence of any analysis of the setting to the significance of the heritage asset, that effect is not relevant. Neither Historic England nor SPMRG explain why undeveloped land to the rear of the William B makes any contribution to its significance as a heritage asset. In my judgement of the evidence presented, there is none. The application would therefore not cause any harm to the significance of the William B.

809. Should the Secretary of State consider that these responses can be construed as relating to the appeal scheme and, further, should he prefer the view of Historic England, he should note that it did not quantify the level of harm. For the reasons set out above [793 and 794], I believe that such a level of harm would be more than outweighed by the public benefits of the scheme and that there would be no conflict with Framework paragraph 134.

Conclusion

810. For the reasons set out under this consideration I do not consider that the appeal proposal would conflict with Framework paragraph 134 or policy CS9, insofar as it is relevant.

The effect of the development on community infrastructure

Education facilities

811. 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 appended to the proof of Mr Lee (Appendix 4, 1/APP).
812. 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.
813. 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 appeal scheme and that submitted by DWH, 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.

814. 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 chose to be educated at one of those three named schools.
815. 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.
816. GDL's response to this is set out above [251 to 258]. It can perhaps be summarised by Mr Lee's 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 GDL to addressing the issue. Although Mr Graham believes that ECC may have misdirected itself in respect of CIL Regulation 123(3) [458] the fact remains that its understanding of the pooling restriction prevented it from seeking any contributions from the appellant.
817. Nevertheless, while the situation settles down, and there is no indication as to how long that may take, Mr Lee accepted that there would be a short term impact which GDL was unable to mitigate [568]. That 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

818. The consultation response by NHS England (CD3.16 set A) has the 'feel' of a template letter (see also CD4.11 set B). At paragraph 5.1 of the response 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'. Those are the terms used in the definition of the 'healthcare contribution' in the s106 Obligation [695] although it specifies that it must be spent at Sydney House.
819. 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 [454]. GDL respond to this by saying that the capacity can be increased without necessarily having to physically expand the building by, for example, internal alterations [260].
820. 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 (rightly rebutted by Ms Osmund-Smith 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

821. 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.
822. 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 and SPMRG contend, the surgery cannot be expanded and that is, as NHS England would appear to believe, actually the issue.
823. However, having identified those concerns it must be acknowledged that GDL has obligated to make all the contributions that have been requested to mitigate any effect from the appeal scheme. In my view, a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Other topic areas

824. There are a number of topics on which GDL disagrees with HPPC and SPMRG respectively [20 and 21].
825. The treatment by Inspector Parker of the best and most versatile agricultural land issue was the ground of challenge on which the Secretary of State conceded in relation to the appeal decision in respect of this scheme. In order to address the issue further GDL commissioned a site specific study, the report of which was submitted in evidence (Appendix 1, 1/APP). This confirms that the application site is not best and most versatile agricultural land and SPMRG did not pursue this point of disagreement [226]. The point taken for the first time during oral evidence from Mrs Jarvis is wrong [226]. There is therefore no policy conflict with respect to best and most versatile agricultural land.
826. The position with respect to transport and highway matters and air quality is, to my mind, very fairly set out by Ms Osmund-Smith in her closing submissions [264 to 273]. In short, GDL has submitted a number of documents at application stage (within CD1 set A) and these have been assessed by the relevant statutory and other consultees. These have been supplemented by GDL/DWH with further reports addressing cumulative air quality (ID1.4) and transport/highway (ID1.5) issues in response to the first pre-Inquiry note (INSP1) which followed on from my review of the evidence submitted by that time.
827. Neither HPPC nor SPMRG challenged this supplementary evidence or, in the event, took issue with the submitted studies. The SOCG between GDL and the Council (SOCG1) confirms that there are no matters on either issue that cannot be resolved by conditions. There is therefore no evidence before the Inquiry to justify a finding of conflict with the development plan.
828. Finally, ecology. This has been the subject of application submission studies (CDs 1.9 and 1.24 set A), further submissions in response to queries raised by consultees in respect of the called-in scheme (CDs 3.7 to 3.9, 3.15, 3.22 and 3.23 set B and CD26.1 set C) and evidence to this Inquiry (5/POE). After

consideration in the officers' report which set out the views of the Council's landscape officer, the Council Committee was advised that there would be a limited ecological impact but that no objection had been raised by any statutory consultee (CD5.1 set A).

829. Dr Mansfield gave detailed evidence about the ecology of the site and particularly about the way the various studies required to understand it had been carried out in accordance with current best practice and guidance. The outcomes are summarised above [228 to 230]. In short, although there is potential for the survey area (land encompassing both GDL schemes and associated blue land) to support breeding and foraging farmland bird species, the restricted range of habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark.
830. Mr East for SPMRG seemed unable to accept these results. Throughout his cross examination he sought to cast doubt on the evidence of GDL and the views of the County Council ecologist. He is not an ecologist [231] but he nevertheless set the brief for the surveys that he commissioned and then interpreted the results. Dr Mansfield explained why all the surveys relied upon by Mr East did not follow best practice [242] and should therefore be treated with caution. She also dealt with the matter of the butane cannon [241] that Mr East felt had undermined the appellant's surveys. In my judgement Mr East has no evidential basis to challenge the appellant's substantial evidence.
831. In her closing submissions on ecology Ms Scott raises only a concern about the ability of the Blue Land to improve the ecology and biodiversity of the area when it will be subject to considerable recreational use by people and pets. That in my view goes to the weight that can be attributed to the benefits claimed in the overall planning balance. The Secretary of State will wish to note in this context the County Council ecologist's assurance with respect to the section 40 biodiversity duty [234].
832. I therefore see no evidence to disagree with GDL's conclusion regarding compliance with development plan policies RLP 80, RLP 84 and CS8.

Conclusion - The extent to which the proposed development is consistent with the development plan for the area

833. I have concluded that the development would accord with the spatial strategy [721]; would not conflict with policy RLP 80 [767] or policy CS8 [768]; and would not conflict with policy CS11 [823]. There would be some visual impact from the development [769] and some harm also to the amenity of users of the PROW [776]. However, in each case the harm would be limited and very localised in effect. Moreover, neither matter appears to be subject of a relevant adopted development plan policy. On heritage matters, should the Secretary of State prefer the advice of Historic England, I consider that the harm identified to Hatfield Place [791] would be 'less than substantial' and would be outweighed by the public benefits [793]. I come to a precautionary balanced view in relation to the William B [809] although my understanding of that evidence is that no harm is suggested. There would therefore be no conflict with Framework paragraph

134. My conclusion on the evidence is that there would be no harm to the significance of either heritage asset in any event [804, 808 and 809].

834. 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 [722 to 731].

Five year housing land supply

Background

835. For the purposes of the Inquiry there is no challenge to the Council's assessed OAHN of 716 dwellings per annum [75]. 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.

836. Again, for the purposes of this Inquiry only, the Council accepts the 'Sedgefield' method to deal with the shortfall [646 and 647]. 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 [648 to 652]. On supply there is an immaterial difference between the Council and GDL/DWH of 68 dwellings [653].

837. 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.

838. In those circumstances it is not necessary to resolve the small difference between the Council and GDL/DWH.

839. HPPC [357] 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

840. Except for Mr Tucker's criticism of Mr Graham's specific interpretation of *St Modwen* regarding the term 'realistic' [72], 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 (ID37) 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 [594 and 595] is, in fact, taken into account in ID37.

841. 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.
842. Ms Scott puts the additional sites suggested by SPMRG as adding a further 461 dwellings to the supply [590]. 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.
843. 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?

844. 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 [583], in practice that is not so as she implicitly acknowledges ('although plainly the Plan has yet to make it through examination').
845. 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 [580] 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.

846. The approach advocated by HPPC [346 to 351] 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.

847. In my judgement there has been no material change in circumstances since my colleagues determined the Coggeshall 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 [645]. There is no cogent evidence before this Inquiry to take a different view.

Conclusion

848. As Mr Tucker put it [95], 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'

849. 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.

850. Dealing with the second limb first, footnote 9 sets out a non-exhaustive list of specific policies in the Framework which indicate that development should be restricted. By the close of the Inquiry sessions Ms Scott explicitly stated that the only relevant policy which SPMRG considers falls into that category in this case is Framework paragraph 134 [495]. I have concluded that there is no conflict with this policy, first, because in my view there is no harm to the significance of either heritage asset and, second, in the event that the Secretary of State accepts the advice of Historic England, the less than substantial harm would be outweighed by the public benefits [793, 794, 804, 808 and 809]. The tilted balance should not therefore be dis-applied by virtue of the second limb.

851. As I understand Mr Graham's case for HPPC it is not argued that the tilted balance should be dis-applied on the basis of the second limb.

852. Turning now to the first limb, the harms that I have identified are set out above [833 and 834] 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 a very small number of aspects. The benefits in terms of housing numbers and tenure mix are considerable and there are other benefits across a range of Framework policies [331]. In my judgement, 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.

853. 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

854. The appeal proposal would conflict with the policies of the development plan. The appeal 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 [834]. I do not consider there to be any other conflict with the development plan.

855. The appeal 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

Footpath 43

856. In my view, the experience of users of this path will be harmed by the development [776], including the provision of the blue land and the public open space between Stone Path Drive and the northern boundary of the developable area. However, the path is not lengthy and does not form part of any promoted country walk [153]; it links two roads. I consider the weight to be attributed to this harm to be limited.

Visual impact

857. 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.

858. In relation to visual impact, I conclude (as to be fair do GDL [178]) that there would be some harm caused [756 to 764]. However, that would be very localised, affecting very few residential occupiers and users of limited lengths of public highways over and above footpath 43. Although I agree with GDL's categorisation of the scale of adverse effect, the harm caused is limited. Given my conclusions on the weight that should be given to the emerging NDP [715] any conflict with emerging policy HPE6 on this consideration can 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

859. These are set out by Ms Osmund-Smith above [322 to 331].

Tilted balance

860. I have concluded that the Council cannot show a 5YHLS [848]. 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 [850 to 852] and I consider that it should attract substantial weight [853].

Housing delivery

861. 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 [705 and 706]. There is however a legitimate concern in my view about the rate of delivery within the first five year period.
862. The query was raised in my second pre-Inquiry note (INSP2) and arose from the evidence of Mr Spry and Mrs Hutchinson's rebuttal proof. She explained that one of the sites that Mr Spry sought to downgrade in terms of its contribution to the 5YHLS (Land South Of Oak Road, Halstead) was one where GDL had secured outline planning permission and then sold it to developers (Bloor Homes and DWH) (paragraphs 2.63 to 2.68 BDC3). Although it was ultimately concluded that there should be no change to the Council's trajectory for this site, Mr Spry's analysis was that the delays caused by the two developers seeking separate reserved matters approvals meant, in his view, that full build-out in five years was optimistic (pages 8 and 9, Appendix 1, 4/POE).
863. As this shows, GDL do not build houses; they are a site-finding company whose business model is to secure outline planning permission and dispose of the land to a housebuilder as soon as possible thereafter [317]. Mr Lee explains that over the period during which GDL has been operating, outline planning permission has been secured for some 15,000 homes (section 10.5, 1/POE) but does not say how many dwellings have actually been delivered within the five years from permission being granted. In oral evidence he explained why this could not in fact be computed (essentially because GDL had not been operating long enough for a true figure to be available).
864. I give little weight to the two letters of intent (ID31 and ID32) since both post-date INSP2 and would appear to have been solicited specifically to address my query. Nevertheless, 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 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 moderate weight to the delivery of housing over the five year period.

Spatial strategy

865. Notwithstanding any conflict with the development plan arising from the position of the village development boundary, the appeal proposal would accord with the longstanding and continuing spatial strategy for the area [721]. That attracts some weight in the balance.

Economic, social and environmental benefits

866. These are the three dimensions of sustainable development set out in Framework paragraph 7.
867. With regard to the economic role, 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. The financial

contributions to the economy set out [331], which were not challenged as to the quantum, are therefore a benefit to which some weight should be attributed.

868. The social dimension is however locally focused since it is aimed at supporting strong, vibrant and healthy communities. The supply of housing already mentioned comes into this. The additional residents will also have the potential to contribute to the social activities of the village and to increase spending in and use of local shops and services. This may help to address the issues identified by Mr Renow whose evidence seemed to suggest that in some respects the village was in decline [246]. These aspects carry some weight too.

869. With respect to environmental matters, the enhanced biodiversity arising from the new boundary planting and the management of the existing boundaries for this purpose is a benefit to which weight must be attributed.

Material considerations which are neutral

870. The identification of the blue land is required to mitigate any adverse effects that there may be on the nearby Natura 2000 sites [27]. It is intended to have a recreational focus to provide an alternative to the Natura 2000 site for that purpose. Whether or not SPMRG is correct that a mitigation measure should not be considered a benefit [610], I believe the effect of its use will contribute to the adverse effect on the experience of those now using footpath 43. Any benefit is therefore offset by the harm caused. Similarly offset is any benefit from the enhancement of footpath 43 as it passes through the development site and any provision of open space and play area in the vicinity of the footpath.

871. In my view also the provision of enhancement to the nearby bus stops and the shelters and the implementation of minor traffic management measures to address what are largely existing conditions should attract so little weight as to be neutral.

Conclusion

872. In my view the conflict with the development plan, which attracts moderate weight applying Framework paragraph 216, and the material considerations that weigh in favour of determining the appeal 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 appeal represents sustainable development as defined in the Framework and planning permission should be granted.

873. This conclusion is clearly different to that of Inspector Parker when he determined the appeal (CD32.6 set C). In part, this can be explained by the fact that I had different evidence available to me about the agricultural land classification of the appeal site and the position with regard to the emerging NDP. Both of these factors weighed against the proposal when Inspector Parker considered the planning balance. He may well have attributed different weight to each had he had the same evidence that has been put before this Inquiry. In part however I have simply come to a different planning judgement on the effect of the proposal on the character of the landscape and its visual impact. In that respect I had the assistance of cross examination of all relevant witnesses by leading and junior planning counsel which, in particular, examined the evidence

base underpinning NDP policy HPE6 and clarified more precisely what it is about the appeal site that is valued by the local community.

Recommendation

File Ref: APP/Z1510/W/16/3162004

874. 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:

Thea Osmund-Smith of Counsel	Instructed by Christien Lee, Senior Planner Gladman Developments Ltd
She called	
Matthew Spry BSc (Hons), DipTP (Dist) MRTPI MIED FRSA	Senior Director Nathaniel Lichfield and Partners
Dr Suzanne Mansfield BSc (Hons) PhD	Director FPCR Environment and Design Ltd
Laurie Handcock MA(Cantab) MSc IHBC	Director Heritage Team Icen Projects
Gary Holliday BA MPhil LD CMLI	Director FPCR Environment and Design Ltd
Christien Lee BSc(Hons) MCD MRTPI	Senior Planner Gladman Developments 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)

FOR THE STONE PATH MEADOW RESIDENTS GROUP:

Rosie Scott of Counsel	Instructed by Birketts Solicitors
She called	
Margaret Freeman MA (NUI) HDipEd (NUI)	Local resident giving evidence on heritage matters
Mark East	Local resident giving evidence on ecology

Kevin Dale

matters
Local resident giving evidence on landscape
matters and soils

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 Landscape 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 Peverel 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 SPMRG

(Where a number in the sequence is missing the document is already listed elsewhere in this Annex)

- F1 Main Statement by Stonepath Meadow Residents Group (SPMRG) submitted to initial hearing for APP/Z1510/W/16/3162004
- F2a Letter from The Rt Hon Priti Patel to The Rt Hon Sajid Javid MP dated 30 March 2017
- F2b Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree

- Council) dated 29 March 2017
- F2c Letter from Cllr Derrick Louis (Essex County Council) to The Rt Hon Sajid Javid MP dated 19 June 2017:
- F2d Letter from Hatfield Peverel Parish Council to Nicola Beach (Braintree Council) dated 3 April 2017
- F2e Letter from Kevin Dale to Cllr Graham Butland (Braintree Council) dated 23 May 2017
- F2f Letter from Cllr Graham Butland (Braintree Council) to Kevin Dale dated 31 May 2017
- F2g Letter from Hatfield Peverel Parish Council to The Rt Hon Sajid Javid MP dated 4 July 2017:
- F2h Letter from Lisa Miller (Hatfield Peverel Parish Council) to Nicola Beach (Braintree Council) dated 5 April 2017
- F2i Letter from Margaret Freeman (SPMRG) to The Rt Hon Sajid Javid MP dated 24 April 2017
- F5e Pre Referendum data
- F5f Letter from Kevin Dale (SPMRG) to Cllr Graham Butland (Braintree Council) dated 23 May 2017
- F5g Audio-typed account of Local Plan Sub Committee Meeting (Braintree Council) dated 11 July 2017
- F6b Notes from the Office of The Rt Hon Priti Patel MP
- F6c UKSC press summary
- F6f *Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146
- F6g *BDW Trading Ltd v Cheshire West & Chester Borough Council*, [2014] EWHC 1470 (Admin)
- F6h *Phides Estates (Overseas) Limited v SSCLG* [2015] EWHC 827 (Admin)
- F7a Key Facts Briefing for Councillors, Refuse the application for 16/01813/OUT, Stonepath Drive, Hatfield Peverel, issued without prejudice, March 2017
- F7b Appendix 1: Stonepath Bird Survey from 7th January 2017 by Paul Hawkins
- F7c Appendix 2: The Historical Significance of Landscape, Heritage and Public Footpath 43 on the site known locally as Stonepath Meadow, an essay written in good faith by Margaret Freeman
- F7d Letter from Mark East (SPMRG) to Cllr Mrs WD Scattergood, Chairman of the Planning Committee (Braintree Council)
- F7e Email reference from Mr Daniel Watkins (Ecology Consultancy) in respect of Mr Paul Hawkins dated 10 March 2017
- F8b Local Plan Map Publication Draft for Consultation, Braintree District Council, June 2017
- F8c General Comments
- F9a Environmental report: Annexe B – Baseline Information, Sustainability Appraisal and Strategic Environmental Assessment, Braintree District Site Allocations and Development Management Policies Plan, Place Services, Essex County Council, January 2013
- F9b Email from Emma Goodings (Braintree Council) to Mark East (SPMRG) commenting on housing targets for Hatfield Peverel dated 29 April 2016
- F9c General comments regarding report by Place Services (a) and email from Emma Goodings

- F10a Resolution passed by Essex County Council to call on the Secretary of State for Communities and Local Government to issue urgent statutory guidance which protects valued greenfield sites from predatory development
- F10b Freedom of Information request by Mark East (SPMRG) to Mike Gosling, Performance and Information Officer requesting information on housing need in the district and specifically Hatfield Peverel
- F10c Housing Needs Statistics in Hatfield Peverel by Housing SatNav, June 2015
- F10d Housing need and economic threat to the economy through speculative development, a study by SPMRG that could show how speculative development may not provide economic benefit and stability to the nation
- F10e Case Officer email re Bury Lane, Sorrells, 3rd Nov 2017
- F11 Letter from the Planning Policy and Reform Correspondence Team, Department for Communities and Local Government to Mark East (SPMRG) dated 5 May 2017
- F12a Decision notice by Braintree Council in respect of 05/02313/OUT
- F12b Case officer's report in respect of 05/02313/OUT
- F12c Consultation documents in respect of 05/02313/OUT
- F12d Preapplication planning advice dated 12 March 2015
- F12e General comments by SPMRG regarding planning history
- F12f Residents representations in respect of 05/02313/OUT
- F13 Maps showing Stonepath Meadow as being a Special Landscape Area
- F14b Landscape guidelines in respect of Stonepath Meadow
- F14c Landscape notes by SPMRG
- F15a A note by Kevin Dale to accompany the Hatfield Peverel Local Landscape Character Assessment
- F15c Map accompanying the Hatfield Peverel Local Landscape Character Assessment
- F15d General comments on landscape by Kevin Dale
- F15e Certificate of membership showing Kevin Dale's fellowship of the Geological Society
- F16a A second note to accompany the Local Landscape Character Assessment by Kevin Dale
- F16b Photomontage of Stonepath Meadow
- F18c Email from Steve Roe (Natural England) to Mark East (SPMRG) dated 25 January 2017
- F18d General ecology notes for Call in by SPMRG
- F18e A12 Ecology Findings
- F20b Map of Stonepath Meadow showing the proposed development boundaries of 16/00545/OUT and 16/01813/OUT
- F21a Heritage Statement submitted to the Appeal Hearing APP/Z1510/W/16/3162004
- F21b "Historic Footpath- Public Footpath 43" treatise submitted to the Appeal Hearing APP/ Z1510/W/16/3162004
- F21c "The Historical Significance of Landscape, Heritage and Public Footpath 43", an essay written in good faith by Margaret Freeman
- F21d Cover sheet of sale brochure for Hatfield Place (1917)
- F21e Clause 21 condition of sale in sale brochure for Hatfield Place

- (1917)
- F21f Academic qualifications of Margaret Freeman (nee McDermott)
 - F21g Professional/voluntary experience of Margaret Freeman
 - F21h Gymkhana notice 1930
 - F22 Letter from The Rt Hon Priti Patel MP to Mark East (SPMRG) dated 25 April 2017
 - F23a Extract from Braintree District Local Plan Review, Inspector's Report Part 2 proposals map and inset map showing why Stonepath Meadow was not included in the existing local plan
 - F23b Email sent by Kevin Kearns (SPMRG) in advance of the committee meeting to determine 16/01813/OUT dated March 2017
 - F23c SPMRG's response to the appellant's Appendix 8 in the Appeal Statement of Case dated January 2017 (appeal reference: APP/Z1510/W/16/3162004)
 - F24e Email from Gavin Jones, Chief Executive (Essex County Council) to The Rt Hon Priti Patel MP dated 1 September 2017
 - F24f Letter from Sarah Cutting to Braintree District Council dated 10 August 2017
 - F26 Responsible Development in the Parish of Hatfield Peverel by SPMRG dated September 2016
 - F27 The Objective Argument for Site HATF314 dated May 2017
 - F28a View from Hatfield Place before/after the proposed development for up to 140 houses
 - F28b View from Stonepath Drive before/after the proposed development for up to 140 houses
 - F28c Considerable local interest from the community in support of planned development and opposition to speculative development on valued greenfield sites
 - F29b Open letter from Beverley Jones (Sidney House/Laurels) dated 31 August 2017
 - F29d Leaflet regarding Sidney House/Laurels Surgeries produced by the Patient Participation Group dated Autumn 2017
 - F30c Housing Supply Calculations Table
 - F30d Misc Documents
 - F31a Letter from Ian Hunt (Braintree Council) to The Rt Hon Priti Patel MP dated 10 April 2017
 - F31b Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree Council) dated 11 April 2017
 - F31c Letter from The Rt Hon Priti Patel MP to The Rt Hon Sajid Javid (SSCLG) dated 13 April 2017
 - F32a Opening submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
 - F32b Ecology submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
 - F32c Landscape submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
 - F32d Traffic/Pollution submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
 - F32e Heritage/Footpath submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
 - F32f Hatfield Peverel Parish Council submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004

- F32g Early Years/Doctors/Schools/Highways submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
- F32h Closing submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
- F32j Rt Hon Priti Patel MP submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
- F32k Hatfield Peverel Neighbourhood Development Plan inc. Housing Needs Survey (2 documents)

Relevant Documents submitted by David Wilson Homes

- SAV50 Letter from Savills (Jonathan Dixon) to HPPC dated 30/09/16 setting out representations on behalf of DWH to Reg. 14 NDP consultation.
- 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.)
- SOCG3 Gladman Developments Ltd and Stone Path Meadow Residents Group

Statements of Common Ground

- SOCG1 Gladman Developments Ltd and Braintree DC
- SOCG2 Gladman Developments Ltd and Hatfield Peverel PC
- SOCG3 Gladman Developments Ltd and Stone Path Meadow Residents Group

Proofs of Evidence

Gladman Developments Ltd

- 1/POE Christien Lee Proof (Planning)
- 1/APP Christien Lee Appendices
- 2/POE Gary Holliday Proof (Landscape)
- 2/APP Gary Holliday Appendices
- 3/POE Laurie Handcock Proof (Heritage)
- 3/APP Laurie Handcock Appendices
- 4/POE Matthew Spry Proof and Appendices (Housing Land Supply)
- 5/POE Dr Suzanne Mansfield Proof (Ecology)
- 5/APP Dr Suzanne Mansfield Appendices

Braintree District Council

- BDC1 Alison Hutchinson Proof
- BDC1a Alison Hutchinson Appendices
- BDC3 Alison Hutchinson Rebuttal Proof

Hatfield Peverel Parish Council

- HPPC1 Mike Renow Proof and Appendices
- HPPC2 Philippa Jarvis Proof and Appendices

Stone Path Meadow Residents Group

RG1	Mark East Proof and Appendices (Ecology)
RG2	Margaret Freeman Proof and Appendices (Heritage)
RG3	Kevin Dale Proof (Landscape)
RG4	Kevin Dale Proof (Soils)
RG5	Kevin Kearns Proof and Appendices (Housing)
RG6	Derrick Louis Proof (Infrastructure: Education)
RG7	David Bebb Proof (Infrastructure: Health)
RG8	George Boyd Ratcliff Proof (Infrastructure: Traffic & Pollution)

Documents submitted during the Inquiry by the parties

ID1.1	<i>Lee v First Secretary of State and Swale BC</i> [2003] EWHC 2139 (Admin) (GDL)
ID1.2	<i>Arun DC v Secretary of State for Communities and Local Govnt and Green Lodge Homes LLP</i> [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	<i>Cotswold DC v Secretary of State for Communities and Local Govnt and others</i> [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)
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)
- ID38 Not used
- 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
CS	Braintree District Core Strategy
CRA	Comprehensive Redevelopment Area
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 80 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 illustrative Development Framework Plan 7015-L-02 rev J.

Approved Plans:

Location Plan:	7015-L-04 Rev B
Access Details:	A095687-SK01 Rev C
Green Infrastructure Plan	7015-L-06 Rev B

- 5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

- 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) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.

- 9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed. The development shall be implemented in accordance with the approved Management Plan.
- 10) 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.

- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable

risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

- 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 by 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 scheme shall subsequently be implemented prior to occupation. In particular the scheme shall provide for the following mitigation measures outlined in the Flood Risk Assessment:
- i) Control all the surface water run-off generated within the development for all events up to and including the 1 in 100 year event plus 40% climate change.
 - ii) In the event of using attenuation SUDs (infiltration basin soakaway) as a means of controlling run-off from the development, the design criteria should be based on limiting the discharge (overflow after all infiltration) from the basin/pond to the 1 in 1 greenfield rate for all events up to and including the 1 in 100 plus 40% climate change.
 - iii) Run-off management within the site must prioritise the use of SUDs both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement.
 - iv) Provide evidence of water quality treatment from the development using the risk based approach as outlined in the CIRIA SUDs manual C753.
 - v) Provide a plan showing the final exceedance flow paths, these shall be away from any buildings.
 - vi) Provide details of the adoption and routine maintenance of the SUDs features including the maintenance of the outfall to the ditch downstream of the pond/basin.

The mitigation measures shall be implemented in accordance with timing/phasing arrangements embodied within the scheme

- 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) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev B) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

- 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 have been 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) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 3 years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

- 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) 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 shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. 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.
- 28) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.
- 29) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).
- 30) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.
- 31) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in

writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

- 32) *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.*
- 33) *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.

Appendix 2: Braintree Essex Housing Supply Statement (April 2019)

Braintree District Monitoring Report 2018
Addendum to the Monitoring Report:

Subject:

Five Year Housing Supply 2018-2023



11 April 2019

1 The target

- 1.1 Braintree District Council now normally reviews housing land supply on an annual basis, in accordance with Government Practice Guidance.
- 1.2 However, the Government has made changes to the assessment of housing land supply, and this has led to the need to review the 5 year supply position. The review continues to examine forecast supply for the 5 year period 2018-2023.
- 1.3 In July 2018 the Government published the Revised National Planning Policy Framework (2018) which introduced the approach of the Standard Methodology for calculating the 5 year supply target for decision making in districts where there was no up to date Local Plan. This was the position for Braintree District, because the adopted Review Local Plan (2005) was more than 5 years old and the emerging new Local Plan is not yet adopted.
- 1.4 The NPPF was supported by revised Practice Guidance, published in September 2018.
- 1.5 According to the Standard Methodology (2018) the target was calculated using data from the latest household projections, and applying a ratio from the latest local housing affordability ratio published by the Office for National Statistics. A buffer should then be applied to the target. Whether the buffer should be the standard 5% buffer or increased to 20% was to be defined by the results of the Housing Delivery Test taking into account housing delivery over the past three years. The Housing Delivery Test was due to be published in November 2018, as stated by the Government in the NPPF, and this buffer requirement definition took effect from when the HDT results were published.
- 1.6 In September 2018 the Office for National Statistics (ONS) published 2016 based household projections. These then formed the basis of the calculation of the housing target for the 5 year supply for Braintree District.
- 1.7 The Government then published a consultation which proposed to change the Standard Methodology to revert, as a temporary measure, to using the (generally higher) 2014 based household projections.

- 1.8 The Government published a revised version of the NPPF in February 2019, together with revised Practice Guidance, and the results of the Housing Delivery Test 2018 (delayed from November). The use of the 2014 household projections produced a higher requirement for Braintree District in Step 1 of the calculation (632, being the annual average projected increase 2018-2028 in the 2014 based household projections). This is an increase compared to the Step 1 target from the 2016 based projections, which was 507.
- 1.9 On March 28 2019 the Office for National Statistics published the latest (2018) local housing affordability ratios. The local housing affordability ratio for Braintree District has increased from 9.5 in 2017 to 10.17. This results in a local affordability multiplier of 1.385625 for Step 2 of the calculation of the target (increased from 1.34375 in the 2017 results published by ONS in April 2018). When this ratio is applied the annual average target increases to **876**.
- 1.10 The local housing affordability data compares the median average house price of properties sold in the District over the year ending at September to the median average income of people working in the District according to earnings sample survey data. House prices in the District have risen, but in addition the data showed a reduction in the median average earnings of people who work in the District. A high proportion of the District commutes to work outside the District where average earnings are higher, and new housing developments in the District are generally marketed as attractive locations for commuters. Average earnings nationally have increased and the earnings of residents, including commuters, is likely to have increased (interim, quarterly, data indicated a rise above the national average). The results for the average earnings of people working in the District may to some extent reflect the employment structure, and may reflect the volatility of sample survey data at low geographic levels such as districts.
- 1.11 Step 3 of the calculation caps the level of any increase over the household projections to 40%. As the Braintree District increase in Step 2 was less than 40%, this is not currently relevant to Braintree District.

1.12 Step 4 applies the buffer (as defined in the Housing Delivery Test Results 2018) to the target. When the Housing Delivery Test Results were published in February this confirmed the buffer for Braintree District at 5%. When applied to the target, this increases the annual average target to 920 and the 5 year supply target to 4,598.

1.13 These calculations are summarised in Table 1:

Table 1: Calculation of the target for 2018-2023	
Stage 1: Setting the baseline: the ONS 2014 based household projections	
Average annual increase in households 2018-2028 Braintree District	632
Stage 2: Adjustment to take account of ONS 2018 local housing affordability data	
Braintree District affordability ratio 2018	10.17
Adjustment factor: (Local ratio minus 4) divided by 4, and then multiplied by 0.25	0.385625
= local affordability ratio to apply:	1.385625
Five years' worth of target before buffer applied, based on 2014 household projections, 2017 affordability ratio published April 2018	4,379
= Baseline annual target after application of local affordability factor and before buffer applied	876
Stage 3: Capping the increase	
The effect of the local affordability ratio is capped at a maximum of 1.4. As Braintree is currently under 1.4, this makes no change	
Stage 4: Application of the buffer The 2018 Housing Delivery Test results (published February 2019) have confirmed the buffer is currently 5%	
Annual target (876 + 5%)	920
5 year supply target (4,379 + 5%)	4,598

2 The supply

- 2.1 The revisions to the NPPF Practice Guidance also changed the approach to the assessment of deliverable supply, and the Council has reviewed the evidence of deliverability on the sites identified by the Council in the 5 year supply assessment 2018-2023.
- 2.2 Further guidance on the sort of evidence needed according to categories of sites and the context has been promised by the Government but is still outstanding.
- 2.3 Sites with detailed permission and small sites with outline permission (i.e. less than 10 dwellings) can be taken as deliverable unless there is evidence to the contrary – and if there are formal phasing restrictions these should be taken into account (this does not apply to any of the sites in the Braintree District 5 year supply).
- 2.4 For larger sites with outline permission, or allocated in adopted plans, information and clear evidence is needed that delivery of completions will start within the 5 year period. Such evidence can include current planning status, timescales and progress towards detailed permission. Information from developers about their sites is important in assessing deliverability.
- 2.5 Table 2 summarises the deliverable supply in Braintree District by planning status.

Table 2: Summary of 5 year supply 2018-2023 by planning status as at 1 April 2018	
As shown in 2018 Monitoring Report, February 2019:	
Sites under construction	1,360
Sites with full permission, development not yet started	629
Small sites with outline permission	66
Windfall allowance	225
Lapse/expiry allowance	-75
Other sites identified as at 1 April 2018: As reviewed against supporting evidence April 2019	
Large sites with outline permission as at 1 April 2018	2,174
Sites with Resolution to Grant as at 1 April 2018	231
Adopted Allocation, North West Braintree	200
Total projected supply, excluding communal accommodation	4,810

- 2.6 For sites with full permission and small sites with outline permission the supply is as detailed in the site trajectory in the 2018 Monitoring Report published in February 2019. Sites developed via Prior Approval process (e.g. conversion of offices or farm buildings via Prior Approval) are included within this category.
- 2.7 For larger sites without detailed permission - including sites with outline permission; sites with a Resolution to Grant subject to the signing of a Section 106 Agreement as at 1 April 2018; and the adopted Growth Location allocation at North West Braintree which is the subject of a current hybrid planning application – were reviewed against information and evidence of deliverability. This included contacting site developers and agents responsible for the sites; reviewing progress including progress towards the submission of planning applications, and a sense check of reviewing the forecast delivery against recent progress on sites.
- 2.8 Appendix 1 to this addendum summarises information on the sites reviewed (large outline permissions; sites with a Resolution to Grant permission; and the adopted allocation at North West Braintree). Appendix 2 provides more detailed supporting information and evidence on these sites.
- 2.9 The results of the review demonstrated that such sites are coming forward. Although the total expected supply from large outline sites appears substantial at 2,174, Table 3 summarises the current status of these sites:

Table 3:	
Deliverable supply 2018-2023 from large sites with outline permission as at 1 April 2018: Updated status	
Under construction	351
With detailed permission, not yet started	532
Resolution to Grant on detailed permission (in addition to the outline)	218
Full or Reserved Matters application pending consideration	572
Full or Reserved Matters application in preparation	461
Deliverable supply 2018-2023 from large sites with Resolution to Grant as at 1 April 2018: Updated status	
With outline permission, Full or Reserved Matters application in preparation to be submitted over next few months, developer on board, deliverable supply forecast provided (<i>Braintree Road Cressing, Countryside Properties, outline consent for 225 homes, deliverable supply by 2023 3 years at 50-60 dpa; and Bury Farm Hatfield Peverel, 46 homes, Bellway Homes, deliverable supply by 2023 46 homes</i>)	209
With outline consent, not yet with deliverable supply forecast from identified developer (<i>Heddingham Road Gosfield – 35 - and Morleys Road Earls Colne – 20</i>)	55

- 2.10 These were sites identified as at 1 April 2018 as expected to produce completions in the 5 year supply period 2018-2023: although additional sites have been identified through the development management process since 1 April 2018 and these sites are expected to add to supply before 2023, the Council will take such sites into account in the roll forward of the supply review to the period 2019-2024. These additional sites reflect the action the Council continues to take to increase supply.
- 2.11 The supply assessment includes an allowance for windfall sites, at 75 dwellings per year from Year 3 of the 5 year supply period; and an allowance for expiry of permissions at 15 dwellings per year over Years 1-5. The evidence supporting these allowances is detailed in the Monitoring Report.
- 2.12 As part of the review of evidence, the Council carried out an analysis of the lead time in recent developments on larger sites from the date of detailed permission to the timing of first delivery of completions. This analysis also examined delivery rates year by year from the date of detailed permission. This evidence is set out in Appendix 3 to this addendum. This demonstrates that lead times vary depending on the site. The longest lead time, at 24 months, was at Portway Place Halstead where existing old employment buildings on this brownfield site needed to be cleared before development could commence. It is more usual however for the lead time to be approximately 1 year, and there were several examples where construction commenced very soon after granting of detailed consent and completions started to be delivered well within the year, for example at the Lodge Farm site in Witham.
- 2.13 The review also demonstrated how on the larger sites such as Lodge Farm, more than one outlet can be operating at one time, and phases of development can come forward before earlier phases are completed. At Lodge Farm (Redrow Homes) and Forest Road (Bellway Homes), land with outline permission at 1 April 2018 was part of larger sites which were under construction, and these subsequent phases come forward without the lead time expectations that might be expected in the case of an outline permission site where development has not started.

3 Review of 2017 trajectory

- 3.1 Government guidance suggests that the Council should review the previous (2017) Monitoring Report trajectory to examine progress on sites. Appendix 4 compares the information in the 2017 trajectory for sites of 10 or more dwellings that would be in the 5 year supply with information on progress and a review of forecasts.
- 3.2 This demonstrates that whilst some sites have not come forward as quickly as forecast, others are coming forward more rapidly.

4 Communal accommodation

- 4.1 To this assessed supply should be added projected supply from communal accommodation, in accordance with Government Guidance. The publication of the Housing Delivery Test data now provides the ratio to be applied to this supply. The Council has included sites with detailed permission in this category.
- 4.2 For student accommodation a ratio of 2.5 is applied. For other communal accommodation a ratio of 1.8 is applied. There are no student communal accommodation developments identified in Braintree District. The total number of net additional rooms identified 2018-2023 is 105. After dividing by 58, this results in a net contribution to supply of 58. These permissions are listed in the schedule in Appendix 5.

4 The 5 year supply position: comparison of reviewed 2018-2023 target against reviewed 2018-2023 supply

- 4.1 Table 4 compares the reviewed target, as amended to reflect the 2018 local housing affordability ratio (published 28 March 2019) with the 2018-2023 projected deliverable supply, taking into account the reviewed evidence of deliverability (Table 2 and paragraph 3.2, above). This results in a **5.29 year supply**.

Annual average target	920
5 year supply target 2018-2023	4,598
Projected deliverable 5 year supply before communal accommodation taken into account	4,810
Projected contribution to deliverable 5 year supply from communal accommodation after application of ratio of 1.8 as per Housing Delivery Test specification	58
Total projected supply	4,868
Years supply	5.29
Projected surplus against target	270

**Appendix 1 - Five Year Supply Housing Trajectory April 2018-March 2023
Large outline and without permission sites: Planning Status as at 31 March 2018**

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-2023	Total supply 2018-2023	Total Identified supply post 2023	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2019)	Deliverability Evidence update
With Outline Planning Permission, 10 dwellings or more														
BOCS 140	BTE/15/1458/OUT BTE/17/1973/FUL	Outline	Site at Rayne Lodge Farm, north of Rayne Road Braintree	5	60	50	12	0	127	127	0	Yes. 21.12.2018. Trajectory from developer forecast 22 in 2018/19, 50 in 2019/20, 50 in 2020/21 and 5 in 2021/22. BDC has adjusted this to take into account site progress at start April 2019 site check.	Developer Redrow Homes; full application granted 08.04.19 covers details of materials, limiting need for later discharge of conditions. Developer expected to progress development fairly quickly. Includes 38 affordable homes. Sales launched June 2018. 38 plots under construction at Dec 2018.	As at start of April 2019, site check showed 5 plots completed and 60 plots under construction.
BCBG 144	BTE/15/1366 BTE/19/013/REM	Outline	Carrier Business Park East Street Braintree	0	0	50	24	0	74	74	0	Yes completed form returned by developer Dec 2018, confirmed completions will begin on site within 5 year supply period, and completion of sale of site to developer due shortly.	Brownfield site, being cleared and coming forward. Current applications for discharge of conditions and reserved matters.	Reserved Matters approved 30.11.18. Variation of plans approved with new S106 signed 18.11.18. Updated information from developer received 8 April 2019 confirmed developer has now completed purchase of site; is tendering for the works, and envisages works will commence c. Sept 2019 with completion by March 2021.
GGHR 307	BTE/14/1580/OUT BTE/17/1665/REM	Outline	Phase 2 Land south of Oak Road Halstead	11	56	33	0	0	100	100	0	Yes. 04.12.2018. Forecast completions 18/19: 17, 19/20: 56, 2021/22: BDC has adjusted this to take into account completions 2018/2019 from site check.	Developer David Wilson Homes; current Reserved Matters application for 100 homes; As at Nov 2018, 23 plots under construction	Site check April 2019 found 11 plots completed and 25 plots under construction.
HASA 288	BTE/16/0802/OUT	Outline	Land at Greenways Balls Chase	0	0	0	0	0	0	0	14	No Yes. 4.12.2018 from agent		Insufficient evidence of deliverability within 5 year supply period
GOSF 251	BTE/17/0610/OUT BTE/18/2007/FUL	Outline	Land South of The Limes Gosfield	0	0	5	14	0	19	19	0	Strut and Parker confirming no significant constraints and site now owned by Chelstean Homes and full application submitted.	Developer Chelstean Homes Ltd. Full application for 22 homes now submitted.	Full planning application BTE/18/2007/FUL pending consideration
GGHR 283 HASA 293	BTE/17/0575/OUT BTE/18/1749/FUL	Outline	Land east of Sudbury Road Halstead	0	33	62	62	61	218	218	0	Yes. 18.12.2018 Trajectory from developer. Subsequent revised trajectory provided by developer 6.2.2019.	Developer Balfour Beatty Homes. Outline was for up to 205 homes plus a care home site. Full application now submitted for 218 homes.	The full application on this site that has an extant outline consent has now had a resolution to grant subject to completion of a Section 106 Agreement. The site access is going in and the site is currently being marketed to potential homebuyers. Follow up information received in meeting with developer dated 6.02.2019; Forecast development 33 completions 2019/20; and 62 completions 2020/21, with remaining 123 homes subsequently. Includes 65 affordable homes.
HATF 608	BTE/16/0996/OUT BTE/19/0494/REM	Outline	Former Aita Dairy Site Hatfield Peverel	0	16	82	47	0	145	145	0	Yes. 18.12.2018 Trajectory from developer. Subsequent revised trajectory provided by developer 6.2.2019.	Developer Balfour Beatty Homes. Site cleared. Current discharge of conditions application, reserved matters submission in preparation.	Reserved Matters now submitted. The BTE/19/0494/REM pending consideration. The site is now being marketed to potential homebuyers (Hatfield Grove). Follow up information received in meeting with developer dated 6.02.2019; Forecast development 16 completions 2019/20; and 82 completions 2020/21, with remaining 47 homes subsequently. Proposed development includes 58 affordable homes.

Five Year Supply Housing Trajectory April 2018-March 2023
Large outline and without permission sites: Planning Status as at 31 March 2018

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-2023	Total supply 2018-2023	Total Identified Supply 2018-33	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2019)	Deliverability Evidence update
	BTE/16/0569/OUT	Outline	Land NE of Inworth Rd Feering	0	0	50	50	50	150	150	165	Yes. 05.02.2019 Trajectory from agent Savills acting on behalf of developer.	Developer Bloor Homes is preparing reserved matters application for submission.	06.02.2019 Agent Savills advised infrastructure to commence late summer 2019; with an anticipated build rate of 50 per year agent from 2020/21, would expect to have 150 completions by April 2023. Reserved Matters in preparation following pre application discussions and expected to be submitted late April/early May 2019.
KELV 335	BTE/17/0418/OUT	Outline	Station Field, Land west of Kelvedon Station Station Road (Monks Farm) Kelvedon	0	0	50	50	50	150	250	04.12.2018 Trajectory from agent Phase 2 Planning acting for developer advised 50 dpa from 2019/20.	Developer Cala Homes. As part of conditions of outline consent reserved matters will be submitted within 2 years of outline permission. Reserved matters application expected to be submitted shortly, current discharge of conditions application.	Applications for Non material amendment and Variation of plans pending consideration; until determined, the Reserved Matters application is in abeyance. Council has adjusted the trajectory to reflect progress, deferring completions by 1 year.	
RV2H	BTE/15/0799 BTE/17/1092/FUL	Outline	Phase 2 NE Witham Growth Location, East of Forest Rd Rivenhall/Witham	0	21	87	55	0	163	163	Yes. 18.12.2018 and revised trajectory from developer 06.02.2019.	Full application 17/01092/FUL submitted for Phase 2 from developer Railway Homes for 163 homes, granted 27.04.2018.	Follow up information received in meeting with developer dated 6.02.2019. Forecast development 21 completions 2019/20, 87 completions 2020/21, 55 completions post 2021. Includes 49 affordable homes. Planning application BTE/19/00139/FUL granted 4.4.2019 for temporary off site construction compound. Developer is constructing the Rivenhall Park site already with Phase 1 under way (222 total of which only 23 plots not yet started, 114 plots are completed and 85 plots are under construction, as at start April 2019).	
SILV 388	BTE/15/0280/OUT BTE/18/175/REM	Outline	Land off Western Road Silver End ("Meadow View")	0	25	51	51	51	178	178	Yes. 21.12.2018. Trajectory from developer	Reserved matters application expected 2018, developer Redrow Homes.	Reserved matters application for 350 homes BTE/18/175/REM approved, Planning Committee. NHBC report for March 2019 shows the site as under construction, first 2 plots started 28 March 2019, and sales have launched. Construction of site access underway. Includes 40% of homes as affordable (140). Current construction by this developer at Lodge Farm showed 85 completions delivered within first year of which 15 were from Phase 1b which had outline.	
SILV 388	BTE/18/1653 BTE/18/01172/VAR	Outline	Land east of Boars Tye Road Silver End	0	4	35	11	0	50	50	Yes. 28.02.2019 Trajectory from developer	Variation of plans agreed. Reserved matters application expected soon, developer Sanctuary Homes. Developer has confirmed forecast delivery.	Reserved matters application now submitted by developer. BTE/19/00634/REM. Includes 40% affordable homes, which are currently programmed to be delivered in the first phase.	
RIDG 359	BTE/17/1325/OUT BTE/19/00635/FUL	Outline	SE side Ashen Rd. at junction with Tilbury Rd Ridgewell	0	0	0	8	8	16	16	Yes. 13.03.2019, agent forecast completion of the whole site in the first quarter of 2021.	Agent confirmed site sold to developer and full planning application was in preparation following pre app discussions (and approval of earlier outline application).	Full planning application now submitted; BTE/19/00635/FUL, Beacon Hill Homes, application for 18 dwellings.	
GRBA 255A	BTE/15/1354/OUT BTE/18/0187/REM	Outline	Land off Braintrise Road Great Bardfield (Bardfield Walk)	0	37	0	0	0	37	37	Yes. 3.12.2018, trajectory from developer.	Developer Croudeca Homes; anticipated sales launch 2019. Reserved matters submitted and now approved post base date. Development forecast provided by developer Dec 2018.	As at beginning of April 2019, 28 of the 37 plots were under construction.	

**Five Year Supply Housing Trajectory April 2018-March 2023
Large outline and without permission sites: Planning Status as at 31 March 2018**

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-2023	Total supply 2018-2023	Total identified supply 2023-2031	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2019)	Deliverability Evidence update
EAR 3	BTE/15/0884/OUT BTE/18/0371/REM	Outline	Land at Station Road Earls Cobe	0	0	15	20	21	56	56	0	Yes. 4.12.2018 agent (Phase 2 Planning) forecast 40 in 2018/20 and 16 in 2020/21.	Reserved matters submitted, Casa Homes	Reserved matters application pending consideration. The Council has moderated the forecast supply from the agent. Nonetheless, given the average Casa Homes delivery rate nationally of 32, plus affordable housing (which in this location would be at 40%), with a capacity of 56 dwellings this site is fully deliverable within the 5 yr supply period.
EARC 225	BTE/15/1580/OUT	Outline	Land rear of Halstead Road Earls Cobe	0	0	25	55	0	80	80	0	Yes. 17.12.2018. Agent Amec Foster Wheeler. BDC adjusted agent trajectory.	Reserved matters planned to be submitted 2019.	Council has put back completions by 1 year
WIS 10X	BTE/14/1528/OUT	Outline	Former Bowls Club And Land At Old Ivy Chimneys Hatfield Road Witham	0	0	0	12	0	12	12	0	No	BTE/18/1807 for 12 homes on land at New Ivy Chimneys part superseded this site by overlapping on 6 units on land NW of New Ivy Chimneys; capacity shown is remaining outline capacity.	Although the outline permission expired later in 2018, a full application for this site has been submitted and is pending consideration, developer SI Giles Developments Ltd, application reference BTE/19/00108/FUL. The site is within the development boundary and is adjacent existing development. There are no known constraints. The developer is currently carrying out small developments on adjacent sites and it is anticipated that this site will come forward on completion of the adjacent work.
WIS 06	BTE/15/0430/OUT BTE/18/0884/REM BTE/18/1812/REM	Outline	Lodge Farm, South West Witham Growth Location, off Hatfield Road	15	90	90	90	90	659	375	284	Yes. 21.12.2018. BDC adjusted developer trajectory.	Developer Redrow Homes. Overall capacity 750 homes. Phase 1, 81 homes, under construction. Full plans being drawn up for Phase 1b (capacity 84) and Phase 2 (est capacity 49)	Twin outlet development. Council has now revised trajectory to take into account progress 2018/19. Phase 1a had full permission at 31.3.2018 and so is not included in this outline capacity. Currently Phase 1a (nearing completion, only 11 plots outstanding at April 2019) and Phase 1b (granted 4 Sept 2018) are both under construction. On the overall site, a total of 85 homes were completed in the year 2018/2019 of which 15 were from Phase 1b which had outline consent at April 2018. Phase 1B - 84 total as at April 2019 and with outline consent, had 67 plots under construction and 2 plots not started as at April 2019. Phase 2 now has detailed permission for 57 homes, granted 28 March 2019 - and sales have launched (The Junipers), and plans are being drawn up for submission of details for Phases 3 and 4 this year. Developer has advised sales strong, currently averaging 1.3 per week compared to more usual average of 1 per week. Affordable housing at 30% is in addition to sales. Developer estimated trajectory as 21 in 2020/2021; 67 in 2021/2022; 36 in 2022/2023 and 26 in 2023/24 (after 5 year supply period) - and that the affordable homes are currently programmed to be delivered 2021/2022; hence the spike in completions. Full application pending consideration.
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Outline	Land north of Conrad Road Witham	0	0	21	67	36	150	124	26	Yes. 1.03.2018. Trajectory from developer.	Developer Sanctuary Homes.	

Five Year Supply Housing Trajectory April 2018-March 2023
Large outline and without permission sites: Planning Status as at 31 March 2018

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-33	Total supply 2018-2023	Total identified supply 2023	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2018)	Deliverability Evidence update
WIS 09	BTE/12/1071	Outline	Land south of Mailings Lane Witham	0	0	0	10	30	63	40	23	Churchmanor Estates replied 4.12.2018	Remainder of new neighbourhood site, as shown in approved master plan. Site promoter Churchmanor Estates has confirmed completions will start on site before April 2023; current discussions with LPA on proposed mixed use development.	
GREY 275	BTE/14/1254	Outline	Hunnable Industrial Estate Great Yeldham	0	16	44	0	0	60	60	0	Yes 4.12.2018. Trajectory from developer.	Developer Linden Homes owns site. Reserved matters and discharge of conditions now submitted; to be considered by Planning Committee 12 March 2019, recommended for approval.	Reserved Matters approved 4.4.2019. Conditions being discharged. Construction is expected to start Spring/Summer 2019.
Estimated supply from Sites with outline planning permission, 10 dwellings or more				31	358	750	638	397	2808	2174	634			

Adopted Plan Growth Location Sites, Without Planning Permission

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-33	Total supply 2018-2023	Total identified supply 2023	Correspondence from Developer / Agent / Land owner	Deliverability Evidence update	
BOS8H	BTE/15/1319	Without	Land West of Panfield Lane Braintree	0	0	30	70	100	600	200	400	Form returned 10.12.2018 forecasting 18/19: 0, 19/20: 0, 20/21: 25, 21/22: 100, 22/23: 100.	Hybrid planning application - Phase 1 full, 189; outline only for remaining 636.	The planning application is planned to be considered by Planning Committee Summer 2019. The Council has reduced forecast delivery by 25 to take into account Feb 2019 advice from agent Kevin Coleman agent as confirmed in meeting Feb 2019 with the two developers involved, Mersea Homes and Hill Residential.

Sites with Resolution to Approve subject to signing of Section 106 Agreement

Local Plan Site reference	Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-33	Total supply 2018-2023	Total identified supply 2023	Correspondence from Developer / Agent / Land owner	Deliverability Evidence update
GOSF 252 GOSF 253	BTE/17/066/OUT	Without	Land West of Headingham Road (Land to the north of Meadow) Gosfield	0	0	0	0	0	35	0	35	No. Original agent responded providing contact details for new agent but no response received to enquiry from new agent.	Resolution to grant subject to signing of S106, 28.11.2017. Subsequently decision granted 24.05.2018. Site has been marketed and is understood to have been sold or is "under offer" for development, but at present insufficient evidence of deliverability within the 5 year supply period.
HATF 630	BTE/17/0341/OUT	Without	Hatfield Bury Farm Bury Lane Hatfield Peveral	0	0	0	46	0	46	46	0	Approved in principle subject to signing of S106. Subsequently decision granted 18.04.2018. Developer Bellway Homes. Full application in preparation.	
CRESS 192 CRESS 193	BTE/16/2144/OUT	Without	Land adjacent to Braintree Road Crossing	0	0	55	55	55	225	165	60	Yes, 18.12.2018 and 06.02.2019. Council has used the original trajectory provided by the developer (18.12.2018). Developer projects 50 - 60 units per year from the end of 2019.	Developer Countryside Properties, outline application approved in principle 27.02.18 subject to signing of Section 106 Agreement; decision issued 18 Dec 2018.
	BTE/17/1769/OUT	Without	Land East of Morleys Road Earls Colne	0	0	0	20	0	20	20	0	Yes, 17.12.2018. From the Hunt Property Trust. In line with agent trajectory.	Reserved Matters expected to be submitted late April/early May 2019.
Estimated supply from Sites subject of Resolution to Approve subject to signing of Section 106 Agreement				0	0	55	121	55	328	231	95		

Appendix 2 – Correspondence with Developers, Agents and Land Owners

Site	Name of Developer, Agent or Land Owner	Correspondence type	Date
Site at Rayne Lodge Farm, north of Rayne Road, Braintree	Redrow Homes	Form	21.12.2108
Former Carrier site, East Street, Braintree	Myriad Housing Ltd /CHP	Form	December 2018
Phase 2 Land south of Oak Road Halstead	David Wilson Homes	Form	04.12.2018
Land South of The Limes Gosfield	Strutt and Parker on behalf of Chelsteen Homes	Email	04.12.2018
Land east of Sudbury Road Halstead	Bellway Homes	Forms received 18.12.2018 Further Information received in meeting with developer 06.02.2019 (table)	18.12.2018 & 06.02.2019
Arla Dairy Site, Hatfield Peverel			
Forest Road, Witham			
Hatfield Bury Farm Bury Lane, Hatfield Peverel			
Land north East of Inworth Road	Savills acting on behalf of Bloor Homes	Email	05.02.2019
Station Field, Kelvedon	Phase 2 Planning acting for Cala Homes	Form	04.12.2018
Land off Western Road Silver End (Meadow View)	Redrow Homes	Form	21.12.2018
Land east of Boars Tye Road, Silver End	Sanctuary Homes	Email	28.02.2019
Ashen Road, Ridgewell	Arcady Architects (agent)	Email	13.03.2019
Land off Braintree Road, Great Bardfield	Croudace Homes	Form	03.12.2018
Land at Station Road, Earls Colne	Phase 2 Planning acting for Cala Homes	Form	04.12.0218

Site	Name of Developer, Agent or Land Owner	Correspondence type	Date
Land rear of Halstead Road, Earls Colne	Amec Foster Wheeler (agent)	Form	17.12.2018
Lodge Farm, South West Witham Growth Location, off Hatfield Road	Redrow Homes	Forms	21.12.2018
Land north of Conrad Road, Witham	Sanctuary Homes	Email	01.03.2019
Land south of Maltings Lane, Witham	Churchmanor Estates	Form	04.12.2018
Hunnable Industrial Estate, Great Yeldham	Linden Homes	Form	04.12.2018
Land West of Panfield Lane, Braintree	Phase 2 Planning & Development Ltd (agent) on behalf of Mersea Homes Ltd And Hills Residential Ltd	Form	10.12.2018
Land adjacent to Braintree Road, Cressing	Countryside Properties	Email	14.01.2019
Land East of Morleys Road, Earls Colne	The Hunt Property Trust	Email	17.12.2018

Please return forms by Friday 7th December 2018



Review of Housing Sites Identified in the 5 Year Supply 2018-2023

The National Planning Policy Framework (July 2018) requires local planning authorities to identify and update annually a supply of specific deliverable sites to be measured against their housing requirements (paragraph 73). As part of this process, local planning authorities are required to engage with developers and others who have an impact on delivery (see paragraph 74).

As you represent one or more of these sites, we would appreciate you taking the time to fill out the below form. Please complete a separate form for each site.

This form can be returned electronically to planningpolicy@braintree.gov.uk or in hard copy if necessary to: Planning Policy, Braintree District Council, Causeway House, Bocking End, Braintree, CM7 9HB.

This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Chris Gatland
Position:	
Organisation:	
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 032 Rayne Gardens, Site at Rayne Lodge Farm, north of Rayne Road
Planning application reference(s):	BTE/15/1458/OUT BTE/17/1973/FUL

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	
Planning Status at 31 March 2018:	Outline planning permission
Update on Planning Status:	Now with full permission and under construction

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	Submitted and approved
Details of Discharge of conditions status: submitted	Conditions discharged
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	OFF RAYNE ROAD
Ground conditions/ contamination:	NO CONTAMINATION
Drainage (SUDS, flood prevention etc):	SUDS AND SWALES
Land ownership:	REDROW HOMES
Other constraints (describe), including market:	

Total/estimated total site capacity	127
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	127
Forecast completions Year 1: April 2018/March 2019	22
Forecast completions Year 2: April 2019/March 2020	50
Forecast completions Year 3: April 2020/March 2021	50
Forecast completions Year 4: April 2021/March 2022	5
Forecast completions Year 5: April 2022/March 2023	0

Other developer/site promoter/landowner comments	
(Internal use)	

Return by Friday 7th December 2018 to:

Planning Policy Team

If you have any other questions about the consultation please contact the Planning Policy Team by email PlanningPolicy@braintree.gov.uk or by phone on 01376 552525 and ask for Planning Policy.

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Please return forms by Friday 7th December 2018



Review of Housing Sites Identified in the 5 Year Supply 2018-2023

The National Planning Policy Framework (July 2018) requires local planning authorities to identify and update annually a supply of specific deliverable sites to be measured against their housing requirements (paragraph 73). As part of this process, local planning authorities are required to engage with developers and others who have an impact on delivery (see paragraph 74).

As you represent one or more of these sites, we would appreciate you taking the time to fill out the below form. Please complete a separate form for each site.

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Debbie Blacow
Position:	Development Officer - new Business
Organisation:	Myriad Housing Ltd /CHP
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 034 Former Carrier Business Park East Street Braintree
Planning application reference(s):	BTE/15/1366 BTE/18/613/REM

Is the site:

Owned by Developer	<input type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input checked="" type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Reserved matters approved

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	18/00613/REM
Details of Discharge of conditions status: submitted	Discharge of conditions submitted
Information on Constraints: Actions needed before completions can be achieved	Land completion from land owner, knotweed removal
Access/transport:	
Ground conditions/ contamination:	
Drainage (SUDS, flood prevention etc):	
Land ownership:	Exchanged, completion of land due shortly
Other constraints (describe), including market:	

Total/estimated total site capacity	74
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	74
Forecast completions Year 1: April 2018/March 2019	
Forecast completions Year 2: April 2019/March 2020	
Forecast completions Year 3: April 2020/March 2021	
Forecast completions Year 4: April 2021/March 2022	
Forecast completions Year 5: April 2022/March 2023	

Other developer/site promoter/landowner comments	
(Internal use)	

Return by Friday 7th December 2018 to:

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Review of Housing Sites Identified in the 5 Year Supply 2018-2023

The National Planning Policy Framework (July 2018) requires local planning authorities to identify and update annually a supply of specific deliverable sites to be measured against their housing requirements (paragraph 73). As part of this process, local planning authorities are required to engage with developers and others who have an impact on delivery (see paragraph 74).

As you represent one or more of these sites, we would appreciate you taking the time to fill out the below form. Please complete a separate form for each site.

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Ray Houghton
Position:	HEAD OF PLANNING
Organisation:	David Wilson Homes Eastern Counties/Barratt Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 035 St Andrews Gate Phase 2 Land south of Oak Road Halstead
Planning application reference(s):	BTE/14/1580 BTE/17/1665

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	YES
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Now with full permission and under construction

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	
Details of Discharge of conditions status: submitted	Conditions now discharged
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	
Ground conditions/ contamination:	
Drainage (SUDS, flood prevention etc):	
Land ownership:	
Other constraints (describe), including market:	

Total/estimated total site capacity	100
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	100
Forecast completions Year 1: April 2018/March 2019	17
Forecast completions Year 2: April 2019/March 2020	56
Forecast completions Year 3: April 2020/March 2021	27
Forecast completions Year 4: April 2021/March 2022	
Forecast completions Year 5: April 2022/March 2023	

Other developer/site promoter/landowner comments	
(Internal use)	

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From: [Carpenter, Kathy](#)
To: [Laura Dudley-Smith](#)
Subject: RE: Request for information forecast development Land south of The Limes Gosfield
Date: 04 December 2018 10:02:00

Many thanks for your help, I think I can take it from here.
Best wishes,
Kathy

From: Laura Dudley-Smith
Sent: 03 December 2018 17:35
To: Carpenter, Kathy <kathy.carpenter@braintree.gov.uk>
Cc: James Firth
Subject: RE: Request for information forecast development Land south of The Limes Gosfield

Dear Kathryn,

The land at Gosfield is no longer owned by Marden Homes Ltd. We are now acting on the site on behalf of it's new owner, Chelsteen Homes. The contact there is Bill Poulton.

A revised planning application has been submitted to BDC for consideration. There are no significant issues that have been identified however that should present delay to delivery should the revised application be determined favourably.

Please let me know if you would like us to complete a revised form in this regard.

Laura

Laura Dudley-Smith
Strutt & Parker

From: Carpenter, Kathy [<mailto:kathy.carpenter@braintree.gov.uk>]
Sent: 30 November 2018 17:38
To: Laura Dudley-Smith
Subject: Request for information forecast development Land south of The Limes Gosfield
Importance: High

Dear Laura,
Please see the attached file. Braintree District Council needs to check information the anticipated timing of completions on the above site, as part of work on checking the deliverable housing land supply in the District. Our records show that you were the contact for the development; could you please advise on the site or provide contact details for someone who can confirm?
Kind regards,

Kathryn Carpenter
Senior Planning Officer

Please return forms by Friday 7th December 2018



Review of Housing Sites Identified in the 5 Year Supply 2018-2023

The National Planning Policy Framework (July 2018) requires local planning authorities to identify and update annually a supply of specific deliverable sites to be measured against their housing requirements (paragraph 73). As part of this process, local planning authorities are required to engage with developers and others who have an impact on delivery (see paragraph 74).

As you represent one or more of these sites, we would appreciate you taking the time to fill out the below form. Please complete a separate form for each site.

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Steve Read
Position:	Divisional Development & Planning Manager
Organisation:	Bellway Homes Ltd
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 38 Land east of Sudbury Road Halstead
Planning application reference(s):	BTE/17/0705

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Outline planning permission
Update on Planning Status:	Full application submitted for 218 homes BTE/18/01749, agent jennifer.carroll@struttandparker.com

Site Progress cont..

HALSTEAD



Full/reserved matters status: approved, applied for, when planned to be submitted	Submitted FULL APPLICATION SUBMITTED
Details of Discharge of conditions status: submitted	Submitted November 2018; Building Regs Initial Notice (NHBC) submitted
Information on Constraints: Actions needed before completions can be achieved	PLANNING APPROVAL AND COMMENCEMENT OF BUILD.
Access/transport:	ACCESS POINTS AGREED AT OUTLINE APPROVAL
Ground conditions/ contamination:	FARM LAND NO CONTAMINATION EXPECTED.
Drainage (SUDS, flood prevention etc):	APPLICATION WITH FULL PLANNING SUBMISSION
Land ownership:	BELLWAY HOMES.
Other constraints (describe), including market:	N/A.

Total/estimated total site capacity	205 OUTLINE
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	205
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	20
Forecast completions Year 3: April 2020/March 2021	70
Forecast completions Year 4: April 2021/March 2022	70
Forecast completions Year 5: April 2022/March 2023	58

218 FULL APPLICATION

Other developer/site promoter/landowner comments	
(Internal use)	Outline permission for 205 also included site for a care home; whereas this is omitted from the full application for 218 - i.e. supply may exceed the 205 indicated as at March 2018

Return by Friday 7th December 2018 to:

PlanningPolicy@braintree.gov.uk

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Please return forms by Friday 7th December 2018



Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:

Steve Read

Position:

Divisional Development and Planning Manager

Organisation:

Bellway Homes

E-mail Address:

Telephone Number:

PART B Site Details (please use separate form for each site)

Site Address/Location:

Site 039 Former Arla Dairy Site Bury Lane/Station Road Hatfield Peverel

Planning application reference(s):

BTE/16/2096

Is the site:

Owned by Developer

Site Actively
being marketed

Sale to developer
under negotiation

Site not actively
being marketed

PART C Site Progress

Will Housing completions begin on site before April 2023?

Yes

Planning Status at 31 March 2018:

Outline permission

Update on Planning Status:

SUBJECT TO R.M. APPLICATION DISCUSSIONS U/WAY.

Site Progress cont..

ARLA FOODS



Full/reserved matters status: approved, applied for, when planned to be submitted	OUTLINE APPROVAL / SECTION 73 R.M. APPLICATION BEING DISCUSSED.
Details of Discharge of conditions status: submitted	PRE RM CONDITIONS BEING SUBMITTED.
Information on Constraints: Actions needed before completions can be achieved	R.M. APPROVAL.
Access/transport:	VIA STATION ROAD - SUBJECT TO CURRENT SECTION 73.
Ground conditions/ contamination:	COVERED HARD/CONC
Drainage (SUDS, flood prevention etc):	APPLICATION WITH RM.
Land ownership:	T.B.C.
Other constraints (describe), including market:	N/A.

Total/estimated total site capacity	145	OUTLINE
Dwellings built as at 31 March 2018	0	
Outstanding capacity as at 31 March 2018	145	✓
Forecast completions Year 1: April 2018/March 2019	0	
Forecast completions Year 2: April 2019/March 2020	0	
Forecast completions Year 3: April 2020/March 2021	80	
Forecast completions Year 4: April 2021/March 2022	65	
Forecast completions Year 5: April 2022/March 2023	-	

Other developer/site promoter/landowner comments	
(Internal use)	

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Please return forms by Friday 7th December 2018



Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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PART A Developer/Promoter Details

Contact Name:	Bellway Homes - Steve Read.
Position:	Divisional Development and Planning Manager
Organisation:	Bellway Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Phase 2 Rivenhall Park Forest Road Witham
Planning application reference(s):	BTE/15/0799 BTE/17/1092

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input checked="" type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	YES
Planning Status at 31 March 2018:	Outline planning permission
Update on Planning Status:	Now with full planning permission for 163 homes, Building Regs Initial Notice submitted

Site Progress cont.. FOREST ROAD - PH 2



Full/reserved matters status: approved, applied for, when planned to be submitted	Approved R.M.
Details of Discharge of conditions status: submitted	CONDITIONS TO BE RELEASED
Information on Constraints: Actions needed before completions can be achieved	CLEAR CONDITIONS
Access/transport:	APPROVED VIA PHASE 1
Ground conditions/ contamination:	FARM LAND / SELF COVERS
Drainage (SUDS, flood prevention etc):	YES
Land ownership:	T. B. C
Other constraints (describe), including market:	N/A.

Total/estimated total site capacity	163	R.M.
Dwellings built as at 31 March 2018	0	
Outstanding capacity as at 31 March 2018	163	
Forecast completions Year 1: April 2018/March 2019	0	
Forecast completions Year 2: April 2019/March 2020	0	
Forecast completions Year 3: April 2020/March 2021	80	
Forecast completions Year 4: April 2021/March 2022	83	
Forecast completions Year 5: April 2022/March 2023	—	

Other developer/site promoter/landowner comments	
(Internal use)	

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PART A Developer/Promoter Details

Contact Name:	Steve Read
Position:	Divisional Development and Planning Manager
Organisation:	Bellway Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 054 Hatfield Bury Farm Bury Lane Hatfield Peverel
Planning application reference(s):	BTE/17/00341/OUT

Is the site:

Owned by Developer	<input type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input checked="" type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	YES - SUBJECT TO LAND DEAL AND FULL APPLICATION
Planning Status at 31 March 2018:	Outline application approved in principle 29.08.17 subject to signing of S106 Agreement
Update on Planning Status:	Outline planning permission granted 18.04.2018

Site Progress cont..

BUILD FARM



Full/reserved matters status: approved, applied for, when planned to be submitted	CURRENT OUTLINE 46 UNITS
Details of Discharge of conditions status: submitted	NONE
Information on Constraints: Actions needed before completions can be achieved	FULL APPLICATION OR R.M.
Access/transport:	VIA EXISTING ENTRANCE
Ground conditions/ contamination:	T.B.A.
Drainage (SUDS, flood prevention etc):	T.B.A.
Land ownership:	T.B.C.
Other constraints (describe), including market:	N/A.

Total/estimated total site capacity	46 OUTLINE
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	46
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	0
Forecast completions Year 3: April 2020/March 2021	0
Forecast completions Year 4: April 2021/March 2022	46 (50)
Forecast completions Year 5: April 2022/March 2023	-

Other developer/site promoter/landowner comments	/
(Internal use)	

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Braintree District Council - Bellway sites

Site	Number of units	Number of HA units	Yearly breakdown				forward
			2017/2018	2018/2019	2019/2020	2020/2021	
Approved Planning							
Central Piling	103	31	57	46			
Forest Road, Phase 1	222	67	71	93	58		
Forest Road, Phase 2	163	49			21	87	55
Mill Lane, Cressing	118	35		19	65	34	
Current	606	182	128	158	144	121	55
4 In Construction		30.03%					
Current applications							
Sudbury Road, Halstead	218	65			33	62	123
Riverview (Gimsons)	78	23			33	45	
Rickstones Road	58	17			15	43	
3 Current Application							
Future applications							
Aria Food, Hatfield Peveral	145	58			16	82	47
Bury Farm, Hatfield Peveral	50	18				16	34
Earls Colne	90	36				54	36
Bakers Lane	300	90				TBC	TBC
N E Witham - Phase 4	350	105				TBC	TBC
Current + Future applications	1289	412					

From: [Wilde, Mathew](#)
To: [Carpenter, Kathy](#)
Subject: FW: 18/60196/PREAPP Land north East of Inworth Road
Date: 05 February 2019 14:23:41
Attachments: [image001.gif](#)

FYI

Kind Regards,

Mathew Wilde

Senior Planner – Development Management

Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB

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From: Catherine Williams **Sent:** 05 February 2019 2:21 PM
To: Wilde, Mathew <Mathew.Wilde@braintree.gov.uk>
Subject: RE: 18/60196/PREAPP Land north East of Inworth Road

Mathew,

In terms of start on site:

- Infrastructure to commence late summer 2019
- With an anticipated build rate of 50 per year we would expect to have 150 completions by April 2023.

Regards,

Catherine Williams BA(Hons) MA MRTPI
Associate Director
Planning

Savills, 33 Margaret Street, London, W1G 0JD
Tel

Email

Website www.savills.co.uk



Before printing, think about the environment

From: Wilde, Mathew [<mailto:Mathew.Wilde@braintree.gov.uk>]
Sent: 28 January 2019 9:59 AM
To: Catherine Williams
Subject: 18/60196/PREAPP Land north East of Inworth Road

Hi Catherine,

Thank you for our meeting on Friday. I have asked Lee to go through the boundary treatment plan with me this week so I will provide comments on this shortly.

In terms of the coloured block plan, please may I have an electronic copy of this?

I have also been asked if I could get some confirmation in writing from you in respect to timescales for the REM submission? And when roughly will works commence?

Could you also please give an indication if possible please?:

- If the site will start to produce completions before April 2023
- View of expected development rates - how many of the 165 are expected to be completed by April 2023?

Many thanks in advance for your help.

Kind Regards,

Mathew Wilde

Senior Planner – Development Management

Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB

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Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Matthew Wood, agent Phase 2 Planning and Development
Position:	Principal Planner
Organisation:	CALA Homes (North Home Counties) Ltd
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Station Field, Land W of Kelvedon Station Station Rd (Monks Farm) Kelvedon
Planning application reference(s):	Site 041 BTE/17/0418

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes, subject to RM approval
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	RM to be submitted early 2019

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	RM to be submitted early 2019
Details of Discharge of conditions status: submitted	Condition submissions to be made early 2019
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	Access approved at outline stage.
Ground conditions/ contamination:	Agricultural land.
Drainage (SUDS, flood prevention etc):	SUDS system to be included within Reserved Matters application.
Land ownership:	CALA Group
Other constraints (describe), including market:	

Total/estimated total site capacity	250
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	250
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	50
Forecast completions Year 3: April 2020/March 2021	50
Forecast completions Year 4: April 2021/March 2022	50
Forecast completions Year 5: April 2022/March 2023	50

Other developer/site promoter/landowner comments	
(Internal use)	As condition of the outline permission dated October 2017, reserved matters application for first phase must be submitted by October 2019 (i.e. within 2 years)

Return by Friday 7th December 2018 to:

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PART A Developer/Promoter Details

Contact Name:	Chris Gatlund
Position:	
Organisation:	Redrow Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 043 Meadow View, Land off Western Road Silver End
Planning application reference(s):	BTE/15/0280

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Reserved matters and discharge of conditions submitted, Building Regs Initial Notice submitted; access approved

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	Submitted
Details of Discharge of conditions status: submitted	
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	OFF WESTERN ROAD
Ground conditions/ contamination:	NO CONTAMINATION
Drainage (SUDS, flood prevention etc):	SUDS AND SWALES
Land ownership:	REDROW HOMES
Other constraints (describe), including market:	

Total/estimated total site capacity	350
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	350
Forecast completions Year 1: April 2018/March 2019	25
Forecast completions Year 2: April 2019/March 2020	51
Forecast completions Year 3: April 2020/March 2021	51
Forecast completions Year 4: April 2021/March 2022	51
Forecast completions Year 5: April 2022/March 2023	51

Other developer/site promoter/landowner comments	
(Internal use)	

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From: Conan Farningham
To: Havers, Timothy
Cc: Carpenter, Kathy; Alice Patchett
Subject: RE: Silver End
Date: 26 February 2019 15:07:23
Attachments: image001.png

Afternoon Tim,

Thanks for your email, I would comment as follows:

- We are ready to submit – we are just waiting for the decision notice to ensure it is not lost in the system.
- We would hope to be complete and off site by April 2023
- Completions are assumed as follows but these will likely change following appointment of a contractor and also the decision date:

April 2019/March 2020: 4
April 2020/March 2021: 35
April 2021/March 2022: 11
April 2022/March 2023 0

Please be advised that we are currently programming the S106 units to be delivered in the first Phase.

Regards,

Conan

Conan Farningham
Head of Land and Planning

Sanctuary Group

Office: 02088261598



From: Havers, Timothy [mailto:timothy.havers@braintree.gov.uk]
Sent: 28 February 2019 14:54
To: Conan Farningham
Cc: Carpenter, Kathy
Subject: Silver End

Conan,

I'm aware that you are chasing Chris for the DN for the above. I have also chased – he is interviewing all day today so may not be able to respond today.

I would be grateful if you could provide a short email setting out the answers to the below. This is to assist with our Planning Policy Team's assessment of the deliverability timescales for your Silver End site.

- When do you plan to submit the full planning application?
- Will the site start to produce completions before April 2023?
- How many completions are they planning for in the years:

April 2019/March 2020:
April 2020/March 2021:
April 2021/March 2022:
April 2022/March 2023

Many Thanks

Tim

Tim Havers MRTPI

Principal Planner
Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB
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From: [Heather Organ](#)
To: [Carpenter, Kathy](#)
Subject: RE: Development site at land at Ashen Road Ridgewell
Date: 13 March 2019 15:13:14
Attachments: [~WRD000.jpg](#)
[image001.png](#)

Dear Kathryn,

We intend to be in a position to submit an application for planning shortly - in late March or early April 2019. Assuming we are successful I would anticipate completion of the whole site in the first quarter of 2021 based on our clients current aspirations.

I am unable to provide the name of the developer at this time but I trust the above information answers your main queries.

Kind Regards,
Heather.

[Heather Organ](#) BSc Architecture

Heather



From: Carpenter, Kathy <kathy.carpenter@braintree.gov.uk>
Sent: 13 March 2019 11:51
To: Heather Organ <[REDACTED]>
Subject: Development site at land at Ashen Road Ridgewell
Importance: High

Dear Heather Organ,

We spoke on the telephone recently, when I was enquiring about whether this above site is coming forward for development in the next few years, as you acted as agent for a Mr J Williams in a 2018 pre application, following the sale of the site by the landowner to a developer. The site currently has the benefit of an extant outline permission and is shown as a draft allocation in the emerging Draft Braintree District Local Plan. You kindly provided me with a verbal response, confirming that the site is now owned by a developer, and that a detailed planning application is being drawn up for submission (in 2019?) following on from the pre-application consideration.

Could I please ask if you could provide this confirmation in writing for us – by e-mail response would be fine? If possible, as well as confirming whether the site is expected to start to produce completions by April 2023, any information would be helpful if available on expected estimated timescales for submission of the planning application, start on site, and expected number of dwellings by year –
April 2019/March 2020 (I assume that will be 0)

April 2020/March 2021
April 2021/March 2022, and
April 2022/March 2023.

If you are able to confirm the name of the developer that would also be helpful.

Kind regards,

Kathryn Carpenter

Senior Planning Officer

Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB

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Please return forms by Friday 7th December 2018



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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Christopher Evans
Position:	Architect
Organisation:	Croudace Homes Ltd.
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 045 Land off Braintree Road Great Bardfield
Planning application reference(s):	BTE/15/1354/OUT BTE/18/0187/REM

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes - site under construction
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Site now under construction, conditions discharged.

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	Approved
Details of Discharge of conditions status: submitted	Discharged
Information on Constraints: Actions needed before completions can be achieved	N/A
Access/transport:	
Ground conditions/ contamination:	
Drainage (SUDS, flood prevention etc):	
Land ownership:	
Other constraints (describe), including market:	

Total/estimated total site capacity	37
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	37
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	37
Forecast completions Year 3: April 2020/March 2021	
Forecast completions Year 4: April 2021/March 2022	
Forecast completions Year 5: April 2022/March 2023	

Other developer/site promoter/landowner comments	
(Internal use)	

Return by Friday 7th December 2018 to:

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Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Matthew Wood agent Phase 2 Planning and Development
Position:	Principal Planner
Organisation:	CALA Homes (North Home Counties) Ltd
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 046 Land at Station Road Earls Colne
Planning application reference(s):	BTE/15/0934 18/02004/REM

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes, construction due to begin early 2019 subject to RM approval
Planning Status at 31 March 2018:	RM submitted
Update on Planning Status:	RM due to be heard at Planning Committee in Jan/Feb 2019

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	RM submitted Feb 2018
Details of Discharge of conditions status: submitted	All relevant condition submissions made and small number yet to be approved
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	Access approved as part of outline consent and S278 works underway.
Ground conditions/ contamination:	No contamination present.
Drainage (SUDS, flood prevention etc):	Attenuation basin incorporated into RM submission.
Land ownership:	Developer owned
Other constraints (describe), including market:	

Total/estimated total site capacity	56
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	56
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	40
Forecast completions Year 3: April 2020/March 2021	16
Forecast completions Year 4: April 2021/March 2022	0
Forecast completions Year 5: April 2022/March 2023	0

Other developer/site promoter/landowner comments	
(Internal use)	

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Braintree
District Council

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PART A Developer/Promoter Details

Contact Name:	Stuart Williamson agent Amec Foster Wheeler
Position:	
Organisation:	The Hunt Property Trust
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Land rear of Halstead Road Earls Colne
Planning application reference(s):	BTE/15/1580

Is the site:

Owned by Developer	<input type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input checked="" type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	YES
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	JULY 2019
Details of Discharge of conditions status: submitted	NONE TO DATE
Information on Constraints: Actions needed before completions can be achieved	NONE BEYOND USUAL
Access/transport:	(Access Reserved ie approved)
Ground conditions/ contamination:	Further investigations per outline
Drainage (SUDS, flood prevention etc):	" " "
Land ownership:	-
Other constraints (describe), including market:	-

Total/estimated total site capacity	80
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	80
Forecast completions Year 1: April 2018/March 2019	
Forecast completions Year 2: April 2019/March 2020	25
Forecast completions Year 3: April 2020/March 2021	55
Forecast completions Year 4: April 2021/March 2022	
Forecast completions Year 5: April 2022/March 2023	

Other developer/site promoter/landowner comments	
(Internal use)	

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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Chris Gatland
Position:	
Organisation:	Redrow Homes Ltd
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 018 Phase 1B Lodge Farm Hatfield Road
Planning application reference(s):	BTE/15/0430/OUT BTE/18/00884/REM

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Outline planning permission
Update on Planning Status:	Reserved matters application submitted 16 May 2018
Full/reserved matters status: approved, applied for, when planned to be submitted	

Site Progress cont..

Details of Discharge of conditions status: submitted	Conditions discharged post March 2018, site now under co	
Information on Constraints: Actions needed before completions can be achieved		
Access/transport:	Access off the B1389	
Ground conditions/ contamination:	No remediation required Predominantly cohesive	
Drainage (SUDS, flood prevention etc):	SUDS and Swales - 1 in 100 year event and 30% for climate change	
Land ownership:	Redrow Homes	
Other constraints (describe), including market:		
Total/estimated total site capacity	84	
Dwellings built as at 31 March 2018	0	
Outstanding capacity as at 31 March 2018	84	
Forecast completions Year 1: April 2018/March 2019	0	
Forecast completions Year 2: April 2019/March 2020	30	
Forecast completions Year 3: April 2020/March 2021	54	
Forecast completions Year 4: April 2021/March 2022	0	
Forecast completions Year 5: April 2022/March 2023	0	
Other developer/site promoter/landowner comments		
(Internal use)		

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PART A Developer/Promoter Details

Contact Name: Chris Gatland
Position:
Organisation: Redrow Homes Ltd
E-mail Address: [REDACTED]
Telephone Number: [REDACTED]

PART B Site Details (please use separate form for each site)

Site Address/Location: Site 019 Phase 2 Lodge Farm Witham
Planning application reference(s): BTE/15/0430/OUT BTE/18/01912/REM

Is the site:

Owned by Developer Site Actively being marketed
Sale to developer under negotiation Site not actively being marketed

PART C Site Progress

Will Housing completions begin on site before April 2023?	
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Reserved matters application submitted 24 Oct 2018
Full/reserved matters status: approved, applied for, when planned to be submitted	

Site Progress cont..

Details of Discharge of conditions status: submitted	
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	Access off the B1389
Ground conditions/ contamination:	No remediation required Predominantly cohesive
Drainage (SUDS, flood prevention etc):	SUDS and Swales - 1 in 100 year event and 30% for climate change
Land ownership:	Redrow Homes
Other constraints (describe), including market:	
Total/estimated total site capacity	57
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	57
Forecast completions Year 1: April 2018/March 2019	11
Forecast completions Year 2: April 2019/March 2020	46
Forecast completions Year 3: April 2020/March 2021	0
Forecast completions Year 4: April 2021/March 2022	0
Forecast completions Year 5: April 2022/March 2023	0
Other developer/site promoter/landowner comments	
(Internal use)	

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Braintree
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This form has three parts: Part A – Developer/Company/promoter Details, Part B - Site details and Part C – Site Progress

PART A Developer/Promoter Details

Contact Name:	Chris Gatland
Position:	
Organisation:	Redrow Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 020 Phases 3, 4 and 5 Lodge Farm Hatfield Road
Planning application reference(s):	BTE/15/0430/OUT

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	
Full/reserved matters status: approved, applied for, when planned to be submitted	

Site Progress cont..

Details of Discharge of conditions status: submitted	
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	Access of the B1389
Ground conditions/ contamination:	No remediation required Predominantly cohesive
Drainage (SUDS, flood prevention etc):	SUDS and Swales - 1 in 100 year event and 20% for Climate Change
Land ownership:	Redrow Homes
Other constraints (describe), including market:	
Total/estimated total site capacity	518
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	518
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	45
Forecast completions Year 3: April 2020/March 2021	80
Forecast completions Year 4: April 2021/March 2022	90
Forecast completions Year 5: April 2022/March 2023	90
Other developer/site promoter/landowner comments	
(Internal use)	Potential capacity based on outline of up to 750, minus Phases 1 a(91) 1b (84) and 2 (57), would be a residual 518, but is this still a realistic estimate of residual site capacity?

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From: [Conan Farningham](#)
To: [Carpenter, Kathy](#)
Cc: [Havers, Timothy](#); [Banks, Natalie](#); [Alice Patchett](#)
Subject: Silver End/Conrad Rd
Date: 01 March 2019 11:00:51
Attachments: [image001.png](#)
[image002.jpg](#)

Morning,

I would advise the following for Conrad Road, Witham (Southfields):

- We have submitted the application and awaiting for further timescales etc
- Yes, this scheme along with Silver End are key to delivering our Homes England Programme and overall targets
- Completions are assumed as follows but these will likely change following appointment of a contractor and also the decision date:

April 2019/March 2020: 0
April 2020/March 2021: 21
April 2021/March 2022: 67
April 2022/March 2023: 36
April 2023/March 2024: 26

Please be advised that we are currently programming the S106 units to be delivered April 21/22 hence the spike in completions.

Regards,

Conan

Conan Farningham
Head of Land and Planning

Sanctuary Group

Office: 02088261598

Email:



From: Carpenter, Kathy [<mailto:kathy.carpenter@braintree.gov.uk>]
Sent: 28 February 2019 15:44
To: Conan Farningham
Subject: RE: Silver End
Importance: High

Dear Conan – thank you very much for your prompt response. Could I please ask, are you able to provide me with the equivalent information in respect of Conrad Road Witham, which I believe you know as Southfields?

Kind regards,
Kathy Carpenter

Kathryn Carpenter
Senior Planning Officer
Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB
☎ 01376 552525 Ext. 2564 | www.braintree.gov.uk | ✉ kathy.carpenter@braintree.gov.uk

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PART A Developer/Promoter Details

Contact Name:	Stephen M Clark
Position:	Chief Executive
Organisation:	Churchmanor Estates plc
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 050 Land south of Maltings Lane Witham
Planning application reference(s):	BTE/12/1071

Is the site:

Owned by Developer	<input type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input checked="" type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Outline planning permission
Update on Planning Status:	See below

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	
Details of Discharge of conditions status: submitted	
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	
Ground conditions/ contamination:	
Drainage (SUDS, flood prevention etc):	
Land ownership:	
Other constraints (describe), including market:	Need a mini Masterplan to deal with housing/neighbourhood shops and public open space

Total/estimated total site capacity	268
Dwellings built as at 31 March 2018	205
Outstanding capacity as at 31 March 2018	63
Forecast completions Year 1: April 2018/March 2019	
Forecast completions Year 2: April 2019/March 2020	
Forecast completions Year 3: April 2020/March 2021	
Forecast completions Year 4: April 2021/March 2022	
Forecast completions Year 5: April 2022/March 2023	

Other developer/site promoter/landowner comments	Current discussions with LPA case officer Neil Jones to combine this application with the provision of Neighbourhood Shops
(Internal use)	Discussions with LPA taking place on proposed mixed use development on remaining, final phase of largely completed strategic site (Land south of Maltings Lane)

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PART A Developer/Promoter Details

Contact Name:	Hannah Short
Position:	Planning and Design Co-ordinator
Organisation:	Linden Homes
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 051 Former Hunnable site Toppesfield Road Great Yeldham
Planning application reference(s):	BTE/14/1254 18/01475/REM

Is the site:

Owned by Developer	<input checked="" type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Outline permission
Update on Planning Status:	Reserved matters application submitted, and discharge of conditions

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	Submitted
Details of Discharge of conditions status: submitted	Submitted
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	Access via Market Grove to be constructed, technical approval required from Essex County Council before works can commence on access.
Ground conditions/ contamination:	Contamination present in ground, remediation to be carried out and validation report to be approved by Braintree DC.
Drainage (SUDS, flood prevention etc):	Surface Water drainage strategy (outline condition 5) to be discharged by Braintree DC.
Land ownership:	None
Other constraints (describe), including market:	None

Total/estimated total site capacity	60
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	60
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	16
Forecast completions Year 3: April 2020/March 2021	44
Forecast completions Year 4: April 2021/March 2022	0
Forecast completions Year 5: April 2022/March 2023	0

Other developer/site promoter/landowner comments	n/a
(Internal use)	

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PART A Developer/Promoter Details

Contact Name:	Kevin Coleman, agent Phase 2 Planning & Development Ltd
Position:	Mersea Homes Ltd And Hills Residential Ltd
Organisation:	
E-mail Address:	
Telephone Number:	

PART B Site Details (please use separate form for each site)

Site Address/Location:	Site 52 Land West of Panfield Lane Braintree
Planning application reference(s):	BTE/15/1319

Is the site:

Owned by Developer	<input type="checkbox"/>	Site Actively being marketed	<input type="checkbox"/>
Sale to developer under negotiation	<input checked="" type="checkbox"/>	Site not actively being marketed	<input type="checkbox"/>

PART C Site Progress

Will Housing completions begin on site before April 2023?	Yes
Planning Status at 31 March 2018:	Without permission; adopted Local Plan Allocation, hybrid application for: 411 homes outline; plus 189 homes full
Update on Planning Status:	Planning application planned to be put before Planning Committee Spring 2019

Site Progress cont..

Full/reserved matters status: approved, applied for, when planned to be submitted	Hybrid application submitted
Details of Discharge of conditions status: submitted	
Information on Constraints: Actions needed before completions can be achieved	
Access/transport:	
Ground conditions/ contamination:	
Drainage (SUDS, flood prevention etc):	
Land ownership:	
Other constraints (describe), including market:	

Total/estimated total site capacity	600
Dwellings built as at 31 March 2018	0
Outstanding capacity as at 31 March 2018	600
Forecast completions Year 1: April 2018/March 2019	0
Forecast completions Year 2: April 2019/March 2020	0
Forecast completions Year 3: April 2020/March 2021	25
Forecast completions Year 4: April 2021/March 2022	100
Forecast completions Year 5: April 2022/March 2023	100

Other developer/site promoter/landowner comments	Assumed programme is for infrastructure start on site before the end of 2019, residential development starting in 2020 on the hybrid/detailed element, with 25 completions second half of 2020, followed by approx. 100 per annum thereafter. Assuming of course that we actually get planning permission 1st half of 2019.
(Internal use)	

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From: [Emma Woods](#)
To: [Carpenter, Kathy](#)
Cc: [Jones, Neil](#); [Massow, Alan](#); [Goodings, Emma](#)
Subject: RE: Request for confirmation of expected housebuilding on Countryside sites within 5 year supply
Date: 14 January 2019 11:14:38
Attachments: [image002.jpg](#)
[119011411143200611.png](#)

Good morning Kathy,

For Meadow Rise, the previous figures should still stand, although you may wish to roll the 6 from 2018/19 into the following period if this is an end of March cut off (ie – 45 in 2019/20; 70 in 2020/21; 90 in 2021/22 and 10 in 2022/23).

For Braintree Road we are hoping to start on site at the end of 2019 – subject to planning; and would therefore anticipate delivery of 50 – 60 units per year once on site, so the previous figures look about right.

Does that help?

Kind regards

Emma

Emma Woods MSc MRTPI
Senior Planning Manager
Housebuilding (East)
Countryside Properties

cid:image001.png@01D42276.B64D46B0



From: Carpenter, Kathy <kathy.carpenter@braintree.gov.uk>
Sent: 14 January 2019 09:25
To: Emma Woods
Cc: Jones, Neil <neil.jones@braintree.gov.uk>; Massow, Alan <alan.massow@braintree.gov.uk>; Goodings, Emma <emma.goodings@braintree.gov.uk>
Subject: [EXTERNAL] Request for confirmation of expected housebuilding on Countryside sites within 5 year supply
Importance: High

This message originated from outside Countryside Properties

Dear Emma –

I am seeking confirmation from Countryside Properties on the forecast supply from two sites that Countryside have, that are included in the March 2018 5 year supply assessment 2018-

2023. I e-mailed Countryside in December but have not had a reply, and Neil suggested that you could help me on this.

The two sites are Meadow Rise London Road Braintree, and Braintree Road Crossing.

Meadow Rise Braintree is of course under construction with new homes actively being marketed. I assume it is safe to take it that there will be completions before 2023. I had used forecasts previously supplied by Countryside, 6 dwellings 2018/19; 39 in 2019/20; 70 in 2020/21; 90 in 2021/22 and 10 in 2022/23.

Braintree Road Crossing is a site that in the context of the revised Planning Practice Guidance etc I really need confirmation on as this is a site subject of an outline planning application which was approved subject to a Section 106 signing as at March 2018. I understand from Neil that the Section 106 has recently been signed. Can you please confirm for me:

- a. if you believe that that completions will begin on site before 2023
- b. the expected rate of completions.

Based on information previously supplied by Countryside, I have forecast 166 completions on this site by March 2023; 39 in 2020/21; 55 in 2021/22 and 72 in 2022/23.

Many thanks for your assistance on this,

Kathryn Carpenter

Senior Planning Officer

Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB

☎ 01376 552525 Ext. 2564 | www.braintree.gov.uk | ✉ kathy.carpenter@braintree.gov.uk

Think before you print!

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From: [William Lee](#)
To: [Carpenter, Kathy](#)
Subject: Request for information on forecast development
Date: 17 December 2018 14:35:14
Attachments: [CCF_000039.pdf](#)
Importance: High

Dear Kathy

Apologies for not coming back to you sooner, but please find the attached.

I am also handling the adjoining Morleys Rd site that has just obtained s106 sign off.

The replies would be exactly the same, except I would target 20 units in the year from April 2020.

Yours sincerely

William Lee MA FRICS

Principal
GREENHUNT

St James's
London SW1Y 6LX

Appendix 3 - Lead time and delivery rates in recent large sites in Braintree District As at end March/Start April 2019

Site	Developer	Brownfield or Greenfield	Date of detailed permission	Site capacity	Date of first plot commencement	Date of first plot completions	Lead time (months) from date of detailed permission to completions starting	No. of completions within 1 year of detailed permission	No. of completions between 1 and 2 years of detailed permission	No. of completions between 2 and 3 years of detailed permission	Notes
Bakers Lane London Road Black Notley	Crest Strategic	Greenfield	17-Jan-17	96	Jan-17	Oct-17	10	28	45	11	83 plots completed as at March 2019; 11 under construction; Year 3 = 2.5 months only
Portway Place Halstead	Bellway Homes	Greenfield	25-Apr-16	103	Oct-16	Apr-18	24	0	57	28	Former employment site had to first be demolished and cleared, following permission
Monks Road Earls Colne	Crest Nicholson	Greenfield	22-May-17	50	Sep-18	Mar-19	22	0	1		As at March 2019 1 completed and 48 under construction; Year 2 = 10 months only
Phase 1 Oak Road Halstead	Bloor Homes	Greenfield	25-Jan-18	183	Apr-18	Oct-18	9	21	18		39 plots now completed and 80 under construction; Year 2 = 2 months only
Phase 2 Oak Road Halstead	David Wilson Homes	Greenfield	11-May-18	100	May-18	Feb-19	9	11			41 plots under construction. Year 1 = 11 months only
Meadow Rise Pods Brook Braintree	Countryside Properties	Greenfield	10-Oct-17	215	Jun-18			0	0		45 plots under construction. Year 2 = 6 months only
Phase 1 Forest Road NE Witham	Bellway Homes	Greenfield	14-Jul-16	222	Sep-16	Oct-17	15	0	78	36	Currently 114 completed and 85 under construction. Year 3 = 9.5 months.
Avondale Mill Lane Crossing	Bellway Homes	Greenfield	10-Jan-18	118	Apr-18	Jan-19	12	11	8		Currently 19 completed and 37 plots under construction, within 15 months of permission. Year 2 = 2.5 months only.
Phase 1a Lodge Farm Witham	Redrow Homes	Greenfield	18-Sep-17	91	Sep-17	Jun-18	9	23	57		Overall site total, of which this is 1 phase, is 750, of which 95 were completed in the monitoring year April 2018/2019. On Phase 1A currently 80 completed and 6 under construction. Year 2 = 6 months only
Phase 1b Lodge Farm Witham	Redrow Homes	Greenfield	04-Sep-18	84	Sep-18	Mar-19	7	15			Currently 67 plots under construction. Year 1 = 7 months only.
Land West of Boars Tye Road Silver End	Keepmoat Homes	Greenfield	28-Dec-17	59	Mar-18	Dec-18	12	17	23		Currently 40 plots completed and 19 under construction. Year 2 = 3 months only.
Rayne Gardens Braintree	Redrow Homes	Greenfield	06-Apr-18	127	May-18	Feb-19	11	5			Currently 60 plots under construction, by end of Year 1.
Land off Braintree Road Great Bardfield	Croudice Homes	Greenfield	08-Jun-18	37	Nov-18						Currently 28 plots under construction. Year 1 = 10 months only.
Constance Close Witham	Bloor Homes	Greenfield	Mar-13	94	Jun-13	Apr-14	13	0	62	32	
Land south of Mill Hill Braintree	Bellway Homes	Greenfield	11-Jun-14	74	Jan-15	Aug-15	14	0	47	27	
WJC Hospital site Braintree	Croudice Homes	Brownfield	Aug-13	29	Feb-14	Nov-14	15	0	29		Buildings had first to be demolished and site cleared.

Appendix 4: Review of March 2017 housing trajectory schedule against progress/change, taking into account current (April 2019) evidence

Planning application reference	Planning Status	Name and address of site	2017 Monitoring Report position	2018 Review and Update
BTE/16/0315	Full	157 Coggeshall Road and land to rear (Ushers Meadow) Braintree	Full permission for 12 dwellings and was under construction at 1 April 2017, all 12 forecast to be completed 2017/2018. Developer Chelsteeen Homes.	12 dwellings completed 2017/2018 as forecast
BTE/15/1530	Full	The Old Police Station Fairfield Road Braintree	Full permission for 14 dwellings and was under construction, part completed at 1 April 2017. Remaining 7 dwellings of total of 14, 7 completed 2016/17; outstanding 7 forecast to be completed 2017/18. Developer Chignal Properties Limited.	7 dwellings completed 2017/2018 as forecast
BTE/15/1596	Full	Crossman House Station Approach Braintree	Development of 21 flats, under construction at 1 April 2017 and forecast to be completed 2017/2018. Developer Colne Housing Society Ltd.	21 dwellings completed as forecast.
BTE/15/0872	Full	Garage block off Mersea Way, Chelmer Road Braintree	Redevelopment of garage court to provide 12 houses, under construction at 1 April 2017 and forecast to be completed 2017/2018. Developer Greenfields Community Housing.	12 dwellings completed as forecast.
BTE/12/1344	Full	Blandford House site 7 London Road Braintree	Development of 14 dwellings from conversion of Blandford House to 10 apartments and erection of 4 houses. 4 houses completed and conversion forecast to be completed 2017/2018.	Development has temporarily stalled; it is understood that the owner has recently died.
BTE/16/0605	Full	Land at Bakers Lane and London Road Black Notley	Development of 96 dwellings, under construction, forecast first completions 2017/18 (40) and 56 forecast 2018/19. Developer Crest Nicholson Eastern	Detailed permission granted January 2017 and construction commenced January 2017. 35 dwellings completed at 1 April 2018. Site check April 2019 identified 83 completed, 11 under construction, 2 plots not yet started. So only 13 plots outstanding at April 2019 of which 11 were under construction.
BTE/14/0171 BTE/15/0328 BTE/16/1577	Full	Balls Chase/Tidings Hill, Ozier Field and Stanstead Road Halstead	Large development being developed incrementally over long period by local developer. 34 plots outstanding; site under construction. 4 completions forecast 2017/18 and further 4 in 2018/19.	1 plot completed 2017/2018, but then 12 plots completed 2018/2019; development now ahead of 2017 tra.
BTE/15/1312	Full	Portway Place, Central Park site Colchester Road Halstead	Redevelopment of employment site to provide 103 homes. 34 completions forecast 2017/18 followed by 69 the following year. Developer Bellway Homes.	57 plots completed 2017/18, more than forecast. Site check April 2019 identified 85 completed (i.e.28 completed 2018/19), 15 under construction, no plots not started. Development is expected to be completed by April 2020.
BTE/15/0962	Full	Land at St Andrews Road Hatfield Peverel	Redevelopment of homes with net gain, demolitions took place earlier, site under construction, 25 new build completions forecast 2017/2018. Developer Greenfields Community Housing.	25 dwellings completed as forecast.
BTE/13/00416	Full	Earl's Garden (Premdor site) Station Road Sible Hedingham	Redevelopment of factory site to 183 dwellings; site under construction and part completed. Completion of remaining 51 dwellings forecast 2017/2018. Developer Bloor Homes.	51 dwellings completed as forecast.
BTE/13/0005/COUPA BTE/16/0418	Full	Units 1 and 2 Tey Grove Gt Domseys Farm Domsey Chase Feering	Conversion of former offices to 11 homes via Prior Approval process, under construction. 11 completions forecast 2017/2018. Local developer Kingsland Property Co Ltd.	Site remains under construction; completion forecast 2017/2018. Completion certificate issued 4 Dec 2018.
BTE/14/1559	Full	Land at 31-45 Church Road Kelvedon	Redevelopment of homes with net gain, demolitions took place earlier, site under construction, 18 new build completions forecast 2017/2018. Developer Greenfields Community Housing.	18 dwellings completed as forecast.
BTE/14/1558	Full	Land at 14-18 Thorne Road and 1-15 Croft Road Kelvedon	Redevelopment of homes with net gain, demolitions took place earlier, site under construction, 15 new build completions forecast 2017/2018. Developer Greenfields Community Housing.	3 completions 2017/2018 and remaining 12 completed 2018/2019.

Appendix 4: Review of March 2017 housing trajectory schedule against progress/change, taking into account current (April 2019) evidence

Planning application reference	Planning Status	Name and address of site	2017 Monitoring Report position	2018 Review and Update
BTE/14/1556	Full	Land at 29-43 Thorne Road Kelvedon	Redevelopment of homes with net gain, demolitions took place earlier, site under construction, 13 new build in total of which 2 completed 2016/17. 11 new build completions forecast 2017/2018. Developer Greenfields Community Housing.	11 dwellings completed as forecast.
BTE/14/1557	Full	Land at 20-42 Church Road Kelvedon	Redevelopment of homes with net gain, demolitions took place earlier, site under construction, 18 new build completions forecast 2017/2018. Developer Greenfields Community Housing.	The 18 dwellings were completed April 2018.
BTE/15/0799	Full	Phase 1 NE Witham Growth Location, East of Forest Road	Development of 222 homes under a hybrid permission for 370 in total, of which Phase 1 (the 222) had detailed consent. 50 completions forecast 2017/2018, and 50 for following year. Developer Bellway Homes.	71 plots completed 2017/18, more than forecast. Site check April 2019 identified 114 completed (i.e. 43 completed 2018/2019), 85 under construction, 23 plots not yet started. As at April 2019, development remains ahead of forecast in 2017 trajectory, 114 having been completed over the 2 years compared to forecast 100.
BTE/15/0237	Full	Land adj Coach House Way Witham	Development of 11 homes on brownfield town centre site, site under construction. 11 completions forecast 2018/2019. Developer Aedis Homes.	11 dwellings completed 2017/2018, ahead of forecast.
BTE/14/1644	Full	Plots 12-31, Phase 2, The Spinney, Former Forest Road Community Hall site Witham	Redevelopment of former community hall site to 31 dwellings, site under construction and Phase 1 (11 dwellings) completed, 20 completions forecast 2017/2018. Developer Greenfields Community Housing.	20 dwellings completed as forecast.
BTE/16/0982/COUPA	Full	Cullen Mill 49 Braintree Road, Block D Witham	Conversion of former offices to 16 homes via Prior Approval process, under construction. 16 completions forecast 2017/2018. Developer Eden Homes	16 dwellings completed as forecast.
BTE/15/0903	Full	Former Health Clinic site Coggeshall Road Braintree	Redevelopment of former health clinic site to 14 dwellings, site with full permission, not yet under construction at April 2017. 14 completions forecast 2018/2019. Developer APC London.	14 dwellings completed as forecast.
BTE/15/1584	Full	Polly's Field, Land at Church Lane Bocking (sheltered housing)	Development of 100 sheltered apartments, site with full permission, not yet under construction at April 2017. 100 completions forecast 2019/2020. Developer Abbeyfield Braintree & Bocking Society Ltd	Development put back 1 year to 2020/2021. Developer advised that the contractor is in place and has done preliminary work, and the site is "oven ready"
BTE/16/0271	Full	Land rear of 49-57 Church Lane Braintree	Reserved Matters permission for net supply of 15 dwellings, forecast supply 6 dwellings 2019/2020 and 9 in 2020/2021.	The consent expired in May 2018 and the site was not included in the 2018 5 year deliverable supply as there was insufficient evidence of deliverability. Following pre-application discussions in Summer 2018, a new full planning application, for a net supply of 15 dwellings, was submitted in October 2018 and is the subject of a Resolution to Grant subject to signing of a Section 106 Agreement, BTE/18/1917/FUL, Planning Committee 26 February 2019. As such the site is not included in the Council's 5 year supply 2018-2023, base date 1 April 2018, but is expected to be considered for possible inclusion in a future review on the basis of the new permission.
BTE/16/0211	Full	Cox's Yard, Land north of Rayne Road, south of Buryan Road Braintree	Full permission not yet started. Development of 11 dwellings, net supply 10. Forecast supply 10 completions in 2018/2019. Developer George Cox (Braintree) Ltd	The site has not come forward as quickly as anticipated because revised plans were submitted by the developer in July 2018 and permitted 5.3.2019, increasing the net capacity to 12 (BTE/18/01273/FUL). 2018 Review projects completions in 2020/2021

Appendix 4: Review of March 2017 housing trajectory schedule against progress/change, taking into account current (April 2019) evidence

Planning application reference	Planning Status	Name and address of site	2017 Monitoring Report position	2018 Review and Update
BTE/14/0676	Full	Oak View Lodge, Land at Leywood Close Braintree	14 sheltered apartments, full permission, not yet started. Forecast supply 14 completions 2018/2019. Developer Cassek Limited.	The site has not come forward as quickly as anticipated although the Approved Building Inspector has advised that development has started. 2018 Review projects 14 completions in 2021/2022.
BTE/16/1452	Full	81-83 High Street Braintree	Conversion of PH to form 10 flats, full permission not yet under construction. Forecast 10 completions in 2019/2020. Developer Liffen Tree Development Ltd	Construction commenced 1.2.2018. Revised plans BTE/18/00986/FUL 10 units, granted 20.12.2018, regularising amendments. Delivery forecast unchanged.
BTE/14/1115	Full	The Rose and Crown PH site Maselfield Road Braintree	14 dwellings, not yet started, completions forecast for 2018/2019. Developer Whitewood Rose And Crown Development Limited.	Permission expired 15.12.2017. Agent and developer unaware, sought to discharge conditions. LPA advised agent of position, new application submitted for 14 dwellings, BTE/18/00198/FUL, pending consideration (problems include inadequate provision of information on SUDS), and a revised application BTE/19/00265/FUL which is currently invalid as form incomplete. The site is not currently included in the 5 year supply.
BTE/15/1321	Full	Riverside site St John's Avenue Braintree	48 flats, full permission not yet under construction, forecast 48 completions 2019/2020. Developer Parkland Developments Riverside Ltd.	Development is under construction; delivery forecast unchanged.
BTE/15/1372	Full	Land between A120 and Tey Road Coggeshall	Full permission not yet started. Development of 11 dwellings. Forecast supply 11 completions in 2018/2019. Developer	Revised plans submitted for 9 bungalows, BTE/18/01673/FUL, pending consideration, revised version of this application submitted March 2019. Development forecast revised to 9 completions in 2020/2021.
BTE/15/1457	Full	Land East of Cherry Tree Rise Halstead	Full permission for 20 dwellings granted to local developer George Tanner (Shalford) Ltd, not started. Forecast development 20 dwellings over 2019/2020-2021/22 starting with 5 completions in 2019/2020.	Site sold to Greenfields Community Housing who have submitted two planning applications seeking approval of revised plans, both refused. Development forecast put back, revised to 10 completions 2021/2022, and 10 in 2022/2023.
BTE/15/1498	Full	Grangewood Centre 10-12 High Street Kelvedon	Redevelopment of centre to 25 dwellings. Full permission, not started. Forecast 25 completions in 2019/2020. Developer Sanzen Investments Limited.	Site under construction. Development forecast unchanged.
BTE/15/1392	Full	Car park at Sheepcotes Lane Silver End	Development of 15 dwellings, forecast 15 completion 2018/2019; full permission, not started.	Site sold to new developer and currently under construction, developer now Stemar Group Ltd, completions put back to 2019/2020.
BTE/16/2198/COUPA	Full	East of England Strategic Health Authority Offices 8 Collingwood Road Witham (Lime Tree Place)	Was full, not started; conversion of offices to 61 dwellings via Prior Approval process; forecast 61 completions 2020/2021. Applicant NHS Property Services.	February 2018 revised Prior Approval BTE/17/02315/COUPA for conversion to 98 dwellings; now under construction, completion of 98 dwellings planned for Spring 2019, on which basis completions brought forward and increased to 98 in 2019/2020. Developer Insulted Asset Management.
BTE/14/1116 BTE/17/0528	Outline	Former Garage site at Falkland Court/Land north of Edinburgh Gardens Braintree	Outline permission for 14 dwellings, forecast completion 2018/2019.	Reserved Matters approved 26.04.2017, 14 completion 2017/2018, ahead of 2017 forecast. Local developer Dimora Homes.
BTE/15/1458	Outline	Site at Rayne Lodge Farm, north of Rayne Road Braintree	Outline permission for up to 136 dwellings, forecast completion 15 in 2018/2019 then 30 dpa.	Full application for 127 homes approved 6.4.2018. Site now under construction, 5 completions 2018/2019 and 59 plots under construction. Developer Redrow Homes. Site completion forecast by 2021/2022 at higher delivery rate than in 2017 trajectory, 127 dwellings within the 5 year supply period.
BTE/14/1580	Outline	Land south of Oak Road Halstead	Outline permission for 292 dwellings. Forecast dwelling completions start with 25 in 2018/2019 and then continue at 50 dpa, 175 completions forecast over 5 years.	Site now under construction: Phase 1 developer Bloor Homes 163 dwellings, completions started 2008/19 with 39 completions and 60 plots under construction; Phase 2 David Wilson Homes 100 homes, completions started 2018/19 with 11 completions and 41 under construction. Overall, Phases 1 and 2 50 completions 2018/2019 compared with 25 in 2017 forecast, and 101 plots under construction April 2019; development accelerated from 2017 trajectory forecast. Now forecast for overall site (2 developers) 283 completions by 2022; 50 achieved in first year 2018/2019; then 70 in 2019/2020; 90 in 2020/2021 and 73 in 2021/2022

Appendix 4: Review of March 2017 housing trajectory schedule against progress/change, taking into account current (April 2019) evidence

Planning application reference	Planning Status	Name and address of site	2017 Monitoring Report position	2018 Review and Update
BTE/14/0688	Outline	Rockways site Station Road Sible Hedingham	Brownfield site; former industrial site. Outline permission for 38 dwellings, forecast delivery 10 in 2018/2019 and 28 in 2019/2020. Developer was originally St Giles Developments Ltd.	Site sold to affordable housing developer and now under construction, all 38 plots under construction and forecast to be completed 2019/2020. Developer Myriad Housing Limited.
BTE/15/1004	Outline	Land West of Boars Tye Road Silver End	Outline permission for 55 dwellings, forecast delivery 55 in 2019/2020.	Delivery brought forward. Site under construction, 40 completions 2018/2019, remaining 19 plots under construction and forecast to be completed 2019/2020. Developer Keeppmoat Homes.
BTE/15/0280	Outline	Land off Western Road Silver End	Outline permission for up to 350 dwellings, forecast delivery starting 2019/2020 with 50 completions followed by 60 dpa, site completing 2025.	Site acquired by Redrow Homes, Reserved Matters approved, construction started 2019, Forecast delivery now starts with 25 in 2019/2020, followed by 51 dpa, following updated delivery forecast from developer.
BTE/15/1354	Outline	Land off Braintree Road Great Bardfield	Outline permission for 37 dwellings, forecast delivery 10 in 2019/2020 and 27 in 2020/2021.	Now under construction, 28 plots under construction at April 2019, 37 completions forecast 2019/2020. Delivery forecast accelerated in light of progress on site. Developer Croudace Homes.
BTE/15/0934	Outline	Land at Station Road Earis Colne	Outline permission for 56 dwellings, forecast delivery 15 in 2019/2020; 20 in 2020/2021, and 21 in 2021/2022.	Site acquired by Cala Homes, Reserved Matters for 56 dwellings submitted and to be considered at Planning Committee 23.04.2019, recommended for approval. Forecast delivery now set back 1 year, starts with 15 in 2020/2021.
BTE/14/1528	Outline	Former Bowls Club And Land At Old Ivy Chimneys Hatfield Road Witham	Outline permission for 18 dwellings, forecast delivery 11 dwellings in 2019/20 and 7 in 2020/2021. Developer St Giles Developments Ltd.	4 dwellings being developed on part of site under separate permission for part of site (BTE/BTE/14/1529 conversion of Old Ivy Chimneys under construction and forecast delivery 2019/2020); full application for 19 dwellings refused and appeal dismissed, no affordable housing provision. New full application now submitted for 13 dwellings on remaining part of site (former bowling green) and pending consideration, BTE/19/00109/FUL, forecast completions in 2021/2022.
BTE/15/0430	Outline	South West Witham Growth Location, off Hatfield Road	Outline permission for 750 homes. Reserved Matters for first Phase, 1B, 91 dwellings, submitted. Forecast delivery at 50 dpa starting 2018/2019. Developer Redrow Homes.	Twin outlet development. Council has now revised trajectory to take into account progress 2018/19. Phases 1A (91) and 1B (84) are under construction. Phase 1A is now nearing completion, only 11 plots outstanding at April 2019. Phase 1B (Reserved Matters granted 4 Sept 2018) delivered 15 completions 2018/2019 and 67 plots were under construction at April 2019. On the overall site, a total of 95 homes were completed in the year 2018/2019. Phase 2 now has detailed permission for 57 homes, granted 26 March 2019 - and sales have launched ("The Junipers"). The developer has advised that he is keen to start work on Phase 2 and bring forward Phases 3 and 4 to maintain supply to meet demand as demand is strong. Plans are being drawn up for submission of details for Phases 3 and 4 by Summer 2019 -capacity expected to be c. 300+ dwellings on Phases 3 and 4. Developer has advised sales strong, currently averaging 1.3 per week compared to more usual average of 1 per week. Affordable housing at 30% is in addition to sales. Delivery is much higher than in 2017 forecast and is forecast to continue at 90 dpa.

Appendix 4: Review of March 2017 housing trajectory schedule against progress/change, taking into account current (April 2019) evidence

Planning application reference	Planning Status	Name and address of site	2017 Monitoring Report position	2018 Review and Update
BTE/12/1071	Outline	Land south of Maitings Lane Witham	Developer/Site promoter Churchmanor Estates. This is the remaining residential phase from the overall Maitings Lane site (1,027 dwellings completed). Forecast delivery 63 dwellings starting with 30 in 2020/2021	Reserved Matters for this final phase not yet submitted; revised forecast 10 dwellings in 2020/21 and 30 in 2021/22.
BTE/14/1254	Outline	Hunnable Industrial Estate Great Yeldham	Brownfield site with outline permission for up to 60 homes. Forecast supply 8 dwellings 2020/2021 followed by 15 dpa.	Reserved Matters approved 4.4.2019. Conditions being discharged. Construction is expected to start Spring/Summer 2019. Revised forecast with information from developer now 16 in 2019/2020 and 44 in 2020/2021. Developer Linden Homes.
BOS6 BOS8 BTE/15/1319	Without	Land West of Panfield Lane Braintree (NW Braintree Growth Location)	Greenfield adopted allocation for mixed use Growth Location. Two developers - Mersea Homes and Hills Residential. Hybrid application for 600 dwellings in total of which 208 was full application. Forecast delivery 50 in 2019/2020 followed by 90 dpa.	Following extensive negotiations, the dwelling capacity has increased from 600 to 825 of which 189 is a full application. Application expected to be considered by Planning Committee Summer 2019. Delivery forecast set back 1 year, now starting at 30 in 2020/2021 followed by 70 in 2021/2022 and 100 in 2022/2023.
BTE/15/1366	Without	Carier Business Park East Street Braintree	Brownfield site, subject of outline planning application, 74 homes. Without permission. Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 2019/2020, 14; 2020/2021 40; 2021/2022 20.	Reserved Matters approved 30.11.18. Variation of plans approved with new S106 signed 19.11.18. Updated information from developer received 8 April 2019 confirmed developer has now completed purchase of site, is tendering for the works, and envisages works will commence c. Sept 2019 with completion of site by March 2021, earlier than previous forecast. Developer Myriad Housing Ltd.
GNNB 264 BTE/15/1193	Without	Land between London Road, Pods Brook and A120 Braintree	Developer Countryside Properties. Outline planning application for 215 homes subject of Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 2021/2022, 25 homes, as advised in appraisal by Peter Brett Associates Dec 2016 (LPA considered this forecast was pessimistic).	Site now under construction, 45 plots under construction at April 2019. Forecast delivery now brought forward to 45 in 2019/2020, 70 in 2020/2021, 90 in 2021/22 and 10 in 2022/2023.
BTE/16/0397	Without	Land east of Mill Lane Cressing	Outline planning application for 118 homes subject of Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 2019/2020, 18 homes, and then 50 dpa.	Reserved Matters granted January 2019 and site now under construction. 19 dwellings completed 2018/19 and 37 plots under construction at April 2019. Delivery accelerated from 2017 forecast; 65 completions now forecast 2019/20 and remaining 34 in 2020/2021. Developer Bellway Homes.
BTE/15/1580	Without	Land rear of Halstead Road Earls Colne	Outline planning application for 56 homes subject of Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 2018/2019, 15 homes, and then 30 dpa.	Reserved Matters plans in preparation, expected to be submitted 2019. Forecast completions put back to 25 in 2020/21 followed by 55 in 2021/22.
BTE/16/1475	Without	Land off Monks Road Earls Colne	Full planning application for 50 homes subject of Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 2018/2019, 20 homes, and then 30 in 2019/20.	Site now under construction, 37 plots under construction at April 2019. Forecast delivery now set back to start in 2019/2020. Developer Crest Nicholson Eastern
BTE/15/1273/OUT	Without	Land north of Conrad Road Witham	Outline planning application for 150 homes subject of Resolution to Approve subject to signing of Section 106 Agreement. Forecast delivery starting 20 in 2020/2021, and then 40 dpa.	Site now purchased by Sanctuary Housing and full planning application pending consideration. Developer has estimated trajectory as 21 in 2020/2021; 67 in 2021/2022; 36 in 2022/2023 and 26 in 2023/24 (after 5 year supply period) - and that the affordable homes are currently programmed to be delivered 2021/2022, hence the spike in completions.

Appendix 5: Communal residential accommodation

Planning Application reference	Planning Status	Name and address of site	2018/19	2019/20	2020/21	2021/22	2022/23	Total Identified Supply 2018-2023	contribution to Housing Delivery after application of ratio of 1.8	Notes	
Elderly persons											
BTE/15/1186	Full permission, not yet started	Willowmead Nursing Home Wickham Bishops Road Hatfield Peverel			25			25	14	Demolition of existing 62 bed care home and erection of new 87 bed care home, net increase of 25 rooms, granted May 2016. Building Regulations Initial Notice submitted. Current discharge of Conditions application.	
BTE/11/0532	Now Completed, 2018/2019	Riverdale Care Home Land adjacent 63 Duggers Lane Braintree	32					32	18	Specialist dementia care, by condition; opened Summer 2018.	
BTE/14/1626	Now Completed, 2018/2019	37 Cross Road Witham	1					1	1	Completed April 2018; additional room in care home	
BTE/14/1013	Under construction	Former Dairy Crest Depot Site 195 Coggeshall Road Braintree					45	45	25	Permission was for demolition of buildings and erection of care home. Demolition now taken place, site cleared pre-development and conditions discharged 2018	
Subtotal, elderly persons care			33	0	25	0	45	103	57		
Learning disabilities											
BTE/16/1804	Now Completed, 2018/2019	Rascasse Sheepcotes Lane Silver End	1					1	1	Completed April 2018. 1 additional room for people with learning disabilities.	
BTE/16/1644	Full permission, not yet started	Massenet Wickham Bishops Road Hatfield Peverel		1				1	1	Change of use from C3b (supported housing) to C2 care home & self contained 1 bed annexe; no. of rooms/ occupants increases by 1 to 7 & so needs to be reclassified. Original PA was ELD, BTE/15/093 for use as community home by 6 adults with learning disability, change took place 2015/16 from 1 dwg C3 to C3b.	
Subtotal, learning disabilities			1	1	0	0	0	2	1		
Total change in C2 rooms			34	1	25	0	45	105	58		

Appendix 2 – Secretary of State Decision (APP/P4605/W/18/3192918) – Site of former North Worcestershire Golf Club Ltd, Hanging Lane, Birmingham



Ministry of Housing,
Communities &
Local Government

Harris Lamb Property Consultancy
75-76 Francis Road
Edgbaston
Birmingham
B16 8SP

Our ref: APP/P4605/W/18/3192918
Your ref:

24 July 2019

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BLOOR HOMES (WESTERN)
LAND AT SITE OF FORMER NORTH WORCESTERSHIRE GOLF CLUB LTD, HANGING
LANE, BIRMINGHAM B31 5LP
APPLICATION REF: 2017/02724/PA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Singleton BSc (Hons) MA MRTPI, who held a public local inquiry starting on 2 October 2018 into your client's appeal against the decision of Birmingham City Council (the Council) to refuse your client's application for outline planning permission, with all matters reserved except access, for the demolition of the club house and development of up to 950 dwelling, public open space, primary school, multi-use community hub, new access points and associated infrastructure. developments in accordance with application reference 2017/02724/PA dated 24 March 2017.
2. On 31 January 2018, 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.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be determined on the basis of the revised proposal for up to 800 dwellings and should be allowed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal 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.

Environmental Statement

5. 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) Regulations 2011. Having taken account of the Inspector's

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comments at IR1.9-1.11; IR7.1-7.6; IR14.4-14.5 and IR14.100-14.102 the Secretary of State is satisfied that the Environmental Statement and other additional information provided during the Inquiry complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal

Procedural matters

6. Following the refusal of the application by the Council, a revised Development Framework Plan (DFP) and revised Indicative Layout Plan (ILP) were submitted to the Council (IR1.5-1.8 and IR5.1-5.12). The Inspector recommends that the appeal should be determined on the basis for the revised proposal for up to 800 dwellings (IR14.2-14.6). The Secretary of State sees no reason to disagree and does not consider that the revised DFP and ILP raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
7. Applications for partial awards of costs have been made by a) Birmingham City Council against Bloor Homes (Western) and by b) Bloor Homes (Western) against Birmingham City Council (IR1.1) These applications are the subject of separate decision letters, also being issued today.

Matters arising since the close of the inquiry

8. 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 measurement by local planning authority 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.
9. These representations were circulated to the main parties on 11 March 2019.
10. The Secretary of State also notes that the latest 'House price to workplace-earnings ratio' was published on 28 March 2019. The Secretary of State does not consider that the publication of this document raises any matter that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
11. The Secretary of State received representations from Bloor Homes (Western) and J Bloor on 10 May 2019. The Secretary of State is satisfied that the issues raised do not affect his decision as the representations were expressing frustration at the delay to a decision and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties

12. A list of all representations received is at Annex A. Copies of these letters may be obtained on written request to the address on the first page of this letter.

Policy and statutory considerations

13. 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.

14. In this case the development plan consists of the Birmingham Development Plan (BDP), adopted in January 2017, and the Birmingham Unitary Development Plan 2005 Saved Policies January 2017 (UDP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR3.2-3.15.

15. 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.

Main issues

16. The Secretary of State agrees with the Appeal Inspector (the Inspector) on the main considerations in the appeal (IR14.7).

Meaning of windfall sites

17. For the reasons given at IR14.8-14.18, the Secretary of State agrees with the Inspector that there is nothing in the Framework definition to support the Council's assertion that a site of 35ha should not be treated as a windfall site in Birmingham (IR14.15).

BDP Examining Inspector's Report (EIR)

18. For the reasons given at IR14.19-14.27, the Secretary of State agrees with the Inspector that the Examining Inspector (EI) found the site met the tests of availability and suitability (IR14.26) and that neither paragraph 61 nor paragraphs 222 & 223 of the EIR provide any meaningful support for the Council's assertion that the EI rejected the site in principle (IR14.27).

BDP Policies

19. For the reasons given at IR14.28-14.34 the Secretary of State does not accept that a grant of planning permission for the proposal would undermine public confidence in the planning system and plan-led approach (IR14.30). Furthermore, for the reasons at IR14.31 the Secretary of State considers that the proposal does not conflict with Policy PG1 or with its underlying objective of delivering 51,100 new homes in the City. The Secretary of State agrees with the Inspector that the key policies for the assessment of an application for housing development on such a site are BDP Policies TP27, TP28 and TP30 (IR14.32).

The meaning of “deliverable”

20. The Secretary of State has carefully considered the Inspector’s conclusions on the meaning of the definition of deliverability in the Framework. For the reasons given at IR14.35-14.43 he agrees with the Inspector’s view that ‘realistic prospect’ remains the central test against which the deliverability of all sites must be measured (IR14.41).

The Council’s 5 year housing land supply

21. The Secretary of State has considered the Inspector’s analysis at IR14.44-14.53 and assessment of disputed sites in Appendix B to the report. For the reasons given the Secretary of State agrees that 847 dwellings should be removed from supply (IR14.52) and the effect of these reductions is to reduce the total number of dwellings in the Council’s revised assessment of the identified supply from 19,023 to 18,206 (IR14.53).

Windfalls

22. For the reasons given at IR14.54-14.56 the Secretary of State sees no reason to adjust the allowance as the appellant suggests.

Lapse Rates

23. For the reasons given at IR14.57-14.59, the Secretary of State agrees with the Inspector that even the application of a 10% lapse rate, as suggested by the appellant, would not reduce the adjusted supply below the 5-year threshold (IR14.59).

Market Evidence

24. The Secretary of State has considered the Inspector’s analysis at IR14.60-14.71 and agrees with his conclusion at IR14.72-14.73 that even if both the lapse rate and market attrition rate are applied, the resulting figure of 17,470 would still result in a supply of 5.82 years. The Secretary of State also concludes, like the Inspector, that the Council is able to demonstrate a 5-year housing land supply (5YHLS) (IR14.73).

Other matters

25. The Secretary of State agrees with the Inspector’s reasoning in respect of Public Consultation (IR14.74-14.76); Traffic and highways (IR14.77-14.85); Local Wildlife and Nature Conservation (IR14.86-14.88); Trees and TPOs (IR14.89-14.94) and Landscape and Visual Impact (IR14.95-14.99). For the reasons given the Secretary of State agrees with the Inspector that there is no conflict with BDP Policies TP8 (IR14.88) and PG3 (IR14.98).

Conclusions on development plan

26. Like the Inspector, the Secretary of State considers that the proposal accords with the development plan (IR14.103-14.104).

Conclusions on harm

27. For the reasons given at IR14.105 the Secretary of State agrees with the Inspector’s conclusion that the proposal would not cause harm to the objectives or spatial strategy that underpins the BDP. He has also not identified any other material harm.

Potential benefits

28. For the reasons given at IR14.106-14.112 the Secretary of State agrees with the Inspector's conclusions on benefits.

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR13.1-13.7, 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.

Planning obligations

30. Having had regard to the Inspector's analysis at IR12.10-12.18, the planning obligation dated 31 October 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, for the reasons given at IR12.10-12.12, that there is no justification for the inclusion of the Additional Sports Improvement Fund and this obligation does not meet the relevant tests (IR12.13). For the reasons given in IR12.14-12.17 the Secretary of State also agrees with the Inspector that there is no justification for payment of the Secondary School Contribution and this proposed obligation does not meet the relevant tests (IR12.18). He concludes that it would not be appropriate to take these two obligations into account in the determination of the appeal.

31. Having had regard to the Inspector's analysis at IR12.1-12.8, The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.9 that the remaining obligations comply 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 in accordance with Policies PG1, TP8, TP27, TP28, TP30 and PG3 of the development plan, and is 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 in favour the Secretary of State considers that the 800 family homes, including up to 280 affordable homes is a benefit of significant weight. He considers that only limited weight in favour should be given to the proposed community hub with moderate weight to the on-site open space and play provision and opening up of public access to an attractive area of open space. He also attaches limited weight to the longer term benefit that might result for the provision of a site for a primary school.

34. The Secretary of State attaches significant weight to the economic benefits. He attaches limited weight to the effective use of underutilised land in the urban area and to the argument that the appeal proposal might avoid the need for use of Green Belt land elsewhere. The Secretary of State considers that there would be a net increase in the habitat and biodiversity value of the site and attaches moderate weight to this benefit.
35. The Secretary of State has not identified any harms arising from the proposal of sufficient significance to outweigh the benefits which it would provide, and he concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

Formal decision

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter, with all matters reserved except for access, for the demolition of the club house and development of up to 950 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure developments, in accordance with application reference 2017/02724/PA dated 24 March 2017 as amended (see paragraph 6 of this letter).
37. 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

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. 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.
40. A copy of this letter has been sent to Birmingham City Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Jean Nowak
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 letter of 21 February 2019

Party	Date
Birmingham City Council	4 March 2019
Harris Lamb on behalf of Bloor Homes	7 March 2019

Circulation of responses sent by email of 11 March 2019

General representations

Party	Date
Bloor Homes	10 May 2019
J Bloor	10 May 2019

ANNEX B: 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 3 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 number of dwellings erected on the site shall not exceed 800.
- 5) The development hereby approved shall be implemented in accordance with the details shown on drawing numbers:
 - 6863-L-01 - Site Location Plan March 2016
 - 16094-06-3 Rev A - Proposed Site Access –Frankley Beeches Road (West)
 - 16094-06-2 Rev A – Proposed Site Access- Frankley Beeches Road (East)
 - 16094-04 Rev D – Proposed Site Access Western Roundabout Extra Arm
 - 16094-06-04 Rev A – Proposed Site Access – Tessall Lane
- 6) The development hereby approved shall be implemented in general accordance with the revised Development Framework Plan – Drawing Number 6863-L-04 Rev T dated 18 May 2018.
- 7) No development shall take place until a Phasing Plan has been submitted to and approved in writing by the local planning authority. The Phasing Plan shall identify the proposed residential development zones and the distribution of affordable housing within these zones, the areas of public open space and green infrastructure to be provided in each phase, and the means of vehicular and pedestrian and cycle access to serve each phase, and shall show how each of these elements of the development is to be phased.

The submitted details shall identify the order of delivery of each phase, the anticipated density in each phase of residential development, and the proposed access arrangements for construction traffic and location of contractors' compounds for each phase.

The development shall be implemented in accordance with the approved Phasing Plan.
- 8) The public open space to be provided within the development hereby approved shall have a minimum area of 12.45 ha and be provided in general accordance with the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The public open space shall be delivered in two phases with the first phase to be completed prior to the occupation of the 200th dwelling and the second phase to be completed prior to the occupation of the 600th dwelling.
- 9) No development shall take place until full details of the proposed play areas have been submitted to and approved in writing by the local planning authority. The play areas shall be in the general locations indicated in the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The submitted details shall include the layout of the play areas and full details of planting, hard and soft surfacing and play equipment specification including type, height and colour and a programme for the completion of the works in accordance with the approved Phasing Plan. The development shall be

implemented in accordance with the approved layout/details and programme and the play areas and equipment shall, thereafter, be retained and maintained for their intended use.

- 10) No development shall take place until an updated hydraulic model has been submitted to and approved in writing by the local planning authority. The update to the model shall address areas identified for improvement as highlighted red and amber in the Environment Agency's Hydraulic Model Review (Model Review NWGC Final -19.09.18). It shall also provide a representation of the proposed final development proposal and identify property boundaries in relation to the updated flood extents and details of any flood mitigation such as compensation, should this be intended.
- 11) No development shall take place until an updated Flood Risk Assessment (FRA) has been submitted to and approved in writing by the local planning authority. The updated FRA shall incorporate the updated Hydraulic Model outputs as well as details of flood resilience measures including, for example, the setting of finished floor levels no lower than 600mm above the climate change level.
- 12) No development shall take place, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include detailed proposals for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) the routing of construction traffic to and from the site;
 - c) the location of loading and unloading of plant and materials and of contractors' compounds.
 - d) proposed working hours for demolition and construction activities to take place and for the delivery of materials to and removal of waste materials from the site;
 - e) the location and specification of all construction accesses and roadways from the public highway to site compounds and working areas;
 - f) the control of noise and vibration;
 - g) the control and suppression of dust.
 - h) the storage and management of construction waste;
 - i) the location and specification of wheel washing facilities and/ or other measures to prevent vehicles leaving the site depositing mud and soil on the public highway.

The approved CMS shall be adhered to throughout the construction period.

- 13) No development shall take place until full details of a sustainable drainage system for the development hereby approved has been submitted to and approved in writing by the local planning authority. The submitted details shall include:
 - a) details of infiltration testing;
 - b) final drainage layout plans;
 - c) typical cross sections and details of proposed SuDS features;
 - d) network calculations;
 - e) proposed finished floor levels (set to a minimum of 150mm above surrounding ground levels);

- f) exceedance flows showing that surface water flood risk has been mitigated on and off site;
- g) a programme for implementing the works in accordance with the approved Phasing Plan.

The sustainable drainage works shall be completed in accordance with the approved details and programme. No building or part of the development shall be occupied or brought into use until the surface water drainage works serving that building or part have been completed and are in operation.

- 14) No development (including demolition and ground works) shall take place until a scheme a Written Scheme of Investigation (WSI) detailing a programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The WSI shall thereafter be implemented in full in accordance with the approved details.
- 15) No development (including demolition, ground works and vegetation clearance) shall take place until a Badger Protection Scheme (BPS) for the protection of badgers using the site and for mitigating the effects of the development on their habitat within the site has been submitted to and approved in writing by the local planning authority. The BPS shall include details of the protection and mitigation measures required both during the construction period and once the development is complete and a programme for the implementation of those works in line with the approved Phasing Plan. The BPS shall be carried out in accordance with the approved details and programme.
- 16) No development (including demolition, ground works and vegetation clearance) shall take place until an Invasive Non-native Species Protocol (INSP) has been submitted to and approved in writing by the local planning authority. The INSP shall include detailed proposals for the containment, control and removal of all Japanese knotweed, Cotoneaster and Rhododendron on the site and a programme for undertaking the necessary works. The measures shall be carried out strictly in accordance with the approved details and programme.
- 17) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees on the site and on immediately adjoining land(the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 18) All work for the pruning or cutting back of retained trees shall be carried out in accordance with British Standard BS3998 'Recommendations for Tree Work' 2010 and with any subsequent edition of those recommendations.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 19) No removal of trees, hedges or shrubs shall take place between 1 March and 31 August inclusive unless a scheme to protecting nesting birds on the site has been submitted to and approved in writing by the local planning authority. If a scheme for the protection of nesting birds has been approved in writing by the local planning

authority no trees, hedges or shrubs on the site shall be removed between 1 March and 31 August inclusive other than in accordance with the approved scheme.

- 20) The site accesses and related visibility splays shall be constructed in strict accordance with the details shown on the approved plans (Drawing Nos: 16094-06-3 Rev A; 16094-06-2 Rev A; 16094-04 Rev D; and 16094-06-04 Rev A) and the approved Phasing Plan. The approved visibility splays shall thereafter be maintained free of any obstruction or vegetation above 0.9m in height.

Phased Conditions

- 21) No development shall take place within any approved phase unless samples of the materials to be used in the construction of the external surfaces of the buildings in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 22) No development shall take place within any approved phase unless full details of hard and/or soft landscape works for that phase and a programme for the implementation of those works have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) proposed finished levels or contours;
 - b) means of enclosure, hard surfacing materials, minor artefacts and structures;
 - c) proposed and existing functional services above and below ground;
 - d) fully annotated planting plans to a scale of 1:200, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs.
 - e) other information shall include planting schedules, noting species, plant sizes and proposed numbers/densities;
 - f) details of the proposed planting implementation programme.

All hard and/or soft landscape works shall be implemented in accordance with the approved details and programme and shall thereafter be maintained.

- 23) Any trees or shrubs which, within a period of two years from the completion of the phase of development of which they form a part, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.
- 24) No development shall take place within any approved phase unless full details of the materials to be used for hard and paved surfacing in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 25) No development shall take place in any approved phase unless full details of proposed boundary treatments for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) plans showing the locations of existing boundary treatments to be retained and the proposed new boundary treatments;
 - b) scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments;
 - c) details of mammal access arrangements.

The approved scheme shall be implemented before occupation of any dwelling in that phase and shall be retained thereafter.

- 26) No development shall take place in any approved phase unless a detailed lighting scheme for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- a) site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate;
 - b) site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises;
 - c) details of the lighting fittings including: colour, watts and periods of illumination;
 - d) details to clearly demonstrate that areas to be lit will not disturb bats or prevent their access to key commuting routes and foraging habitat.

All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the first occupation of any part of the development within that approved phase and shall thereafter maintained.

- 27) No development shall take place in any approved phase unless full details of earthworks and finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include the proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings.

The development shall be implemented in strict accordance with the approved details.

- 28) No development shall take place within any approved phase until an assessment of the risks posed by any ground contamination in that phase of development has been submitted to and approved in writing by the local planning authority. The risk assessment and information required for each phase shall comprise:
- a) A preliminary risk assessment, which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - b) A site investigation scheme, based on (a) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
 - c) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken and a timetable of works and site management procedures.
 - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

- 29) All ground contamination remediation measures required as a result of the risk assessment shall be provided in accordance with the details set out within the agreed remediation scheme. Prior to the first occupation of each phase of the development hereby approved, the developer shall provide written certification to the local planning authority that the measures set out in the report have been implemented in full for that phase of the development.
- 30) No development (including demolition, ground works and vegetation clearance) shall take place in any approved phase unless a Construction Ecological Management Plan (CEMP) for that phase of development has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- a) risk assessment of potentially damaging construction activities;
 - b) identification of “biodiversity protection zones;”
 - c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements);
 - d) the location and timing of sensitive works to avoid harm to biodiversity features;
 - e) the times during construction when specialist ecologists need to be present on site to oversee works;
 - f) responsible persons and lines of communication
 - g) the role and responsibilities on site of an Ecological Clerk of Works or similarly competent person;
 - h) the use of protective fences, exclusion barriers and warning signs.
- The approved CEMP shall be adhered to and implemented throughout the construction period.
- 31) No development shall take place in any approved phase unless an Ecological Enhancement Strategy (EES) for that phase of development has been submitted to and approved in writing by the local planning authority. The EES shall include (but not be limited to) details of:
- a) provision for wildlife corridors, linear features and habitat connectivity;
 - b) creation, restoration and enhancement and semi-natural habitats;
 - c) creation of new wildlife features, e.g. bird nesting features and bat roosting features within buildings and structures, ponds and badger setts;
 - d) green roofs and green/habitat walls;
 - e) a programme for the implementation of the agreed works.
- The development shall thereafter be implemented in accordance with the approved details and programme.
- 32) No development shall take place in any approved phase unless a Habitat/Nature Conservation and Management Plan for that phase of development has been submitted to and approved in writing by the local planning authority. The management plans shall include:
- a) description and evaluation of the features to be 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 an annual work plan capable of being rolled forward over a five-year period);
- g) details of the body or organisation responsible for implementation of the plan;
- h) monitoring and remedial / contingencies measures triggered by monitoring.

The Conservation and Management Plan shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the management plan 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 approved plan shall be implemented in accordance with the approved details.

- 33) No part of the development hereby approved shall be occupied or brought into use until full details of the agreed off-site highway improvement measures and a programme for their implementation have been submitted to and approved in writing by the local planning authority and the approved measures have either been substantially completed or have been included in an agreed programme of works to ensure that the improvements are secured as each associated phase of development is completed. All delivery and timing of highway works shall be agreed in accordance with the approved Phasing Plan. The package of measures shall include:
- a) new signalised pedestrian crossings and carriageway widening at the Frankley Beeches Road/Hanging Lane crossroads;
 - b) new 2m wide footway Frankley Beeches Road along the site frontage;
 - c) pelican crossing on Frankley Beeches Road near the new school;
 - d) central refuge to the west of Guardian Close;
 - e) footway/cycle link into the site onto Elan Road;
 - f) 2m wide footway along Elan Road;
 - g) pedestrian link onto Hanging Lane and central refuge;
 - h) improved signage at the West Park Avenue/ Hanging Lane junction to further discourage the use of Hanging Lane by HGVs;
 - i) a third lane would be provided on the A38/ Tessall Lane junction to accommodate right turning movements onto Bristol Road South.
- 34) No part of any agreed phase shall be occupied or brought into use until the sustainable drainage system to serve that phase of development has been completed in accordance with the approved sustainable drainage system and a Sustainable Drainage Operation and Maintenance Plan (SDOMP) for that part of the sustainable drainage system has been submitted to and approved in writing by, the local planning authority. The approved drainage system shall thereafter be operated and maintained in accordance with the approved SDOMP.
- 35) No dwelling in any approved phase shall be occupied until the approved means of vehicular access from that dwelling to and from the public highway has been constructed in accordance with the approved plans and is available for use.
- 36) No dwelling in any approved phase shall be occupied until a Residents' Travel Plan for that phase of development has been submitted to and agreed in writing by the local planning authority. The Residents' Travel Plan shall propose measures to

actively promote the use of more sustainable transport choices for residents occupying the site and shall include:

- a) the incentives to be offered to each household upon occupation to encourage the use of modes of travel other than the car;
- b) the information to be provided to each household upon occupation with regard to public transport timetables, cycle maps, the location of local facilities such as schools, shops, education and healthcare services and walking information.

The plan shall be implemented in accordance with the approved details.

- 37) No dwelling in any approved phase shall be occupied until an electric vehicle charging point which is accessible to the occupier of that dwelling has been provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details should provide individual charging points for all dwellings that have their own garage, driveway or dedicated parking space and for charging points to be provided in 10% of all parking spaces in shared parking areas.

School and Community Centre conditions

- 38) The primary school shall not be brought into use unless a School Travel Plan has been submitted to and approved in writing by the local planning authority. The School Travel Plan shall include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet these objectives. The plan shall thereafter be implemented in accordance with the approved details.
- 39) The rating levels for cumulative noise from all plant and machinery, associated with the school and community facility, shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing Laeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.
- 40) No above ground works shall take place for the construction of the school or community hub unless details of the extract ventilation and odour control equipment for those buildings, including details of any noise levels, noise control and external ducting have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 41) No above ground works shall take place for the construction of the school or community hub until details of facilities for the storage of refuse within the curtilage of that building have been submitted to and approved in writing by the local planning authority. The refuse facilities shall be provided in accordance with the approved details before the buildings are first occupied and shall thereafter be maintained.
- 42) The community hub shall only be used between the hours of 0700-2300 daily.



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

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date: 6 December 2018

TOWN AND COUNTRY PLANNING ACT 1990

BIRMINGHAM CITY COUNCIL

APPEAL MADE BY

BLOOR HOMES (WESTERN)

Inquiry Held on 2-5, 10-12 and 16 October 2018

Site of former North Worcestershire Golf Club Ltd, Hanging Lane, Birmingham B31 5LP

File Ref: APP/P4605/W/18/3192918

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GLOSSARY

5YHLS	5 Year Housing Land Supply
B&BCWT	Birmingham and Black Country Wildlife Trust
BCC	Birmingham City Council
BDP	The Birmingham Development Plan – Adopted January 2017
BMHT	Birmingham Municipal Housing Trust
CAD	Costs Application Document
CD	Core Document
CIL	Community Infrastructure Levy
CPO	Compulsory Purchase Order
DAS	Design and Access Statement
DF	Development Framework Plan
DfE	Department for Education
dph	dwellings per hectare
DTA	David Tucker Associates
EA	Environment Agency
EIA	Environmental Impact Assessment
EiP	BDP Examination in Public
EIR	BDP Examining Inspector’s Report dated 11 March 2016
ES	Environmental Statement
GI	Green Infrastructure
HIF	Housing Investment Fund
HMA	Housing Market Area
ILP	Indicative Layout Plan
LPA	Local Planning Authority
NPPF	National Planning Policy Framework 2018
2012 NPPF	National Planning Policy Framework 2012
OAN	Objectively Assessed Needs
NWGC	North Worcestershire Golf Club Ltd
PAN	Planned Admission Number
POE	Proof of Evidence
PPG	Planning Practice Guidance
PSI	Potential Site of Importance for nature conservation
RfR	Reason for Refusal
S106	Section 106 of the Town and Country Planning Act 1990
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SLINC	Site of Local Importance for Nature Conversation
SoCG	Statement of Common Ground
SoS	Secretary of State
SUE	Sustainable Urban Extension
SuDS	Sustainable Drainage System
TA	Transport Assessment
TPO	Tree Preservation Order
UDP	Birmingham Unitary Development Plan 2005 Saved Policies January 2017
WMAS	West Midlands Ambulance Service

File Ref: APP/P4605/W/18/3192918

Site of former North Worcestershire Golf Club Ltd, Hanging Lane, Birmingham B31 5LP

- 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 Bloor Homes (Western) against the decision of Birmingham City Council.
- The application Ref 2017/02724/PA, dated 24 March 2017, was refused by notice dated 31 August 2017.
- The development proposed in the appealed application is outline application, with all matters reserved except access, for the demolition of the club house and development of up to 950 dwelling, public open space, primary school, multi-use community hub, new access points and associated infrastructure.

Summary of Recommendations: that the appeal should be determined on the basis of the revised proposal for up to 800 dwellings and should be allowed.

1. Procedural Matters

- 1.1 Shortly before the Inquiry Birmingham City Council (BCC) made an application (Document AC1) for a partial award of costs against Bloor Homes (Western) (Bloor Homes). An application was subsequently made by Bloor Homes for a partial award of costs against BCC (AC2). BCC subsequently withdrew its original application and submitted a new application (AC3), on revised grounds, for a partial award of costs against Bloor Homes. The applications set out in Documents AC2 and AC3 are the subject of a separate report.
- 1.2 The appeal was recovered by the Secretary of State (SoS) for his own determination by means of a direction dated 31 January 2018¹. The reason given was that the appeal involves development of over 150 units, or on a site 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.
- 1.3 The appealed application was made in outline form with all detailed matters other than means of access reserved. The application was refused for two reasons. Reason for Refusal (RfR) 1 on the Council's decision notice asserts that the site was not specifically allocated for housing in the recently adopted local plan, that the principle of development is not acceptable, and that material considerations have failed to indicate otherwise. It states that the proposal represents unsustainable development and is contrary to Section 38(6) of the Planning and Compulsory Purchase Act 2004, Policy PG1 of the Birmingham Unitary Development Plan (BDP) (adopted January 2017) and the provisions of the NPPF (paragraphs 2, 15-17, 47-49).²
- 1.4 RfR 2 states that the Master Plan fails to pay sufficient regard to the site constraints of ecology, trees and important landscape feature or the local context. As such the Master Plan and proposed development zones would not provide a suitable balance between development areas and open space and would fail to consider connectivity, context (especially in regard to density) and

¹ See main file

² The paragraph references are to the 2012 NPPF

internal layout. It alleges conflict with a number of BDP policies, with paragraph 3.14 to 3.14D of the Birmingham Unitary Development Plan (2005- Saved Policies January 2017) (UDP), and with the fundamental design considerations set out in paragraph 56 of the NPPF.³

- 1.5 Following the refusal the appellant's consultancy team undertook a review the proposals culminating in a revised Development Framework Plan (DF)⁴ and revised Indicative Layout Plan (ILP)⁵. The key changes between these and the equivalent drawings in front of the Council at the time of its decision can be summarised as follows:
- (i) The area of land proposed for built development is reduced from 19.4 hectares (ha) (60% of the total site area) to 17.9ha (55.3% of the total site area). The amount of land to be used for open space is increased from 10.95ha to 12.45ha.
 - (ii) The number of dwellings proposed is 'up to 800' rather than 'up to 950'.
 - (iii) The density of residential development is reduced from 49 dwellings per hectare (dph) to 45 dph.
 - (iv) The minimum width of the green corridor proposed in the central part of the site is increased from 30 metres (m) to 50m.
 - (v) The width of the wildlife corridor along the eastern boundary is increased from 5m to between 10 and 33m.
 - (vi) Residential development would be set back from the Frankley Beeches Road and Tessall Lane frontages to allow for landscape treatment to those boundaries. This would involve the retention of existing boundary vegetation and its reinforcement with new tree and hedgerow planting.
 - (vii) Additional pedestrian connections are indicated between the eastern and western 'neighbourhoods' within the development scheme.
 - (viii) Residential development fronting the eastern boundary of the site (to the rear of residential properties on Josiah Road) is proposed to create a secure, positive frontage to the wildlife corridor on this boundary.
- 1.6 The revised plans were submitted to and discussed with the Council and officers took a report to BCC Planning Committee on 5 July 2018. That report (CD K3) advised members that the revised plans had been considered by BCC's urban design, ecology and arboricultural officers who were all supportive of the proposed revisions. All these officers considered that the revised DF would provide an appropriate basis to achieve an acceptable development subject to the approval of layout and other detailed matters at reserved matters stage and that appropriate mitigation and long term management measures could be secured by means of planning conditions.
- 1.7 The Committee resolved not to defend RfR 2 at the appeal. In line with that resolution, the Council submitted no evidence in respect of design, landscape, trees or ecology and did not challenge the appellant's evidence on these

³ Also referring to the 2012 NPPF

⁴ fpcr Drawing No. 6863-L-04 Revision T

⁵ fpcr Drawing No. 6863-L-05 Revision E

matters. RfR 2 has, accordingly, been withdrawn. The appellant did, however, call witnesses to deal with design, landscape trees and ecology and with transport and accessibility to respond to concerns raised in the representations from interested third parties.

- 1.8 The appellant carried out public consultation on the revised DF and ILP in June and July 2018 and I deal with the scope and results of that consultation in section 5 below. The appellant's written evidence also addresses the effects of a development of up to 950 dwellings but its intention is that the appeal be considered and determined on the basis of the reduced number of dwellings and the revised DF. Having withdrawn RfR 2 on the basis of these revisions the Council supports that approach.
- 1.9 The proposal is for development which requires an Environmental Impact Assessment (EIA). An Environmental Statement (ES) was submitted with the application in March 2017 in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the 2011 Regulations). Although these have been superseded by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 the 2011 Regulations continue to apply in this case⁶. The assessment of effects set out in the ES is predicated on a development of up to 950 dwellings and on the assumptions comprised in the earlier version of the DF⁷ with regard to the distribution and balance of built development and open space within the site and landscape and ecological mitigation.
- 1.10 No formal revision of the ES has been carried out to reflect the revised DF and the lower number of dwellings now proposed. My Pre-Inquiry Note (ID1) advised that I wished to be informed whether the conclusions in the ES as to the significant effects of the proposal remain valid in light of the amended housing numbers and revised DF. In response, Counsel for the appellant submitted a written advice (ID4). This advises that, having assumed a development of up to 950 dwellings, the ES has been prepared to consider a 'worst case' scenario in terms of the potential environmental effects in line with the Rochdale judgment.⁸ On this basis the ES remains appropriate and does not need to be updated.
- 1.11 It might be expected that a reduction in the maximum number of dwellings would lead to a reduced level of impact in respect of many of the potential effects on the environment. However, mindful that the revised DF does more than reduce the scale of residential development, I requested that the effect of these changes should be addressed at the Inquiry.
- 1.12 The Council made The Birmingham (Former Golf Club, Hanging Lane, Northfield) Tree Preservation Order 2017 (TPO)⁹ 5 July 2017 and the TPO has subsequently been confirmed. This is an area TPO covering the entire site and protecting all the trees within it. The stated reason for the TPO is that the trees add greatly

⁶ Regulation 76 of the 2017 provides that the 2011 Regulations continue to apply where an appellant has submitted an ES before the commencement date of the new Regulations (16 May 2017).

⁷ fpcr Drawing No. 6863-L-04 Revision O

⁸ R v Rochdale MBC ex parte Milne [2000] EWHC 650 (Admin)

⁹ See Appeal Questionnaire documents

to the amenity of the site and surrounding locality and that the Council considers it expedient in the interests of amenity that they should be preserved.

- 1.13 In my Pre-Inquiry Note I observed that the ES had not been updated to reflect the making of the TPO. I requested that ES Table 6.19 be updated to indicate which trees would likely need to be removed to facilitate a development in accordance with the revised DF. I also requested detailed plans and schedules to show the numbers and categories of trees that would need to be removed to facilitate the construction of the vehicular accesses for which detailed approval is sought.¹⁰ In addition, I asked for the appellant's views as to the effect of the development on the TPO and the contribution that the protected trees make to the amenity of the site and surrounding locality. Mrs Kirk's supplementary note (ID20) deals with these matters.
- 1.14 At the time of the refusal there was an outstanding objection from the Environment Agency (EA) on the grounds that further information and modelling was required to show the true extent of flooding on the site. Following the EA's review and consideration of further information relating to the Hydraulic Model for the development the EA updated its position in a letter dated 26 September 2018. That letter¹¹ withdraws the EA objection subject to appropriate conditions being attached to any permission granted as a result of the appeal.
- 1.15 The Birmingham and Black Country Wildlife Trust (B&BCWT) did not respond to the consultation on the outline application but subsequently submitted a letter of objection to the Planning Inspectorate.¹² That objection was responded to in the supplementary note prepared by Mr Goodman (ID23) and a written response from the Council (ID39).
- 1.16 The West Midlands Ambulance Service (WMAS) did not respond to the consultation on the application but was subsequently contacted by Richard Burden MP. An email from WMAS dated 7 September 2018¹³ was forwarded to the Planning Inspectorate. It sets out information on the number of movements, including 'blue light' movements, to and from the WMAS Ambulance Hub located about 1km to the south-west of the appeal site. It expresses some concerns about the possible effect on WMAS's ability to respond to emergency calls. The appellant's written response is provided in Mr Parfitt's supplementary note at ID19.
- 1.17 Both parties submitted proofs and rebuttal evidence concerning what planning obligations are required to meet the need generated by the proposal for secondary school places. These witnesses were not formally called but did participate in the round table discussion of planning obligations.
- 1.18 Two Statements of Common Ground (SoCG) were submitted. That relating to general matters (General SoCG) is dated 3 October 2018 (ID11) and that

¹⁰ Under Regulation 14 of the Town & Country Planning (Tree Preservation) Regulations the effect of a grant of detailed planning permission is that consent is given for the felling of any protected trees that would need to be removed to facilitate the implementation of that permission. This does not apply to the outline planning permission that would be granted on the remainder of the site should the appeal be allowed.

¹¹ See main file

¹² See main file

¹³ See main file

relating to matters of transportation and accessibility (Transportation SoCG) is dated 1 October 2019 (ID16). I have taken these into account.

- 1.19 As agreement had not been reached between BCC and the appellant on the planning obligations required in relation to the appeal the appellant submitted a number of documents at the start of the Inquiry. These comprised a draft legal agreement under Section 106 of the Town and Country Planning Act 1990 (S106 Agreement) (ID24), a summary of the draft agreement (ID25), Table of Obligations (ID26), a draft Unilateral Undertaking (UU)(ID27), and a summary of that document (ID28). Further progress was made in negotiations outside of the Inquiry and only the draft S106 Agreement was discussed at the Planning Obligations session. The draft agreement was subsequently revised in light of those discussions and a signed version of that agreement, dated 31 October 2018 has subsequently been submitted (ID47). I deal with the planning obligations in section 12 of the report.
- 1.20 I carried out an accompanied visit to the site and surrounding area on 9th October 2018 and viewed the key road junctions assessed in the Transport Assessment (TA) prepared by David Tucker Associates (DTA) and the locations of the proposed off-site highway improvements. At the request of interested persons I undertook a second, unaccompanied visit on 15 October to observe the operation of those key junctions during the PM peak.
- 1.21 On 26 October 2018, the Government published "*Technical consultation on updates to national planning policy and guidance*" which includes possible amendments to the NPPF definition of 'deliverable' in relation to sites included in a local authority's housing land supply. Part of the consultation is relevant to this case but the words outlined in the document remain the subject of consultation and may not reflect the final position. I have not given any weight to the possible changes and have considered the appeal on the basis of the current definition.
- 1.22 In drafting my report I identified the possible need for two additional conditions, which had not been included in the Council's draft schedule and were not discussed at the Inquiry, in order to deal with necessary mitigation of potential environmental effects as identified in the ES. In the interests of fairness the main parties were given the opportunity to comment on the need for and possible wording of those conditions. I have had regard to the comments received in finalising the report.
- 1.23 A large number of sites included in the identified sites part of the Council's 5YHLS were challenged by the appellant and a significant volume of information about those sites was included in the Core Documents. In order to avoid duplication of evidence, Appendix E deals with each of the disputed sites or categories of sites in turn. In each case this sets out the appellant's arguments as to why sites should be removed from the supply or why the number of dwelling completions assumed should be reduced, the Council's response and my conclusions. My findings as to the effect on the overall numbers of dwellings that should reasonably be included in the 5YHLS are carried across into my main conclusions as set out in section 14 of the report.

2. The Site and Surroundings

- 2.1 Section 4 of the general SoCG (ID11) includes an agreed description of the appeal site and surroundings. The site extends to 32.35 hectares (ha) as shown on the Site Location Plan (CD H3) and was formerly used as a golf course by North Worcestershire Golf Club Ltd (NWGC). Following deterioration in its financial position over a number of years, NWGC decided to close the course at the end of March 2016 and the site has remained vacant since.
- 2.2 It is a greenfield site within the urban area of Birmingham and is located within a predominantly residential area. It lies within the Longbridge ward but adjoins the Northfield ward at its eastern edge. Its northern and western boundaries are formed by Frankley Beeches Road and its southern boundary by Elan Road. The eastern boundary adjoins a strip of land, of about 3.5 to 4m in width, which forms a shared alleyway to the rear of the houses on the west side of Josiah Road. The only dwellings that back directly onto the site are the two storey apartments at Guardian Close (on Frankley Beeches Road) and a short run of detached houses on the north side of Tessall Lane. Around the remainder of its perimeter the site extends up to the highway boundary and is screened from public view by dense tree and hedge planting¹⁴.
- 2.3 The site is irregular in shape with notable changes in levels. The highest point, at about 205m above AOD, is close to the Frankley Beeches Road/ Egghill Lane roundabout and the lowest, at about 176 AOD, is where Hanging Brook, which runs through the site, exits onto Hanging Lane. The former club house occupies a raised plateau from which the ground falls steeply into the valley formed by Hanging Brook. There is a second raised area of ground in the south western part of the site.¹⁵
- 2.4 The grass has regularly been mowed and vegetation cut back and the site retains the form and appearance of a golf course. It is characterised by the managed grassed areas of the former fairways and greens with woodland blocks and narrow tree belts between these and around the site perimeter. Following vandalism and arson attacks prior notification approval has been issued for the demolition of the former club house. Three small outbuildings remain intact.
- 2.5 Vehicular access for the NWGC use was from Hanging Lane and this remains as the only vehicular access to the site. There are no public footpaths or rights of way into or across the site and the site has been maintained as a secure site since the golf course closed. Other than the TPO the site is not subject to any landscape or other designations.
- 2.6 The parties agree that the site is in an accessible location in relation to local shops and facilities with all parts of the proposed development being within about 400m of a bus stop. Train services are available from the nearby Longbridge and Northfield railway stations. The Access and Movement Strategy and Plan within the Transport SoCG (ID16) propose off-site improvements to help facilitate walking and cycling trips.

¹⁴ See aerial photographs at Appendix 3 and photographs at Appendix 6 to Mr Jackson's POE

¹⁵ See Constraints and Opportunities Plan (fpcr Drawing No. 6863-L-02 Revision F in Plans Folder)

3. Planning Policy

3.1 The decision notice refers to policies in the 2012 National Planning Policy Framework (the 2012 NPPF) which has been superseded by the revised NPPF issued in July 2018. The proofs refer to the relevant sections of the new NPPF and references in the written evidence were updated as necessary to reflect revisions made to the Planning Practice Guidance (PPG) in September 2018.

3.2 The development plan comprises the Birmingham Development Plan (BDP), adopted in January 2017, and the Birmingham Unitary Development Plan 2005 Saved Policies January 2017 (UDP). The general SoCG includes a long list of BDP policies agreed to be relevant but the only policy referred to in RfR 1 is Policy PG1.

3.3 Policy PG1 is headed 'Overall Levels of Growth' and states that:

"Over the Plan period significant levels of housing, employment, office and retail development will be planned for and provided along with supporting infrastructure and environmental enhancements.

- *51,000 additional homes¹⁶.....*

Birmingham's objectively assessed need for the period 2011-2031 is 89,000 additional homes, including about 38,000 affordable dwellings. It is not possible to deliver all this additional housing within the City boundary. The City Council will continue to work actively with neighbouring Councils through the Duty to Co-operate to ensure that appropriate provision is made elsewhere within the Greater Birmingham Housing Market Area to meet the shortfall of 37,900 homes, including about 14,400 affordable dwellings within the plan period. Policy TP48 provides further details on this".

3.4 BDP paragraph 4.4 explains that, by the end of the plan period in 2031, Birmingham's population is expected to rise by 156,000. In relation to the objectively assessed need (OAN) for an additional 89,000 homes, paragraph 4.6 states that the Council has sought to maximise the level of housing delivery within the City boundary but that it has not been possible to meet the full requirement within City boundary. Hence, the BDP seeks to provide for only 51,100 dwellings within the boundary.

3.5 The inability to accommodate the full OAN within Birmingham reflects the fact that land supply is limited even when Green Belt options are considered. The BDP advises that options outside of the City's boundaries will need to be explored to meet some 37,900 of the total 89,000 dwellings required to meet the OAN. Paragraph 4.7 provides more detail on BCC's intention to work with other authorities in the Greater Birmingham Housing Market Area (HMA) to secure the development of homes in those areas to contribute to meeting that unmet need. In addition to Birmingham itself, the HMA covers The Black Country, Bromsgrove, Redditch, Solihull, North Warwickshire, Tamworth, Lichfield, Cannock Chase, South Staffordshire and parts of Stratford-on-Avon.

¹⁶ The policy then lists a number of other targets for employment, retail, office and waste management provision.

- 3.6 Policy TP48 is concerned with monitoring and promoting the achievement of the growth targets in Policy PG1. This sets out the indicators which would trigger a full or partial review of the BDP. Among these are:
- A failure to provide a 5YHLS in any monitoring year with the following 2 monitoring years indicating no recovery in the position;
 - Housing completions falling more than 10% below the targets in the trajectory over any rolling 3 year period;
- 3.7 Policy TP48 states that BCC will play an active role in promoting the provision and delivery of the 37,900 homes elsewhere in the HMA and will monitor progress with this. If progress is falling short of the level required, BCC will undertake a review of the reasons for this. If that review indicates that it is necessary to reassess capacity for housing provision in Birmingham, a full or partial review of the BDP will be undertaken. Key indicators which would trigger a review include the failure of a relevant Council to submit a replacement or revised Local Plan, providing an appropriate contribution to Birmingham's unmet need, for examination within 3 years from the adoption of the BDP.
- 3.8 In response to my questions, the planning witnesses for both parties confirmed that the site is not allocated in the BDP for any specific purpose and is not subject to any land use designation. Their combined responses identified Policies TP27, TP28 and TP30 as being of particular relevance in considering the acceptability in principle of an application for housing development on a site with no allocation or designation in the development plan.
- 3.9 Policy TP27 states that new housing is expected to contribute to making sustainable places and sets out a number of attributes by which such neighbourhoods are characterised. These include a wide choice of housing sizes, types and tenures, access to shops, services and employment opportunities, convenient options to travel by sustainable means, a strong sense of place, environmental sustainability and attractive, safe and multi-functional public spaces.
- 3.10 Policy TP28 sets out a number of criteria concerning the location of new housing against which applications are to be considered. These relate to matters such as flood risk, scope for remediation if required, accessibility to shops and services, availability of infrastructure to support the development proposed, and the proposal being sympathetic to historic, cultural or natural assets.
- 3.11 Policy TP29 sets out the planned trajectory for housing delivery. This breaks the Plan period of 2011-2031 into 3 phases and puts forward a stepped approach to annual average rates of housing delivery as follows:
- 1,650 dwellings per annum (2011/12 – 2014/15)
 - 2,500 dwellings per annum (2015/16 – 2017/18)
 - 2,840 dwellings per annum (2018/19 – 2030/31).
- 3.12 On the recommendation of the BDP Examining Inspector, the trajectory over the first phase reflects the actual delivery achieved over this period to avoid the need to impose a retrospective requirement for 2011-15 that could not be met

simply by increasing the supply of housing land from 2015 onwards.¹⁷

Paragraph 8.13 of the reasoned justification to the policy states that the annual provision rates are *“not ceilings and that housing provision over and above that set out in the annual trajectory will be encouraged and facilitated wherever possible”*.

- 3.13 Policy TP30 states that proposals for new housing should seek to deliver a range of dwellings to meet local needs and support the creation of mixed, balanced and sustainable neighbourhoods. New housing should be at a target density responding to the site and its context. A density of at least 50 dph is indicated in areas well served by public transport and at least 45 dph on other sites outside of the City Centre.
- 3.14 Policy TP31 seeks 35% affordable homes on developments of 15 dwellings or more. Paragraph 8.21 states that the Council is committed to providing high quality affordable housing for people unable to access market housing. Paragraph 8.22 notes that the 2012 Strategic Housing Market Assessment (SHMA) found that about 38% of the City’s overall housing requirement is for affordable housing.
- 3.15 RfR 2 cited policies in paragraphs 3.14-3.14D of the UDP which are concerned with design matters. That reason has been withdrawn but a number of third parties raise concerns about the effect of the proposal on the character of the site and its surroundings. These issues are relevant when considering whether the proposal complies with these UDP policies.

4. Planning History

- 4.1 Bloor Homes submitted an outline planning application¹⁸ on 31 March 2016 for the redevelopment of the site for up to 1,000 dwellings, a primary school, a community hub and associated public open space. This is referred to in the evidence as “The Original” or “Old” application and the documents relating to it are at CD E1-E3. BCC officers prepared a Committee report (CD E1) recommending that permission be refused for 6 reasons but the application was withdrawn prior to the Committee meeting. The appellant states that this was to facilitate discussions with BCC and to try to agree matters through a resubmission¹⁹.
- 4.2 The TA produced for the original application was submitted with the appealed application and has not been revised. Its assessment of trip generation and effects on the road network and nearby junctions is, therefore, based on a development of up to 1,000 dwellings. The ES was revised and is based on a scheme of up to 950 dwellings.

5. The Proposal

- 5.1 In June/July 2018 the appellant carried out public consultation on the revised DF and ILP. A consultation letter from the appellant’s agent, Harris Lamb, (CD J7) explaining the revisions and the reasons for making those changes, together with reduced copies of the revised plans (CD J5 and J6) was sent to all parties

¹⁷ Paragraph 86 of EIR (CD F3)

¹⁸ Reference 2016/02717/PA

¹⁹ Mr Downes main POE paragraph 5.5

that had been notified of the planning application and all those who submitted comments or representations on the application. Notice of the consultation was put in the Birmingham Post (CD J9) and on social media and a public meeting to discuss the revised plans was held on 26 July 2018. All responses received by the appellant's agent (Harris Lamb) were submitted to the Planning Some 81 written responses were received as summarised in the note and schedule at CD J8 with 37 in support of the proposal and 44 objecting to it. These objections raise similar issues to those raised by objectors to the planning application. None of the objections received in response to the June 2018 consultation are directly concerned with the changes comprised in the revised DF and ILP. Neither do any of these objections indicate a preference for the larger development of up to 950 dwellings or the earlier versions of the DF and ILF submitted with the planning application.

- 5.2 At the Inquiry interested persons were given an opportunity to comment on this consultation process. Many of those who spoke were critical of the consultation carried out by the appellant prior to making the original (1,000 dwellings) application and the level of engagement with the local community at various other stages. However, in response to my direct questioning, they all confirmed that they had received the appellant's notification concerning the revised DF and ILF.
- 5.3 Some referred to having had difficulty speaking with the contact named in the Harris Lamb letter and suggested that some in the local community might not have understood how any comments made would be taken into consideration in the appeal. However, their answers to my questions and the number of written responses received indicate that the consultation was successful in reaching its intended audience. I am satisfied that this consultation complied with the principles established in the Wheatcroft judgment²⁰ and that no party who should have been consulted has been denied the opportunity of being consulted on those proposed changes.
- 5.4 The amended proposal is for the demolition of the former club house and redevelopment of the site for up to 800 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure. The appeal seeks detailed permission for means of access with all other detailed matters reserved for subsequent approval.
- 5.5 The parties agree that the means of access for which detailed approval is sought should be restricted to the proposed vehicular accesses at this stage. The requirement for a good level of permeability is agreed to be important. However, the parties consider it desirable to maintain flexibility as to the detailed positioning of the pedestrian and cycle accesses to be provided in addition to those available at the vehicular access points so that these are considered alongside the detailed site layout.
- 5.6 The existing access to the former club house and car park would be closed off and four new vehicular accesses would be provided. These are shown on the plans in the Transport SoCG comprising DTA Drawing Nos²¹:

²⁰ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

²¹ Appendices SP4-7 of Mr Parfitt's main POE

16094-06-3 Revision A: Proposed Residential Site Access from Frankley Beeches Road

This would be a simple priority T junction on Frankly Beeches Road a short distance to the west of Guardian Close.

16094-04 Revision D: Proposed Residential Site Access from Frankley Beeches Road/ Egghill Lane roundabout

This access would form a new, fourth arm of the existing roundabout junction of Frankley Beeches Road with Egghill Lane.

16094-06-4 Revision D: Proposed Residential Site Access from Tessall Lane

This would be a priority T junction with ghost islands to form 'back to back' right turn lanes into the proposed site access and Farren Road.

16094-06-2 Revision A: Proposed School Site Access

This access would serve the primary school and community hub and any parking associated with these uses, the sports pitches and play space. It would be in the form of a simple priority T junction on Frankley Beeches Road.

In all cases approval is sought for the proposed accesses and associated visibility splays and the construction of approximately 20m of road within the site boundary.

- 5.7 The revised DF shows two main areas of land for residential development, together extending to some 17.9 ha and separated by a central 'green corridor' varying from about 50m to more than 120m in width. All dwellings in the south eastern development zone would be served by the vehicular access from Tessall Lane and there would be no vehicular connection between this and the other residential development zone. That zone would be accessed from the new accesses from Frankley Beeches Road the Frankley Beeches Road/ Egghill Lane roundabout. The DF reserves the option that these access points could be connected together by the internal estate road but this would be a matter to be resolved as part of any future reserved matters application.
- 5.8 The green corridor, which would extend both sides of Hanging Brook, would comprise an 'eco-park' and areas of new parkland and habitat. The eco-park would provide wetland areas and include a number of storage basins and other features associated with the proposed sustainable drainage system (SuDS) and a new pond(s) to replace the existing pond on the site. It would also incorporate existing and new woodland planting and species rich grassland.
- 5.9 The green corridor would provide opportunities for informal recreation and would be directly accessible from the proposed residential areas via a network of paths and cycle routes. The DF indicates the retention of many of the existing blocks of trees in the green corridor and around the site perimeter and in three central blocks within the eastern development zone. Retained and additional planting would form a wildlife corridor of between 10 and 33m width along the site's eastern boundary.
- 5.10 The main play space and sports facilities would be on the raised plateau in the north east corner of the site close to the primary school and community hub. These would comprise a multi-use games area (MUGA), local equipped area for

play (LEAP) and neighbourhood equipped area for play (NEAP) and an informal kick-about area. A second LEAP would be provided in the green corridor in the central part of the site. Green infrastructure (GI) (excluding the primary school and community hub sites) would cover a minimum of 12.45 ha, representing about 38% of the total site area.

- 5.11 The DF identifies a site of 1.8ha for the primary school. The parties have agreed that sufficient land should be made available for the construction of a one form entry school which can be extended to a two form entry school at a later date²². The S106 agreement includes an obligation to fund the cost of building the 1 form entry school on the site and the payment of a financial contribution to increase capacity at another local school to meet the additional 0.12 form entry need generated by the development. The community hub would occupy a site of about 0.2ha and would have a minimum of 1,000 square metres (sq. m) gross floor space. The appellant has had discussions with organisations that might be interested in occupying or using the community hub but no detailed plans for its design, layout or use have been agreed.
- 5.12 The residential development would have an average density of 45 dph and provide a range of 1 and 2 bed apartments and 2, 3, 4 and 5 bed houses. Up to 280 (35%) of the total number of new dwellings would comprise affordable homes including homes for social rent, affordable rent and shared ownership.

6. Common Ground

- 6.1 The General SoCG (ID11) confirms that the NWGC club closed for reasons of viability, that there is no prospect of this use being resumed and that there is no objection to the loss of the golf course. The parties agree that there are no technical or environmental objections to the proposal subject to the imposition of conditions to secure mitigation of the effects on ecology, trees, landscape and loss of open space.
- 6.2 The Transportation SoCG (ID16) is between the appellant and BCC as Local Highway Authority following BCC's review of the TA and the Stage 1 Safety Audit²³. There is agreement as to existing traffic flows on the local network, the level of traffic generation for the proposal, traffic distribution, the impact on the network and key junctions, and the highway improvement measures needed to mitigate that impact. It is agreed that the site has good accessibility to services, facilities and public transport and the measures proposed as part of the proposed sustainable access and movement strategy are also agreed.
- 6.3 The Transportation SoCG identifies that mitigation measures would be required at some nearby road junctions to ensure that they continue to operate effectively at the forecast year of 2026.²⁴ These are:

²² See paragraph 3.5 of the General SoCG (ID11)

²³ CD R5

²⁴ Allowing for both the effect of traffic generated by the development and local traffic growth to that date

Frankley Beeches Road/ Hoggs Lane/ Hanging Bridge signalised crossroads (DTA Drawing No. 16094-08 Revision A)²⁵

A new right turn lane on the Hoggs Lane approach by widening the carriageway would increase the operational capacity of the junction and provide an improved alignment for vehicles travelling between Hanging Lane and Hoggs Lane.

Minor carriageway widening by using land within the appeal site would allow the creation of a defined turning area within the junction to reduce the propensity for right turning vehicles to block traffic on Frankley Beeches Road.

A38 (Bristol Road)/ Tessall Lane signalised crossroads (DTA Drawing No. 16094-10)²⁶

In addition to works already planned at this junction the proposal would create a third lane on the Tessall Lane approach to accommodate right turning movements onto the A38 (south). This could be achieved within the existing highway boundary.

It is agreed that all other relevant junctions would continue to operate within capacity following the completion of the development.

- 6.4 Agreement has been reached on a schedule of off-site highway works to help facilitate pedestrian and cycle movements which would be secured by means of a Grampian type planning condition and a Highways Act agreement. These are indicated on DTA Drawing No. 16094-11 included in the Transportation SoCG and include new and improved pedestrian crossings and improvements to bus stops. The detail of these works would be subject to approval at a later stage.
- 6.5 It is common ground that the OAN for Birmingham over the BDP plan period to 2031 is for 89,000 additional homes and that the BDP plans for 51,100 of this need within the City boundary, with the remainder being met by provision in other local authorities within the HMA. It is agreed that the 5YHLS should be calculated by reference to the 51,100 requirement and that a 5% buffer should be added in accordance with paragraph 73 of the NPPF. It is also agreed that the current 5YHLS runs from 1 April 2018 to 31 March 2023 and the base date is 1 April 2018.
- 6.6 By the close of the Inquiry agreement had been reached on the nature and scale of obligations relating to: affordable housing provision; the delivery of the site for the new primary school and developer contribution towards its construction; a financial contribution to provide the additional primary school places needed over and above those within the new school; the provision of on-site public open space and its future management; the sum of £1,600,000 as a Sports Improvement Fund payment; the construction and delivery of the community hub; and the developer's adherence to a Local Employment Plan during the construction of the proposed development.
- 6.7 The areas of remaining dispute in respect of planning obligations relate to the Council's request for an additional Sports Improvement Fund payment to compensate for the loss of recreational land and for a contribution to increase

²⁵ Included in the TA (CD H10) and at Appendix SP12 to Mr Parfitt's PoE

²⁶ Included in the TA and at Appendix SP13 to Mr Parfitt's PoE

the capacity in local secondary schools. These matters are considered in more detail in section 12 of this report.

7. Environmental Information

- 7.1 The ES was prepared in respect of a development of up to 950 dwellings and has not been updated to reflect the lower number now proposed. Its conclusions as to the potential significant environmental effects need to be considered in that context. The potential transport, ecology, tree, landscape and visual effects were dealt with in the evidence to the Inquiry in response to my request for clarification about the effect of the amended proposal and revised DF and to respond to third party concerns. I have identified the need for a condition relating to the felling or cutting back of vegetation to be done outside of the bird breeding season in order to secure necessary mitigation that was identified in the ES. The need for this condition has been agreed by the parties. Although the EA had previously had concerns about flood risk these have now been resolved subject to the attachment of conditions to any outline permission that might be granted that would require the submission of an updated hydraulic model and flood risk assessment in tandem with of any reserved matters submission.
- 7.2 In relation to the historic environment, the ES identifies the most significant effect to be the potential damage to or loss of buried archaeological features which may be present in parts of the site during the construction period. It recommends that this could adequately be mitigated for by carrying out a programme or archaeological investigation and recording and that if was done, the residual effect would be reduced to minor adverse which is not significant under the EIA regulations. There is no other technical information in relation to archaeology and the need for a condition requiring that investigation and recording has been agreed by the parties.
- 7.3 The Air Quality chapter of the ES concludes that impacts of the traffic generated by the proposal on the air quality for local residents have been shown to be acceptable at the worst-case locations, with concentrations being well below the air quality objectives. It does identify the potential for adverse dust impacts during construction works but advises that this could adequately be mitigated for by using appropriate dust suppression measures which would be required by condition as part of the Construction Method Statement. There was no objection to the application from the Council's environmental health officers subject to appropriate conditions being attached to any permission granted with regard to a ground contamination survey and verification report, any plant and machinery installed at the primary school and community hub and provision of charging points for electric vehicles. All of these matters were included in the draft conditions submitted to the Inquiry.
- 7.4 The ES identified the potential for noise disturbance to future residents of the proposed development from traffic on the surrounding roads but this is a matter that would need to be considered in relation to the detailed layout if and when this is submitted at reserved matters stage. Potential adverse effects during construction could be dealt with by agreement of working hours and appropriate methods of noise and vibration control as part of a construction environmental management plan or method statement. The need for a method statement was identified in the draft conditions submitted to the Inquiry and there was no

objection from the Council's environmental officers in relation to noise or vibration.

- 7.5 The ES concluded the proposal would have positive socio-economic effects in relation to the provision of new homes, construction employment and investment and the increase in population in the area. It noted the requirement for mitigation in relation to the increase pressure on primary school facilities but assessed the overall effect on other community, health, sports and recreations facilities as beneficial and minor and not significant under the EIA Regulations. The Council's concerns about the need for financial contributions in relation to secondary school provision and additional sports pitches are discussed in Section 12 and I deal with local resident's concerns about the pressure on local services in my conclusions.
- 7.6 The ES chapter concludes that the potential impacts from risks associated with the ground conditions within site could satisfactorily be mitigated for by adopting best practice in the construction works. However, it notes the need for an intrusive site investigation prior to construction commencing so that any longer term risks can be identified and dealt with. The need for a further contamination survey and verification report was identified in the draft conditions. In relation to waste, the ES identifies the need for construction and demolition waste to be managed appropriately and that this should be covered in the construction management plan or method statement and that appropriate provision should be made for the storage and collection of waste and recyclable materials within the design of the development. The need for this provision and for a construction method statement was identified within the draft conditions submitted to the inquiry.

8. The Case for Birmingham City Council

The gist of the Council's case is as follows.

- 8.1 The BDP has recently been adopted and is entitled to be treated with appropriate weight. The proposal conflicts with Policy PG1 because the site is not allocated for housing development. It cannot reasonably be treated as a windfall site due to its large size and the scale of development proposed and because the site was considered as a possible allocation in the BDP and was rejected by the Examining Inspector. Accordingly, it does not comply with the definition of a windfall site as set out in the NPPF. It would undermine public confidence in the planning system if large housing sites not allocated for that purpose are brought forward by means of ad-hoc planning applications and appeals.
- 8.2 The Council has a 5YHLS and the appellant has not been able to demonstrate otherwise. The BDP policies should, therefore, be given full weight. The proposal conflicts with the BDP strategy and objectives. The appellant has underestimated the harm to public confidence that would be caused by a grant of permission in this case. There are no material considerations that outweigh the conflict with the development plan.

Policy

- 8.3 The BDP was adopted in January 2017 following a public examination and has been found to be sound. The site was promoted as a potential housing

allocation but was rejected by the Examining Inspector. No application was made to challenge the adoption of the BDP.

- 8.4 Harris Lamb's representations to the EiP²⁷ show that the appellant argued that the BDP was defective as a matter of principle because of a failure to allocate the appeal site for housing development. That is implied by their complaint that the plan did not meet the "justified" or "effective" tests and should not be considered sound²⁸. These representations were rejected in the Examining Inspector's Report (EIR).²⁹ The main arguments advanced to the EiP are identical to those advanced at the appeal.
- 8.5 The Council rejects the contention that the Examining Inspector's decision not to support the site's allocation was made only on site specific and technical grounds. At Paragraph 61, the EIR is clear that he rejected the scheme because it fell outside the balance that he had struck between the level of provision of new homes within and outside of the City boundary. That is an issue of principle and there has been no change in circumstances since the EiP that would justify a grant of planning permission.
- 8.6 Mr Wood states in his proof of evidence (POE) (paragraph 4.7) that the Examining Inspector accepted that the site's location was sustainable and in the southern suburbs of the City but concluded that it would not be appropriate to allocate it for housing use. The Inspector was aware that BCC was unable to meet its full OAN within its administrative area because he was addressed by the appellant's representatives on this point. He still concluded that the allocation of additional sites including the appeal site would not be justified.
- 8.7 The Council accepts that there has been slippage in the delivery of the Langley Sustainable Urban Extension (SUE) and that the SUE will not deliver the number of new homes previously envisaged within the plan period. This is not, however, a relevant new fact. It is in the nature of broad, structural decisions made in a local plan context that facts will subsequently emerge which disrupt earlier assumptions. This is not a basis for re-opening questions that have been settled through the forward planning process. The BDP contemplates that events might not materialise quite as anticipated and Policy TP48 allows for exactly that.
- 8.8 PolicyTP48 sets out a series of triggers for an early review of the BDP. The only ones of relevance are the absence of a five year supply and progress towards meeting the overspill figure of around 38,000 homes outside of the City. BCC is not in control of the other local authorities in the HMA and the most it can achieve is to monitor progress of this provision. Only a short period has passed since the BDP was adopted and progress towards meeting this part of the OAN is steady. The appellant has not suggested that this trigger has been activated and the decision as to whether an early review is needed is left to BCC. The Council has not considered this necessary. This is properly a matter for the Council's judgment and it is difficult to see how the Secretary of State (SoS) can take this any further.

²⁷ Mr Woods' Appendix MW1

²⁸ Harris Lamb comment form December 2013 at Appendix MW1 Part 3

²⁹ CD F3

- 8.9 The development plan hangs together as a coherent whole. Although the Plan allows for an early review in certain circumstances none of these circumstances apply. The BDP therefore remains intact. BDP Policy PG1 sets a threshold of 51,100 new homes to be provided within the City boundary. This provision explicitly excluded the appeal site and the Council rejects the contention that the site can come forward as a 'windfall'.
- 8.10 The NPPF glossary defines windfall sites as "*sites not specifically identified in the development plan.*" Having regard to that definition BCC argues that the appeal site cannot be considered to be a windfall because it was identified as a possible housing allocation in the BDP, was carefully considered by the Examining Inspector and was rejected. Mr Wood considers this approach to be consistent with NPPF paragraph 68 which expresses support for windfall sites of small to medium size³⁰.
- 8.11 Under cross examination Mr Wood stated that the glossary definition of windfall sites should be read together with the text in the NPPF as a whole but, in response to my question, he confirmed that he relies only upon the glossary and paragraph 68 to inform his judgement on what the term should be understood to mean. Having regard to paragraph 68, Mr Wood considers that the site's size and the scale of development proposed, which are comparable to some of the housing planned in the Growth Areas within the BDP, are further reasons why the proposal cannot be considered to be a windfall development.
- 8.12 In its closing submissions, the Council rejects the contention that there is no size threshold in the NPPF definition for two reasons. First, when paragraphs 68-70 of the NPPF are read as a whole, it is clear that the SoS has in mind a limit on the size of windfall sites which are described as "small" and "medium". A 35 ha site of 800 houses cannot reasonably be described as small or medium. Secondly, those adjectives denote a relative concept of size which must give way to local circumstances. For example, what might be a small site in Northumberland might be regarded as a medium or large site in central Birmingham. It all depends upon local context.
- 8.13 The Strategic Housing Land Availability Assessment (SHLAA) provides the context for the application of NPPF advice in Birmingham. Table A4.2 in the 2018 SHLAA³¹ shows that, in Birmingham, a small site is less than 0.06 ha and a medium site is one that is larger than 0.06 ha. This reflects the City's dense urban fabric and industrial heritage. The application of the concept of a windfall must bear some relationship to these orders of size in the context of Birmingham and, therefore, excludes a site of 35ha.
- 8.14 Mr Downes agreed, in cross examination, that a proposal can conflict with a development plan either by reference to strategy and objectives or detailed development management policies. In this case the conflict is with the former. It would be inimical to the plan-led process to allow this large housing site to come forward outside of the development plan process when it has already been considered and rejected through that process.

³⁰ Mr Wood main POE page 24

³¹ CD F1

5 year housing land supply

- 8.15 At Appendix 1 to her rebuttal proof, Mrs Han sets out concessions about the deliverability of housing on some of the sites within the 2018 5YHLS³² that had been challenged in the appellant's evidence. At paragraph 2.6 she gives her view that all but 4 of the disputed sites should remain in the 5YHLS but that the number of units to be delivered on some sites should be reduced. These changes lead to a reduction in the total supply from 20,413 to 20,183 (a deduction of 230 dwellings) resulting in an identified supply of 6.72 years. Mrs Han's final position on all the disputed sites in the identified supply component of the 5YHLS is set out in the combined table at document ID18. I deal with this detailed evidence in Appendix B to this report.
- 8.16 The 2018 SHLAA (CD F1) has been prepared in accordance with the methodology set out in the PPG³³ with the assessment relating to all sites in excess of 0.06 ha. In addition to issuing a call for sites in October 2017, the Council examined land within its ownership, sites with planning permission and development allocations. Each site was assessed for its suitability, availability and achievability. Lead-in times and build-out rates have been taken into account and the assumptions on these matters (Appendix 5 to the SHLAA) are based on past delivery rate assessment. The Council has not taken for granted developers' aspirations but has approached all sites with the same consistency.
- 8.17 The Council considers that there is no requirement for a lapse rate. The BDP Examining Inspector was satisfied with the SHLAA methodology and did not require that a lapse rate be applied (paragraph 56 of CD F3). The conservative allowance for windfalls used in calculating the supply counters the need for a lapse rate and the inclusion of a lapse rate could make the figures less reliable. Windfall completions are expected to exceed the allowance assumed in the 5YHLS by a significant degree. Even if a lapse rate of 5% is applied to all sites with planning permission that have not yet commenced and a rate of 10% is applied to all other sites the Council would still be able to demonstrate a 5YHLS. The same would be true even if higher rates of 10% and 20% were to be applied. This is shown in Table 2 of Mrs Han's rebuttal evidence.
- 8.18 The SHLAA represents some 3-6 months of work by officers in assessing all the potential sites and provides a robust assessment of the supply. The Council has taken a pragmatic and cautious approach to deliverability with the result that the 5YHLS is very conservative; only 43% of the total capacity identified in the SHLAA has been assessed as being deliverable within 5 years. The 5YHLS is also robust, with 45% of the dwellings being on sites which are under construction and a further 42% on sites with detailed planning permission or prior approval for permitted development works.
- 8.19 Only 2.6% of the dwellings in the 5YHLS are identified as other opportunity sites but 27 of the 31 sites in this category are in the Council's Birmingham Municipal Housing Trust (BMHT) 5 year development programme. BMHT was set up in 2009 and has completed 3,000 homes and is currently the largest provider of affordable homes in the City. Whilst the BMHT sites do not have planning permission they are amongst the most certain to be delivered. Most are small

³² CD F2

³³ The key stages in the assessment are set out in Appendix 2 of the SHLAA at CD F1

sites (under 50 units). Based on an assessment of a sample of completed sites the average time for determination of a BMHT planning application is 2-3 months. Even if applications were not submitted until April 2020 all these sites would be delivered by 2023, allowing for average lead-in and build-out rates.

- 8.20 The issues around the 5YHLS have narrowed and the matters in dispute relate to specific points on supply. The five year requirement is uncontested. The policy-on figure is 51,100 and a 5% buffer is added to this. As the appellant accepts, this indicates that BCC has satisfactorily discharged its obligations as to the provision of housing land in the recent past. This concession provides the essential backcloth to considering the detail of the supply discussion.
- 8.21 The 5 year requirement is 15,018, including the 5% buffer. Mr Hawley's evidence at Table 8³⁴, in which seven classes of site are set out and the differing assumptions of both parties are described, further narrows the issues in dispute. In broad terms, the parties differ within the range of 15,000 to 20,000 units, providing for a land supply of between 5.1 to 6.79 years. Even if Mr Hawley's evidence is accepted in its entirety, the Council can still demonstrate a five year supply.
- 8.22 The appellant seeks to show a deficiency in the 5YHLS by supplementing Mr Hawley's "planning" deductions of sites or units with a series of "market" deductions arising from Mr Willet's evidence. However, the appellant has made a serious error even in the terms of its own evidence.
- 8.23 Mr Hawley's paragraph 13.4 states that he has made "planning" deductions from the headline figure of 5,208 City Centre apartments. These total 1,296 units, leaving a residual figure of 3,912 City Centre apartments in the 5YHLS calculation. Mr Hawley states that this residual figure should be subject to a 50% reduction in line with Mr Willet's market evidence, resulting in a further reduction of 1,956 units from the City Centre apartment category. This is put beyond doubt by row 8 of Mr Hawley's Table 9³⁵ which states: "*Mr Willet's adjusted reduction for City Centre Apartments – 1,956*".
- 8.24 This is an error because Mr Willet's evidence argues for a deduction of only 1,192 units from the City Centre apartment category on market grounds. By adopting a figure of 1,956 Mr Hawley has made an additional deduction of c.700 units for which there is no evidential support. Mr Willet explained this discrepancy by contending that his evidence was "market facing" whereas Mr Hawley had applied a "planning approach". The Council asserts that that cannot be right. The 1,956 unit reduction in Table 9 is wholly and exclusively attributable to Mr Willet's market concerns but is c.700 more than the maximum for which Mr Willet argues. Mr Willet also accepted during evidence in chief that he had wrongly deducted a number of units from the supply.
- 8.25 When these 700 units are added back into the supply (as they must be) the 5YHLS position asserted by the appellant becomes highly marginal. If every issue and assessment is resolved in favour of the appellant, the best they can demonstrate is a marginal five year supply. As issues and assessments move increasingly in favour of the Council the five year supply becomes more robust.

³⁴ Mr Hawley main POE p49

³⁵ Mr Hawley main POE p50

The issues with regard to the deliverability of sites are, therefore, important to the resolution of this matter.

- 8.26 The appellant argues that the NPPF policy advice about deliverability is now fundamentally different to the previous advice and that, for this reason, the guidance in the Court of Appeal judgment in *St Modwen*³⁶ is out of date. Both those assertions are wrong. In *St Modwen*, the Court emphasised the need to exercise planning judgment in considering the issue of deliverability. That point was accepted by Mr Hawley as providing the foundation for the approach to this issue. It is also affirmed in the Hallam Land Court of Appeal judgment quoted by Inspector Fagan at paragraph 60 of the Coalpit Heath, South Gloucestershire appeal decision³⁷.
- 8.27 There is a need to focus on probabilities and prospects rather than certainty as the benchmark for the acceptable level of evidence. Paragraph 41 of the *St Modwen* judgment emphasised the distinction between deliverability and actual delivery. The former is a judgment whilst the latter is a statement of fact. The Council rejects the appellant's contentions that that distinction is no longer valid and that the revised NPPF's requirement for a demonstration of clear evidence has to be treated as meaning the achievement of certainty. In his decision in the *Pocklington East Riding of Yorkshire* appeal,³⁸ at paragraph 12, Inspector Baird quotes both *Wain Homes* and *St Modwen* and then states: "*I take this to mean that for a site to be deliverable, it should be capable of being delivered not that it will be delivered*".
- 8.28 Inspector Spencer takes this up in the *Holme on Spalding Moor* decision.³⁹ At paragraph 11, she quotes the judgment of Ousley J in *St Modwen* (affirmed as correct by the Court of Appeal) in which he says: "*The assessment of housing land supply does not require certainty that the housing sites will actually be developed within that period. The planning process cannot deal in such certainties. The problem of uncertainty is managed by assessing "deliverability" over a five year period ...*" This body of law is applied by Inspectors and provides the standard method for addressing probabilities in this area of policy. It is highly unlikely that the SoS would have introduced a fundamental change to the policy approach by slightly changing the language in the third sentence of a glossary definition in the NPPF.
- 8.29 The appellant has adopted the wrong approach to deciding whether a site included in the 5YHLS as deliverable should be so included. This undermines the reliability of the appellant's assessment and suggests that BCC's judgments are more dependable because the Council has correctly applied the policy test. When the apportionment of the burden of proof which arises from the revised definition is considered, the discussion about "deliverability" becomes a second order issue in the appeal. This is because the appellant's contention, that the Council must achieve a high standard of evidence to prove that the delivery assumptions underpinning the 5YHLS are correct, misunderstands the policy and is wrong in law.

³⁶ *St Modwen Developments & SSCLG & East Riding of Yorkshire Council & Save Our Ferriby Action Group* [2017]EWCA Civ 1643 at CD C2

³⁷ APP/P0119/W/7/3191477 dated 06.09.18 at Mr Stacey Rebuttal POE Appendix JSr5

³⁸ APP/E2001/W/16/3165930 dated 01.11.17 at Mr Wood's Appendix MW/4

³⁹ APP/E2001/W/16/3165880 dated 17.08.17 at Mr Wood's Appendix MW/5

- 8.30 It is agreed that the appellant carries the burden of proof for some 80% of the disputed sites; that is for sites with detailed permission, sites under construction and small sites which together comprise over 2,000 units. If the appellant fails to discharge that burden on even half of that number the Council can demonstrate a five year supply. However, the evidence on each site within those categories amounted to a short digest or commentary in Mr Hawley's proof. That is a long way short of providing compelling evidence capable of discharging the burden in respect of those sites.
- 8.31 Mr Hawley's deduction, of c. 1,000 units, from the windfall category because of his scepticism about delivery from this source is arbitrary and unjustified. NPPF paragraph 70 requires that attention be paid to the past and future in assessing the reliability of a windfall allowance. Table A4-2 in the 2018 SHLAA⁴⁰ shows historic windfall completions many times greater than the allowance included in the forward supply. Paragraph 5.4 states that windfalls have historically played a very important role in enabling housing growth in Birmingham and paragraph 6.1 confirms that: "*Windfalls have made an important contribution to meeting the city's housing growth over the last 20 years*".
- 8.32 The prospects in the future are equally positive. The evidence of Mrs Han and Mr Willet provide an optimistic picture of a buoyant economy with market confidence, rising rents, economic activity, the retention and attraction of young people and an expanding population. This provides the 'compelling evidence' that NPPF paragraph 70 has in mind when making assumptions about a windfall allowance. The SoS is invited to conclude that BCC can demonstrate a 6.79 year housing land supply. If the SoS is disinclined to identify a number the Council would be content for him to conclude that the Council can demonstrate a robust housing land supply which comfortably exceeds the five year threshold.

Other material considerations

- 8.33 On behalf of the Council Mr Wood considers that the potential to stimulate construction employment is not unique to the appeal proposal and that it is not clear how far this would benefit the local community. He gives this relatively limited weight. He states that any economic benefit derived through the contribution that future residents might make to the local labour supply would be difficult to quantify and that the payment of Council Tax and New Homes Bonus should only attract moderate weight as they are not specific to the proposal. He considers that an increased pool of disposable income generated by incoming residents would apply to any form of housing development.
- 8.34 Mr Wood attaches only moderate weight to the provision of up to 800 new homes in a mix of sizes, types and tenures having regard to the fact that the Council is delivering housing in the City in accordance with BDP Policy PG1. This is notwithstanding his acceptance that the Langley SUE is likely to deliver about 2,000 dwellings within the BDP Plan period rather than the 5,000 units previously assumed⁴¹. He accepts the need for affordable housing in the City and attaches significant weight to the 35% affordable homes that the proposal would deliver.

⁴⁰ CD F1

⁴¹ See updated trajectory at ID41

- 8.35 He acknowledges the potential benefits of the eco-park, wider public access to public open space and that the play space provision would rectify gaps in the provision of play space to the north and east of the site. He attaches moderate weight to these social benefits. Given the uncertainty as to the form and use of the community hub he attaches only limited weight to this. He considers that the games areas, new primary school and educational contributions are required as mitigation and should not be regarded as benefits.
- 8.36 The site is agreed to be in an accessible location but Mr Wood argues that this should be given only limited weight because the proposal does not accord with Policy PG1. As there would be a net loss in the total area of open space comprised in the site, he does not consider the provision of 12.45 of GI to be an environmental benefit and does not accept that there would be a net increase in biodiversity on the site. He does not judge the potential benefits sufficient to indicate that the appeal should be determined other than in accordance with the development plan. In cross examination he declined to add the market and affordable housing and other potential benefits together and afford these a combined weight in the overall planning balance. He considered that this would risk conflating the benefits.
- 8.37 Overall, BCC considers these issues to be a matter for the judgment of the SoS. The Council contends that provision made by the proposal to offset external costs does not constitute an independent benefit and that the alleged benefits do not outweigh the statutory presumption. The appeal should, therefore, be rejected. The Council refers to Mr Downes' agreement that the approach taken by Inspector Graham in the Oundle appeal decision⁴² is correct in principle; namely that if the proposal is not "sustainable" the appeal should be dismissed. That principle applies in this case.

B&BCWT Objection

- 8.38 In its written response to B&BCWT's objection (ID 39) BCC states that, notwithstanding the outcome of the appellant's Local Site Assessment, the appeal site has potential as a Site of Local Importance for Nature Conversation (SLINC). Officers have had regard to the local site assessment criteria in their assessment of the proposal. The revised DF does not directly address the issue of the site's potential SLINC status but does more effectively address concerns relating to its value. The revised DF adheres to the requirements of the NPPF and BDP Policy TP8 by following the "mitigation hierarchy" and delivering a biodiversity net gain.
- 8.39 Careful phasing of the development would be required to ensure that mitigation measures can be delivered and demonstrated to be effective before existing habitats are removed. Effective management of the GI would be essential to ensure that the ecological value of retained and newly created habitats is sustained once the development is completed and occupied. The draft conditions proposed by BCC would provide a mechanism by which appropriate mitigation and future management could be secured.

⁴² APP/G2815/A/2209113 dated 29.09.14 at Mr Wood's Appendix MW/7

Sport Improvement Fund contribution

8.40 BDP Policy TP11 refers to the loss of existing sports facilities. Paragraph 3 says:

"Sports and physical active facilities will be protected from development, unless it can be demonstrated that they are surplus to requirements through a robust and up to date assessment of needs. Where there is an identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality of replacement provision is provided".

8.41 BCC and Sport England accept that the site is surplus for golf use but BCC does not consider it surplus to all sports. Policy TP11 requires compensation for the loss of the facility with mitigation of a similar value to the community. BCC calculate the cost of laying out new sports pitches elsewhere to be £15 per sq. m. Multiplying that figure by the 17.9 ha of land to be developed for residential use gives a total of £2,685,000. That is the estimated cost of replacement provision elsewhere and BCC considers that this payment should be directed to the provision of facilities for sporting use rather than open space. This is the level of compensation that is due.

8.42 During the course of the application, Sport England requested funding for the provision of enhanced football facilities in the form of two 3G artificial pitches and associated parking and changing facilities at an estimated cost of £1,600,000. BCC supports that provision. If that cost is deducted from the £2,686,000 total compensation payable it leaves a sum of £1,085,000 (the 'Additional Sport Improvement Fund Contribution') that should be included in the S106 planning obligations.

Secondary School contribution

8.43 The parties agree that a development of up to 800 homes of the type and size envisaged would be likely to accommodate 168 pupils of secondary school age. BCC accepts that not all families moving into the development would be new to the area and that a percentage of pupils would already be attending local schools. However, the City is experiencing growth in all year groups and there is net growth in demand for high school places.

8.44 BCC uses the national formula to calculate the number of school places required to serve new housing developments and it is not its practice to apply discounts for the proportion of pupils who attend Grammar, faith or other schools outside the main school sector. The Department for Education (DfE) adopt a surplus capacity figure of 2% when assessing capacity in relation to capital funding for school places. However DfE has confirmed in their email to Mr Marlow (ID44) that there is no recommended level of surplus and that local authorities can set a level appropriate to their local circumstances while not carrying excessive levels. BCC's practice has been to apply an allowance of between 2.5 and 5%.

8.45 Although the officer report stated that local secondary schools are full BCC acknowledge that this is not the case and that there would be capacity for an additional 44 pupils to be accommodated in the period up to 2020. There would not, however, be sufficient capacity to provide the residual 124 secondary school places required.

- 8.46 BCC does not accept that there are 154 surplus places at Turves Green Boys School. Lower admission limits have been applied in the upper school as a result of the phased expansion resulting from the recent rebuilding of the school. There are currently 57 vacancies but the school is likely to be operating at 100% of its capacity (with 150 in each year group) within the next four years. At Colmers School there are only 3 vacancies in Year 7 and 97% of its capacity is filled. A surplus of 5% is considered tolerable to allow for in-year changes and the school is accordingly considered to be full.
- 8.47 Balaam Wood School is operating at 84% of capacity with vacancies clustered in the upper year groups. It is seeing increased intakes and is likely to be full to capacity over the next 4 years. The Planned Admission Number (PAN) has been reduced from 107 to 97 to assist the school on its school improvement path following an Ofsted inspection. Even if the PAN was reinstated to its former level the school would be likely to reach capacity in a few years' time.
- 8.48 The Council maintains that an additional 124 secondary school places would be required to meet the likely needs generated by the development and that a financial contribution of £2,221,451⁴³ is needed to provide appropriate mitigation for this additional demand on secondary school provision in the area.

9. The Case for Bloor Homes (Western)

The case for the appellant is summarised as follows.

- 9.1 The site is a redundant golf course within the built-up area of Birmingham. It has been vacant and unused for nearly two years and the buildings on it have been subject to vandalism and arson. There is no public access. The number of houses proposed has been reduced to a maximum of 800 and the open space has been increased by 1.5 ha, leading the Council to withdraw RfR 2. It is EIA development that has been fully assessed under a worst-case scenario. The development would be in a sustainable location and deliver a policy compliant level of affordable housing. There is no objection to the loss of the golf course and the public open space proposed far exceeds the necessary requirement.
- 9.2 Policy PG1 is concerned only with setting the housing target and there is no sensible basis for alleging a breach through an individual application. Even if that were not the case, a plethora of material considerations weigh in favour of the proposal. The appellant challenges the Council's 5YHLS but does not rely upon this. The availability of an up-to-date development plan and 5YHLS is no bar to the delivery of new homes on greenfield sites. If the SoS agrees that the Council is unable to demonstrate a 5YHLS the tilted balance under paragraph 11 of the NPPF is triggered. It is evident that the adverse impacts of granting planning permission would not outweigh the benefits.

Policy

- 9.3 In cross examination Mr Wood confirmed that, in respect of RfR1, the Council relies only on the first sentence of Policy PG1 which reads:

⁴³ 124 places x £17,914.93 per additional school place

“Over the Plan period significant levels of housing, employment, office and retail development will be planned for and provided along with supporting infrastructure and environmental enhancements.

- 51,100 additional homes...”

- 9.4 PG1 sets no ceiling for growth. It would be perverse if it did so given the need for around 38,000 dwellings to be met in other local authority areas outside of Birmingham. Not only does the BDP prescribe no ceiling but paragraph 8.13 of the explanatory text to Policy TP29 ‘Housing Trajectory’ states that:

“Whilst the trajectory sets out annual provision rates, they are not ceilings. Housing over and above that set out in the trajectory will be facilitated wherever possible”.

That is a strong statement of the Council’s intent.

- 9.5 The BDP allocates specific sites for only some 12,950 dwellings in the Growth Areas GA2-GA10 and relies upon windfall sites for the majority of the 51,100 unit requirement. Together with the GA1 (City Centre) allowance, the site allocations account for only about 50% of the housing target. At least half of that target will need to be delivered on windfall sites.

Whether the site is a windfall site

- 9.6 The definition of “windfall sites” in the NPPF glossary is easily understood and there is no need to look at the 2012 NPPF definition as an ‘aid to interpretation.’ The wording of policy should be given its ordinary and sensible meaning. In any event, reference to the 2012 NPPF does not support the Council’s case. Under the old definition a windfall site is one not identified in the Local Plan process whereas the new definition states that they are sites not identified in the development plan. The term “development plan” can be understood by reference to section 38(3) of the Planning and Compulsory Purchase Act 2004 which states that:

“For the purposes of any other area in England the development plan is ...the development plan documents (taken as a whole) which have been adopted or approved in relation to that area”

- 9.7 The definition does not include development plan documents still to be adopted or the process of preparing the development plan but simply the adopted development plan documents. In the present case that is the BDP. There is no agreement between the Council’s witnesses as to whether any size threshold applies to windfall sites. Mrs Han stated that the Council does not have any size limit whereas Mr Wood asserted that a limit can be inferred by reference to NPPF paragraph 68. That assertion is misplaced.
- 9.8 Found under the heading of “*Identifying land for homes,*” paragraph 68 is there to remind local authorities that small and medium sites can make an important contribution to meeting housing need. It encourages authorities to support windfall sites through their policies and decisions but gives no guidance that windfall sites can only be small or medium in size. Mr Wood accepted that, when determining the application for its redevelopment for 210 dwellings, BCC’s

planning officers treated Hall Green Stadium⁴⁴ as a windfall site but was unable to say either what a large site is or what maximum size threshold should be applied to windfall sites.

- 9.9 The contention that the appeal site cannot be a windfall because it was considered and rejected by the BDP Examining Inspector is unfounded. The NWGC site is dealt with in the EIR⁴⁵ at paragraphs 222 and 223 which read as follows:

"North Worcestershire Golf Club [NWGC] is in financial difficulties and is shortly to close. Its course, which could potentially accommodate around 800 new dwellings, is in a sustainable location outside the Green Belt in the southern suburbs of the city. At present there is no public access to the course, and it is likely that provision of open space as part of any development could compensate for the loss of public views from the site perimeter (para 222).

However, the course is surrounded by residential streets and lies some distance from the nearest main roads. While I was shown details of proposed access points to the site, there has been no detailed analysis of the impact of traffic from an 800-house development on the local road network or on local residents' amenity. In the absence of such analysis, the allocation of NWGC for development would not be justified. No other substantial areas of greenfield land in Birmingham were shown to be available for development" (para 223).

- 9.10 It is clear from these paragraphs that the Examining Inspector found that the site is in a sustainable location in the southern suburbs and that the provision of open space would compensate for loss of views from the perimeter. His only concern was that there was inadequate evidence before him on the likely traffic impact of its development. This matter has since been resolved. Any assertion about him having an 'in principle' objection to the allocation of the site for housing is incompatible with his finding that it is in a sustainable location. If the Council's proposition were correct, it would have the perverse effect of dissuading land owners from putting potential sites forward in 'call for sites' exercises in case they were rejected and, in consequence, forever barred from being considered as suitable sites regardless of their merits.

BDP reliance on windfalls

- 9.11 The Council's 2014 SHLAA assumed 7,600 completions on windfall sites over the rest of the Plan period to 2031. The Examining Inspector found this a realistic and achievable figure. His expectation that this was likely to be exceeded (paragraph 58 of EIR at CD F3) has been borne out. Table A4.2 of the 2018 SHLAA (CD F1) shows 1,395 completions on windfall sites in 2016/17 and 1,593 in 2017/18. The SHLAA records that windfalls have played "a very important role in enabling housing growth in the City" (paragraph 5.4), and that they have made "an important contribution to meeting the city's housing growth over the last 20 years".
- 9.12 Because the BDP is predicated upon windfall sites windfalls are 'planned' for within the context of Policy PG1. That reliance has been increased by

⁴⁴ See paragraph 6.19 of Officer report at CD S32(c)

⁴⁵ CD F3

substantial delays in bringing forward the Langley SUE. That site was removed from the Green Belt to provide development including approximately 6,000 new homes (BDP Policy GA5) with the intention that 5,000 would be delivered within the plan period. At the EiP it was assumed that the SUE would start to deliver housing soon after the adoption of the BDP and contribute to increased delivery in housing completions under the stepped trajectory. Paragraph 85 of the EIR notes that:

"From 2018 and for the rest of the plan period there is a further step up in the delivery trajectory to 2,850 dpa, largely accounted for by the output from the Langley SUE which is expected to reach maximum annual output by that date".

- 9.13 In the April 2017 SHLAA, the Langley SUE was predicted to deliver 655 dwellings between 2017 and 2022⁴⁶. In the 2018 SHLAA⁴⁷ no dwellings are expected to be delivered within the period to 2023. Mr Wood advised that the earliest date for a start on site is 2023-24 but no evidence was presented to confirm that. Delivery of new homes at Langley is now anticipated to continue until 2041 meaning that only about 2,000 homes will be delivered the BDP plan period. The expected shortfall of some 3,000 in the number of homes at Langley by 2031 will further increase the Council's reliance on windfall sites to meet the 51,100 target. This is not just a numerical point.
- 9.14 Policy GA5 identifies the SUE as *"a destination for families wishing to live in Birmingham"* and that it is intended to provide a mix of housing types and tenures including affordable housing. The delay in bringing it forwards means that the BDP will not provide family and affordable housing in the numbers required. Given the overwhelming focus of present delivery on City Centre apartment schemes it will also fail to deliver the mix of housing types needed. The appeal proposal would provide exactly those types of properties and could deliver these in the short term⁴⁸.
- 9.15 Accordingly, there is no breach of Policy PG1 and reference to Policy TP28 adds nothing to the Council's case. No conflict is alleged with the first 5 criteria and the last bullet serves simply to ensure that other policies are taken into account.

5YHLS

- 9.16 NPPF paragraph 67a requires that Councils should identify a supply of *"specific deliverable sites for years one to five of the plan period"*. There is a clear distinction between the definition of "deliverable" in the glossary to the new NPPF and that in the 2012 NPPF⁴⁹. The previous one allowed the assumption that all sites with planning permission could be included unless clear evidence indicated otherwise. The present definition allows the assumption that small sites and sites with detailed planning permission can be included unless clear evidence indicates otherwise. Sites with outline planning permission, permission in principle, allocations or those identified on a brownfield register may only be included where there is clear evidence that completions will begin

⁴⁶ See extract at ID30 – site N646

⁴⁷ See pro-forma for Site N646 at CD F1

⁴⁸ See trajectory for site development at ID36

⁴⁹ Footnote 11 on page 12

within 5 years. This is different from the previous and lower bar of schemes being implemented within 5 years.

- 9.17 The previous PPG (2014)⁵⁰ indicated a presumption in favour of including all sites with planning permission and all allocations, and also allowed sites with neither a development plan allocation nor a planning permission to be included. This is the text cited in the St Modwen judgment (CD32). The Court of Appeal's approach was predicated on the old definition in the NPPF and the now superseded PPG guidance as to the meaning of "deliverable".
- 9.18 The words "realistic prospect," remain in the first part of new definition but must be read in the context of very different guidance in the revised PPG. The rest of the definition does not adopt a "realistic prospect" threshold. Instead, in relation to sites with outline permission and the other categories listed, it requires that the Council should have clear evidence that housing completions will begin within 5 years. There is no scope for applying a "realistic prospect" threshold to this part of the definition.
- 9.19 Counsel for BCC sought to introduce arguments about the standard of proof required but the adoption of that legal concept is not appropriate in relation to planning decisions. The Inspector and SoS are free to reach their conclusions based on the plain English meaning of the words "*housing completions will begin within 5 years*". A judgement should be made on the evidence and without the qualification of a lower "realistic prospect" threshold.
- 9.20 Once first completions have been delivered on such sites the realistic prospect test applies to the separate issue of what will be delivered over the 5 year period. On sites with detailed permission and small sites, the onus is on the appellant to justify why a site should be discounted but the evidence threshold is the same. For these sites the test requires clear evidence that homes will not be delivered within 5 years. No part of that test requires a "realistic prospect" threshold for discounting sites from the 5YHLS.
- 9.21 The first sentence of the NPPF definition is concerned with delivery rates. The second and third sentences are concerned with the separate issue of lead-in times. What the Government has done is to tighten up the definition of lead-in times. The Court of Appeal's distinction between deliverable and actual delivery, in paragraph 41 of the St Modwen judgment, is based on the 'realistic prospect' test. That is no longer the test for lead-in times. However, Mr Hawley confirmed that, even if the realistic prospect test is applied to all sites he would still discount the same sites and numbers of units from the 5YHLS. He has identified specific reasons why these sites or dwellings should not be included.
- 9.22 What constitutes "clear evidence" for the purpose of assessing deliverability is a matter of planning judgment. The definition refers to sites no longer being viable, there being no demand for the type of units and sites with long term phasing plans but this is a non-exhaustive list. The matters that might be raised are unlimited and an appellant is entitled to raise issues such as the fact a site is still operating as a commercial business or as offices. When the inclusion of a site within the 5YHLS is challenged, there is an onus on the Council to produce evidence to rebut that challenge. There is no general

⁵⁰ Appendix 1 to Mr Hawley's rebuttal proof

standard of proof and what is required will depend on each site but this may include market evidence where relevant.

- 9.23 Mr Willet's evidence identifies various sites in the City Centre that have been mothballed or where no real progress has been made towards the construction of the dwellings that the 5YHLS assumes will be delivered. His expert opinion is that not all these sites will begin and that a 50% discount to the number of homes assumed is appropriate. This evidence is supported by the market reports appended to his POE and by his discussions with 2 high profile City Centre letting agents who have privately expressed their concerns about the oversupply of stock coming forward (paragraph 7.4 of POE). The application of market realism is a perfectly acceptable way of challenging sites in the supply. As the Council present no separate market evidence it is difficult to see how the decision maker can leave that challenge unanswered.
- 9.24 Mr Hawley relies on Mr Willet's evidence for the deduction he makes to reflect the market evidence but Mr Willet does not seek to tell Mr Hawley what figure to deduct from the 5YHLS. Mr Willet works from a different time period because he is considering when the market would expect sites to come forward. He uses the term "under construction" with its plain English meaning rather than as used in the categorisations adopted by the Council. Mr Hawley's adoption of a 50% deduction from the numbers assumed to be provided by City Centre apartments with detailed permission is based on the principle that Mr Willet explains in his evidence. There is no inconsistency between Mr Willet's evidence and that of Mr Hawley. Looking for similar numbers in their respective proofs misses the key difference about their different roles at the Inquiry.
- 9.25 The appeal decision in relation to land at Woolpit, Suffolk⁵¹ is the first in which an Inspector has considered the meaning of the revised definition of 'deliverable'. Inspector Stephens' comments at paragraph 65 that:
- "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 planning 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 site within five years. The onus is on the LPA to provide that clear evidence for outline permissions and allocated sites."*

- 9.26 At paragraph 69 he continues as follows:

"The updated PPG on Housing and economic land availability assessments 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 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."

⁵¹ APP/W3520/18/3194926 dated 29.09.18 at ID9

- 9.27 Inspector Stephens did not need to depart from the relevance of the St Modwen judgment but his comments are instructive. As agreed by the Council the correct approach to be taken under the revised definition is that:
- i) the burden of proof lies with the appellant for small sites and sites with detailed planning permission to show that they are not deliverable within five years, i.e. there is a rebuttable presumption;
 - ii) for sites with outline planning permission, allocations, sites with permission in principle and sites on a brownfield register the burden lies with the Council to demonstrate clear evidence that such sites are deliverable and that completions will occur within five years;
 - iii) there remains disagreement between the parties as to where the burden of proof lies in respect of permitted development sites.
- 9.28 PPG paragraph 36⁵² outlines what might be required to demonstrate that housing completions will begin within 5 years. The clear evidence required may include:
- "-any progress being made towards the submission of an application;*
- any progress with site assessment work;*
- any relevant information about site viability, ownership constraints or infrastructure provision."*
- 9.29 Examples of such evidence include a statement of common ground between the local authority and site developer confirming delivery intentions and anticipated start dates and build-out rates and a hybrid planning permission for large sites linked to a planning performance agreement that sets out the timescales for conclusion of reserved matters applications and discharge of conditions. These examples are not a closed list but indicate of the level of detail required.
- 9.30 PPG paragraph 47 states that local authorities should carry out an annual assessment of their 5 year land supply in a robust fashion based on up-to-date and sound evidence. Authorities may need to develop a range of benchmarks and assumptions to inform and test assessments. Such assumptions should be;
- (i) based on clear evidence;
 - (ii) consulted upon with stakeholders (including developers);
 - (iii) regularly reviewed and tested against actual performance; and
 - (iv) should be clear, transparent and available as part of assessments. That is the approach identified by Inspector Stephens at paragraph 69 of his decision. The Council's evidence does not meet those standards.
- 9.31 The Council's evidence concerning the deliverability comprises the 2018 SHLAA report (CD F1) and the 5YHLS 2018-33 report (CDF2). For all sites carried across from the SHLAA, the 5YHLS report simply reproduces the SHLAA pro-forma site assessment sheet. The information on those sheets is, however, very limited. They show the number of completions anticipated in Years 1-5, 6-10 and 10+ but do not include a housing trajectory showing annual delivery. They provide brief information on land ownership, date and type of planning permission, last known use, and any heritage or environmental designations. Using "Yes/No" tick boxes they provide only brief information on factors such as

⁵² Appendix 2 to Mr Hawley's rebuttal proof

contamination, the need for demolition of existing buildings, and the presence or absence of site access issues.

- 9.32 In most instances, there is no analysis of a likely start date or whether there are any constraints to be overcome. The majority of the sheets provide no indication that discussion has taken place with the site owner/developer or any detailed information on build-out rates or phasing. They take no account of whether the site is held by a house builder/residential developer or is simply a site with planning permission owned by land traders/investors/speculators. Without this detail the 5YHLS does not provide a robust assessment of whether sites are likely to come forward within the five-year period. No other evidence is provided by the Council to show that this is the case.
- 9.33 The appellant's evidence shows that some of the information in the pro-forma sheets is incorrect, some is out of date and some unrealistic. Most disclose no attempt to analyse constraints or to interrogate the prospect of site delivery. Many such questions could have been answered had the Council engaged with the development industry but it has chosen not to do so. This has significant repercussions for the quality of its evidence in support of the claimed 5YHLS.
- 9.34 Mrs Han asserted that sites with detailed planning permission that have been 'implemented' should be counted in the 5YHLS but this does not provide clear evidence that housing will actually be delivered within 5 years. Many planning permissions are preserved by making a material start. The appellant accepts that it carries the burden for showing why sites with detailed planning permission sites should be discounted. However, despite producing a rebuttal proof, the Council has not provided any more detailed evidence to show that housing will be delivered on the sites that the appellant has challenged.
- 9.35 The dogmatic nature of the Council's approach was demonstrated in Mrs Han's response to the Inspector's questions regarding site N536⁵³ where permission was first granted in 2010 and was extended for a further 3 years in July 2013. Despite the minimal works undertaken to implement the permission and a photograph taken 2 years' later which shows a complete absence of any subsequent construction, Mrs Han insists that the site should be characterised as being "under construction".
- 9.36 In relation to Site E446⁵⁴ the photographs demonstrate that no construction works are ongoing. There is no information in the SHLAA or 5YHLS to indicate what works have been undertaken. Mrs Han said that this was in an officer report but that was not before the Inquiry. This is a further example of the Council failing to provide more detailed information about delivery in response to the appellant's challenge.
- 9.37 The Council has granted extended time limits on a number of large and complex sites within the 5YHLS. For example, the Masshouse site (Site CC220 at CD S48) was granted permission in 2008 with a period of 8 years for submission of reserved matters. The appellant accepts that Phase 1 will deliver new homes within 5 years but questions the inclusion of Phase 2 when no residential

⁵³ CD S49

⁵⁴ CD S50

developer or builder has yet been identified to take that phase forward. The Council continues to include it without further analysis.

- 9.38 On site N856 (CD S29) outline planning permission for 504 units was granted in December 2015. Mrs Han's evidence is that a new application for 750 dwellings is anticipated. The SHLAA has increased the capacity to 750 units with the first 150 to be delivered in Year 5 even though no new application for this larger number has yet been made. Mrs Han accepted that the developer was unlikely to build out the present outline permission and that no information is available as to the timescales and conditions that might be attached to any new permission. Nevertheless, and with apparent reliance upon a planning performance agreement which is neither referenced in the SHLAA or 5YHLS report nor available on the Council's website, the Council maintains that the site should be retained in the 5YHLS. Other information that the Council relies upon is not available because there is no publicly accessible record of applications to discharge conditions.
- 9.39 The assumptions about lead-in times and build-out rates that underpin the 5YHLS are taken directly from Table A5.1 of the SHLAA⁵⁵ and are based on average historical delivery rates. They do not meet the requirements of PPG paragraph 47 since:
- i) The calculations and data behind them are not transparent;
 - ii) The calculations and data behind the headline figures are not available; and
 - iii) There is no indication that, in formulating the assumptions, there has been any consultation with stakeholders including developers (save, presumably, for monitoring site completions).
- 9.40 The Council states that its assumed contribution from windfall sites of 272 dwellings per year is conservative in the context of past completions. Table A.4.6 in the SHLAA indicates that 72% of all completions over the periods 2016/17 and 2017/18 were on windfall sites but that cannot be confirmed. The Council holds information on the constituent make-up of those claimed windfalls for 2017/18 but cannot produce this for the other reporting years. There can, therefore, be no certainty that all the dwellings included as windfall completions were actually on sites that had not previously been identified in the SHLAA⁵⁶.
- 9.41 Mr Hawley argues (paragraph 12.3 of main POE) that some 28.8% of the completions recorded by the Council in 2017/18 as windfalls were on sites of 10 dwellings or more. As these are large sites he contends that they should be removed from the windfall category as the NPPF definition of deliverable excludes the use of a large site windfall allowance. In the absence of any other information to remove the large site allowance he proposes that the windfall allowance should be reduced by 28% from 340 dpa to 242 dpa.

⁵⁵ CD F1 at page 40

⁵⁶ Note that the SHLAA defines windfall sites as "sites that have not previously been identified at the time that detailed planning permission is granted. That means not only that they have not been identified in the local plan process but also that they have not been included in the SHLAA". (Paragraph 3.2 of Part A4 to the SHLAA at CD F1)

- 9.42 In Mr Hawley's opinion a windfall allowance should be included only in years 4 & 5 rather than in years 2-5. He considers that the majority of windfall permissions that have been granted will have conditions that require a commencement within 3 years. As such there are windfall sites that will be completed over the next 3 years that already have planning permission and are included in the Council's commitment figures. That being the case a windfall allowance for years 1 & 2 would result in double counting. By applying both of these discounting factors Mr Hawley suggests a total windfall allowance within the 5YHLS of 484 dwellings rather than the 1,360 adopted by the Council.
- 9.43 In asserting that that there is no need to apply a lapse rate because the conservative windfall allowance offsets the need to do so and that the application of such a rate would make the assessment less reliable Mrs Han referred to the EIR. There are no such references in the EIR. Mrs Han confirmed that she had not attended the EiP and could not say whether there had been any discussion about lapse rates. She also accepted that some sites included in the 5YHLS had in fact lapsed. In relation to Site CC377 (CD S4) she conceded that the 73 apartments which the 2018 5YHLS assumes will be delivered within the 5 year period, should be deleted because the planning permission will expire in November 2018.
- 9.44 Mr Hawley's position is that a lapse rate of 10% should be applied to all sources of supply within the 5YHLS other than the 'under construction' and windfall categories. He justifies this by reference to 2 larger sites where planning permission has expired (paragraph 12.7 of POE) and a number of permissions in relation to the disputed sites that he says have expired or are soon to expire.
- 9.45 In addition, the identified 5YHLS is heavily reliant upon City Centre apartment schemes. Some 85% of the dwellings in the "under construction" category and 83% of those with detailed permission comprise City Centre apartment schemes.⁵⁷ The 5YHLS does not, therefore, provide for a varied portfolio of development opportunities.
- 9.46 The Council's assumption that City Centre apartment schemes will deliver 100% of the units predicted within the 5 year period is a further risk factor. On Mr Willet's evidence these schemes have a higher risk profile than other market segments because:
- i) They require a substantial capital outlay with no return until the development (or a phase of it) is completed and sold;
 - ii) They take longer to build and can only be released to the market in a single block or in tranches;
 - iii) Large numbers of apartments coming onto the market leads to competition for buyers which can depress sales values and require incentives or discounting. This impacts on investment return and influences investment decisions;
 - iv) Large numbers of new stock impacts on the value of second hand stock, again influencing investment decisions in relation to the second hand stock. As the principal investors are domestic and overseas buy-to-let/ private rented sector investors a depreciation in the value of

⁵⁷ Tables 4 & 5 at page 23 of Mr Hawley's main POE

existing investments will negatively influence their investment in new schemes.

- 9.47 The appellant has not challenged some two thirds of the Council's 5YHLS. However, it has produced clear and robust evidence to show why each site that it has challenged should be discounted or why the number of units expected to be delivered within the 5 year period on that site should be reduced. The appellant's detailed evidence on the disputed sites within the identified sites part of the 5YHLS is set out in Appendix B.
- 9.48 On the basis of that evidence the parties' final positions regarding disputed sites are set out in the combined table produced by Mr Hawley (ID 18) and can be summarised as follows:

Source	BCC Original Figure	Appellant's Original Figure	BCC Revised Figure	Appellant's Revised Figure
Under Construction	9111	8802	9060	8804
Detailed Planning Permission	7615	6022	7540	6063
Outline Planning Permission	773	38	713	38
Permitted Development	868	264	868	264
Allocations in BDP	155	-200	155	-200
Other Opportunity	531	-89	487	-89
Windfalls	1360	484	1360	484
Sub-Total	20,413	15,321	20,183	15,364
Years Supply	6.79	5.1	6.72	5.12
Adjusted – 50% attrition rate applied to remaining City Centre apartments schemes still in supply	-	-1956	-	-1956
Total	20,413	13,365	20,183	13,408
Years supply	6.79	4.45	6.72	4.46

Affordable Housing

- 9.49 Mr Stacey's evidence on affordable housing provision was not challenged. Table 7.1 of his proof shows that, over the first 6 years of the plan period 2,757 new affordable homes were provided against a target provision of 5,820 (6x970). When the losses of social rented dwellings through right to buy purchases is taken into account that equates to a net provision of only 151 new affordable homes over that period (Mr Stacey's Tables 7.2 & 7.3) against an identified need for 970 affordable homes each year. This represents only 1% of all completions over those 6 years and 3% of the affordable housing need for that period. It has also resulted in a net delivery shortfall of 5,669 affordable homes over the plan period to date.

- 9.50 It is important to remember that the need is generated by families and individuals unable to secure suitable accommodation to meet their needs. The level of need has shot up. At 1 April 2018 the number of households on BCC's Housing Register was 9,234. The new information (ID40) shows that the number is now 12,051, an increase of nearly 3,000 households. Against that level of need the net provision of only 151 affordable homes over the plan period to date is pitiful. That trend is likely to worsen over the short to medium term because of the heavy reliance in the 5YHLS on City Centre apartments schemes which, as the Council accepts, deliver little if any affordable housing.
- 9.51 It is agreed that there is a housing crisis both nationally and locally. The position is getting worse in Birmingham. The 38,000 dwelling unmet need to be provided outside of the City includes 14,400 affordable units but BCC is failing even to provide the affordable housing proposed in its own area. The provision of affordable housing in the City has collapsed.

Public consultation

- 9.52 When properly considered the representations about the inadequacies of the public consultation amount to a complaint that no alternative proposals for the re-use of the site were on the table. The representations show that there is no consistent view as to what alternative the site could be used for.
- 9.53 From the start the appellant has undertaken an extensive programme of local consultation to inform the evolution of a proposed residential scheme (e.g. its design, its scale, how to mitigate any potential impacts of it, landscape and highways matters). The consultation is necessarily framed by the residential proposal and is not designed to explore alternative uses. The level of engagement is beyond that which would ordinarily occur and is an exemplar of public consultation. Given that extensive consultation it is indicative of the degree of local objection that the number of local residents attending the Inquiry never exceeded eight people and, on most days, was limited to 4 or 5.
- 9.54 The proposal to develop up to 800 dwellings is a reduction from that submitted (950 dwellings). That amendment falls properly within the Wheatcroft principles as demonstrated by:
- i) The further round of consultation undertaken with regard to the revised scheme by post and email directly to local residents;
 - ii) The confirmation to the Inquiry by all members of the public present that they had received such notification;
 - iii) The submissions made by those members of the public present show that they objected to the scheme in any event (i.e. a 'root and branch' objection in principle);
 - iv) That revision being a reduction in the scale of development proposed;
 - v) The Council's recognition that the amendments properly fall within the Wheatcroft principle.

Traffic and highways

- 9.55 The Highways SoCG (ID16) confirms the Council's agreement, as the Local Highway Authority, that there are no adverse highways impacts such that the proposal should be refused. A further note submitted to the Inquiry [ID19] by

Mr Parfitt raises nothing that was not already in his evidence. It does, however, provide a targeted response to third party concerns.

- 9.56 The WMAS email refers to 105 ambulance movements per day but this includes non-‘blue light’ movements to and from the Hub approximately 1km to the south west of the site. The TA assesses the effect of the proposal at 11 key junctions along five routes from the Ambulance Hub to the wider highway network including the new site access junctions proposed. Figure 1 of ID19 provides a comparison of total delay along each of those routes at: (i) 2026 assuming base traffic levels without the appeal development or proposed mitigation; and (ii) in 2026 assuming base traffic levels with the development of the appeal scheme and proposed mitigation.
- 9.57 Figure 1 shows that blue light vehicles would experience additional delays on two of the routes (to the north-west and the south) of about 2 seconds. There would be no change on the route to the west. On the route to the north east, via Frankley Beeches Road, journey times would be improved as a result of the proposed mitigation works, with delays reduced by between 4 and 9 seconds. The route to the east, via Tessall Lane, would have a substantially improved outcome with a reduction in delays of between 46 and 108 seconds in peak periods. The extra lane proposed on the Tessall Lane approach to its junction with the A38 would also provide greater scope for blue light vehicles to ‘push through’ stationary traffic. The concerns about ambulance response times are not borne out by proper analysis
- 9.58 The TA was the subject of a scoping exercise agreed with BCC as Local Highway Authority⁵⁸. Future growth and development commitments, including at Longbridge, are accounted for in the traffic modelling. The TA provides a robust assessment for conditions at the modelled year of 2026. It is particularly robust as it has been carried out on the basis of a 950 dwelling scheme rather than the 800 dwellings now proposed and because the development is expected to be completed before the 2026 modelling year. Mr Parfitt confirmed that it was extremely robust on the impact of traffic likely to be generated by the residential development and the primary school. In his opinion, compared to the 950 dwelling scheme, there would be some 15% fewer movements in the AM peak and 20% fewer in the PM peak.
- 9.59 The Transport SoCG records BCC’s agreement that the site is a sustainable location with good access to local buses and 2 railway stations and significant improvements are proposed on the nearby road network to enhance pedestrian crossing facilities and local bus stops. Given these improvements, and the evidence from the local transport census that some 25% of journeys to work in this part of Birmingham are made by public transport, objectors’ fears that the development would be wholly car dependent are not well founded.
- 9.60 The TA demonstrates that the traffic generated by the development could be accommodated on the local network without significant adverse effects and that all relevant junctions will operate satisfactorily subject to the mitigation works agreed. These works offer scope for a net improvement in the operation of some junctions compared to the situation that would arise with traffic growth but no development.

⁵⁸ See Highway Technical Notes at CD R1

Local wildlife and nature conservation

- 9.61 Mr Goodman's note (ID23) confirms that B&BCWT's objection does not raise any matters not already considered in Section 8 of the ES and his POE. The site's identification as a Potential Site of Interest (PSI) provides a marker for further exploratory work to ascertain its value. The assessment⁵⁹ demonstrates that, under most assessment categories, the site has low value and does not conform to the selection criteria for designation as a SLINC.
- 9.62 That assessment shows no significant adverse effects on the retained open space, habitats and species. This is agreed by the Council. Mr Goodman stated his opinion that all potential effects on ecological features would be reduced by virtue of the reduction in the number of dwellings and that no negative effects would result from the changes proposed in the revised DF.
- 9.63 The revised DF clarifies that a substantial proportion of the site would be retained as GI and demonstrates the opportunities for significant enhancement and long term management of its biodiversity value. The mitigation strategy at section 8 of Mr Goodman's POE demonstrates how these opportunities can be further developed at reserved matters stage. He considers that the scale of the GI would enable this to fulfil a 'stepping stone' function, linking the wider countryside and existing habitat areas within the Hanging Brook valley.
- 9.64 Mr Goodman stated that there is no evidence of the presence on or use of the site by Great Crested Newts and that the bat roost in the clubhouse and the 'single clan' badger setts could be dealt with under a NE licence. He saw no difficulty in a licence being obtained. The badgers would be retained on the site with the provision of artificial setts. There are no rare species of bats using the roost and the site's foraging potential is relatively limited. The proposal would provide increased foraging opportunities for bats. It would deliver ecological enhancements as required by NPPF paragraph 174 and does not conflict with any of the principles set out in paragraph 175.

Trees and TPO

- 9.65 The site is unusual in terms of the opportunity it provides to secure residential development alongside carefully considered and managed improvements to the existing trees. Outline design has sought to retain the highest quality trees and protect their root protection areas. The scope for tree retention has increased with the reduction in the number of dwellings. Mrs Kirk confirmed that the reduced scale of development and the changes within the revised DF have a wholly positive effect in terms of the potential impact on existing trees.
- 9.66 Mrs Kirk's response to the Inspector's Pre-Inquiry Note and updated tree plan at ID20 shows that the revised DF provides for the retention of about 55% of the existing tree cover. An additional 8,000 sq. m of tree covered area would be retained compared to the 950 dwelling scheme with most of the additional trees being of Category A classification in the Tree Survey (CD H21). Two additional individual trees-T18 (Category B) and T48 (Category B) would also be retained. The area of new tree planting envisaged in the eco-park, public open space and landscape buffers would be approximately 23,500 sq. m. In combination with

⁵⁹ As summarised in paragraphs 1.8-1.12 of ID23

retained trees this would provide cover equating to about 74% of the existing tree cover. This does not take into account additional planting that might be expected in private gardens.

- 9.67 The design team has carefully considered how best to utilise existing trees. The redevelopment of a former golf course inevitably requires the removal of a significant number of trees but many of those that would be lost are either non-native or tall thin trees that were planted because of their fast growing habit. A number of trees are suitable for lifting and transplanting within the site and this could further reduce the overall number lost as a result of the appeal proposal.
- 9.68 Mrs Kirk submitted a series of plans showing the proposed site accesses overlaid on the tree plan.⁶⁰ Table 1 to her note summarises what trees would need to be felled to facilitate the construction of those accesses. Very few individual trees and only small parts of existing tree groups would be lost. Given the very extensive tree cover to be retained around the site boundary these losses are not significant.
- 9.69 Government guidance is that an area TPO should only be made as a temporary measure until the trees can be fully assessed and classified.⁶¹ That assessment will necessarily run parallel to the reserved matters process. The Council's Tree Officer is content that the scheme is capable of coming forward in a way which would retain and protect the best examples of trees across the site.
- 9.70 The visual amenity value is largely derived from public views of the belt of trees to the site perimeter. The DF would retain large blocks of the highest quality trees on the perimeter and in the central area of open space and eco-park and provide significant areas of new tree planting. The overall change in the site's contribution to the visual amenity of the site and surrounding area would not be significant. However, the provision of public access to the open space, where no such access currently exists, would increase the level of amenity. For these reasons the proposal would not have a significant adverse effect on protected trees or on the purposes of the TPO.

Landscape and visual effects

- 9.71 Some 38% of the site area would comprise GI. This compares favourably with the 21-30% GI cover provided in a typical urban extension or garden village. In addition, particular features of the proposal, including the eco-park and green corridor mean that it performs well in respect of urban and landscape design and that there would be a positive improvement in terms of public experience. The landscape design process has been able to retain the more valuable woodland and the brook and to take advantage of the site topography to provide a wide and robust area of public open space that would add character and a strong sense of place.
- 9.72 Mr Jackson assesses the landscape impact as minor moderate adverse and the visual impact as minor adverse on completion. Both of these impacts would reduce as new mitigation planting becomes established. Due to the retention and enhancement of boundary vegetation only a small number of existing

⁶⁰ Fpcr Drawings 6863-T-01 to 05 included in the bundle of drawings at ID20.

⁶¹ Mrs Kirk POE paragraph 4.7

dwelling would have views into the development and longer range views are very restricted. Where these are available, the site is seen in the context of the surrounding urban development. Mr Jackson confirmed that all potential landscape and visual effects would be reduced by reason of the reduced number of dwellings and the changes in the revised DF. The site currently has low to moderate landscape and visual amenity value. This would be increased as a result of the management and maintenance plan. The provision of public access would also significantly enhance its amenity value to the local community.

Affordable Housing

- 9.73 Most of the interested persons who spoke at the Inquiry agree that affordable housing provision would be a positive benefit of the proposal. Mr Kennedy considered that adequate provision is being made by the private sector through houses acquired under the 'right to buy' process coming onto the rental market. The appellant respectfully disagrees.
- 9.74 The main concerns are whether the housing would be genuinely 'affordable', whether it would actually be delivered, and what level of benefit it would bring. Councillor Armstrong's view that the affordable housing provision would not assist with the issue of homelessness is inconsistent with BCC's Homelessness Strategy which notes that "*Social housing is a scarce resource*" and "*It is clear that the supply of social rented property is insufficient to meet the requirements of homeless households.*"⁶² The proposed provision will be affordable in line with tenure specific rental/price guidelines and will deliver a range of affordable dwellings in the mix that the Council requires.

Scheme benefits and other material considerations

- 9.75 The only disbenefit asserted is the alleged conflict with Policy PG1 which is rejected by the appellant. Against that alleged disbenefit the positive benefits of the scheme, which sit across the three strands of sustainable development, weigh heavily in favour of the proposal.
- 9.76 Consideration should also be given to the lack of progress by the other local authorities within the HMA towards providing new homes to meet Birmingham's unmet need. North Warwickshire has agreed to provide 3,800 units and the Inspector's report on its Local Plan is expected shortly. Solihull's proposal to provide 2,000 dwellings in its draft Local Plan has attracted objections including one from BCC on the grounds that the figure is too low. There is no agreement as to how or where the majority of the 38,000 units will be provided.
- 9.77 The appellant accepts that the monitoring thresholds in Policy TP48 do not, as yet, require BCC to undertake a review of the BDP. But the 3 year deadline of January 2020 is only 14 months away. This is not a long period in terms of local plan preparation, particularly given the limited progress to date. The fact that no provision is in place to meet most of the unmet need is a material consideration in favour of the proposal. The 800 dwellings proposed would reduce the quantum that has to be met outside the City boundary.
- 9.78 The BDP relies upon Green Belt release for one of its major allocations. The exporting of Birmingham's unmet need is also likely to require Green Belt land

⁶² Pages 20 & 24 of BCC Homelessness Strategy at CD F12

in some other authority areas. For example, North Warwickshire proposes to use Green Belt land to meet its housing need and its share of Birmingham's unmet need. The development of up to 800 dwellings on the appeal site would provide the potential that Green Belt land elsewhere will not be needed to meet the OAN. This is a material consideration in favour of the scheme.

9.79 The benefits of the proposal can be summarised as follows:

- Provision of affordable homes helping to meet the acute housing need. In the circumstances of this case that provision should carry very great weight.
- Market and family housing to contribute to meeting the BDP objectives of meeting the needs of all residents.
- Allowing people to access housing locally when a substantial proportion of Birmingham's housing need is to be exported outside of the City boundary.
- The community hub.
- Substantial GI and new cycling and pedestrian routes on land which is presently not accessible to the general public.
- Delivering housing in a sustainable, accessible location.
- The opportunity to create enhanced habitats and increase bio-diversity.
- Providing 800 homes potentially leads to that quantum of housing not having to be delivered on Green Belt land.
- The scheme represents the effective use of under-utilised land within the built-up area and contributes toward meeting the unmet needs of the area consistent with paragraphs 118b and 120 of the NPPF.
- New resident expenditure in the local economy.
- Jobs and expenditure during the construction phase.
- Delivering family housing for those who work in the city without them having to move to other towns / locations to meet their housing need.

The Planning Balance

9.80 The appellant's primary case is that the proposal accords with the BDP and should be approved. There are no material considerations which indicate otherwise. If conflict with the development plan is found other material considerations weigh positively in the planning balance and, taken together, indicate that the appeal should be allowed.

9.81 If the SoS finds that the proposal does not accord with the development plan but that BCC cannot demonstrate a 5YHLS the tilted balance applies and lies overwhelmingly in favour of the scheme. Even if the SoS finds that the proposal does not accord with the development plan and that BCC can demonstrate a 5YHLS the appeal should still be approved because the material considerations in favour of the proposal would still substantially outweigh any conflict with the development plan.

Planning Obligations

- 9.82 There is agreement so far as primary education provision is concerned and the needs arising from the proposal are provided for in the s106 agreement.
- 9.83 BCC argues that there is insufficient capacity in local secondary schools and that the shortfall amounts to a maximum of 124 places. This issue only arises as to future capacity. It is agreed that not all the places required would be in Year 7 and that some pupils will already be enrolled at local schools and will remain at those schools after moving home.
- 9.84 It is agreed that the January 2018 Census data provides the most reliable source for assessing current pupil numbers. The Council's argument that a surplus of 5% capacity in a school is tolerable is rejected. DfE and the Education and Skills Funding Agency allow for 2% for planning purposes⁶³ and this is the appropriate figure to use. The debate should be about the physical capacity of schools rather than the PAN. Statutory guidance is that the net capacity should match the PAN but the PAN for two local schools has been reduced below the capacity level.
- 9.85 At Balaam Wood the original PAN of 107 provided for a total pupil roll close to its capacity of 546 places. Due to issues not concerning the school's physical characteristics the PAN has been reduced and now stands at 90. Some 85 places (17 per year group)⁶⁴ that have not been taken into account in the Council's assessment would make a major contribution to meeting the 124 place requirement. In addition, S106 contributions can only be used to increase physical capacity. As no capital works are required to bring pupil numbers back up to Balaam Wood's full capacity no S106 contribution can be justified.
- 9.86 As at September 2018, Turves Green Girls School was operating at 87% capacity with 127 surplus places across the year groups. Turves Green Boys was operating at 87% capacity with 91 surplus places. Colmers School (the largest secondary school in the vicinity of the appeal site) was operating at 92.5% capacity with spaces available in every year group. There is ample capacity within local secondary schools to meet the needs generated by the proposal.
- 9.87 The Sports Improvement Fund contribution of £1.6m for 2 artificial pitches at existing local facilities is justified and provided for in the S106 agreement. However, there is no justification for the additional contribution sought. The former golf club was not open to the public and the site was not and is not used by the community. Policy TP 11 does not require compensation in these circumstances. There is no explanation as to how the figure of £15 per sq. m. of new sports provision, on which the claimed contribution is based, has been calculated and no evidence to support that figure.

10. The Case for Interested Persons

- 10.1 The following paragraphs summarise the statements made by interested parties and their answers to questions from appellant's advocate and me as
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⁶³ DfE Note re Capital Funding for School Places, 2018-19 Explanatory Note at Appendix 2 to Mr Hunter's rebuttal proof.

⁶⁴ Mr Hunter's rebuttal proof at paragraph 7.21

appropriate. The full texts used by interested persons are within the Inquiry Documents Folder 1. Points already covered by another interested party have not been repeated.

Richard Burden MP

- 10.2 Mr Burden is a local resident and the Member of Parliament for the Birmingham Northfield constituency. He referred to the comment in the BDP EIR that there had been no detailed analysis of the impact of an 800 dwelling development on the local road network or on local residential amenity and that, without that analysis, the allocation of the site for housing development would not be justified. Mr Burden does not agree that the analysis carried out by the appellant demonstrates that the road network would be able to cope. He is also concerned that the traffic surveys in the TA are out of date with some pre-dating other significant developments in the local area.
- 10.3 He said that Frankley Beeches Road is a main route into Northfield and onwards towards Birmingham in the morning and in the opposite direction in the evening, in both cases with commuters seeking to avoid the main A38 at Longbridge. The roundabout at Frankley Beeches Road/ Egghill Lane is a particular pinch point. The officer report on the application stated that this would be approaching capacity in 2026 as a result of traffic growth; i.e. without the additional traffic from the proposal. Mr Burden thinks that the proposal to form a fourth arm to that junction would make matters worse.
- 10.4 The officer report also stated that the junction of Frankley Beeches Road with the A38 would soon be operating at capacity in the morning and evening peaks and that development-generated traffic would lead to it operating at a "*degree of saturation exceeding 90% in both directions*". Mr Burden has previously asked BCC to look at the signal phasing but has been told that the junction is operating satisfactorily despite there being regular traffic jams. He is not convinced by the appellant's contention that adequate mitigation can be provided by changing the traffic light sequence at the junction.
- 10.5 Mr Burden said that the Tessall Lane/ A38 signal junction experiences regular queues and the officer report said that this was approaching capacity. He is not convinced that a third lane on the Tessall Lane approach could be fitted in and questions how this would provide much mitigation. He also reiterated his concerns that the proposal would lead to an increase in emergency vehicle response times and potentially put lives at risk. In response to Mr Young's questions, Mr Burden accepted that it is the appellant's intention to bring the development forward earlier than 2026 but considered that there would be congestion at peak times.
- 10.6 Mr Burden stated that the site sits on high ground and that the open land within it has always provided a giant soakaway protecting residents on lower ground from flooding. He noted the EA's withdrawal of its objection but understands that they require sustainable drainage issues to be scrutinised and considers that the precautionary principle should be given due weight. Flooding events have occurred several times in recent years and many people living within a mile of the site have suffered their effects. He does not wish this situation to be made worse.

- 10.7 Mr Burden was critical of the quality of the consultation in respect of the site's redevelopment. Roadshows have been carried out but local feedback is that these were promotional rather than consultative with limited opportunity for people to have a say about the site's future. BCC has also been fairly minimalist in consulting on the proposals and the planning obligations.
- 10.8 In response to my question about the letters of support received Mr Burden was surprised at this level of support for the proposal. However, he recognised that there are real concerns about the ability of local people to access both the housing market and affordable housing and said that housing related issues account for the major part of his constituency work. He welcomed the provision of more social rented housing as that is where the main deficit exists but questioned whether the other types of affordable housing proposed would genuinely be affordable for local people. He acknowledged that City Centre apartments provide limited affordable housing but considered that the main constraint on the delivery of affordable homes lies in the financial climate and the constraints on the ability of local authorities to build social housing.

Roger King

- 10.9 Mr King said that local people do not understand why the Inquiry is needed when the SoS has received a report recommending that the site should not be allocated for housing development in the BDP. He argued that the site is neither greenfield nor brownfield but is a unique area of open space that has benefitted from over 100 years of maturity and that serves as a natural lung for the local community.
- 10.10 Birmingham is short of tree cover and it is no solution to rip out the majority of the trees to "shoe horn" in 800 homes. Such a proposal should only be permitted in exceptional circumstances. In response to Mr Young, Mr King stated that he was not aware that this test relates to proposals in the Green Belt but considered that there would need to be an exceptional case to justify the site's development in breach of the development plan. There has been a significant level of development in the area over recent decades and the site is an oasis in the midst of high density housing. Sympathetic redevelopment might be acceptable; for example, retirement housing or a care home with the majority of the existing woodland retained and bequeathed to the local community.
- 10.11 Mr King argued that the development would be car based because the bus stops and local railway stations are a considerable walk away. Hence, the proposal would lead to problems on the local highway network and Mr King shares Mr Burden's concerns about the impact on nearby road junctions.

Gerald Kennedy

- 10.12 Mr Kennedy lives on Tessall Lane. He was critical of the consultation undertaken, stating a working group which suggested by the appellant was never formed and that no opportunity had been given to local residents to explore the 12 areas of concern identified in the initial consultation. He alleged

that Bloor Homes had declined to attend a meeting of Longbridge Ward Committee in June 2014 as recorded in the minute of that meeting⁶⁵.

- 10.13 Mr Kennedy argued that, due to the scale of recent development in Northfield and Longbridge, no more housing is needed. Saturation point has been reached and local services and infrastructure are unable to cope with more development. He referred to vacancies in a local care village and the withdrawal of 3 estate agents from the local area as evidence of the lack of need for the proposal.
- 10.14 He questioned the need for affordable housing as there is already a good level of access to private rented housing in the area. The local need is for accommodation for homeless people but the appeal proposals would not provide for that need. He rejected the appellant's contention that poor conditions in the private rented sector justify the provision of more affordable housing. The Council has powers under the Housing Act 2004 to require landlords to make improvements. He also argued that shared ownership housing would be out of reach of local people because of the costs associated with this method of purchase and the likely future service charges for shared equity purchasers.
- 10.15 In addition to sharing concerns about congestion and emergency vehicle response times Mr Kennedy raised particular concern about the site access from Tessall Lane. He considers that this would be in a dangerous location because it would be on a steep hill which is particularly narrow at this point. In his view the proposals failed to take into account the recently introduced restrictions on access from the A38 into Farren Road for all vehicles except buses. All other vehicles now need to enter Farren Road from Tessall Lane resulting in a significant increase in traffic through this junction. In reply to Mr Young, he accepted that the traffic order had been introduced to reduce the use of Farren Road for rat-running but did not think that this would work.
- 10.16 Mr Kennedy said that removing TPO trees would be a rejection of the democratic process and thought that safeguarding issues could arise from the primary school and community hub being on the same site. He also considered that the need for electric gates at the access to the school would lead to service vehicles queuing on the highway and result in danger for other road users.

Stuart Turner

- 10.17 Mr Turner lives on Hanging Lane close to its junction with Tessall Lane. He stated that there are regular traffic queues on the approach to the junction. Together with on-street parking, this makes it difficult and dangerous to reverse out of his drive. Whichever route he takes the local roads are very busy and there are regular queues at nearby junctions including those onto the A38 and at Frankley Beeches Road and Hanging Lane. Local roads are dangerous particularly for children walking to the local schools. He also stated that Hanging Lane floods after heavy rain.

John Churchman

- 10.18 Having lived in the area for over 30 years Mr Churchman has regularly walked, cycled or travelled by bus on the roads around the site. In his view the site represents an important area of open land that is a haven for wildlife, much of

⁶⁵ Mr Kennedy's Appendix 4 at ID13

which would lose its home if the site is redeveloped as proposed. Its importance is increased because there are few local parks accessible to local people and many community facilities have closed or been burned down.

- 10.19 He argues that, if no longer needed as a golf course, the site should be seen as a potential public asset. Local people should have the right to help determine how its future use can benefit the local community but have been denied that right. They have only been given the opportunity to comment on the plans already put forward. There must be other potential green uses that should be considered before the site is redeveloped for housing. It should be a real windfall for the community. The current proposal fails in terms of consultation, imagination and the exploration of alternative uses.
- 10.20 Mr Churchman raised concern about the location of the proposed pedestrian crossing on Frankley Beeches Road which will be in a dangerous position where forward visibility for vehicles is reduced by a bend and the gradient in the road. He considers that the proposal do not make adequate provision for cyclists, questioning whether routes through the site would bring real benefit to cyclists wishing to use the surrounding roads. He argued that local GP surgeries would be unlikely to cope with the increased demand. He also raised concerns about the housing mix, the sale of houses on a leasehold basis with high ground rents and charges, who would manage the community hub and the future management of the site more generally.

Councillor Armstrong

- 10.21 Councillor Armstrong is a local resident and ward councillor for the Northfield ward. He has a background in community work and community engagement and does not feel that the appellant has carried out genuine consultation. Mr Young put to him the dates and nature of the meetings with local councillors and other consultation events that had taken place before and after the submission of the planning application. Councillor Armstrong stated that he had been elected relatively recently but had been involved with the local community prior to his election. He was unable to recall whether he had been aware of all of the events mentioned. Based on what he had seen and experienced he maintained his views about the inadequacy of the consultation.
- 10.22 Whilst recognising that the appellant has a range of experts on its professional team, Councillor Armstrong argued the need for detailed engagement with local people who have expert knowledge of the local area and its needs. He raised concerns about the potential effect of the loss of so many trees on climate change, air quality and the water table but acknowledged that he had not been aware of the proposed SuDS strategy for the site. He expressed support for the provision of affordable housing but questioned whether the appellant had spoken with BCC's experts on homelessness in Birmingham. In response to Mr Young, he accepted that he had had time only to skim read rather than study the Council's Homelessness Strategy in detail since his election

11. Written Representations

- 11.1 The officer report (CD K2) records that the application consultation resulted in 136 letters of objection, a petition of objection with 546 names and 6 letters of support. Paragraph 4.28 lists the key concerns of objectors as relating to:

- The loss of a longstanding leisure facility;
- The local area having already experienced high levels of development and the impact on local services and infrastructure;
- The density of housing proposed;
- Loss of space for wildlife;
- Traffic impacts and concerns about noise and pollution;
- Drainage and flood risk;
- Loss of views and overlooking and disturbance during the construction period; and
- A likely increase in crime levels.

11.2 Those who wrote in support welcomed the extra public open space, the school and community hub. Many commented that if this scheme is not supported the site would remain as a wasted space which would eventually be picked up by another developer (paragraph 4.29).

11.3 The notification of the making of the appeal generated some 68 written objections from interested persons and 130 representations in support of the proposal. Of those 130 representations, 10 are from people who identify themselves as existing or former shareholders in NWGC.

11.4 The objections include letters from Richard Burden MP and two local councillors. The issues raised largely reflect the objections to the planning application with a significant proportion of objectors raising concerns about traffic and highway safety. Many objectors say that there has been too much development in the area and that local services would not be able to cope; there is particular concern about school places and health care services.

11.5 Many objectors comment that the land is not allocated for development and that there are alternative brownfield sites available. Many express concern about the scale of development and whether the affordable housing would be within the reach of local people. Concerns about flood risk, loss of open space and a green lung, the effect on wildlife and the risk of increased crime and anti-social behaviour are also shared by many objectors. Some residents who live close the site are concerned about the effect on their living conditions, both during construction and following completion of the proposal, and a small number comment that few of the NWGC shareholders who are likely to benefit financially from the grant of planning permission actually live in the area.

11.6 Many of the 130 supporters express frustration and confusion at BCC's decision to refuse planning permission on a site which is well located in terms of access to local services, public transport and employment areas. Many note that Birmingham has a pressing need for new homes and state that it would be much better to develop the appeal site rather than build in the Green Belt or on greenfield sites in the countryside or in neighbouring local authority areas.

11.7 A large number state that there is an urgent need for new market and affordable housing, with many referring to family members who are struggling to find suitable accommodation in the area. There is wide consensus within

these representations that the development has been planned to include green space and community facilities and not just housing and general support for the provision of a large area of publicly accessible open space. Some refer to the arson and vandalism that has occurred since the golf course closed and the problems that this has caused for local residents and the police. Some say that the proposal would help to support local shops and services.

- 11.8 The appellant carried out a further consultation exercise in June and July 2018 in relation to the reduction in the number of dwellings proposed and the revised DF. The representations received in response to that consultation are included and summarised in CD J8. Of the 81 written representations received, 37 were in support of the proposal and 44 were against.
- 11.9 The objectors at this stage raise a similar range of issues as those raised in objections to the original application and those submitted in response to the appeal notification letter. These include concerns about traffic impacts, additional pressure on local schools and services, flood risk, the effect on the greenspace within the site and the need for the proposed housing. Some also say that 800 dwellings is still too large a development for the site, that more open space should be provided and that the site would be better used as a park or for leisure facilities. None directly oppose the changes in the revised DF.
- 11.10 Those writing in support argue that the proposal would provide much needed housing to help meet the essential needs of the City and reduce the need to develop Green Belt land. Others comment that the revised DF has addressed previous concerns and that the proposal would give better access to educational facilities and represent an appropriate balance between built development and green infrastructure. No significant issues were raised for the first time.

12. Planning Obligations

- 12.1 I have assessed the revised S106 Agreement (ID47) in light of the Community Infrastructure (CIL) Regulations 2010 and paragraph 56 of the NPPF which state that planning obligations must only be sought where they meet the following 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.
- 12.2 Most of the obligations within the signed S106 Agreement are agreed between the parties but there remains disagreement as to the payment of the Additional Sports Improvement Fund Contribution and the Secondary School Contribution. Clauses (G), (H) and (I) of the recital to the agreement are written as 'blue pencil' clauses that allow for these specific obligations to be struck out if the SoS concludes that they do not meet the relevant tests.
- 12.3 The agreement would bind the site owners to ensure that 35% of all dwellings constructed comprise affordable homes in accordance with the affordable housing mix of 20% affordable rented, 10% social rented and 5% shared ownership units. An affordable housing plan would need to be submitted and approved to show the proposed distribution of affordable homes in each phase of development. The agreement sets specific targets to ensure that the

affordable homes are delivered in tandem with the market housing. The agreement includes ongoing obligations about the future ownership and management of these dwellings to ensure that they remain as affordable homes over the long term. These obligations are necessary to ensure compliance with BDP Policy TP31 and the 35% provision accords with the requirements of that policy.

- 12.4 The parties agree that there would be insufficient primary school places to accommodate the needs of the development. The obligations to provide a site and funding for a new primary school would provide capacity for a development of up to 712 dwellings. The obligations provide for the transfer of the land and payment of contributions so as to ensure that the school can be constructed and be operational at an early phase of development. The S106 agreement also provides for a financial contribution to provide for increased capacity at another local school to cater for the additional places needed to serve a development of more than 712 dwellings. These obligations are needed to mitigate the impact on local school infrastructure and the financial payments have been calculated in accordance with standard methodology.
- 12.5 The agreement requires the approval of a works specification for the proposed on-site open space and that the open space works should be carried out in a phased manner in line with the phased development of the dwellings. It includes obligations concerning a payment of fees to enable the Council to supervise the works. The agreement would secure public access to the proposed open space and provide for its future management and maintenance. These obligations are needed to ensure compliance with BDP Policy TP9 which sets out standard requirements for the provision of open space in new housing developments. The level of provision would exceed the minimal requirements for a scheme of 800 dwellings but the additional GI is an important element in ensuring adequate mitigation for the effects on wildlife and nature conservation interests.
- 12.6 Although it would provide more than the minimum area of open space required the appeal proposal would not provide for formal sports pitches as required under the assessment of needs generated by the development. The payment of the Sports Improvement Fund Contribution is necessary to meet the increased demand for such facilities and to offset the increased pressure on the use of existing sports facilities in the local area. Sports England has identified specific projects that would fill an existing gap in local sports provision and the financial contribution fairly reflects the estimated cost of that provision.
- 12.7 A development of up to 800 new dwellings would increase pressure on existing community facilities in the wider area and the provision of an on-site community hub is agreed to be an appropriate form of mitigation for this impact of the scheme. The proposed size of the community hub is proportionate to the scale of residential development and is needed to render the proposal acceptable.
- 12.8 The S106 agreement commits the developer to implement the Employment Plan which seeks to ensure that the investment made in the construction of the proposed development will provide maximum benefit to local people and the local economy. This includes measures such as advertising vacancies locally, working in partnership with organisations to recruit local people in employment and training, and provide training opportunities on the construction site.

12.9 I am satisfied that all of the obligations listed above are necessary to render the proposal acceptable in planning terms, are directly related to the development and are related in scale and kind to the development proposed. These meet the relevant tests and can, in my view, be afforded weight in the determination of the appeal. The additional contributions requested by the Council do not, in my view, meet those tests.

12.10 In respect of the Additional Sports Improvement Sum, the third paragraph of BDP Policy TP11, which the Council relies on, states that sports and physical activity facilities will be protected from development unless it can be demonstrated that they are surplus to requirements through a robust and up-to-date assessment of need. That assessment has been carried out and all parties, including BCC and Sport England, agree that the golf course is surplus to requirements in terms of the need for such facilities in the area.

12.11 The potential requirement for payment of compensation arises in the second sentence of that paragraph which reads:

"Where there is identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality of replacement provision is provided." (my emphasis).

12.12 The agreed position is that there is no identified need for the golf course. There may, as the Council's contends, be a need for additional sports pitches at other facilities in the area. However, the appeal site does not contain and has never contained any sports pitches and no such facilities will be lost as a result of the appeal proposal. Policy TP11 is sport specific and does not require replacement provision or compensation for the loss of any sports facilities for which there is no identified need.

12.13 In my judgment, the Council's rationale for seeking such compensation is founded on a misreading of its own development plan policy and there is no justification for the inclusion of the Additional Sports Improvement Fund in the S106 Agreement. I consider that this obligation does not meet the relevant tests and that it would be improper to take it into account in the determination of the appeal.

12.14 I agree that that the assessment of capacity in local secondary schools should be based on the physical capacity of the local schools rather than their PAN. This is preferable as physical capacity can be measured and agreed by reference to a standard formula. It is also an important distinction given that planning obligations should not be requested or used other than for capital work to increase the physical capacity of a local school or schools to provide any additional places that are required.

12.15 Although the DfE has confirmed that the 2% surplus capacity allowance is not a recommended amount to be followed by local authorities, it would be difficult for developers and decision makers to have to apply a range of different ratios in different local authority areas. The 2% figure provides a reasonable and consistent ratio to be applied to such calculations. In the interests of clarity it is also preferable to use school census data that has been checked and verified and which is in the public domain. The January 2018 census provides the most robust indicator of current pupil numbers in local secondary schools.

12.16 I accept that some families moving into the proposed development will have children who already attend a local school and who will not, therefore, require a new secondary school place but this would also apply to primary aged children. As no discounting factor has been applied in the calculation of the primary school places needed, I see no reason to apply one in relation to the number of secondary school places required. No validated figures are available for the number of children who might attend Grammar, faith or independent schools. In my experience it is not standard practice to discount the level of need in respect of such considerations. There is no agreed basis on which this could be done. The disputed capacity is, therefore, in respect of 124 of the total 168 secondary school places needed to serve the development.

12.17 Taking the above approach to the assessment, surplus capacity exists within the following schools:

Balaam Wood - 239 places

Turves Green Girls - 127 places

Turves Green Boys - 91 places

Colmers School - 91 places

12.18 In total, these schools have 548 surplus places compared to the overall requirement of 168 places to meet the needs likely to be generated by the proposal. Some of this spare capacity may be taken up by population growth and the needs generated by other residential development in the area but the Council has not demonstrated that there will be insufficient capacity to provide the 168 places required. Accordingly, I conclude that there is no justification for payment of the Secondary School Contribution. That proposed obligation does not meet the relevant tests and it would not be appropriate to take such an obligation into account in the determination of the appeal.

13. Conditions

13.1 A list of conditions (ID8) and the reasons for their suggested inclusion was discussed at the Inquiry. Two additional conditions were specifically requested by the EA in their letter withdrawing their objection to the proposal. As noted previously I identified that two additional conditions may be required to secure necessary mitigation in relation to archaeology and the protection of breeding birds and the parties have agreed that these conditions should be attached to any permission granted as a result of the appeal. Other than as set out below, I am satisfied that the suggested conditions would meet the tests in NPPF paragraph 55. The list of conditions that I recommend should be attached to the outline permission in the event that the SoS concludes that the appeal should be allowed is set out at Appendix F.

13.2 Conditions 1-3 are standard conditions required under s92 of the Town and Country Planning Act 1990 with regard to the approval of reserved matters and commencement of development. The appellant suggested that a time limit of 1 year from the date of permission be set for the submission of reserved matters details for the first phase of residential development with 3 years for the subsequent phases. This would be in line with the trajectory submitted to the Inquiry (ID36) and might be appropriate if the SoS was to conclude that the proposal is contrary to the development plan.

- 13.3 If, in those circumstances, the scheme's potential to deliver a large number of dwellings by 2026 was found to be a material consideration of such weight that it would help to justify a grant of planning permission contrary to the provisions of the development plan it would be appropriate that the planning conditions should secure that early delivery. That does not, however, reflect my conclusion that no such conflict arises. Given the appellant's intention to progress the development in two main phases in line with the trajectory I see no justification for applying a longer period for the submission of reserved matters as suggested by the Council.
- 13.4 Conditions 4 and 5 define the scope of the permission and condition 6 is required to ensure that the development is carried out in general accordance with the revised DF. Condition 7 requires the prior approval of a phasing plan for the development. Condition 8 relates to the provision of open space within the site and specifies that this should have a minimum area of 12.45 ha in line with the DF. I see no need for the condition proposed by the Council to set a maximum land area to be used for residential purposes given that condition 4 imposes a limit on the number of dwellings that can be constructed. Condition 9 relates to the provision of the play areas. Conditions 10 & 11 relate to flood risk and condition 12 requires the approval of a Construction Method Statement before development is commenced.
- 13.5 Condition 13 requires the prior approval of a sustainable drainage system. Following the discussion of the draft condition at the Inquiry, I consider that the system submitted for approval should relate to the whole site in order to ensure a satisfactory development even if it can subsequently be implemented in a phased manner. Condition 14 sets out the requirement for a written scheme of archaeological investigation. Conditions 15, 16, 17, 18 and 19 relate respectively to protected species, the removal of invasive vegetation, the protection of retained trees during the construction period, the pruning of trees to be retained and the carrying out of the removal of trees, hedges and shrubs outside of the bird breeding season. Condition 20 is needed to ensure that the site accesses are constructed in accordance with the approved plans.
- 13.6 Conditions 21-27 require the prior approval of various details for each phase before that phase is commenced and for the replacement of any trees or shrubs that die or are otherwise lost after the completion of the landscaping works. Conditions 28 & 29 require further investigation of the potential for ground contamination in each phase and appropriate action if the risk of contamination is identified. The need for these conditions was discussed at the Inquiry and in my view the ES does provide sufficient grounds for requiring further assessment in relation to some parts of the site. I have not included one of the conditions in the draft list as this would duplicate my condition 27. Conditions 30-32 require approval of a Construction Ecological Management Plan, Ecological Enhancement Strategy and Habitat/ Nature Conservation Plan for each phase of development.
- 13.7 Condition 33 is a Grampian condition relating to the various off-site highway improvements that are agreed to be required. As discussed at the Inquiry, I have removed the reference in the draft condition to the funding of these works as that would not meet the relevant tests. Conditions 34-37 are pre-occupation conditions requiring the specified works to be completed before any dwellings in an agreed phase are first occupied. Conditions 38-42 set out specific requirements and controls in relation to the primary school and community hub.

14. Inspector's Conclusions

14.1 On the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. References in square brackets [] are to earlier paragraphs in this report.

The amended appeal proposal

14.2 The appellant seeks that the appeal should be determined on the basis of the amended proposal for up to 800 dwellings which would be taken forward in accordance with the revised DF. The Council supports these changes and has withdrawn RfR 2 on this basis. [1.5-1.8] [14.2] In the event that outline planning permission is granted, the parties agree that a condition should be attached requiring that development is carried out in general accordance with the revised DF.

14.3 The consultation on the revised DF and ILP was sufficiently comprehensive in its scope to afford all those who should have been consulted on those changes to have the opportunity to comment. The interested persons who spoke at the Inquiry confirmed receipt of the correspondence from the appellant's agent and that they had been aware of the consultation and its general purpose. The consultation complied with the Wheatcroft Principles and no interested persons have been denied the opportunity to have their say about the proposed amendments. [1.8] [5.3]

14.4 The proposal is EIA development and regard must be had to whether the changes in the revised DF give rise to any greater or significantly different effects than those assessed in the ES prepared in relation to the previous DF and proposal for up to 950 dwellings. Counsel for the appellant sought to provide reassurance that the 950 dwellings scheme represented a 'worst case scenario' and that no updating of the ES is required. [1.10]

14.5 In my view that provides only a partial response. However, in response to my questions all of the appellant's technical experts confirmed their professional opinion that the reduction in dwelling numbers and revised DF would reduce the scale of likely environmental effects and that no new adverse effects would be introduced. [1.11] [9.58-9.65] [9.72] Taking this evidence into account the amended proposal would not result in any new or significantly different environmental effects or be of such a nature or scale as to bring the findings of the ES into question. I consider that the determination of the appeal on the basis of the amended scheme and revised DF would not breach the prohibition, within Regulation 3 of the 2011 Regulations, on granting planning permission without consideration of the environmental information relevant to the proposal.

14.6 I therefore recommend that the appeal should be determined on the basis of the amended proposal for up to 800 dwellings and the revised DF.

Main considerations

14.7 In light of the withdrawal of RfR 2 and the progress made towards agreement on appropriate planning obligations the main considerations in the appeal are:

- a) Whether the appeal site is an appropriate location for the form and scale of development proposed having regard to the provisions of the development plan and national policy in the NPPF; and

- b) Whether the Council is able to demonstrate a 5 year supply of deliverable sites for new housing in accordance with paragraph 67 of the NPPF.

The meaning of "windfall sites"

- 14.8 In its original sense a "windfall" is an apple or other fruit blown from the tree by the wind. All the apples growing on a tree might potentially suffer that fate but an apple only becomes a "windfall" once it has fallen to the ground. If one applies that logic to the use of the term in relation to housing supply a site can accurately be recorded as a "windfall site" only when some housing development has been completed on it. Until that has occurred it can be no more than a potential windfall site.
- 14.9 In the definition of "windfall sites" [8.10-8.13] [9.6-9.8] in the NPPF glossary the words "development plan" can reasonably be understood to mean the development plan documents that form the adopted development plan, not the more extensive interpretation for which the Council argues. The definition is simple and unambiguous. It means that a site developed for housing purposes is a windfall site if it is one which is not allocated or otherwise identified (for example as a key site in a designated Growth Area) in the development plan. This is consistent with the NPPF's statement that the planning system should be plan-led (paragraph 17) and its requirement (at paragraph 67) that planning policies should identify specific deliverable sites to meet housing needs over years 1-5 of the plan period and either specific developable sites or broad locations to meet the needs over years 6-10 and, where possible, years 11-15.
- 14.10 The revised definition does no more than simplify and clarify that in the glossary to the 2012 NPPF. That used the words "*specifically identified in the plan process*" but did not, in my view, convey anything more than a reference to sites which have not been allocated or otherwise referred to in the adopted plan. The application of the definition in the manner that the Council suggests would have the outcome that landowners could be dissuaded from putting sites forward in response to a 'call for sites' for fear that rejection at that stage would bar them from securing a residential permission on that site for the duration of the plan period. [9.10] That outcome would plainly not assist local authorities in significantly boosting the supply of housing in their areas.
- 14.11 It is self-evident that the purpose of the glossary is to define various terms used in the NPPF so that the reader can better understand the meaning of its policies. The glossary's value would substantially be diminished if it was necessary to cross refer to text in the main body of the document in order to understand what the definitions in the glossary mean. [8.11] Such an approach is counter-intuitive and defies logic. The Council's contention that the glossary's definition of windfall sites needs to be understood by reference to paragraphs 68-70 of the NPPF is, therefore, misguided.
- 14.12 Those paragraphs are concerned with "Identifying land for homes." Paragraph 68 serves only to remind local authorities that small and medium size sites can make an important contribution to meeting housing needs. It encourages them to promote the development of a good mix of sites for this purpose through various measures including by supporting the development of windfall sites through their policies and decisions. This means that windfalls can contribute to the supply of small and medium sites for housing but does not mean that

windfall sites can only be of small or medium size. [9.8] That would be a misreading of the paragraph.

14.13 Paragraph 69 encourages the provision of small and medium sites for housing specifically through the allocation of such sites in neighbourhood plans. It makes no reference to windfalls. Paragraph 70 is concerned with windfall sites more generally. It sets out the requirement for compelling evidence to support any windfall allowance that a local planning authority proposes to make when assessing the anticipated supply of housing in its area.

14.14 Although paragraphs 68 & 69 are concerned with the provision of small and medium sites, paragraph 70 is not. It deals with the separate matter of windfalls more generally and there is no cross reference between this and paragraphs 68 & 69. I find nothing in these paragraphs to support the Council's proposition that only small and medium sized sites should be characterised as windfall sites. [8.10-8.12] [9.8]

14.15 The Council contends that the definition needs to be applied within the local context such that what constitutes a windfall site in Birmingham is different in terms of size to a windfall site in Northumberland. Given my clarification that a site only becomes a windfall site when housing has been developed on it, it is likely that the windfall sites in both of those local authority areas would be found to be of various sizes and scales of development if records were kept over a reasonable time period. There is nothing in the NPPF definition to support the Council's assertion that a site of 35ha should not be treated as a windfall site in Birmingham. [8.12]

14.16 Moreover, it is apparent that the Council does not apply this distinction in its development management practice. With an area of 4.3 ha and capacity for 210 dwellings the Hall Green Site would not constitute either a small or medium site of the type contemplated in NPPF paragraph 68 which characterises such sites as ones which are often built out relatively quickly. That potential could not sensibly be ascribed to a proposal for the redevelopment of an operational greyhound racing track which has only an outline permission with 12 pre-commencement conditions attached to it. Nevertheless, paragraph 6.19 of the officer report on that application (CD S32) clearly states the officer's view that the site would constitute a windfall housing site. [9.8]

14.17 I note that the officer formed this conclusion on the basis that the site is not identified in the SHLAA. I also note that the 2018 SHLAA includes its own definition of a windfall site as one that has not previously been identified through the local plan process or included in the SHLAA at the point at which detailed planning permission is granted. [Footnote 56] However, the SHLAA makes it clear that this definition is adopted for the purposes of the Windfall Assumptions Paper and the windfall allowance in the SHLAA.⁶⁶ It does not purport to and cannot change the NPPF definition of windfall sites.

14.18 The Council's approach would leave it with a difficulty as to how it records housing completions on large sites not previously identified in the local plan or the SHLAA. If they cannot be listed as windfalls then some new, and as yet

⁶⁶ Paragraph 3.1 of Section A4 in CD F1

unknown, classification would need to be devised so that these are not lost in the Council's annual monitoring and updating of the 5YHLS.

BDP Examining Inspector's Report

- 14.19 For the reasons given above, I do not consider that either the BDP plan preparation process or the EIR form part of the 'development plan' for the purposes of applying the NPPF definition of windfall sites. Neither do I agree that a site can, in principle, be debarred from being granted planning permission for housing use because it was considered and rejected in the plan preparation process. I do, however, accept that the reasons given at that stage for not allocating the site could provide a relevant framework for assessing any future planning application for the site's development for housing. It is, therefore, necessary to consider why the allocation of the appeal site was not supported by the Examining Inspector.
- 14.20 In approaching this question it is useful to note that the Inspector faced a particular set of challenges in judging the soundness of the BDP. At paragraph 216 of the EIR, he notes that Birmingham is not the only local authority that faces difficulties in accommodating its OAN within its own boundaries but that the scale of the potentially unmet need in Birmingham "*is exceptional and possibly unique.*" The SHLAA that was before him showed that, without Green Belt release, there were sites identified for around 46,000 homes which is only just over half of the OAN of 89,000 dwellings. In that same paragraph, he acknowledges that the development of Green Belt land is necessary to provide an additional 5,000 homes and concludes that the evidence does not support any additional strategic Green Belt release.
- 14.21 I agree that the Inspector was faced with striking a balance between the level of provision that could sustainably be made within the City boundary and that to be met elsewhere. [8.5] In striking that balance he had to be as confident as he could possibly be that the full 89,000 dwellings would be delivered somewhere and within the plan period. Importantly, his decision as to what number of dwellings could realistically be provided within Birmingham directly determined the residual number to be met elsewhere in the HMA. He would also have been aware that, once the BDP was adopted, that residual figure would be fixed as the target that the relevant authorities would together seek to take forward in their local plans. Hence, any subsequent failure on BCC's part to deliver its major housing developments would risk leaving a significant shortfall against the OAN target of 89,000 new dwellings.
- 14.22 At the EiP the Inspector was asked to consider the allocation of the NWGC site which had not been included and assessed in the Council's SHLAA. In such a situation the Inspector would have needed to be satisfied as to the availability and suitability of the site for housing development and that the development envisaged was capable of being delivered within the plan period. In view of the particular challenges he faced in relation to the BDP examination he would, I think, have seen deliverability as a particular risk for the reasons set out above.
- 14.23 The only references to the site within the 56 page EIR are at paragraphs 222 & 223. [9.9] On a fair reading the first two sentences of paragraph 222 record the Inspector's conclusions that the site was available, is in a sustainable location and is not in the Green Belt. They also note that it is located in Birmingham's southern suburbs. It is reasonable to assume that the Inspector saw this as a

point in favour of a possible allocation given his observation, at paragraph 56, that most of the larger sites identified in the SHLAA are in the inner-city wards rather than the higher value suburbs.

- 14.24 The last sentence of paragraph 222 identifies the loss of public views as a possible issue but notes that this potential impact of development would likely be compensated for by the provision of public open space within the site. Given his reference to there being no public access at present it can be inferred that the Inspector considered this a potential benefit of the site's development.
- 14.25 Paragraph 223 notes the potential constraints arising from the site being surrounded by residential streets and some distance from the nearest main roads. It states that the Inspector had seen details of proposed new access points but had not been provided with a detailed analysis of the traffic impact of an 800 dwelling development or of its potential effect on the amenity of residents living close to the site. No other issues are raised in that paragraph.
- 14.26 Read together, these paragraphs confirm that the Inspector found that the site met the tests of availability and suitability for residential use and that it had particular advantages in terms of its location outside of the Green Belt and in the suburbs. The only reason that he gives for not supporting its allocation is the absence of detailed assessments of the likely impact of traffic on the network and on residential amenity. These issues go to the question of deliverability and the paragraphs show that he was not satisfied that a development of around 800 houses could be delivered because of these potential constraints. This conclusion implies only that he had insufficient information to be able to recommend the site's allocation. In my view it is wrong to place any wider interpretation on the Inspector's words in these paragraphs.
- 14.27 I agree that the Inspector reached this conclusion in the full knowledge that, if adopted without the site's allocation, the housing target within the BDP would be a long way short of meeting the OAN as noted in paragraph 61 of the EIR. [8.6] However, I do not consider that either that paragraph or paragraphs 222 & 223 provide any meaningful support for the Council's assertion that he rejected the site in principle.

BDP Policies

- 14.28 The Courts have ruled that planning policy statements should be interpreted objectively in accordance with the language used, read in its proper context. Applying that approach to BDP Policy PG1 leads me to conclude that it is a strategic rather than a development management policy. [9.2] In relation to housing the policy simply states that an additional 51,000 homes, together with the infrastructure and environmental enhancements to support that growth, will be planned for and provided over the plan period. The 51,100 dwellings figure is a target and not a ceiling for the scale of housing considered appropriate within Birmingham. This is confirmed at paragraph 8.13 of the BDP. [9.4]
- 14.29 There is a tick in the 'Planning Management' box within the implementation matrix for Policy PG1. That is unsurprising given that, ultimately, the proposed housing can only be provided (insofar as the BDP is able to achieve this) through the grant of planning permissions. The policy does not include any criteria or requirements against which planning applications can be measured or

assessed. For this reason I agree with the appellant that it is difficult to see how any housing application could be found to be in breach of the policy. [9.2]

- 14.30 I do not accept that a grant of permission for the proposal would undermine public confidence in the planning system and the plan-led approach. [8.1-8.2] [8.14] That might be arguable if it had been demonstrated that such an outcome would have a harmful effect on the spatial strategy underpinning the BDP or that it would delay or frustrate the delivery of other key housing sites, for example in regeneration areas. No such harm has been suggested by the Council. Instead, it relies on its assertion that the Examining Inspector rejected the site's allocation in principle to support that part of its case. For the reasons already set out that is not a fair or accurate interpretation of what is said in the EIR.
- 14.31 I consider that the proposal does not conflict with Policy PG1 or with its underlying objective of delivering 51,100 new homes in the City. Indeed, the provision of 800 new dwellings, including up to 280 affordable homes, would make a positive contribution towards meeting the policy's objective of meeting the needs of Birmingham's growing population (BDP paragraph 4.5).
- 14.32 As confirmed by the planning witnesses, the appeal site is not subject to any land use allocation or designation and can be regarded as an unallocated site or 'white land'. The key policies of relevance to the assessment of an application for housing development on such a site are BDP Policies TP27, TP28 and TP30. [3.8]
- 14.33 These policies set out specific criteria against which planning applications can be assessed and are intended to operate as development management policies. That BCC considers this to be the case is evidenced in the officer report on the Hall Green Stadium application (CD S32). That report refers to the policies as numbered in the then draft BDP, but it is clear from paragraphs 6.20 to 22 that it was specifically against these policies that the acceptability in principle of the site's development for housing was assessed.
- 14.34 Mr Wood also suggested that the proposal would not comply with the final bullet of Policy TP28 by virtue of the alleged conflict with Policy PG1. [9.15] However, if there is no conflict with PG1 that objection falls away. Some of the third party concerns need to be considered before reaching a final conclusion on the proposal's compliance with TP27 and TP28. However, no other conflict with these key policies has been suggested by the Council.

The meaning of "deliverable"

- 14.35 Much of the Inquiry was spent debating the meaning of the NPPF's definition of "deliverable". It would, therefore, be useful for me to set out my conclusions on this before addressing the specific issue of whether or not BCC can demonstrate a 5 year supply of deliverable housing sites.
- 14.36 In comparing the new definition in the NPPF glossary to that in Footnote 11 to the 2012 NPPF it is clear that important changes have been made. I do not believe those changes to be as fundamental as the appellant suggests. [9.16-9.21] In the 2012 definition the first sentence stated a general requirement that *"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 the development of the site is*

viable." The second sentence set out a presumption that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years.

- 14.37 Other than the deletion of the reference to viability the first sentence in the revised definition is unchanged and serves to set out a general requirement that applies to all sites included in the housing land supply. The significant change, in the second part of the definition, is that the presumption of deliverability is removed in respect of sites with outline planning permission, permission in principle, allocated in a development plan or identified on a brownfield register, in respect of which there is now a requirement for clear evidence that housing completions will begin within five years. As agreed by the parties this places the onus on the local planning authority to justify the inclusion of such sites in the 5YHLS. [8.30] [9.27]
- 14.38 For sites with detailed planning permission, the presumption of deliverability until permission expires carries with it an underlying assumption that schemes will be implemented within the normal 3 year life of the permission. The same cannot be assumed for sites which only have outline or no planning permission and which need to go through or complete the planning approval process before they can be implemented. Hence, the requirement for evidence that they will progress to the point of delivering housing completions within 5 years.
- 14.39 The essential consideration under both definitions is whether or not sites included in the 5YHLS will actually deliver housing within the 5 year period. In my view, that assessment is still to be made on the basis of realistic prospect and not on any greater burden of proof. As established in the St Modwen judgment (paragraph 38), that does not mean that for a site to be considered deliverable it must be certain or probable that the housing will in fact be delivered upon it. [8.27] In that paragraph, Lord Justice Lindblom refers to Lord Gill's statement, in paragraph 78 in the Suffolk Coastal judgment (CD C1), that the requirements set out in the NPPF reflect the futility of local authorities including sites in their 5YHLS which have no realistic prospect of being developed within five years.
- 14.40 The previous definition included a requirement for "clear evidence" to rebut the presumed deliverability of sites with planning permission. That did not require those challenging the inclusion of a site with planning permission to do more than demonstrate that there is no realistic prospect that housing will be delivered on that site. The new definition requires 'clear evidence' that housing completions will begin within 5 years on certain categories of site. That does not, however, mean that the local planning authority must demonstrate certainty that housing completions will begin within that period.
- 14.41 I have carefully considered the appellant's submissions but cannot agree that that there is no scope for the concept of 'realistic prospect' in carrying out the assessment of deliverability as set out in the second and third sentences. [9.20] In my view 'realistic prospect' remains the central test against which the deliverability of all sites must be measured. Similarly, I am not persuaded that the changes are so fundamental that the first sentence of the definition can be said to be concerned only with delivery rates and the second and third with the separate issue of lead-in time. [9.21] The changes to the wording do not support this wholly different approach to the assessment of deliverability.

- 14.42 The distinction between “deliverability” and “actual delivery” as identified in the St Modwen judgment holds good when assessing sites to be included in a 5YHLS. On my reading there is nothing in Inspector Stephens’ Woolpit decision that suggests that he considered the realistic prospect test to have been replaced by some higher burden of proof. He did not feel the need to depart from that judgment in reaching his decision on that appeal. [9.27]
- 14.43 The PPG has been updated to give more detailed advice as to what types of information might be used as the clear evidence needed to justify the inclusion or removal of sites from the 5YHLS. This does not however change the NPPF definition of ‘deliverable’. [9.17] [9.28-9.30]

The Council’s 5 year housing land supply

- 14.44 I agree that a key effect of the revised definition is that the responsibility for demonstrating whether sites in the 5YHLS are or are not deliverable is now apportioned between the parties. The appellant bears the burden of proof to show that there is no realistic prospect that housing will be delivered within 5 years on sites that are not major development and with detailed planning permission. For sites with outline permission, permission in principle, allocated in the development plan or identified on a brownfield register the Council bears the burden of proof to show that there is a realistic prospect that housing completions will begin within 5 years. The NPPF is silent in respect of ‘permitted development’ sites and there is no agreement as to where the burden of proof lies in relation to this category. [9.27]
- 14.45 The appellant’s submissions on this matter are not without merit [para 79 of Appendix B] but it seems to me that these sites are more akin to those with detailed planning permission than to the other categories listed in the definition. In my view, sites with detailed permission have been placed in the first group because there is a reasonable expectation that the permission will be implemented within 3 years and, hence, that the housing on them will be delivered within 5 years. Sites with Prior Approval have an even shorter period for implementation since the standard conditions require that the works are completed within 3 years. [para 81 of Appendix B]
- 14.46 There may be less work involved in securing a Prior Approval compared to a full planning permission [para 77 of Appendix B] but it does involve time and costs. Having regard to the St Modwen judgment, that the property owner has gone to the trouble of securing that approval demonstrates that the housing is capable of being delivered within 5 years and that there is a realistic prospect that it will be.
- 14.47 The ‘Other Opportunity Sites’ category falls outside of the NPPF definition of deliverable. All of the sites would comprise proposals for major development (10 or more houses) that did not have planning permission at the base date. For that reason they do not, in my view, benefit from the presumption that the housing completions will be delivered within the 5 year period and are more akin to development plan allocations in this respect. The burden of proof to demonstrate that housing completions will be secured within 5 years should, accordingly, rest with the Council.
- 14.48 The parties agree that the base date for the 5YHLS is 1 April 2018 and that the supply should be assessed at that base date. [6.5] As noted by Inspector

Stephens in the Woolpit decision, (paragraph 67) this requires a clear cut-off date as including sites beyond that date skews the data by overinflating the supply without a corresponding adjustment of need. A site granted permission after 31 March should not, therefore, be included in the sites with permission categories within the 5YHLS. However, this does not mean that all information gathered after the cut-off date is irrelevant where, for example, this serves to confirm that assumptions made when deciding what should be in the supply were well founded.

- 14.49 PPG provides guidance on the preparation of 5YHLS reports and the evidence required to support them. I agree that the examples in paragraph 36 do not comprise an exhaustive list of the information that might be used to provide the clear evidence needed but it does provide an indication of the kind of information that might be required. [9.29] Paragraph 47 states the need for the annual assessment of the 5YHLS to be based on up-to-date and sound evidence. [9.30] It suggests, rather than requires, the use of benchmarks and assumptions about non-implementation rates, lead-in times and build rates to test delivery where there is no information from the site owner/developer to inform the assessment. Where such assumptions are used they should be based on clear evidence and be consulted upon with stakeholders including developers.
- 14.50 In my assessment of the disputed sites I have had regard to the revised definition of deliverable and updated PPG guidance and to the evidence submitted by the parties. My conclusions as to which sites/ dwellings should be removed and which should be retained in the 5YHLS are set out in Appendix B.
- 14.51 These include sites within in the Outline Permissions and Allocations categories where the Council's evidence falls significantly short of the clear evidence required to demonstrate a realistic prospect of housing completions within the 5 year period. In many cases the Council has simply relied upon the existence of outline permission or the site's inclusion in the BMHT programme with little or no additional information to support its inclusion within the 5YHLS. This is an area where the Council's decision not to seek detailed information from site owners and developers has made the 5YHLS less robust. [9.33]
- 14.52 I agree that the Council's process of updating the 5YHLS could be made more transparent and would be more robust if there was more extensive engagement with the development sector when carrying out that update. [9.33] However, based on the evidence relating to the assumptions made when preparing the 2018 5YHLS I find that there is justification to remove only some of the disputed sites and dwellings from the categories as set out in the table below:

Site Category	Number Removed from Supply
Outline Permissions	-145
Allocations	-355
Other Opportunities	-347
Total	-847

14.53 The effect of these reductions is to reduce the total number of dwellings in the Council's revised assessment of the identified supply from 19,023⁶⁷ to 18,206.

Windfalls

14.54 The 5YHLS assumes a contribution from windfall sites of 1,360 dwellings over years 2-5, equating to 340 dpa. It is not possible to be certain that all of these were on sites that had not previously been identified in the SHLAA at the date on which detailed planning permission was granted. [9.40] However, the recorded completions are so far in excess of the assumed 340 dpa windfall allowance that this uncertainty is not sufficient to suggest that the allowance is anything other than conservative or to call it into question. I note that the Examining Inspector also came to that view.

14.55 I see no justification for Mr Hawley's suggestion that a windfall allowance should only be included for years 4 & 5 of the 5YHLS. Windfall sites may come in a variety of forms and sizes and some will be capable of being delivered more quickly than others. There are no reasonable grounds to assume that most of the sites that might potentially contribute to the assumed 1,320 dwellings windfall completions will already have planning permission and will be recorded elsewhere in the 5YHLS. I see very limited risk of double counting and no need to adjust what is already a conservative figure. [9.42]

14.56 Similarly, I see little merit in the argument that a reduction should be made to the allowance to discount large site windfalls. [9.41] By definition the details the potential sites that might deliver those completions are unknown and the only logical basis for determining the allowance is by reference to past completions on windfall sites. Given my conclusion that the NPPF definition of windfall sites does not set any size threshold I see no reason to adjust the allowance as the appellant suggests.

Lapse Rates

14.57 In my experience lapse rates are appropriate only where clear evidence, gathered over a reasonable period of time, has shown that planning permissions on a significant number of sites within the claimed 5YHLS are being allowed to expire and are not making their assumed contribution to completions over the 5 year period. Mr Hawley refers to two such sites in his main proof and Mrs Han accepted that the planning permissions on 2 sites and the prior approval on one other site had expired or were about to expire. These few examples do not justify the application of a lapse rate.

14.58 The Council was unable to provide historic information on the numbers of permissions that have lapsed⁶⁸ and dwellings that have not been delivered as a result. [9.40] In the absence of any historic data I am unable to conclude either

⁶⁷ See Appendix 2 to Mrs Han's rebuttal evidence. Note that there is an error in the 'adjusted supply' column in that table. This shows the total number of dwellings with outline permission as 155 where the combined table of disputed sites at ID18 shows a total of 355 dwellings on those sites. The figures below that row have been adjusted accordingly.

⁶⁸ Appendix 12 to Mr Hawley's main POE

that a lapse rate is necessary or that the 10% figure suggested by the appellant would be appropriate even if there was a clear need for such a rate.

14.59 Even if I am wrong in that judgment, the application of a 10% lapse rate to the sites with planning permission and allocations as suggested by the appellant would not reduce the adjusted supply below the 5 year threshold. Using the figures from Mrs Han's Appendix 2 with my corrections and my adjustments for the sites that I propose should be removed the revised figures would be as follows.

Source	Figures without lapse rate	Figures with 10% lapse rate
Under construction	9,060	9,060
Detailed planning permission	7,540	6,786
Outline planning permission	568	511
Permitted development	868	781
Allocations	0	0
Other opportunity sites	140	126
Windfalls	1,360	1,360
Total	19,536	18,624
Years' supply	6.50	6.20

Market Evidence

14.60 Mr Willet's evidence provides a positive review of the local economy with low unemployment, an 11.5% increase in business numbers, increased visitor numbers, record breaking office take-up in 2017, annual growth in house prices and many other positive indicators. Together with Mrs Han's rebuttal, this paints an optimistic picture of the prospects for future prosperity, for example in terms of graduate retention, inward migration and an expectation that the number of young people living in the City will rise to 1.3 million by 2039 which translates into some 100,000 additional households in the City over the next two decades. [8.32]

14.61 This summary of economic and market conditions is informed by the detailed studies appended to Mr Willet's POE. The Knight Frank report records that the scale and pace of economic growth in the region has been significant and that the area is establishing itself an alternative to London as a business hub. It notes that the City is receiving billions of pounds in infrastructure investment and that hosting the 2022 Commonwealth Games is likely to bring further economic and social benefits. It also states that, given the uplift in job creation, amenity, transport and population the demand for City Centre living and property in the area around Birmingham "is expected to continue to grow"

(page 5). There appears to be little in this report that supports Mr Willet's concerns about the future capacity of the City Centre residential market.

- 14.62 The CBRE report appears mainly to comprise a factual review of the Private Rented Sector (PRS) stock already in the City and in the pipeline. The section concerned with demand indicates a likely demand for high quality rented accommodation from people in the 'Transient Renters' group as these mature and move up the career ladder. It says that recent trends create a very positive backdrop for buy-to-rent development in Birmingham as they demonstrate an established market for aspirational and high quality city centre accommodation which is likely to spill out further. The report notes that a small proportion of private renters have annual salaries more than £50,000 but otherwise suggests a continuing healthy demand for PRS development in the City Centre.
- 14.63 Against this background Mr Willet's concerns about the future capacity to support City Centre residential growth appear unduly pessimistic. [8.31-8.32] [9.23] I do not question his knowledge and experience of the Birmingham residential market. However, his professional opinion as to the capacity of the market to absorb the scale of City Centre apartments currently under construction and in the pipeline appears to be supported only by private discussions with two other property practitioners rather than by any direct evidence. Given the optimistic picture painted in the submitted economic and market reports I consider that Mr Willet's concerns should be treated with some caution, notwithstanding that the Council did not call an expert witness on this matter. [9.23]
- 14.64 The essential part of Mr Willet's evidence is set out in section 6 of his POE and Table 2 at Appendix 5. This shows that he accepts that the 5,928 units already under construction will be delivered in the period Q4 of 2018 to the start of Q4 of 2021. As none of these were completed at the 5YHLS base date they would all contribute to meeting completions within the 5 year period.
- 14.65 He says that sites with planning permission that have not yet commenced account for some 5,695 units.⁶⁹ These are assumed to deliver over the 5 year period Q4 2021 to Q4 2026 at an annual average rate of 1,192⁷⁰. It is this average rate that he contends should be reduced by 50% to reflect the likely non-delivery of schemes because of his market concerns. At paragraph 7.12 he suggests that, once the oversupply in this market is evident for all to see, traders and other investors/developers will exit the City Centre PRS market and will be forced to sell sites at a loss.
- 14.66 The Council's submissions are that Mr Willet's only argues for a reduction of 1,192 as shown in his Table 2 and that there is no evidence to support the reduction of 1,956 units which Mr Hawley makes to the City Centre apartment component of the 5YHLS in his Table 7. [8.24] The appellant contends that Mr Hawley does not directly transfer Mr Willet's figure into his table but, instead, applies the principle of a 50% discount to those dwellings in the 5YHLS which comprise City Centre apartment schemes with detailed permission. [9.24] Mr

⁶⁹ Figure adjusted from 5,995 by Mr Willet in evidence in chief

⁷⁰ This figure should also be adjusted to 1,139 to reflect the reduction in the total number in the pipeline. However, as the original figure is used in the Council's closing submissions I have used that figure in the text above.

Hawley says (paragraph 13.4) that he has applied the 50% discount only to the residual figure that remains after the deductions made for 'planning' as opposed to 'market' reasons.

14.67 Mr Willet adopts a 5 year period of Q4 2021 to end of Q3 2026 compared to the 5YHLS period which runs only to the end of Q1 of 2023. For this reason it is difficult to compare the two sets of information. However, what does seem to be clear is that Mr Willet's concern about future oversupply leads him to apply his 50% attrition rate only to completions anticipated from Q4 of 2021 onwards and not to completions before that date.

14.68 As the Council notes, a 50% discount to his assumed annual average rate over those 2 years amounts to a total reduction of 1,192 units. [8.24] In addition, if Mr Willet's approach is applied to the 5YHLS period the attrition rate should be applied only to completions anticipated in the last 6 quarters of the 5 year period (Q4 of 2021 to Q1 of 2023) and not to the completions assumed prior to Q4 of 2021.

14.69 On that basis I see no grounds applying a 50% discount to all City Centre apartment schemes with detailed permission or to Mr Hawley's 'residual figure'. The schemes within this source of supply will be of varied types and scales and would likely have been at various stages of design, tender or site mobilisation at the base date. No trajectory is available to show anticipated completions but annual average rates might usefully be adopted. Whilst no completions might be expected in year 1 of the 5 year period it is not unreasonable to assume completions in this category over years 2-5.

14.70 If Mr Willet's full annual average completion rate of 1,192 dpa (298 per quarter) is applied to the period from Q1 of 2019 to end of Q3 of 2021 (10 quarters) and his discounted rate of 596 dpa (149 per quarter) is applied to the period from Q4 2021 to end of Q1 2023 (6 quarters) this would provide the following completions:

Period 1	(10 x 298)	2,980
Period 2	(6 x 149)	894
Total		3,874

14.71 According to Mr Hawley's Table 6, the total number of City Centre apartments with detailed permission included in the 5YHLS is 5,028. [8.24] If 3,874 of those are completed the shortfall from this source would amount to 1,154 units. This is close to the overall 2 year discount of 1,132 which the Council says is the maximum that Mr Willet argues for. It also shows that, even if Mr Willet's concerns about the market are accepted, the maximum deduction that should reasonably be made for market as opposed to planning reasons is 1,154 units rather than the 1,956 proposed by Mr Hawley. If my adjusted 5 year supply figure of 19,536 in my table above is reduced by 1,154 units (with no lapse rate) the resulting supply of **18,382** would be comfortably above the 5 year requirement of 15,018.

14.72 The market attrition rate is a form of lapse rate and it would not be appropriate to apply both this and Mr Hawley's 10% lapse rate. Some adjustment would, therefore, be needed to the figures in the third column of my table to avoid double discounting in relation to this group of sites. However,

even if both the 10% lapse and the market attrition rate are applied without that refinement, the resulting figure of **17,470** (18,624 -1,154) would still result in a supply of 5.82 years.

14.73 For these reasons I conclude that the Council is able to demonstrate a 5YHLS and that there is insufficient evidence to show otherwise. There is no justification on these grounds for deeming the most relevant development policies to be out-of-date and NPPF paragraph 11d is not, therefore, engaged in relation to the appeal.

Public consultation

14.74 I understand the desire of some in the local community that there should have been engagement about alternative uses before any proposals for a specific use or range of uses were consulted upon. However, the land is in private ownership and there is no development plan designation which either provides protection to its former use or limits the uses to which it might be put. In those circumstances such wider engagement might only have been likely if BCC or another public body had sought to acquire the site for a non-commercial or community use.

14.75 The appellant's interest is in securing a residential development and the engagement carried out has been framed by that objective. [9.53] They should not be criticised for taking that approach. There appears to be some uncertainty as to why the working group was not carried forward but the public consultation undertaken was both appropriate in its form and sufficiently extensive to enable interested persons to comment on the proposals. [9.53]

14.76 There has been substantial local objection to the proposal at all stages of the application and appeal processes and it is clear that many local people maintain a root and branch objection to the scheme notwithstanding the reduction in dwelling numbers and the changes made in the revised DF. However, it is notable that the notification of the making of the appeal has also attracted around 130 letters of support and that these outnumbered the written objections received at that stage. [11.3] Many supporters consider that the proposed housing is badly needed and acknowledge the appellant's efforts to provide a substantial area of public open space and other community benefits within the residential development.

Traffic and highways

14.77 A proposal of this scale is likely to attract significant concern about potential impacts on the local highway network and key junctions near to the site. Although a large development, the site has the advantage of providing an opportunity for 3 new accesses to serve the residential development and a separate access for the school and community hub. Because of this arrangement and the proposal that there should be no internal road link between the two housing development zones [5.7] peak hour movements will not all be focused on one road junction as might otherwise be the case.

14.78 Notwithstanding the concerns raised, I consider that the site is in a highly accessible location with regard to the nearest bus stops and services and the nearby railway stations. [6.2] The pedestrian and cycle routes proposed within the site and the package of off-site improvements agreed in the Transport SoCG

will make a meaningful contribution to facilitating and encouraging future residents to walk or cycle to access local services and facilities and public transport. [6.4] Given this level of accessibility, and the evidence that some 25% of journeys to work in the local area are made by public transport, it is reasonable to assume that a significant proportion of trips will be by modes other than the private car. [9.59]

14.79 The TA has been prepared on a robust basis as it has assumed a development of 1,000 dwellings rather than the maximum of 800 now proposed. On Mr Parfitt's unchallenged evidence that change is likely to result in approximately 15% fewer traffic movements in the AM peak and 20% fewer movements in the PM peak than assumed in the traffic modelling in the TA. I note Mr Burden's concerns [10.2] but it is clear that the traffic counts have not been used in isolation and that growth has been applied to ensure the accuracy of the assumed background levels at the modelled year of 2026. As the appellant plans that the development will be fully completed by 2026 (ID36) that provides for a robust assessment of the likely traffic effects. [9.58]

14.80 My observations of key junctions in the PM peak are that, although busy, they operate efficiently with most queuing traffic able to clear the junction in a single green phase of the signals. I saw only limited queues at the Frankley Beeches Road/Egghill Lane roundabout with traffic being able to clear the junction relatively quickly. These observations generally support the TA's findings as to the current operation of those junctions. The TA has been assessed by BCC's Highways Officers who are satisfied that the traffic generated can be accommodated on the network without an unacceptable effect on highway safety or on any nearby junctions subject to the agreed mitigations works being completed. [6.4] [9.55] There is no technical evidence to the contrary.

14.81 In my view the proposed works would provide adequate mitigation and ensure that the junctions continue to operate effectively. The mitigation proposals would bring positive benefits for the operation of the Frankley Beeches Road/Hoggs Lane and Tessall Lane/ A38 junctions as detailed in Section 5 of Mr Parfitt's POE. These works have been the subject of an independent Stage 1 safety audit which found no significant areas of concern.

14.82 Having assessed the highway evidence I see no reason why the site access junctions should not operate effectively and safely. The visibility splays required are within land which is either in the highway or within the appellant's control and there is no reason why these cannot be achieved. Although I note Mr Kennedy's concerns about the recently introduced traffic order on Farren Road this is intended to prevent the use of that road for rat running. If that objective is achieved increased movements resulting from the need for residents to access Farren Road at its southern end would be offset by a general reduction in through traffic. [10.15] The provision of a right turn lane from Tessall Lane into Farren Road and the resultant limitation on the ability of vehicles to park close to the junction would improve rather than reduce safety at that junction. The proposed access meets the design standards with regard to forward visibility for vehicles approaching on Tessall Lane.

14.83 Mr Parfitt's supplementary note (ID190) shows that the time taken for emergency vehicles to pass along key routes from the Ambulance Hub would not materially be affected. A minor delay of about 2 seconds for peak hour

journeys on two of the routes would be more than offset by reductions in journey times of up to 108 seconds on other routes. There is, therefore, no evidence that the proposal would have a significant adverse effect on the ability of WMAS to respond to emergency calls. [9.57]

14.84 The proposed primary school access has been subject to an independent safety audit and no significant concerns have been raised. The school is likely to need a site that can be made secure but I see no reason why this should not be designed to provide adequate queuing space off of the highway and expect that BCC will seek such provision in the detailed layout of that site. The decision that the pedestrian crossing on Frankley Beeches Road should be signalised has been taken to address safety concerns about its location on that road. This is an appropriate means of ensuring that drivers have ample warning of the crossing when approaching this section of the road (paragraph 51 of ID19).

14.85 I consider that the effects of the proposal on the local highway network and highway safety would be acceptable. There are no reasonable grounds for refusal having regard to paragraph 109 of the NPPF and no conflict with the development plan in this regard.

Local Wildlife and Nature Conservation

14.86 As a result of its past use and managed landscape the site is of low habitat and biodiversity value and the potential significant impacts are limited to the effects on the single bat roost and the badger setts within the site. Adequate mitigation can be provided for these potential effects and the badgers can be retained on the site. No difficulties are anticipated in obtaining the licences to carry out the necessary mitigation. [9.64]

14.87 Beyond that, the likely effects of the proposal are positive rather than negative. The provision of a large area of open space, focused on the existing brook and incorporating new ponds and wetland areas, additional woodland and mixed planting, and a dedicated eco-park provide a genuine opportunity for the biodiversity of the site to be enhanced by a significant degree. The commitment, by means of planning conditions and obligations, to bring these areas under a management and maintenance regime would secure these as long term benefits of the proposal. [9.63]

14.88 Given this evidence, I see little substance in B&BCWT's objection and consider that this has been adequately responded to. The proposal does not conflict with BDP Policy TP8, which seeks that development should not cause harm to local sites of importance for biodiversity or to priority habitats and species unless any harm can adequately mitigated, or with any of the policies in paragraphs 170 and 171 of the NPPF.

Trees and TPO

14.89 The redevelopment of the former golf course for residential purposes could not be achieved without the need to remove a substantial number of trees. However, the approach set out in the revised DF provides for most of best quality tree groups and individual trees to be retained. In pure numbers the overall loss of trees would not be insignificant but the revised DF and the reduction in the number of dwellings provide for a considerable improvement compared to the potential impact of the previous 950 dwelling scheme. [9.66] A

number of Category A trees would be removed but my observations on the site visit are that a considerable proportion of those that would be lost are non-native trees or tall thin specimens that have been planted for their fast growing habit.

14.90 With the new tree planting envisaged, the eventual tree coverage would equate to about 74% of the existing position. Opportunities would be available at reserved matters stage to consider the possible retention of other individual trees in the detailed layout, to assess the prospects for transplanting trees that might otherwise be lost, and to look for opportunities for in-curtilage and other additional planting. Given those further opportunities, the revised DF provides a sound basis for achieving an appropriate balance between an attractive and efficient residential layout and retaining the best of the existing tree cover. [9.66]

14.91 An area TPO is generally intended as a short-term protection and is often subsequently replaced by a new order(s) providing protection to individual trees and tree groups that have been found in a more detailed assessment to warrant protection over the long term. That more detailed assessment would likely be done before or as part of the Council's assessment of detailed proposals for site layout and landscaping. [9.69]

14.92 At present the amenity value of the trees is mainly derived from the visibility of perimeter trees from the surrounding roads. Most of the trees inside this dense perimeter screen are not visible from outside of the site. The majority of existing trees to the perimeter would be retained with additional planting where there are gaps. Their contribution to the amenity of the site and its surroundings would be largely unchanged. By providing public access to the substantial open space in the central part of the site the proposal would enable local people to see and enjoy the significant woodland blocks and individual trees that are currently hidden from public view. [9.70]

14.93 As a result of this public access and the long term maintenance and management arrangements that would be put in place, there would be a net benefit in terms of the contribution which the retained trees make to the visual amenity of the site and surrounding area. This would be sufficient to offset any harm resulting from tree loss within the development zones.

14.94 A grant of detailed permission for means of access would give consent for the felling of trees which is necessary to facilitate the construction of the accesses and visibility splays. The plans and schedule included in ID20 show that these works would result in the loss of only a small number of individual trees (all of Category B quality) and of very small portions of tree groups of Category A quality. [9.68] These losses would not be significant in relation to the overall numbers of trees around the perimeter and would not have a material effect on the amenity value of the perimeter planting. The small scale of these losses demonstrates that the access points would be well sited so as to minimise their effect on the perimeter planting.

Landscape and Visual effects

14.95 The site is a managed rather than a natural landscape reflecting the site's long use as a golf course. There are some larger blocks of trees inside the perimeter belt but much of the planting between fairways comprises narrow strip planting

of fast growing and non-native trees. The site is almost fully screened from public view and only a very small number of residential properties back onto the site. Medium to long distance views are limited and, where these exist, the site is seen in the context of the surrounding suburban development. For these reasons I agree that the site has only low to moderate landscape and visual amenity value. [9.72]

14.96 With the extent of vegetation to be retained and opportunities for additional planting, the visual effects of the development would be very modest and limited to a very small number of receptors. The revised DF provides for some 38% of the site to be retained as GI on completion of the development. I agree that this provides the opportunity to create a development framed by a mature landscape which would have a strong sense of place. [9.71]

14.97 The reduction in dwelling numbers allows the retention of more of the existing landscape features and a larger area of the site to be used as open space and GI. These changes have had a wholly positive benefit in terms of the potential landscape and visual effects. [9.72] The minor landscape harm that would be caused by the introduction of a large number of buildings into a currently open site would largely be offset by the creation and long term management of the proposed GI and the provision of public access which would enhance the public experience of the landscape compared to the existing situation. [9.71]

14.98 Having regard to the outline nature of the proposal I consider that the proposal does not conflict with BDP Policy PG3, which requires that new development should demonstrate high design quality contributing to a strong sense of place and should respond to site conditions and the local area context. Similarly, I do not consider there to be any conflict with UDP Paragraphs 3.14 to 3.14D which require that development should achieve a high quality of design and follow good design principles.

14.99 The appeal site can, therefore, be concluded to be an appropriate location for the scale and form of development proposed having regard to the provisions of the development plan and relevant national planning policy.

Environmental information

14.100 As noted above the ES was prepared in respect of a development of up to 950 dwellings. It has not been updated to reflect the reduced number now proposed and its conclusions as to the key environmental effects of the proposal need to be considered in that context. The Council's concerns with regard to the effect of the proposal on trees, landscape and ecology have all been resolved by the submission of the revised scheme and I am satisfied that this has had a wholly positive outcome in relation to these potential effects. The reduction in the proposed number of dwellings is positive in relation to potential effects on the road network and highway safety and renders the TA and the Transportation chapter of the ES very robust.

14.101 The EA has withdrawn its objection subject to the attachment of appropriate planning conditions on any permission that may be granted and there are no outstanding objections in relation to drainage or flood risk from any technical consultee. Other areas of mitigation that were identified in the ES are covered within the suggested conditions.

14.102 In light of the above considerations I conclude that the proposal would not give rise to any significant residual environmental effects and that all necessary mitigation to avoid that outcome can be secured by means of planning conditions and obligations.

Conclusions on development plan

14.103 For the reasons set out above I consider that the proposal does not conflict with BDP Policy PG1. I find no conflict with any other policies of the development plan. Neither do I find any conflict with any of the policies in the NPPF. I conclude that the proposal accords with the development plan and, having regard to paragraph 11c of the NPPF, that it comprises sustainable development that should be approved without delay.

14.104 If the SoS accepts my finding in this regard there is no need for him to consider other material considerations or to reach a conclusion as to whether or not the Council is able to demonstrate a 5YHLS. If, however, the SoS concludes that there is a conflict with the development plan, consideration needs to be given to whether there are material considerations that would justify a grant of planning permission.

Conclusions on harm

14.105 In light of my finding that the proposal does not conflict with Policy PG1 I conclude that it would not cause any harm to the objectives or spatial strategy that underpins the BDP. I reject the Council's concerns that allowing the appeal would undermine public confidence in the development plan process and the plan-led system. I have not identified any other material harm.

Potential benefits

14.106 The proposal would deliver up to 800 family homes in a range of sizes and tenures and in an accessible location in the southern suburbs of the City. It would support the BDP objectives of meeting the needs of a growing population and maximising the level of housing delivery within the built up area of the City.

14.107 Policy TP48 sets out a timescale of 3 years from the adoption of the BDP for monitoring progress made by other authorities in meeting Birmingham's unmet housing need within their local plans. It is, therefore, too early to form any definitive conclusion as to whether a material shortfall in that provision is likely. [8.8] However, a shortfall of around 3,000 dwellings against the 51,100 target within the City boundary is highly likely due to the delay in bringing forward the Langley SUE. The major contribution which that development was expected to make to the provision of new family homes during the plan period will also be substantially reduced. [9.13-9.14] In those circumstances the 800 family homes which the appeal scheme could deliver in the period up to 2026 is a social benefit of significant weight.

14.108 Mr Stacey's unchallenged evidence shows that only 2,757 new affordable homes were provided in the City over the first 6 years of the plan period. This represents less than half of the target provision and a net increase of only 151 affordable homes if Right to Buy sales are taken into account. On either measure there has been a very low level of provision against a background of a pressing and growing need for new affordable homes in Birmingham. [9.49-9.51]

- 14.109 Given the heavy reliance in the 5YHLS on City Centre apartment schemes it is difficult to see how that recent trend of can be reversed over the short to medium term. Against this background, the delivery of up to 280 affordable by about 2026 in a mix that matches the Council's requirements is a social benefit of considerable weight. [9.50]
- 14.110 The proposed community hub has the potential to deliver significant social benefit but, at present, the form and content of this facility is undefined. Only limited weight should be attached to it. The on-site open space and play provision would extend beyond that needed to meet the standard planning requirements and help fill gaps in existing provision in the locality. [8.35] The opening up of public access to an attractive area of open space on land that is not currently accessible would also a positive benefit. I attach moderate weight to these social benefits and some, limited weight to the longer term benefit that might result from the provision of a site for a primary school capable of being extended into a 2 form entry school at a later date. [5.11]
- 14.111 The construction of the development would involve substantial investment and would create or support employment in the construction sector over a period of about 8 years. The scale of impact on local employment and the local economy of such development can never be guaranteed but the Local Employment Plan seeks to maximise opportunities for local people to access construction jobs and training. The proposal would also provide the potential for a long term benefit to local businesses through the expenditure by future residents on goods and services. Given the scale of the development, the length of the construction period and the accessibility of the site to a large part of the urban area I attach significant weight to these economic benefits.
- 14.112 I agree that the appeal scheme would represent the effective use of underutilised land in the urban area but only limited weight can be given to this benefit because it does not comprise previously developed land. I also attach limited weight to the appellant's argument that allowing the appeal proposal might avoid the need for use of Green Belt land elsewhere. Until more progress has been made by other authorities towards identifying housing provision to meet Birmingham's unmet need it is difficult to assess the extent to which Green Belt land might be needed to secure that provision. I do, however, agree that the proposal would result in a net increase in the habitat and biodiversity value of the site and the long term management of those improved habitats. [9.63] I attach moderate weight to this environmental benefit of the proposal.

The Planning Balance

- 14.113 For the reasons already given I do not accept the Council's contention that the proposal conflicts with BDP Policy PG1 or any other development plan policy. However, if such a conflict was to be found the benefits that I have listed above are material considerations in favour of the proposal. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, I consider that these benefits would provide sufficient indication that permission should be granted notwithstanding the development plan conflict.
- 14.114 If, contrary to my finding, the SoS concludes that the Council is unable to demonstrate a 5YHLS then NPPF paragraph 11d is engaged and the tilted balance in favour of a grant of planning permission applies. My clear judgement is that the limited adverse impacts of the proposal would not significantly and

demonstrably outweigh the benefits of granting planning permission when assessed against the policies in the NPPF taken as a whole.

14.115 Under all of these scenarios I consider that the appeal proposal constitutes sustainable development having regard to paragraph 8 of the NPPF. The circumstances of this case are, therefore, quite different from those in the Oundle appeal decision and that decision does not provide any precedent for the determination of this appeal. [8.37]

14.116 Accordingly, I conclude that the appeal should be allowed and that outline planning permission should be granted on the basis of the revised proposal for the development of the site for up to 800 dwellings.

15. Inspector's Recommendations

15.1 I recommend that that appeal should be considered and determined on the basis of the amended proposal for a development of up to 800 dwellings to be developed in general accordance with the revised DF.

15.2 I recommend that, in his decision letter, the SoS should rule that the proposed obligations relating to the Additional Sports Improvement Fund Contribution and the Secondary School Contribution do not meet the relevant tests for planning obligations and are not required to render the proposal acceptable in planning terms.

15.3 I recommend that the appeal should be allowed and that outline planning permission with all matters reserved except for access, should be granted for the demolition of the club house and the development of up to 800 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure subject to the conditions in the schedule at Appendix F.

Paul Singleton

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Crean QC instructed by Kate Chorlton-City Solicitor BCC

He called:

Uyen Phan Han BSc (Hons) PG Dip MRTPI Planning Policy Manager BCC

Mark Wood BA (Hons) B.Tp PG Dip MRTPI MCILT

FOR THE APPELLANT:

Christopher Young QC and Christian Hawley of Counsel instructed by Patrick Downes-Harris Lamb

They called:

James Stacey BA (Hons) Dip TP MRTPI Tetlow King Planning

Simon Hawley BA (Hons) MA MRTPI Harris Lamb

Adrian Willet BSc (Hons) FRICS FCIH Highgate Land and Development

Simon Parfitt BA MSc CMILT David Tucker Associates

Kurt Goodman BSc (Hons) MSc MCIEEM FPCR Environment and Design Ltd

Helen Kirk Dip Arb. MARborA MICFor FPCR Environment and Design Ltd

Timothy Jackson BA (Hons) Dip LA CMLI FPCR Environment and Design Ltd

Patrick Downes BSc (Hons) MRICS Harris Lamb

INTERESTED PERSONS:

Richard Burden MP Member of Parliament for Birmingham Northfield

Councillor Oliver Armstrong BCC Councillor - Northfield Ward

John Churchman Local Resident

Gerald Kennedy Local Resident

Roger King Local Resident

Stuart Turner Local Resident

Appendix B

Five Year Housing Land Supply- Evidence and Conclusions on Identified Supply

1. In this appendix I set out the parties' evidence as to why, in their view, individual sites included within the identified sites part of the 5YHLS should either be removed or retained, together with my conclusions on these. The sites are grouped under the categories listed in the combined table of disputed sites at ID 18. For each site I set out the appellant's evidence and the Council's response followed by my conclusions. Site references are as they appear in the SHLAA and 5YHLS report together with the CD references which contain the detailed information submitted by the appellant in relation to each site. The detailed evidence on the identified sites is in the main proof and rebuttal submitted by Mr Hawley on behalf of the appellant and in Mrs Han's rebuttal (Appendix 1).

Sites Under Construction

CC220 (CD S48) Land Bounded by Priory Queensway and Chapel Street

Appellant

2. Planning permission was granted in March 2008 with 8 years for reserved matters. Phase 1 of 603 units is under construction but is at least 1 year away from completion. It is unclear whether construction can be arranged for those dwellings to be occupied prior to the completion of Phase 2. Phase 2 (223 dwellings) has not been sold to a residential developer and there is no construction contract in place. There is no evidence as to viability or when it might start to deliver dwellings. All 223 dwellings in Phase 2 should be removed from the 5 year supply.

Council

3. Phase 1 is nearing completion and Phase 2 expected to be completed within 5 years based on average build rates. Retain in supply.

Conclusion

4. The presumption that housing will be delivered within 5 years applies to all of sites in this category unless there is clear evidence to the contrary. The NPPF definition indicates that this might comprise evidence that the sites are no longer viable, there is no longer a demand for the types of units proposed, or sites have long term phasing plans. This is not an exhaustive list of examples but it is noted that the appellant's evidence does not demonstrate that any of these circumstances apply to the disputed sites in this category.
5. No contact has been made with the site owner about the sale of Phase 2 to a developer or the likely timescales for delivery of the 223 dwellings. In the absence of that detailed information it is reasonable for the Council to apply assumptions as to build-out rates where these are based on the historical delivery rate assessment set out in Appendix A5 of the SHLAA.
6. For City Centre apartment schemes of 200+ units the average build out rate indicated in Appendix A5 is 137.8 dpa. This is the rate that should be applied to this site. Construction of Phase 1 (603 units) started prior to the base date and

the parties agree that, as at September 2018, this was nearing completion. Reserved matters approval is in place for Phase 2. Even if construction of that phase is not started until April 2021 the average build-out rate suggests that the 223 units could be completed by the end of March 2023. There is ample time for Phase 2 to be sold and a construction contract to be let to achieve that outcome. I conclude that the full 826 units should be retained in the 5YHLS.

E446 (CD S50) Green Lane, Bordesley Green

Appellant

7. Permission was granted in 2010 and an extension of time was approved to October 2016. There is no publicly available information to show what works have been carried out to implement the permission or that the 7 pre-commencement conditions have been discharged. Recent photographs show no construction works underway and that the retail premises remain on the site. The site (8 dwellings) should be removed.

Council

8. Conditions on the original consent were discharged via an approval issued in October 2015. Permission was subsequently granted in June 2016 to change the proposed ground floor use from retail units to a dental surgery and minor material amendments also approved in May 2018 to changes some of the conditions. The officer reports for both these recent applications state that the permission has been implemented. Retain in supply.

Conclusion

9. Planning permission for the site's redevelopment for 8 dwellings has been implemented and remains extant. The more recent submission of minor material amendments to increase the number of dwellings and vary some planning conditions was not required to safeguard the planning permission and can be taken as an indication of the site owner's intention to carry out the development. Demolition of the existing buildings has not yet begun but the photographs do not suggest that these are occupied or in active use. There are no obvious obstacles to the redevelopment being taken forwards with 8 dwellings being delivered within the 5 year period. The site should, therefore, be retained.

N536 (CD S49) Land adj. 7 Sutton Square, Sutton Walmley & Minworth

Appellant

10. Planning permission was granted in 2013 with an expiry date of July 2016. The permission has been implemented by constructing footings but there has been no subsequent construction activity. The only evidence produced is a reference to the owner having said that construction will be completed within 2 years. The site (1 dwelling) should be removed.

Council

11. Site visit notes from housing monitoring year 2016/17 show that foundations had been put in. Officers revisited site on 19 September 2018 and the owner confirmed an intention to complete the development within 2 years. The site should be retained.

Conclusion

12. Although the officers' visit (September 2018) came after the base date it served to confirm the Council's understanding, when updating the SHLAA, that the planning permission for a single dwelling had been implemented by the construction of foundations. Although two years may have passed since those works were carried out this does not provide clear evidence that the site will not be taken forward. Indeed, the evidence from the site owner is that he intends to complete the development within 2 years. There is no evidence to justify the removal of the site from the 5YHLS

S29 (CD S46) Land adj. 163 Cole Valley Road, Hall Green South

Appellant

13. Planning permission was granted for demolition of a single dwelling and erection of 2 new dwellings in 2014. Demolition took place in 2015/16. BCC has had no contact with site owner and has no plans for a completion notice. As 2 years have passed since the demolition without any further construction activity the site (1 dwelling) should be removed.

Council

14. The existing house was demolished in 2016/16 monitoring year and permission implemented. 2 new dwellings can be implemented in 5 year period.

Conclusion

15. The planning permission granted in April 2014 has been implemented by means of the demolition of the single house on the site and remains extant. The only evidence produced by the appellant is a recent photograph that shows that no construction has yet started. That does not constitute clear evidence that the owner has no intention to redevelop the site or that there is no realistic prospect of the 2 dwellings being completed in the 5 year period. The site should be retained.

CC77 (CD S44) 70 Constitution Hill

Appellant

16. Planning permission was granted in 2013 with 3 years for the submission of reserved matters. BCC issued a Lawful Development Certificate confirming implementation of the permission in 2016 but has no other information. There is no construction activity on the site and no contact has been made with the owner. The site (109 dwellings) should be removed.

Council

17. A Lawful Development Certificate (LDC) granted in March 2017 confirms that the planning permission has been lawfully implemented. Retain in supply.

Conclusion

18. The LDC confirms that the planning permission for 109 dwellings was implemented before the April 2016 expiry date and remains extant. For this to have been issued the Council would need to have been satisfied that the pre-commencement conditions had been discharged. Given the number and nature

of those conditions this would have required a significant investment of time and cost on the site owner's part. Although no further construction activity appears to have taken place that does not constitute clear evidence that the owner has no intention to redevelop the site in accordance with that permission.

19. Applying the Council's average annual build rate or 92.3 dpa for City Centre apartment scheme of 100-200 units the 109 dwellings could be completed within 1 year. There is ample time for the development to be built out and the 109 dwellings to be completed within the 5 year period. The site should be retained.

Sites with Detailed Planning Permission

CC263 (CD S1) 45-51 Holloway Head, Ladywood

Appellant

20. Planning permission expires on 23 December 2018. Partial demolition has taken place but the site is boarded up with no sign of construction activity. BCC's evidence confirms that a number of the 21 pre-commencement conditions have yet to be discharged. Condition 1 requires a contamination assessment and a remediation scheme to be approved. BCC accepts that this goes to the question of viability but has not contacted the owner to ascertain the timescale for the delivery of the dwellings. Mr Hawley's appendix 7 shows that the sale of the site to the developer was delayed. The site (484 dwellings) should be removed.

Council

21. An application was made in August 2018 to vary planning conditions 9 & 11 and an application made in September 2018 to discharge condition 17 but there are other pre-commencement conditions still to be discharged. Retain in supply.

Conclusion

22. A large number of pre-commencement conditions were attached to the full permission but it is not unusual for the details needed to discharge such conditions to be submitted many months after permission has been granted particularly where the site is being sold on to a developer. At the 5YHLS base date, 9 months were available for those conditions to be discharged and a commencement made on site before the 3 year deadline of 22 December 2018. Given that time window it was reasonable for the Council to assume that the permission could lawfully be implemented.
23. Mrs Han's rebuttal evidence shows that applications for the discharge of pre-commencement conditions have subsequently been made. Her supplementary note at ID32 confirms that there no details still required to discharge the 21 pre-commencement conditions. Although this information was provided after the base date it serves to support the reasonableness of the Council's underlying assumption, in including the site in the 5YHLS, that the permission would be implemented by the 3 year deadline.
24. Given the number and nature of pre-commencement conditions the preparation and submission of this information will have required a significant investment of time and cost on the applicant's part. This can be taken as indicating an intention to implement the permission. If the conditions are discharged and a

commencement is made by 22 December there would be more than 4 years remaining to achieve the 484 completions which the 5YHLS assumes.

25. Although no trajectory has been provided by the site owner this rate of delivery is achievable having regard to the Council's historic average build out rate of 137.8 dpa on City Centre apartment schemes of 200+ units. Although the sale to a developer was not due to be completed until 31 July 2018 the fact that this has been progressed should increase rather than decrease confidence that the completions will be delivered within the 5 year period. The site should be retained.

CC379 (CD S5) Legge Lane/ Camden Street, Soho & Jewellery Quarter

Appellant

26. Planning permission expires on 23 December 2018. An application for discharge of some pre-commencement conditions (1, 3, 4, 12, 13 & 17) is due to be determined by 24 October but a further 11 pre-commencement conditions yet to be discharged. There is no evidence as to who the intended developer is and BCC has had no contact with the site owner regarding timescales for delivery. The site (100 dwellings) should be removed.

Council

27. An application for discharge of conditions was made in time to enable commencement before December expiry of permission. Retain in supply.

Conclusion

28. As at the base date of 1 April 2018, there were nearly 9 months remaining for the pre-commencement conditions to be discharged and a commencement to be made before the expiry date of 23 December 2018. As with the previous site, it was reasonable for the Council to assume that the permission would lawfully be implemented. A subsequent application for the discharge of pre-commencement conditions can be interpreted as a statement of intent that the permission will be implemented.
29. I accept the appellant's evidence that this application does not cover all of the pre-commencement conditions on the permission. However, I do not consider that the remaining conditions are ones which are overly complex or which are likely to require a substantial amount of work in preparing the necessary information. The appellant has not produced clear evidence to show that there is no realistic prospect that the 100 dwellings assumed in the 5YHLS will not be delivered. The site should, therefore, be retained.

CC381 (CD S7) BOERM Phase 2 & 3 Digbeth Park/ Park Street, Bordesley & Highgate

Appellant

30. Planning permission is due to expire on 8 January 2019. An application has been made to discharge some of the conditions but there is no evidence that this covers all pre-commencement conditions or that these have been discharged. The owner appears to be an off-shore Special Purpose Vehicle with no evidence of a residential developer involvement. No contact has been made with owner regarding delivery timescales. The site (198 dwellings) should be removed.

Council

31. Discharge of conditions 1 & 19 was approved June 2017. An application for variation of some conditions was approved in July 2018 and a current application for discharged of conditions is likely to be determined by early November. These recent applications suggest a commitment to implement the permission.

Conclusion

32. The permission is not due to expire until 9 January 2019. At the base date, 2 pre-commencement conditions had been discharged and 9 months remained available to secure the discharge of other pre-commencement conditions and to make a start on site. It was reasonable for the Council to assume that these things would occur over that period. The subsequent application to discharge other pre-commencement conditions indicates an intention that the permission will be implemented. The remaining pre-commencement conditions are not ones which require extensive information to be submitted to secure their discharge.
33. I do not consider that the appellant has produced clear evidence to show that there is no realistic prospect that the 198 dwellings assumed in the 5YHLS will not be delivered. The site should, therefore, be retained.

Small Sites

Appellant

34. There are numerous small sites with planning permission due to expire shortly after the 1 April 2018 base date. At that date there was no evidence that pre-commencement conditions on these had been discharged or of construction activity on site. BCC included them notwithstanding that, in some cases, permission was due to expire only a few weeks after the base date. These 10 sites account for 18 dwellings. Site E740 (CD S12) only has planning permission for a change of use to B2/B8 but had also been included in the 5YHLS with an anticipated contribution of 37 dwellings. These should be deleted.

Council

35. The base date is 1 April 2018 so sites with consent that has not expired before that date should be included. If sites where permission has subsequently expired are now to be removed then BCC should be able to add new sites on which planning permission has been granted after the base date. However the Council accepts the deletion of Site N815 for 2 dwellings as this permission expired on 1 April.

Conclusion

36. These sites do not comprise major development and, under the NPPF definition, benefit from the presumption that the homes which have been permitted will be delivered unless there is clear evidence to the contrary. On this basis it was reasonable for the Council to include them in the 5YHLS unless the permission had expired at the 31 March cut-off date.
37. The Council accepts that the permission on some of the sites has expired after 1 April. However, as there is no opportunity to add sites on which planning permission is granted after the 31 March it is necessary to adhere to that cut-off to provide consistency in the assessment. I see no justification for removing any

of the small sites other than N815 which has already been reflected in the Council's revised figures.

Sites with Outline Planning Permission

E101 (CD S25) The Comet PH, Collingbourn Avenue, Bromford & Hodge Hill

Appellant

38. BCC accepts that it carries the burden of proof in relation to these sites but its evidence is no more detailed than for the other categories of site. Neither has more detailed information been provided in the Council's rebuttal. The appellant maintains, in respect of all of the disputed sites in this category, that the existence of outline permission alone does not constitute clear evidence that housing completions will take place within 5 years
39. Outline permission was granted in 2017 and no reserved matters application yet made. An application for a reduced number of dwellings (20 instead of 27) was made after the base date but there is no information from the developer and no SoCG in place. The site (29 dwellings) should be removed.

Council

40. There is a current application for a revised scheme of 20 dwellings. The site should be retained in the supply but number of dwellings should be reduced from 29 to 20.

Conclusion

41. Sites with outline planning permission do not benefit from the presumption that the housing permitted on them will be delivered within 5 years under the revised definition. Because they still have to go through or complete the planning approval process there is no underlying assumption that development will commence in 3 years. Clear evidence is required to show that the housing completions will actually be delivered within the 5 year period. PPG provides examples of what that clear evidence might comprise.
42. In respect of this site no reserved matters application had been made at the base date. The site pro-forma provides no information about what progress had been made towards making such an application. No other information was available as to likely lead-in times and build-out rates. The Council accepts that the subsequent submission of a full application for a revised scheme of 20 dwellings means that the number of dwellings assumed in the 5YHLS should be reduced. As that application was made after the base date it cannot be relied upon as clear evidence that the dwellings assumed in the 5YHLS will actually be delivered. For these reasons I consider that the site and the full 29 dwelling contribution should be removed.

E379 (CD S26) Nocks Brickworks, Holly Lane, Erdington

Appellant

43. Outline planning permission was granted in 2013. A reserved matters application was submitted in 2017 but remains undetermined. Persimmon does not intend to rely upon the outline permission but no new application has been made and

contamination issues may affect viability. BCC accept that it is difficult to say when completions will occur. The site (50 dwellings) should be removed.

Council

44. An EIA screening opinion was issued in July 2018 and a full application including works for remediation of the site is to be submitted. Due to scale of remediation needed BCC proposes that yield within 5 year period be reduced to 50 dwellings.

Conclusion

45. A reserved matters application was submitted in January 2017 and the site pro-forma records that, at the base date, this application was under consideration. The fact that it had been in for over a year suggests that there were key issues to be resolved but the site-pro forma records that a remediation strategy was being agreed. There was, therefore, evidence of some progress with regard to the reserved matters and, on this basis, the inclusion of 100 of the total 200 dwellings proposed on the site within the 5YHLS was not an unreasonable assumption.
46. Given the issue of a screening opinion in July, it seems that discussions were ongoing at the base date and that Persimmon have subsequently taken the decision to submit a new full application rather than pursue the reserved matters approval. That application was submitted after the base date but that does not, in my view, call into question the Council's reliance on the progress that had been made in relation to the reserved matters application at the base date. Based on the discussions about contamination, the Council proposes that the assumed contribution within the 5 year period should be reduced from 100 to 50. I accept that amendment but see no justification for removing the site in its entirety.

N14 (CD S27) Old Oscott Hill, Oscott

Appellant

47. Outline permission was granted in 2016 with an expiry of 2021. The site largely comprises a former orchard to a former convent. The application was made by the Archdiocese. There is no evidence of a residential developer involvement or about timescales for delivery. BCC accepts that it relies on the outline permission to justify its inclusion. The site (14 dwellings) should be removed.

Council

48. BCC accepts that no reserved matters application has been made. As the outline permission does not expire until June 2021 there is still 2 years for reserved matters approval and construction of the 14 dwellings.

Conclusion

49. It is clear from Mrs Han's written and oral evidence that the Council relies on the existence of the outline planning permission to justify this site's inclusion in the 5YHLS. No reserved matters applications have been submitted and BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence in respect

of these sites falls short of what is required under the new definition. There is accordingly a justification for the removal of the site.

E799 (CD S28) 89 Coleshill Road, Bromford & Hodge Hill

Appellant

50. Outline permission was granted in 2016 and no reserved matters application has been made. There is no evidence of a residential developer involvement or of timescales for delivery. No SoCG. An additional full permission has been granted but this was after the base date. The site (33 dwellings) should be removed.

Council

51. A full application was submitted on 2 March 2018 and approved on 6 June 2018 for 33 dwellings. The site should be retained.

Conclusion

52. The site has outline planning permission which expires in November 2019. No reserved matters application had been made but a full application for 33 dwellings had been submitted before the base date. There may be a number of reasons why the applicant decided to make a full rather than a reserved matters application but, given that it proposes the same number of dwellings, that submission demonstrates good progress towards securing the delivery of that number of homes on the site.

53. As that application was not approved until after the base date the site is correctly recorded within the outline permissions category but that does, not in my view, call into question the assumptions made in the 5YHLS about the deliverability of the 33 dwelling contribution within the 5 year period. The site should, therefore, be retained in the supply

N856 (CD S29) 38 Heath Street South, North Edgbaston

Appellant

54. Outline permission was granted in December 2015 for 504 dwellings but there is no reserved matters application. BCC states that a new application for 750 dwellings is expected but this information was provided after the base date. Reliance was placed on a Planning Performance Agreement (PPA) that was not before the Inquiry. There is no evidence that a new application will be made, what timescales and conditions might be attached to any new permission, or of likely timescales for delivery. Its inclusion is not supported by evidence that completions will take place within 5 years and all 150 dwellings should be removed.

Council

55. A PPA has been agreed for a mixed use development of the site including 750 dwellings. Public consultation was carried out in April and a full application is expected in late 2018. Based on average build out rates the completion of 150 dwellings on the site is achievable within 2-3 years. There is, therefore, ample time remaining for the submission and approval of full application to enable these completions to be achieved.

Conclusion

56. Outline permission for a mixed use development including 504 dwellings was granted in 2015. The 3 year deadline for submission of reserved matters is 23 December 2018 and no application had been made as at the base date. However, the SHLAA pro-forma records that the Council had information from the new owners of their intention to develop the whole site for housing. It states that pre-application discussions were ongoing and that an application was expected in autumn 2018. The pro-forma indicates a total site capacity of 700 dwellings and the 5YHLS assumes that 150 will be completed within the 5 year period.
57. Given that the principle of residential use had already been established it was reasonable for the Council to include the site in the 5YHLS with 150 dwellings expected to be delivered within the 5 year period. The discussions as to the making of a new application in place of a reserved matters provided the Council will information as to the progress being made towards delivery and the subsequent signing of a PPA and confirmation that public consultation about the revised proposal was carried out in April 2008 confirms the reasonableness of the Council's judgment.
58. As no new permission is yet in place the site is rightly included within the outline permissions category of sites. The fact that a new application is now to be made in place of a reserved matters submission does, not in my view, call into question the assumptions made in the 5YHLS about the deliverability of the 150 dwelling contribution within the 5 year period. The site should be retained in the supply.

S10 (CD S30) Selly Oak Hospital, Selly Oak

Appellant

59. Outline permission granted in October 2013. A reserved matters application submitted in September 2018 remains undetermined and it cannot, at this stage, be certain that it will be approved. BCC is unable to identify a developer involvement and there is no information from the landowner on likely timescales for delivery and no SoCG. The site (153 dwellings) should be removed.

Council

60. This is the balance of an outline consent with the rest of the site either completed or under construction. A reserved matters application was submitted on 10 September 2018. The site should be retained.

Conclusion

61. The site forms part of a larger site on which outline planning permission was granted in October 2013 for a mixed use development including up to 650 dwellings with a reserved matters deadline of October 2023. The majority of those dwellings had been completed or were under construction at the base date and the 150 units included in the 5YHLS is the remaining balance of that outline consent. Although no reserved matters application for these units had been submitted as at the base date the SHLAA pro-forma records that discussions were ongoing with the developers to bring the site forward.

62. The pro-forma does not indicate what information the Council had gleaned from its discussions about the likely timescale for making a reserved matters application and, in that sense, the SHLAA is not as transparent as it could be. However, the note does not indicate any concern that a reserved matters application would not be made in time to deliver the 150 units within the 5 year timescale. Given that some 500 dwellings had already been brought forward on the site I do not consider it unreasonable that the balance of the dwellings were included in the 5YHLS on this basis. The subsequent submission, after the base date, of a reserved matters application in September 2018 confirms that the Council's assumptions were reasonable. The site should be retained.

S889 (CD S31) Land at Monmouth Road, Della Drive and Penrith Croft, Bartley Green

Appellant

63. There is existing outline permission but a new application was lodged by Birmingham Municipal Housing Trust (BMHT), after the base date, for detailed planning permission. It is not known whether there are any objections or if it will be approved. Other than its inclusion in the single page spreadsheet showing BMHT's 5 year programme of sites (Appendix 8 to Mrs Han's rebuttal proof) there is no evidence as to the timeframe for delivery of housing on the site or whether there are any site constraints. This is of particular concern given that BMHT is part of the Council and that checks could easily have been made. The site (77 dwellings) should be removed.

Council

64. BMHT made a full application for 77 dwellings in August 2018. The site should be retained.

Conclusion

65. Outline permission for 80 dwellings was granted in August 2016 with a 3 year period for submission of reserved matters. No reserved matters application had been made by the base date. The SHLAA pro-forma states that the site is in BMHT's five year programme but gives no information as to any discussions that the planning officers have had with BMHT or any indication of when a reserved matters application might be made.

66. The BMHT future programme is a single page spreadsheet which provides very limited information about site constraints and no information about when planning or reserved matters applications are likely to be made. The final column is headed 'start on site' with indicated dates of 18/19, 19/20 and 20/21. This shows that some sites predicted to start in 18/19 are still at 'site identification' stage and that the vast majority in the 19/20 start date category are at 'site analysis' or 'site identification' stage. There is no explanation in the schedule as to what these terms mean and Mrs Han was unable to provide any information even as to what is meant by a 'start on site' in the schedule.

67. Based on the very limited information available it is difficult to avoid the conclusion that, other than for the sites already under construction or at tender stage, the start dates set out are aspirational. They appear not to be supported by any detailed analysis of what the lead-in times or build-out rates that might realistically be on what is a very wide range of site types and sizes. In my view this falls short of the clear evidence now required that there is a realistic prospect

that housing completion will be delivered on the site within the 5 year period. On the basis of this evidence the site should not have been included in the 5YHLS and should be removed. I note that an application was made in August 2018 but this was submitted after the base date. I can see no evidence that those preparing the 5YHLS were aware that this was likely to be submitted during 2018.

S992 (CD S32) Hall Green Stadium

Appellant

68. There is no evidence, other than the existence of the outline permission, to demonstrate that completions will be delivered with 5 years. Information that a reserved matters application was reported to Committee in September 2018 came after the base date. There is no information on site constraints or delivery timescales and no SoCG. The site (150 dwellings) should be removed.

Council

69. A reserved matters application is due to be reported to Planning Committee on 27 September with a recommendation for approval. The site should be retained.

Conclusion

70. The SHLAA pro-forma records that a reserved matter application had been made by the base date. This would have provided officers with clear evidence that there is a realistic prospect that the assumed contribution of 150 dwellings will be completed within the 5 year period. The site should be retained.

S935 (CD S33) 6 Selly Hill Road, Bournbrook & Selly Park

Appellant

71. The outline permission expires in March 2021 and no reserved matters application has been made. There is no evidence of developer involvement, no information from the owner on delivery and no SoCG. The site (10 dwellings) should be removed.

Council

72. The outline permission does not expire until March 2021 so there is time for the site to be developed out to provide 10 dwellings.

Conclusion

73. The Council relies on the existence of the outline planning permission to justify the site's inclusion in the 5YHLS. No reserved matters application has been submitted and BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence in respect falls short of what is required under the new definition. There is accordingly a justification for the removal of the site

E787 (CD S34) Elite House, 95 Stockfield Road, Tyseley & Hay Mills

Appellant

74. An outline permission for a second floor extension expires in 2020 with conversion of the existing building included under permitted development rights. Recent photographs show the building comprises vacant offices. There is no evidence of developer involvement, no information from the landowner on delivery timescales and no SoCG. The site (14 dwellings) should be removed.

Council

75. The outline consent does not expire until July 2020 leaving ample time for a reserved matters approval and implementation to deliver the 14 dwellings.

Conclusion

76. The Council relies on the existence of the outline planning permission to justify the site's inclusion in the 5YHLS. No reserved matters application has been submitted. BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence falls short of what is required under the new definition. There is a justification for the removal of the site.

Permitted Development Sites

Appellant

77. In respect of these sites the Council considers that the onus lies with the appellant to provide evidence why they should be discounted but the appellant disagrees. The Framework and PPG are silent on this question but securing Prior Approval for permitted development rights requires little time, investment or effort. It is good practice, when managing assets, to secure such approvals for conversion to residential use as this may provide options for the future and increase the value of the asset. Also there is no requirement to do anything further once Prior Approval has been obtained. This increases the need for the Council to check whether they are likely to deliver any housing.
78. BCC includes these sites up to the expiry of the Prior Approval even though the relevant permitted development rights require that the conversion works are completed within 3 years. No prudent developer would leave implementation towards the end of their 3 year life as if the works or not completed by the 3 year deadline the benefit of the Prior Approval falls away. It is inappropriate for BCC to rely upon the full 3 year life of Prior Approvals granted on such sites.
79. There are 9 sites with a combined yield of 575 dwellings which the appellant argues should be removed from the 5YHLS. The reasons include that the buildings are still in occupation and, in some cases, are being actively marketed for office use, no evidence of a residential developer involvement, no information from the owner re delivery timescales and no SoCG.

Council

80. The shortest expiry date of the disputed sites is 1 June 2019 leaving 9 months from now (September 2018) for the works to be completed. All other sites have between 1 and 2.5 years left. All sites should remain in the supply.

Conclusion

81. For the reasons already set out, my view is that sites with Prior Approvals for conversion to residential use under permitted development rights benefit from the NPPF presumption that the units proposed will be delivered unless there is clear evidence to the contrary. I do, however, accept the appellant's argument that it is not realistic for the Council to apply that presumption up until the date that the Prior Approval expires because the standard conditions within the Town & Country Planning (General Permitted Development) (England) Order 2015 require that the works must be completed within 3 years of the date of prior approval date. Hence, there is a need to build in some time allowance for the works to be carried out when considering whether or not there is a realistic prospect that the dwellings will be completed.
82. There is no guidance as to what cut-off date might be used to reflect this key difference between sites with prior approval and those with detailed planning permission. The scale of the projects in this category is likely to vary quite widely but, as a general guide, it might be reasonable to assume a minimum 3 month period for the completion of works to convert an office or industrial premises to residential use. If that is applied to this category of sites in the 5YHLS, any sites with a prior approval due to expire within 3 months of the 31 March cut-off date (i.e. before 30 June 2018) would not be included in the 5 year supply.
83. I acknowledge that my 3 month period is an arbitrary judgement as to what period should be allowed. However, even if a 6 month period (which would be generous for many of the smaller schemes) was adopted there would be no justification for excluding any of the disputed sites from the 5YHLS. The earliest expiry date of any of the prior approvals is June 2019 (Site E769). Most of the sites have considerably longer periods available for the works to be completed. None of these sites should, therefore, be removed.

Allocated Sites

E106- E111 inclusive, E485, E487 & E489 (CD S52-S60 inclusive)

Appellant

84. These sites are located in close proximity to one another on the Bromford Estate. There are all in Flood Zone 3. The SHLAA states that discussions re flood risk measures are ongoing but there is no information as to what these might comprise, whether funding is needed and whether they pose a risk to viability and delivery. Some of the sites fall within the BDP's definition of open space and there may be policy hurdles to be overcome. As they are in BMHT's programme it is likely that they would be built out in series rather than in parallel so the overall build-out time is likely to be extended.

Council

85. These are in the BMHT 5 year programme with a start date of 2019/20 giving 3 years for the 160 dwellings to be completed. This is achievable given BMHT's historic delivery rates.

Conclusion

86. No planning applications have been submitted in relation to any of these sites and the SHLAA pro-forma sheets give no indication as to when applications might be made. In all cases it appears that the Council has relied upon their inclusion in the BMHT 5 year programme to justify their inclusion in the 5YHLS. I do not consider that the BMHT schedule provides any confidence that the start dates indicated will be met. It provides no information as to realistic lead-in times and build-out rates for each of these sites.

87. This is particularly important in respect of 6 of the sites (E106-E11) for which the pro-forma sheets indicate that discussions are ongoing about flood mitigation measures. Neither those sheets nor the BMHT schedule provide any information as to the nature and scale of the issues or what implications this might have for viability and lead-in times.

88. The SHLAA notes that site E485 is designated as public open space but gives no indication as to the loss of this open space is to be dealt with in policy terms.

89. When preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. Whilst BMHT may have a track record of delivery that does not provide sufficient confidence about the deliverability of housing on the individual sites within the 5YHLS as required by the NPPF. All of these sites and their combined contribution of 160 dwellings should be removed from the supply.

E61 (CD S51) Yardley Brook, Colehill Lane, Glebe Farm & Tile Cross

Appellant

90. This is a former sewage works with significant contamination issues and no planning permission. BCC's best evidence is that a start is expected sometime next year. The BMHT schedule gives only an indicative start date and there is no project update re progress dealing with the contamination or preparing an application. Mr Hawley's evidence identifies a number of detailed issues relating to contamination, securing EA approval for any remediation works, undertaking habitat and other surveys and securing agreement with National Grid to work adjacent to a 132Kv cable as well as the procurement of a developer for the scheme. The site (100 dwellings) should be removed.

Council

91. The site is in the BMHT 5 year programme with a start date of 2020/21 which gives 3 years for the completion of the 160 dwellings. This is achievable based on BMHT's historic delivery rates.

Conclusion

92. No planning application has been submitted and the SHLAA pro-forma gives no indication as to when applications might be made. As for the 9 sites above it

seems that the Council has relied upon their inclusion in the BMHT 5 year programme to justify their inclusion in the 5YHLS.

93. The pro-forma notes that this is a former sewage works and refers to HCA funding for remediation. No further information is available on the nature and extent of the works or the implications for lead-in time before a start can be made and in cross-examination Mrs Han accepted that there is no real evidence that the proposed dwellings can be delivered on this site within 5 years.
94. I consider that, when preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. The site should be removed from the supply.

E768 (CD S61) Highgate Road, Sparkbrook

Appellant

95. This is allocated in a Neighbourhood Development Plan which says that a development brief is to be prepared but that has not yet been done. BCC accepts that neighbourhood plan allocations do not require consideration of viability or deliverability and there is no evidence on its viability. The site is listed in the BMHT schedule as being at site identification stage. The site (45 dwellings) should be removed.

Council

96. The site is in the BMHT 5 year programme with a start date of 2019/20 and should be retained in the supply.

Conclusion

97. No planning application has been submitted and the SHLAA pro-forma gives no indication as to when an application might be made. It is reasonable to presume that this can only be done after the development brief has been prepared and approved if this is intended to guide the development proposals. The pro-forma indicates that the site comprised open space but that improved open space is to be provided on site.
98. The Council has relied upon its inclusion in the BMHT 5 year programme to justify its inclusion in the 5YHLS. I consider that, when preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. The site should be removed from the supply.

N814 (CD S62) Former Birchfield Library, Alston

Appellant

99. The site is partly BCC owned but a compulsory purchase order and HIF funding are needed. The outcome of these cannot be guaranteed. If the scheme is being used for the Common Wealth Games it could not be available for general residential use until after summer 2022. It is not known what works might be needed to convert the units for general residential use. The site (50 dwellings) should be removed.

Council

100. The CPO is needed to address rights that tenants may have had over the land. Existing tenants are to be served notice in December 2018 to vacate and the site will be available in mid-2019. HIF funding bid is due in last week of September or first week of October 2018. The site is part of the Perry Barr redevelopment for Commonwealth Games.

Conclusion

101. The SHLAA pro-forma includes no information as to when an application might be expected. Although it refers to the need for HIF funding and a CPO to complete the land assembly there is no information as to how long these procedures might take or how they might impact on lead-in times. A favourable outcome cannot be assured in respect of either of these two actions but the Council appears not to have given any consideration to the associated risks to delivery.

102. Although not referenced in the SHLAA pro-forma, Mrs Han's rebuttal evidence revealed that the 50 dwellings are proposed as part of the Perry Barr redevelopment for the Commonwealth Games in the summer of 2022. Given that critical deadline, it might be expected that the Council would have produced a detailed programme for progressing the site through the funding bid, CPO, design, planning and construction phases but no information was submitted as to that detailed programme. Similarly, there is no information as to what works might be required after the completion of the Games to make the dwellings available for general use so that they do contribute to meeting the City's general housing requirements.

103. Where risk factors such as these are known about this increases the need for the Council to show clear evidence that there is a realistic prospect of housing delivery on the site. Such evidence was not available to officers when preparing the 5YHLS and no new information has subsequently been provided to demonstrate that a realistic prospect of delivery exists. The site should be removed from the supply.

Other Opportunity Sites

E594 (CD S64) Hallmoor School, Glebe Farm & Tile Cross

E860 (CD S66) Lyndhurst Estate Phases 3 & 4 Erdington

E866 (CD S67) Gressel Lane, Glebe Farm & Tile Cross

S975 (CD S71) Highfield Lane/ Woodridge Avenue, Quinton

S977 (CD S72) Long Nuke Road Recreation Ground, Barley Green

Appellant

104. No planning applications have been made on any of these sites. There is no information as to when an application might be made and none on lead-in times and build out rates. Inclusion in the BMHT programme is not evidence of delivery and the sites are indicated in that schedule as being only at site identification or site analysis stage. No builder is in place. Other site specific constraints are noted in the SHLAA pro-forma.

105. In relation to E594 and E680 the pro-forma says that the site access solution is unknown. S975 and S977 were last used as a playing fields/ recreation ground so policy hurdles are likely. All the sites should be deleted.

Council

106. The sites are in the BMHT schedule with a start in 2019/20 and should be retained. The expected contribution for E860 should, however, be reduced from 54 to 20.

Conclusion

107. These 'other opportunity' sites fall outside of the NPPF definition of deliverable but all of the sites would comprise proposals for major development (10 or more houses) that did not have planning permission at the base date. For that reason they do not benefit from the presumption that the housing completions will be delivered within the 5 year period and are more akin to allocations in this respect. The burden of proof to demonstrate that housing completions will be secured within 5 years should, accordingly, rest with the Council.

108. For each of these sites the SHLAA pro-forma provides no indication as to when an application might be made or on lead-in times or build-out rates. The Council has relied upon their inclusion in the BMHT programme. I do not consider this sufficient to provide the clear evidence needed to show that there is a realistic prospect of the dwellings being delivered. The sites should be removed from the supply.

E808 (CD S65) Greenwood Academy, Farnborough Road, Castle Vale

Appellant

109. A planning application has been made but its outcome is unknown. There is no direct evidence on constraints, viability or timescales. The site (124 dwellings) should be removed.

Council

110. The site is in the BMHT schedule with a start in 2018/19 and should be retained.

Conclusion

111. The SHLAA pro-forma records that a planning application had been submitted by the base date. This would have provided sufficient evidence that BMHT's anticipated start date of 2018/19 could be achieved and that there is a realistic prospect that the 124 unit dwelling contribution from this site can be completed within the 5 year period. The site should be retained in the supply.

N493 (CD S68) Crown & Cushion, Birchfield

Appellant

112. A previous planning permission has expired and there is no indication of when a new application might be made. The site requires both a compulsory purchase order and a HIF funding bid. No direct evidence on constraints, viability or timescales. The site (100 dwellings) should be removed.

Council

113. A decision on the HIF bid is due any time. The site should be retained.

Conclusion

114. This is another site that is related to the Commonwealth Games in 2022 but where there appears to be no detailed programme available to show how its delivery can be secured. The pro-forma notes the need for a CPO to complete land assembly and for HIF funding but no timescale is indicated as to when these processes might be completed. A favourable outcome cannot be guaranteed in relation to either of these actions but there is no assessment of what risks this might pose to delivery.

115. The rebuttal evidence indicates that a decision on the HIF bid was expected in late September or early October. Not only was that information not apparently available at the base date but the outcome of that application was not made known to the Inquiry. The Council did not have the clear evidence required in relation to this site and it should be deleted from the 5YHLS.

N903 (CD S69) Leslie Road Depot, Birchfield

Appellant

116. There is no planning permission or application and the development requires HIF funding. There is no direct evidence on constraints, viability or timescales. The site (15 dwellings) should be removed.

Council

117. The site was included as a BMHT site in error. A decision on the HIF bid is expected shortly.

Conclusion

118. This is a Council owned site. Although the pro-forma records the need for a HIF bid it includes no information as to what risks the need for funding might pose to the delivery of the site or about when a planning application might be made. As with the previous site I consider that, when preparing the 5YHLS, the Council did not have the clear evidence required in relation to this site and that it should be removed.

S160 (CD S70) Land to rear of 15-87 Cateswell Road, Hall Green North

Appellant

119. There is no planning permission or application. There is no direct evidence on constraints, viability or timescales. The only supporting evidence is a recent email from Homes England who control the site stating that an application is to be made in late September or early October 2018. This was received after the base date. The site (89 dwellings) should be removed.

Council

120. An email from Homes England states that an application is to be made in late September or early October 2018 and that a start on site is expected in 2019. The site should be retained.

Conclusion

121. No application had been submitted at the base date but the SHLAA pro-forma records that pre-application discussions had been held, that the site had been cleared and that remediation works were underway. Although it does not indicate a date when an application might be expected it is reasonable to conclude that the information that officers did have gave them confidence that one would be submitted sufficiently early to enable the 89 dwellings to be completed within the year period. The subsequent confirmation from Homes England that an application is being prepared and a start of site is to be made in 2019 confirms the reasonableness of the Council's assumptions.
122. The pro-forma could usefully have provided more detail as what information officers had obtained from the pre-application discussions. I am satisfied that the Council had sufficient evidence that progress was being made both with regard to preparing an application and in preparing the site for construction works to take place. The site should accordingly be retained in the 5YHLS.

Conclusion

S978 (CD S73) Edgbaston Cricket Ground

Appellant

123. An extant planning permission is not being relied on as a new application was submitted after the base date. The scheme proposes parking levels substantially below the standard for the 'least accessible' zone in the Car Parking Guidelines SPD. There is no direct evidence as to timescales, constraints or viability. This site (100 dwellings) should be removed.

Council

124. BCC's parking standards are maxima so lower levels can be agreed. The current scheme has been subject to pre-application discussions that have informed the submission. There is also a partially implemented permission for residential development which still be completed should the developer choose. The site should be retained.

Conclusion

125. Although no planning application had been submitted at the base date the pro-forma records that pre-application discussions and public consultation had taken place with regard to the residential development proposals. The note also records that previously approved and commenced developments on other parts of the site will not now be carried out. Again, although it does not indicate a date when an application might be expected, it is reasonable to conclude that the information that officers did have gave them confidence that one would be submitted sufficiently early to enable the 100 dwellings to be completed within the year period. The subsequent submission of an application after the base date confirms the reasonableness of the Council's assumptions.
126. I note the appellant's comments about the level of parking proposed in the application and the Council's response that the standards in the Car Parking Guidelines SPD are maxima and that lower levels can be accepted. Planning permission has yet to be granted but the Council has confirmed that parking

provision was discussed in the pre-application meetings and it is reasonable to assume that there is some level of agreement on the appropriate level of provision. I do not consider that this issue is likely to present a significant obstacle to the delivery of the 100 dwellings assumed in the 5 year period. The site should, therefore, be retained in the supply.

Summary

127. On the basis of the above conclusions I find that there is justification to remove a number of dwellings from the Council's claimed 5YHLS as set out below:

Sites with outline planning permission:	- 145 dwellings.
Allocated Sites:	- 355 dwellings.
Other Opportunity Sites:	- 347 dwellings.
Total Deductions:	- 847 dwellings.

Appendix C

INQUIRY DOCUMENTS

- ID1 Inspector's Pre-Inquiry Note
- ID2 BCC Solicitor's Letter re Appellant's evidence dated 19.09.18
- ID3 Opinion of Christopher Young QC re evidence dated 26.09.18
- ID4 Opinion of Christopher Young QC re EIA dated 28.09.18
- ID5 BCC letter re S106 Agreement dated 27.09.18
- ID6 BCC CIL Compliance Statement dated 20.09.18
- ID7 Gowling WLG letter re S106 Agreement dated 28.09.18
- ID8 Schedule of draft planning conditions
- ID9 Appeal Decision Reference APP/W3520/W/18/3194926 dated 29.09.18
- ID10 Appellant's Opening Submissions
- ID11 Signed SoCG (general matters) dated 03.10.18
- ID12 Roger King – text of representations
- ID13 Gerald Kennedy – text of representations
- ID14 John Churchman - text of representations
- ID15 Richard Burden MP - text of representations
- ID16 Signed SoCG (Transport) dated 01.10.18
- ID17 Extract from Footnote 11 to NPPF 2012 re "deliverability"
- ID18 5YHL Table of Disputed Sites – Council and Appellant comments combined
- ID19 Mr Parfitt's written response to 3rd party & WMAS highway concerns
- ID20 Mrs Kirk's response to Inspector's Pre-Inquiry Note
- ID21 Mrs Kirk's response to 3rd party representations
- ID22 Mr Jackson's ES LVIA Update in relation to the revised IDF
- ID23 Mr Goodman's response to 3rd party representations
- ID24 Draft (1) Section 106 Agreement
- ID25 Summary of Draft Section 106 Agreement
- ID26 S106 Table of Obligations
- ID27 Draft Unilateral Agreement
- ID28 Summary of Draft Unilateral Agreement
- ID29 Statement of Errata to Mr Downes main Proof of Evidence
- ID30 Extract from 2017 SHLAA
- ID31 Extract from BDP Examining Inspector's Report concerning MM62
- ID32 BCC note re pre-commencement planning conditions - SHLAA site Ref CC263
- ID33 Extract from BCC report on Greenbelt Housing Delivery Options January 2013
- ID34 Extract from 2014 SHLAA
- ID35 Extract from 2014 5YHLS report
- ID36 Appellant's proposed Housing Trajectory for the appeal scheme
- ID37 Mr Hunter's Rebuttal Proof re Education contributions
- ID38 Email correspondence between BCC and DfE dated 05.10.18
- ID39 BCC written response to B&BCWT objection
- ID40 Mrs Han email re numbers on BCC Housing Register as at 15.10.18
- ID41 Updated Trajectory for housing delivery at Langley SUE (as at June 2018)
- ID42 Decision Letter re Appeal Ref APP/W1715/W/15/3130073 dated 30.11.16
- ID43 Combined table showing appeal scheme housing trajectory and available secondary school places
- ID44 Email correspondence between BCC and DfE dated 16.10.19
- ID45 Council's Closing Submissions
- ID46 Appellant's Closing Submissions
- ID47 Signed Section 106 Agreement

Appendix D

CORE DOCUMENTS

Planning Policy

- A1 NPPF 2018
- A2 National Planning Policy Guidance (NPPG)
- A3 Birmingham Development Plan (BDP)
- A4 Saved Policies UDP 2005

- B4 Mature Suburbs SPD

High Court and Supreme Court Cases

- C1 Judgment on the Suffolk Coastal District Council and Richborough cases.
- C2 St Modwen v Secretary of State for Communities and Local Government and East Riding of Yorkshire Council [2017]

Appeal Cases

- D1 Land off Barn Road, Longwick, and Buckinghamshire.
APP/K0425/W/15/3018514
- D2 Land rear of 62 Iveshead Road, Shepshed. APP/X2410/W/15/3007980
- D3 Land at Foldgate Lane, Ludlow, Shropshire. APP/L3245/W/15/3137161
- D4 Land at Waterloo Road, Bidford-on-Avon, Warwickshire.
APP/J3720/W/15/3089709
- D5 Land to the south and west of Whitworth Way, Wilstead, Bedfordshire.
APP/K0235/W/16/3147287
- D6 Land at the Worcestershire Hunt Kennels, Kennels Lane, Fernhill Heath,
Worcestershire. APP/H1840/W/15/3003157
- D7 Report to SoS: Land surrounding Sketchley House, Watling Street, Burbage,
Leicestershire. APP/K2420/A/13/2208318
- D8 Land between Iron Acton Way and North Road, Engine Common, Yate, South
Gloucestershire. APP/P0119/A/12/2186546
- D9 Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Cheshire.
APP/R0660/A/13/2192192
- D10 Land at the corner of Oving Road and A27, Chichester PO20 2AG.
APP/L3815/W/16/3165228
- D11 SoS Land at Gotham road, East Leake, Nottinghamshire.
APP/P3040/A/07/2050213
- D12 SoS Land At Pulley Lane, Newland Road And Primslan Way, Droitwich Spa,
(Wychavon Dc) APP/H1840/A/13/2199426
- D13 Land north of Upper Chapel, Launceston. APP/D0840/A/13/2209757
- D14 Land at Fountain Lane, Davenham, Cheshire. APP/A0665/A/14/2226994
- D15 Land north of Bill Crane Way, Lutterworth, Leicestershire.
APP/F2415/A/12/2179844
- D16 Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon.
- D17 Land east of Buckingham Road, Steeple Claydon, Buckingham,
Buckinghamshire. APP/J0405/W/16/3154432
- D18 Land off Worcester Road, Drakes Broughton, Worcestershire.
APP/H1840/W/15/3008340
- D19 Broden Stables, Redlands Lane, Crondall, Farnham.
APP/N1730/W/17/3185513

- D20 64 Biggleswade Road, Potton. APP/P0240/W/17/3176444
- D21 Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney.
APP/Y0435/W/17/3178790
- D22 Land off Olney Road, Lavendon. APP/Y0435/W/17/3182048
- D23 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley.
APP/D2320/A/12/2172693
- D24 Land off Elmwood Avenue, Essington. APP/C3430/A/12/2189442
- D25 Land east of Springwell Lane, Whetstone, Leicestershire.
APP/T2405/A/13/2193758
- D26 Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire.
APP/A0665/W/14/3000528

Old Planning Application 2016/02717/PA

- E1 Committee Report
- E2 Application Plans
 - Site Location Plan (6863-L-01)
 - Indicative Layout Plan (6863-L-05-D)
 - Constraints and Opportunities Plan (6863-L-02-F)
- E3 Planning Statement (2016)

Local Plan Evidence Base Documents

- F1 2018 SHLAA
 - F2 5YHLS Report January 2018
 - F3 BDP Inspector's report
 - F4 BDP Duty to Co-Operate Statement (June 2014)
 - F5 Withdrawal of BDP inspector's report holding direction
 - F6 Strategic Housing Needs Study Stage 2 report (November 2014)
 - F7 Greater Birmingham HMA Strategic Growth Study (Feb 2018)
 - F8 Greater Birmingham and Black Country Housing Market Area Strategic Locations Study (2018) Position Statement.
 - F9 Birmingham Local Plan Authority Monitoring Report Monitoring period 2016 - 2017
 - F10 BCC Local Development Scheme
 - F11 Sustainable Community Strategy – Birmingham 2026
 - F12 Homelessness Strategy 2012+
 - F13 BCC Strategic Housing Market Assessment 2012
 - F14 BCC Housing Targets 2011-31 Technical Paper (September 2013)
 - F15 BDP Planning for Birmingham's growing population Options Consultation October 2012
 - F16 Extract from Birmingham Core Strategy 2026 Consultation Draft December 2010
-
- B1 Playing Pitch Strategy (2017)

Other supporting information

- B2 Places for Living
 - B3 Places for all
-
- G3 BCC representations on Solihull Draft Local Plan
 - G4 Solihull Local Plan Review Draft Local Plan – Summary of Representations (July 2017)

- G5 Report to the Greater Birmingham and Solihull Supervisory Board – STRATEGIC HOUSING NEEDS STUDY
- G6 Fixing our broken housing market – February 2017
- G7 Extract from the Consultation Draft Core Strategy

Appeal - Application Documents (ref: 2017/02724/PA)

- H1 Covering Letter
 - H2 Application Forms
 - H3 Site Location Plan (6863-L-01)
 - H4 Development Framework (6863-L-04)
 - H5 Constraints and Opportunities Plan (6863-L-02 rev F)
 - H6 Indicative Layout Plan (6863-L-05 rev D).
 - H7 Supporting Planning Statement
 - H8 Phase 1 Site Investigation Report
 - H9 Design and Access Statement
 - H10 Transport Assessment
 - H11 Confidential Badger Report - Environmental Statement: Volume 3 Appendices
 - H12 Birmingham City Council Five Year Housing Land Supply Assessment
 - H13 Community Infrastructure Levy Liability Form
 - H14 Education report
 - H15 Equality Monitoring Form
 - H16 Environmental Statement Volume 1
 - H17 Environmental Statement Volume 2
 - H18 Environmental Statement Volume 3
 - H19 Environmental Statement Non-Technical Summary
 - H20 Flood Risk Assessment
 - H21 Tree Survey
 - H22 Open Space Review
 - H23 Planning Obligation and Affordable Housing Statement
 - H24 Minerals Impact Assessment
 - H25 Statement of Community Involvement
 - H26 Highways Technical Note 004
-
- J2 Biodiversity Impact Assessment Calculator
 - J3 Fluvial9 Design and Access Statement
 - J4 Precautionary Method Statement (Bats)
-
- K1 Decision Notice 2017/02724/PA
 - K2 Committee Report 2017/02724/PA

Consultee Responses

- I1 West Midlands Fire Service
- I3 Severn Trent
- I4 West Midlands Police
- I5 Environment Agency
- I6 Lead Local Flood Authority
- I7 Sport England – Non- statutory role and policy
- I8 Regulatory Services
- I9 Landscape Architect
- I10 Ecology
- I11 Education
- I12 Transportation

- I13 Housing
- I14 Leisure Services
- I15 Trees
- I16 Design
- I17 District Parks Team 120717
- I18 District Park Team2 120717
- I19 Sports Development Officer 210717
- I20 Design (to revised Masterplan)
- I21 Design (to revised Masterplan)
- I22 Ecology (to revised Masterplan)
- I23 Trees (to revised Masterplan)
- I24 LLFA (response to revised Masterplan)

Documents submitted during Wheatcroft Consultation

- J5 Development Framework (6863-L-04 Revision T)
- J6 Indicative Layout (6863-L-05 Revision E)
- J7 Cover letter
- J8 Consultation responses and summary
- J9 Newspaper advertisement
- J10 Correspondence between HL, BCC and PINS

- K3 Committee report 2017/02724/PA (05/07/18)

Transport Documents

- R1 Transport Scoping Notes 16094-01 and 16094-02
- R2 Technical Note 16094-03
- R3 Technical Note 16094-04
- R4 Technical Note 16094-05
- R5 Stage 1 Road Safety Audit & Designer's Response

BCC 5 Year Housing Land Supply Planning Applications

Detailed Planning Permissions	
S1	CC263 - 49 to 51 Holloway Head, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S2	CC299 - Site of 36 and 38 Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S3	CC356 - 87 Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report

S4	CC377 - United Services Club, Gough Street, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S5	CC379 - Legge Lane/Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S6	CC380 Land rear of Assay Office, Charlotte Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S7	CC381 - BOERMA phase 2&3 Digbeth/Park Street/Well Lane, Bordesley & Highgate
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S8	E114 - 12 - 18 Whitmore Road, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S9	E705 - Site of 477 Charles Road, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S10	E707 - 7 Land Adjacent 160 Slade Road, Stockland Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S11	E714 - Upper Floors, 138 Ladypool Road, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
(b)	Decision Notice

(c)	Committee Report
S12	E740 - 95 to 97 Cato Street, Nechells
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S13	N412 - Rear of 216 Birmingham Road, Sutton Wylde Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S14	N784 - Adjacent 95 Uplands Road, Holyhead
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S15	N788 - Old Mill Grove, Birchfield
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S16	N793 - Adjacent 62 Rosslyn Road, Sutton Walmley & Minworth
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S17	N794 - Above 277 Kings Road, Kingstanding
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S18	N808 - 1st Floor 146 Soho Road, Handsworth
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S19	N815 - 393 Dudley Road, North Edgbaston
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S20	N853 - 24 Trenchard Close, Sutton Reddicap
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report

S21	S785 - Adjacent 37 Longwood Road, Rubery & Rednal
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S22	S792 - St Judes Court, Brandwood & King's Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S23	S796 - 13A Alvechurch Road, Longbridge & West Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S24	S808 - Hill Croft/Allens Croft Road, Brandwood & King's Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
Outline Planning Permissions	
S25	E101 - The Comet Public House, Collingbourn Avenue, Bromford & Hodge Hill
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S26	E379 - Nocks Brickworks, Holly Lane, Erdington
(a)	Site Location Plan
(b)	Decision Notice
(c)	S106
S27	N14 - Old Oscott Hill, Old Oscott, Oscott
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S28	E799 - 89 Coleshill Road, Bromford & Hodge Hill
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106

S29	N856 - 38 Heath Street South and adjacent site, North Edgbaston
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S30	S10 - Selly Oak Hospital, Raddlebarn Road, Bournville & Cotteridge
(a)	Site Location Plan
(b)	Decision Notice
S31	S899 - Site of Near Oak Drive Dela Drive, Bartley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S32	S922 - Hall Green Stadium, York Road, Hall Green North
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S33	S935 - 6 Selly Hill Road, Bournbrook & Selly Park
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S34	E787 Elite House, 95 Stockfield Road, Tyseley & Hay Mills
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S74	S273- Adjacent 85 Redhill Road, Longbridge & West Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
Permitted Development	
S35	E837 - Equipoint, 1506 Coventry Road, South Yardley
(a)	Site Location Plan
(b)	Decision Notice

(c)	Committee Report
(d)	Site Visit Photograph
S36	CC74 - The Square, Ryland St, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S37	E848 - Swan Courtyard, Charles Edward Road, South Yardley
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S38	N961 - Four Oaks House, Lichfield Road, Sutton Four Oaks
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S39	E769 - Greencote House, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S40	C429 - 123 Bradford Street, Bordesley & Highgate
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S41	E787 - Elite House, 95 Stockfield Road, Tyseley & Hay Mills
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S42	C428 Blocks 1&2 Branston Court, Branston Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph

S43	E853 - 197-201 Streetly Road, Stockland Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
Under Construction	
S44	CC77 - Between 62 & 90 Constitution Hill, ho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	S106
S45	E679 - 2308 Coventry road, Sheldon
(a)	Site Location Plan
(b)	Decision Notice
S46	S29 - Adjacent 163 Cole Valley Road, Hall Green South
(a)	Site Location Plan
(b)	Decision Notice
S47	S252- 350 Groveley Lane, Longbridge and West Heath
(a)	Site Location Plan
(b)	Decision Notice
S48	CC220 - Land bounded by Priory Queensway and Chapel Street, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S49	N536- Land adjacent 7 Sutton Square, Sutton Walmley & Minworth
(a)	Site Location Plan
(b)	Decision Notice
S50	E446 - 551-555 Green Lane, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
Allocated in the Plan	
S51	E61 - Yardley Brook, Colehall Lane, Glebe Farm & Tile Cross
(a)	Site Location Plan

S52	E106 - Between 17 Hyperion Road & 7 Papyrus Way, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S53	E107 - Adjacent 17 Papyrus Way Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S54	E108 - Junction of Tipperary Close & Trigo Croft, Bromford Estate
(a)	Site Location Plan
S55	E109 - 17 Hyperion Road, Bromford & Hodge Hill
(a)	Site Location Plan
S56	E110 - Land adjacent 25 Tri go Croft, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S57	E111 - Rear of 19 25 Trigo Croft, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S58	E485 - Berrandale Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S59	E487 - Hyperion Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S60	E489 - Tipperary Close/Chipperfield Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S61	E768 - Highgate Road, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
S62	N814 - Former Birchfield Library and adjacent shops, Aston
(a)	Site Location Plan
Other Opportunities	
S63	E363- Rear of 364 to 404 Stockfield Road, South Yardley

(a)	Site Location Plan
S64	E594 - Hallmoor School, Hallmoor Road, Glebe Farm & Tile Cross
(a)	Site Location Plan
S65	E808 - Greenwood Academy, Farnborough Road, Castle Vale
(a)	Site Location Plan
S66	E860 - Lyndhurst Estate Phases 3&4, Erdington
(a)	Site Location Plan
S67	E866 - Gressel Lane, Glebe Farm & Tile Cross
(a)	Site Location Plan
S68	N493 - Crown and Cushion and adjoining land, Birchfield
(a)	Site Location Plan
S69	N903 - Leslie Road Depot, Birchfield
(a)	Site Location Plan
S70	S160 - Land to the rear of 15-87 Cateswell Road, Hall Green North
(a)	Site Location Plan
S71	S975 - Highfield Lane/Woodridge Avenue, Quinton
(a)	Site Location Plan
S72	S977 - Long Nuke Road Recreation Ground, Bartley Green
(a)	Site Location Plan
S73	S978 - Edgbaston Cricket Club, Edgbaston
(a)	Site Location Plan

Appendix E

DOCUMENTS RELATING TO COSTS APPLICATIONS

AC1 BCC application for Costs against the Appellant dated 27.09.18

AC2 Appellant's application for Costs against the Council dated 12.10.18

AC3 BCC application for Costs against the Appellant dated 15.10.18

AC4 BCC response to Appellant's Costs application dated 17.10.18

AC5 Appellant's final comments dated 19.10.18

AC6 Appellant's response to BCC Costs application dated 17.10.18

AC7 BCC final comments dated

Appendix F

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 3 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.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

- 4) The number of dwellings erected on the site shall not exceed 800.

Reason: for the avoidance of doubt and to ensure an appropriate balance between built development and green infrastructure.

- 5) The development hereby approved shall be implemented in accordance with the details shown on drawing numbers:

6863-L-01 - Site Location Plan March 2016

16094-06-3 Rev A - Proposed Site Access –Frankley Beeches Road (West)

16094-06-2 Rev A – Proposed Site Access- Frankley Beeches Road (East)

16094-04 Rev D – Proposed Site Access Western Roundabout Extra Arm

16094-06-04 Rev A – Proposed Site Access – Tessall Lane

Reason: For the avoidance of doubt

- 6) The development hereby approved shall be implemented in general accordance with the revised Development Framework Plan – Drawing Number 6863-L-04 Rev T dated 18 May 2018.

Reason: For the avoidance of doubt and to ensure an appropriate balance of built development and green infrastructure including existing trees and vegetation.

- 7) No development shall take place until a Phasing Plan has been submitted to and approved in writing by the local planning authority. The Phasing Plan shall identify the proposed residential development zones and the distribution of affordable housing within these zones, the areas of public open space and green infrastructure to be provided in each phase, and the means of vehicular and pedestrian and cycle access to serve each phase, and shall show how each of these elements of the development is to be phased.

The submitted details shall identify the order of delivery of each phase, the anticipated density in each phase of residential development, and the proposed access arrangements for construction traffic and location of contractors' compounds for each phase.

The development shall be implemented in accordance with the approved Phasing Plan.

Reason: In order to secure the satisfactory development of the application site.

- 8) The public open space to be provided within the development hereby approved shall have a minimum area of 12.45 ha and be provided in general accordance with the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The public open space shall be delivered in two phases with the first phase to be completed prior to the occupation of the 200th dwelling and the second phase to be completed prior to the occupation of the 600th dwelling.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

- 9) No development shall take place until full details of the proposed play areas have been submitted to and approved in writing by the local planning authority. The play areas shall be in the general locations indicated in the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The submitted details shall include the layout of the play areas and full details of planting, hard and soft surfacing and play equipment specification including type, height and colour and a programme for the completion of the works in accordance with the approved Phasing Plan. The development shall be implemented in accordance with the approved layout/details and programme and the play areas and equipment shall, thereafter, be retained and maintained for their intended use.

Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3, TP9 and TP27 of the Birmingham Development Plan and Public Open Space in New Residential Development SPD.

- 10) No development shall take place until an updated hydraulic model has been submitted to and approved in writing by the local planning authority. The update to the model shall address areas identified for improvement as highlighted red and amber in the Environment Agency's Hydraulic Model Review (Model Review NWGC Final -19.09.18). It shall also provide a representation of the proposed final development proposal and identify property boundaries in relation to the updated flood extents and details of any flood mitigation such as compensation, should this be intended.

Reason: To reduce the risk of flooding to the development and its future users and third parties.

- 11) No development shall take place until an updated Flood Risk Assessment (FRA) has been submitted to and approved in writing by the local planning authority. The updated FRA shall incorporate the updated Hydraulic Model outputs as well as details of flood resilience measures including, for example, the setting of finished floor levels no lower than 600mm above the climate change level.

Reason: To reduce the risk of flooding to the development and its future users.

- 12) No development shall take place, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include detailed proposals for:
- a) the parking of vehicles of site operatives and visitors;
 - b) the routing of construction traffic to and from the site;
 - c) the location of loading and unloading of plant and materials and of contractors' compounds.

- d) proposed working hours for demolition and construction activities to take place and for the delivery of materials to and removal of waste materials from the site;
- e) the location and specification of all construction accesses and roadways from the public highway to site compounds and working areas;
- f) the control of noise and vibration;
- g) the control and suppression of dust.
- h) the storage and management of construction waste;
- i) the location and specification of wheel washing facilities and/ or other measures to prevent vehicles leaving the site depositing mud and soil on the public highway.

The approved CMS shall be adhered to throughout the construction period.

Reason: In order to safeguard the amenities of occupiers of nearby premises/dwellings and in the interests of highway safety.

- 13) No development shall take place until full details of a sustainable drainage system for the development hereby approved has been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) details of infiltration testing;
 - b) final drainage layout plans;
 - c) typical cross sections and details of proposed SuDS features;
 - d) network calculations;
 - e) proposed finished floor levels (set to a minimum of 150mm above surrounding ground levels);
 - f) exceedance flows showing that surface water flood risk has been mitigated on and off site;
 - g) a programme for implementing the works in accordance with the approved Phasing Plan.

The sustainable drainage works shall be completed in accordance with the approved details and programme. No building or part of the development shall be occupied or brought into use until the surface water drainage works serving that building or part have been completed and are in operation.

Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy TP6 of the Birmingham Development Plan and the Sustainable Management of Urban Rivers and Floodplains SPD.

- 14) No development (including demolition and ground works) shall take place until a scheme a Written Scheme of Investigation (WSI) detailing a programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The WSI shall thereafter be implemented in full in accordance with the approved details.

Reason: To ensure that any features of archaeological interest within the site are protected or recorded.

- 15) No development (including demolition, ground works and vegetation clearance) shall take place until a Badger Protection Scheme (BPS) for the protection of badgers using the site and for mitigating the effects of the development on their habitat within the site has been submitted to and approved in writing by the local planning authority. The BPS shall include details of the protection and mitigation measures required both during the construction period and once the development is complete and a programme for the implementation of those works in line with the approved Phasing Plan. The BPS shall be carried out in accordance with the approved details and programme.

Reason: In the interests of nature conservation in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.

- 16) No development (including demolition, ground works and vegetation clearance) shall take place until an Invasive Non-native Species Protocol (INSP) has been submitted to and approved in writing by the local planning authority. The INSP shall include detailed proposals for the containment, control and removal of all Japanese knotweed, Cotoneaster and Rhododendron on the site and a programme for undertaking the necessary works. The measures shall be carried out strictly in accordance with the approved details and programme.

Reason: In order to safeguard the nature conservation value of the site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.

- 17) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees on the site and on immediately adjoining land (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

Reason: In order to ensure adequate protection of all trees to be retained and to secure the satisfactory development of the application site in accordance with Policies PG3 and TP7 of the Birmingham Development Plan.

- 18) All work for the pruning or cutting back of retained trees shall be carried out in accordance with British Standard BS3998 'Recommendations for Tree Work' 2010 and with any subsequent edition of those recommendations.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3 and TP7 of the Birmingham Development Plan.

- 19) No removal of trees, hedges or shrubs shall take place between 1 March and 31 August inclusive unless a scheme to protecting nesting birds on the site has been submitted to and approved in writing by the local planning authority. If a scheme for the protection of nesting birds has been approved in writing by the

local planning authority no trees, hedges or shrubs on the site shall be removed between 1 March and 31 August inclusive other than in accordance with the approved scheme.

Reason: To ensure the protection of birds using vegetation within the site for the purposes of breeding.

- 20) The site accesses and related visibility splays shall be constructed in strict accordance with the details shown on the approved plans (Drawing Nos: 16094-06-3 Rev A; 16094-06-2 Rev A; 16094-04 Rev D; and 16094-06-04 Rev A) and the approved Phasing Plan. The approved visibility splays shall thereafter be maintained free of any obstruction or vegetation above 0.9m in height.

Phased Conditions

- 21) No development shall take place within any approved phase unless samples of the materials to be used in the construction of the external surfaces of the buildings in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

- 22) No development shall take place within any approved phase unless full details of hard and/or soft landscape works for that phase and a programme for the implementation of those works have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) proposed finished levels or contours;
 - b) means of enclosure, hard surfacing materials, minor artefacts and structures;
 - c) proposed and existing functional services above and below ground;
 - d) fully annotated planting plans to a scale of 1:200, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs.
 - e) other information shall include planting schedules, noting species, plant sizes and proposed numbers/densities;
 - f) details of the proposed planting implementation programme.

All hard and/or soft landscape works shall be implemented in accordance with the approved details and programme and shall thereafter be maintained.

- 23) Any trees or shrubs which, within a period of two years from the completion of the phase of development of which they form a part, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

Reason: In order to secure the satisfactory development of the application site and secure a high quality of development in accordance with Policy PG3 of the Birmingham Development Plan.

- 24) No development shall take place within any approved phase unless full details of the materials to be used for hard and paved surfacing in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

- 25) No development shall take place in any approved phase unless full details of proposed boundary treatments for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) plans showing the locations of existing boundary treatments to be retained and the proposed new boundary treatments;
 - b) scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments;
 - c) details of mammal access arrangements.

The approved scheme shall be implemented before occupation of any dwelling in that phase and shall be retained thereafter.

Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3, TP7 and TP8 of the Birmingham Development Plan.

- 26) No development shall take place in any approved phase unless a detailed lighting scheme for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- a) site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate;
 - b) site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises;
 - c) details of the lighting fittings including: colour, watts and periods of illumination;
 - d) details to clearly demonstrate that areas to be lit will not disturb bats or prevent their access to key commuting routes and foraging habitat.

All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the first occupation of any part of the development within that approved phase and shall thereafter maintained.

Reason: To ensure a high quality of external environment, to complement the development proposals, to protect and reinforce local character, and to safeguard the nature conservation value of the site in accordance with Policy PG3 and TP8 of the Birmingham Development Plan, saved Paragraph 3.14 of the Birmingham UDP, Places for All SPG and Lighting Places SPD.

- 27) No development shall take place in any approved phase unless full details of earthworks and finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include the proposed grading and mounding of land areas,

cross sections through the site and relationship with the adjoining landform and buildings.

The development shall be implemented in strict accordance with the approved details.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

28) No development shall take place within any approved phase until an assessment of the risks posed by any ground contamination in that phase of development has been submitted to and approved in writing by the local planning authority. The risk assessment and information required for each phase shall comprise:

(a) A preliminary risk assessment, which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

(b) A site investigation scheme, based on (a) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.

(c) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken and a timetable of works and site management procedures.

(d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

29) All ground contamination remediation measures required as a result of the risk assessment shall be provided in accordance with the details set out within the agreed remediation scheme. Prior to the first occupation of each phase of the development hereby approved, the developer shall provide written certification to the local planning authority that the measures set out in the report have been implemented in full for that phase of the development.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

30) No development (including demolition, ground works and vegetation clearance) shall take place in any approved phase unless a Construction Ecological Management Plan (CEMP) for that phase of development has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of "biodiversity protection zones;"

- c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements);
- d) the location and timing of sensitive works to avoid harm to biodiversity features;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication
- g) the role and responsibilities on site of an Ecological Clerk of Works or similarly competent person;
- h) the use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period.

Reason: In the interests of nature conservation in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.

- 31) No development shall take place in any approved phase unless an Ecological Enhancement Strategy (EES) for that phase of development has been submitted to and approved in writing by the local planning authority. The EES shall include (but not be limited to) details of:
- a) provision for wildlife corridors, linear features and habitat connectivity;
 - b) creation, restoration and enhancement and semi-natural habitats;
 - c) creation of new wildlife features, e.g. bird nesting features and bat roosting features within buildings and structures, ponds and badger setts;
 - d) green roofs and green/habitat walls;
 - e) a programme for the implementation of the agreed works.

The development shall thereafter be implemented in accordance with the approved details and programme.

Reason: In order to safeguard the nature conservation value of the site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.

- 32) No development shall take place in any approved phase unless a Habitat/Nature Conservation and Management Plan for that phase of development has been submitted to and approved in writing by the local planning authority. The management plans shall include:
- a) description and evaluation of the features to be 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 an annual work plan capable of being rolled forward over a five-year period);
 - g) details of the body or organisation responsible for implementation of the plan;
 - h) monitoring and remedial / contingencies measures triggered by monitoring.

The Conservation and Management Plan shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the management plan 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 approved plan shall be implemented in accordance with the approved details.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.

33) No part of the development hereby approved shall be occupied or brought into use until full details of the agreed off-site highway improvement measures and a programme for their implementation have been submitted to and approved in writing by the local planning authority and the approved measures have either been substantially completed or have been included in an agreed programme of works to ensure that the improvements are secured as each associated phase of development is completed. All delivery and timing of highway works shall be agreed in accordance with the approved Phasing Plan. The package of measures shall include:

- a) new signalised pedestrian crossings and carriageway widening at the Frankley Beeches Road/Hanging Lane crossroads;
- b) new 2m wide footway Frankley Beeches Road along the site frontage;
- c) pelican crossing on Frankley Beeches Road near the new school;
- d) central refuge to the west of Guardian Close;
- e) footway/cycle link into the site onto Elan Road;
- f) 2m wide footway along Elan Road;
- g) pedestrian link onto Hanging Lane and central refuge;
- h) improved signage at the West Park Avenue/ Hanging Lane junction to further discourage the use of Hanging Lane by HGVs;
- i) a third lane would be provided on the A38/ Tessall Lane junction to accommodate right turning movements onto Bristol Road South.

Reason: In order to secure the satisfactory mitigation of the effects of the development on the highway network and to facilitate and encourage the use of walking and cycling modes of travel and the use of public transport.

34) No part of any agreed phase shall be occupied or brought into use until the sustainable drainage system to serve that phase of development has been completed in accordance with the approved sustainable drainage system and a Sustainable Drainage Operation and Maintenance Plan (SDOMP) for that part of the sustainable drainage system has been submitted to and approved in writing by, the local planning authority. The approved drainage system shall thereafter be operated and maintained in accordance with the approved SDOMP.

Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy TP6 of the Birmingham Development Plan and the Sustainable Management of Urban Rivers and Floodplains SPD.

35) No dwelling in any approved phase shall be occupied until the approved means of vehicular access from that dwelling to and from the public highway has been constructed in accordance with the approved plans and is available for use.

Reason: In the interests of highway safety and to ensure a satisfactory development.

36) No dwelling in any approved phase shall be occupied until a Residents' Travel Plan for that phase of development has been submitted to and agreed in writing by the local planning authority. The Residents' Travel Plan shall propose measures to actively promote the use of more sustainable transport choices for residents occupying the site and shall include:

- a) the incentives to be offered to each household upon occupation to encourage the use of modes of travel other than the car;
- b) the information to be provided to each household upon occupation with regard to public transport timetables, cycle maps, the location of local facilities such as schools, shops, education and healthcare services and walking information.

The plan shall be implemented in accordance with the approved details.

Reason: In order to provide future residents with a genuine choice of sustainable transport options.

37) No dwelling in any approved phase shall be occupied until an electric vehicle charging point which is accessible to the occupier of that dwelling has been provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details should provide individual charging points for all dwellings that have their own garage, driveway or dedicated parking space and for charging points to be provided in 10% of all parking spaces in shared parking areas.

Reason: In order to provide for more sustainable modes of travel in accordance with Policy TP5 of the Birmingham Development Plan.

School and Community Centre conditions

38) The primary school shall not be brought into use unless a School Travel Plan has been submitted to and approved in writing by the local planning authority. The School Travel Plan shall include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet these objectives. The plan shall thereafter be implemented in accordance with the approved details.

Reason: In order to provide staff, parents and visitors with a genuine choice of sustainable transport options.

39) The rating levels for cumulative noise from all plant and machinery, associated with the school and community facility, shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing Laeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.

Reason: To secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan.

40) No above ground works shall take place for the construction of the school or community hub unless details of the extract ventilation and odour control equipment for those buildings, including details of any noise levels, noise control and external ducting have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

Reason: In order to secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan.

41) No above ground works shall take place for the construction of the school or community hub until details of facilities for the storage of refuse within the curtilage of that building have been submitted to and approved in writing by the local planning authority. The refuse facilities shall be provided in accordance with the approved details before the buildings are first occupied and shall thereafter be maintained.

Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.

42) The community hub shall only be used between the hours of 0700-2300 daily.

Reason: In order to define the permission and safeguard the amenities of occupiers of nearby dwellings and premises.



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.